DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[FNS–2018–0004]

RIN 0584–AE57

Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: USDA is finalizing its rulemaking proposed February 1, 2019. The rule revises the conditions under which USDA would waive, when requested by States, the able-bodied adult without dependents (ABAWD) time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. In addition, the rule limits carryover of ABAWD discretionary exemptions.

DATES: This rule is effective April 1, 2020, except for the amendment to 7 CFR 273.24(h), which is effective October 1, 2020.

ADDRESSES: SNAP Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 812, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302. *SNAPCPBRules@usda.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms or Abbreviations

Able-Bodied Adults without Dependents, ABAWDs
Advanced Notice of Public Rulemaking, ANPRM
Agriculture Improvement Act of 2018 (Pub. L. 115–334), the 2018 Farm Bill
Bureau of Labor Statistics, BLS
Census Bureau's American Community Survey, ACS
Code of Federal Regulations, CFR
Department of Labor, DOL
Employment and Training Administration, ETA
Employment and Training, E&T
Food and Nutrition Act of 2008, Act
Food and Nutrition Service, FNS
Labor Market Area(s), LMA(s)
Labor Surplus Area(s), LSA(s)
Office of Management and Budget, OMB
Notice of Proposed Rulemaking, NPRM
Supplemental Nutrition Assistance Program, SNAP
The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PRWORA
U.S. Department of Agriculture, the Department or USDA

References

The following references may be helpful background.

(1) Section 6(d) and section 6(o) of the Food and Nutrition Act of 2008, as amended
(2) Title 7 of the Code of Federal Regulations, parts 273.7 and 273.24
(3) Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Proposed Rule, 64 FR 70920 (December 17, 1999). Available at: *https://www.federalregister.gov/documents/1999/12/17/99-32527/food-stamp-program-personalresponsibility-provisions-of-the-personalresponsibility-and-work.*
(4) Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Final Rule, 66 FR 4437 (January 17, 2001). Available at: *https://www.federalregister.gov/documents/2001/01/17/01-1025/foodstamp-program-personal-responsibilityprovisions-of-the-personal-responsibilityand-work*
(5) Guide to Serving ABAWDs Subject to Time-limited Participation, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/Guide_to_Serving_ABAWDs_Subject_to_Time_Limit.pdf*
(6) Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents, 2016. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf*
(7) Expiration of Statewide ABAWD Time Limit Waivers, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Expiration-of-Statewide-ABAWD-Time-Limit-Waivers.pdf*
(8) ABAWD Time Limit Policy and Program Access, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf*
(9) ABAWD Questions and Answers, 2015. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Questions-and-Answers-June%202015.pdf*
(10) ABAWD Questions and Answers, 2013. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/ABAWD-Questions-and-Answers-December-2013.pdf*
(11) Historical Policy Document: Waivers of Work Requirement Time Limits Based on Insufficient Jobs, March 1997. Available at: *https://fns-prod.azureedge.net/sites/default/files/media/file/HistoricalPolicyDocument_FSPWaiversofWorkRequirementTimeLimitsBasedonInsufficientJobs_Mar1997_0.pdf*
(12) Historical Policy Document: Guidance for States Seeking Waivers for Food Stamp Limits, December 1996. Available at: *https://fns-prod.azureedge.net/sites/default/files/media/file/HistoricalPolicyDocument_GuidanceforStatesSeekingWaiversforFoodStampLimits_December1996.pdf*
(13) Overuse of the 15 Percent Able-Bodied Adults Without Dependents (ABAWD) Exemptions by States Agencies, November 2007. Available at: *https://fns-prod.azureedge.net/sites/default/files/media/file/Overuse%20of%20the%2015%20Percent%20ABAWD%20Exemptions%20by%20States%20Agencies%20Nov%202007.pdf*
(14) BLS Local Area Unemployment Statistics. Available at: *https://www.bls.gov/lau/*
(15) DOL Labor Surplus Area. Available at: *https://www.doleta.gov/programs/lsa.cfm*
(16) Executive Order 13828: Reducing Poverty in America by Promoting Opportunity and Economic Mobility. Available at: *https://www.federalregister.gov/documents/2018/04/13/2018-07874/reducing-poverty-in-america-by-promoting-opportunity-and-economic-mobility*

Background on This Rulemaking

Section 6(o) of the Food and Nutrition Act of 2008, as amended (the Act) generally limits the amount of time an able-bodied adult without dependents (ABAWD) can receive Supplemental Nutrition Assistance Program (SNAP) benefits to 3 months in a 36-month period (the time limit), unless the individual meets certain work requirements. On the request of a State SNAP agency, the Act also gives the U.S. Department of Agriculture (the Department) the authority to temporarily waive the time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. The Act also provides State agencies with a limited number of discretionary exemptions that can be used by States to extend SNAP eligibility for ABAWDs subject to the time limit.

The ABAWD time limit and work requirement were initially enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which was signed into law on August 22, 1996. According to the Conference Report accompanying PRWORA, the main purpose of PRWORA was to ''[promote] work over welfare and self-reliance over dependency, thereby showing true compassion for those in America who need a helping hand, not a handout'' (H. Rept. 104–725, p. 261). Congress also explained that the legislation ''reforms welfare to make it more consistent with fundamental American values—by rewarding work and self-reliance, encouraging personal responsibility, and restoring a sense of hope in the future'' (H. Rept. 104–725, p. 263). By

adding the time limit and work requirement to the Food Stamp Act of 1977 (now the Food and Nutrition Act of 2008, as amended) at section 6(o), Congress highlighted the importance of work and self-sufficiency for the ABAWD population. Specifically, Congress noted that: ''It [PRWORA] makes substantial reforms in the Food Stamp Program, cracking down on fraud and abuse and applying tough work standards'' (H. Rept. 104–725, p. 261). The time limit and work requirement for ABAWDs enacted by PRWORA has been maintained by Congress through several reauthorizations of the Federal law governing SNAP, most recently through the Agriculture Improvement Act of 2018, indicating that Congress remains committed to promoting work, self-reliance, and personal accountability among the ABAWD population.

On April 2, 2018, the President signed Executive Order (E.O.) 13828, on ''Reducing Poverty in America by Promoting Opportunity and Economic Mobility.'' E.O. 13828 sets forth the Administration's policy that, with regard to social welfare, the Federal Government's role is to clear paths to self-sufficiency and to invest in Federal programs that are effective at moving people into the workforce and out of poverty. Federal programs should empower individuals to seek employment and achieve economic independence, while reserving public assistance programs for those who are truly in need. Government must examine Federal policies and programs to ensure that they are consistent with principles that are central to the American spirit—work, free enterprise, and safeguarding human and economic resources.

E.O. 13828 also provided a list of ''Principles of Economic Mobility'' that should inform and guide program administration in the context of applicable law. One such principle, relevant to this rulemaking, is to ''improve employment outcomes and economic independence.'' To advance this principle, the E.O. calls for Federal agencies to ''first enforce work requirements that are required by law [and to] also strengthen requirements that promote obtaining and maintaining employment in order to move people to independence.'' Moreover, E.O. 13828 directed Federal agencies to review regulations and guidance documents to advance these objectives consistent with the principles of increasing self-sufficiency, well-being, and economic mobility.

In accordance with E.O.13828 and other Administration priorities, the Department undertook a review of its regulations and policies associated with ABAWDs. The time limit and work requirement for ABAWDs in SNAP clearly align with E.O. 13828 and the Department's shared principle that those who can work—adults who are able-bodied and do not have dependent care responsibilities—should work or participate in a work program, as a condition of receiving their benefits.

The Department's review of these rules, along with its more than 20 years of operational experience overseeing the States' administration of the ABAWD time limit, has led the Department to identify key weaknesses in the current regulations on ABAWD time limit waivers. Over the years, States have taken advantage of these weaknesses to request and qualify for waivers of the ABAWD time limit in areas where it is questionable as to whether the statutory conditions for approval as outlined in section 6(o)(4) of the Act, an unemployment rate over 10 percent or a lack of sufficient jobs, are present. This manipulation is demonstrated by the fact that currently about half of the ABAWDs on SNAP live in waived areas, despite low unemployment levels across the majority of the country.

Similarly, the current regulations' interpretation of section 6(o)(6)(G) of the Act, which requires the Department to increase or decrease the number of exemptions available to the State during the fiscal year based on the prior year's usage, allows States to carryover and accumulate unused ABAWD discretionary exemptions indefinitely. As a result, States have accumulated extremely high amounts of unused discretionary exemptions that well exceed the number allotted to each State for the fiscal year. The Department views the accumulation of such significant amounts of unused exemptions to be an unintended outcome of the current regulations. In the Department's view, the indefinite carryover and accumulation of unused exemptions is inconsistent with Congress' decision to limit the number of exemptions available to States in a given fiscal year, as expressed by sections 6(o)(6)(C), (D), and (E) of the Act.

The Department is committed to providing SNAP benefits to those who truly need them, but it must also encourage participants to take proactive steps toward long-term self-sufficiency. In order to ensure these goals are met, the Department believes that waivers of the time limit should only be permitted when the circumstances clearly warrant that action and meet the statutory conditions for approval.

Therefore, the Department is amending its regulations to address these policy issues by setting clear limitations and introducing new safeguards. In particular, the Department is codifying a strict definition of an ''area in which the individuals reside'' for purposes of a geographic area covered by a waiver; and redefining what demonstrates that such an area ''has an unemployment rate of over 10 percent'' or ''does not have a sufficient number of jobs to provide employment for the individuals'' for purposes of such an area qualifying for a waiver. In addition, the Department is setting a reasonable limit on the carryover of unused discretionary exemptions. The Department is making these changes in order to encourage broader application of the time limit, to more appropriately target waivers and limit discretionary exemptions, and to incentivize ABAWDs to proactively pursue any and all work and/or work training opportunities within commuting distance of their residences.

Proposed Rule and Comments

On February 1, 2019 (84 FR 980), the Department published a proposed rule, *Supplemental Nutrition Assistance Program: Requirements for Able-Bodied Adults Without Dependents,* proposing to amend the regulatory standards by which the Department evaluates State agency requests to waive the time limit for ABAWDs and to limit the carryover of ABAWD discretionary exemptions. The 60-day comment period ended on April 2, 2019. The comment period was reopened on April 8, 2019, for a period of 3 days ending April 10, 2019, due to problems with the **Federal Register** website on April 1 and 2, 2019, which contributed to commenters facing challenges when trying to submit comments.

The Department received more than 100,000 comments. The comments came from a broad range of stakeholders, including Members of Congress, State agencies, State elected officials, local governments, advocacy groups, religious organizations, food banks, legal services organizations, private citizens, and others. The Department greatly appreciates the comments received on the proposed rule as they have been essential in developing the final rule.

The Department reviewed and considered all comments received. Based on the Department's review of all the comments received, about one quarter were unique and/or substantive, with the remaining three quarters consisting of form letters, duplicates, or non-germane submissions. Generally

speaking, the Department viewed a comment as substantive if it provided an opinion or recommendation on a specific policy and included detailed reasoning. In the sections that follow, the Department's discussion focuses on those comments that provided substantive and specific feedback on particular proposed provisions and those comments that have most influenced the Department's decisions on whether to revise the proposed rule. The provisions are presented and discussed in a section-by-section format for consistency with the proposed rule and the amendatory text to the extent possible. The majority of comments that were submitted generally opposed the proposed rule but did not comment on specific provisions or provide recommendations on how to address the policy issues identified by the Department. In general, the preamble does not address in detail these comments. Similarly, the preamble does not address in detail those comments that generally supported the proposed provisions.

The Department also received comments that were outside the scope of the proposed rulemaking. By outside the scope, the Department means that commenters provided substantive feedback on policies that were not proposed to be changed as part of this rulemaking. Though the Department appreciates the feedback on those policies, comments that are clearly out of scope are not discussed in detail in this final rule.

To view public comments on the proposed rule, go to *www.regulations.gov* and search for public submissions under docket number FNS–2018–0004.

For a full understanding of the background of the provisions in this rule, see the proposed rulemaking, which was published in the **Federal Register** February 1, 2019, at 84 FR 980.

Establishing Core Standards for Approval

The Department proposed the establishment of core standards for waivers in § 273.24(f)(2). The proposed core standards would provide States with a set of consistent criteria for approval. Any supporting unemployment data provided by the State would need to rely on standard Bureau of Labor Statistics (BLS) data or methods, or data from BLS-cooperating agencies. BLS is the principal federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy. BLS produces unemployment data that is accurate, objective, relevant, timely, and accessible, and that is generally considered by experts to be reliable and robust evidence for evaluating labor market conditions. For areas which BLS does not produce data, such as Indian Reservations and some U.S. Territories, the core standards would not apply.

The Department did not receive any substantive comments on the general concept of establishing core standards; however, many comments were received on each specific core standard. These comments and the Department's responses are detailed in the following sections.

Core Standards: Retaining Waivers Based on a 12-Month Unemployment Rate Over 10 Percent

The Department proposed to maintain the criterion allowing an area to qualify for a waiver when it has a recent 12-month average unemployment rate over 10 percent, and to include that criterion as a core standard.

The comments provided on this particular proposal were generally supportive. Some comments suggested that this proposal was inadequate and that other time periods should be allowed to demonstrate an unemployment rate over 10 percent. The Department addresses these viewpoints in the *Other Data and Evidence in Exceptional Circumstances* and *Other Changes to Waivers* sections of the final rule.

The final rule adopts this provision of the proposed rule at § 273.24(f)(2)(i) as written.

Core Standards: Establishing a Floor for Waivers Based on the 20 Percent Standard

Current regulations at § 273.24(f)(2) and (3) provide for a waiver approval for a requested area that has been designated as a Labor Surplus Area (LSA) by the Department of Labor (DOL) for the current fiscal year. Prior to the final rule in 2001 that established § 273.24(f), the Department introduced the use of LSAs for waivers in its December 1996 memorandum, *Guidance for States Seeking Waivers of Food Stamp Limits.* DOL designates LSAs based on specific unemployment rate criteria. In order to be designated as an LSA for the fiscal year, the area must have had an unemployment rate 20 percent or more above the national unemployment rate for the previous 2 calendar years. In addition, the area must have had an unemployment rate of 6 percent or higher for the same 24-month period, which DOL refers to as the ''floor'' unemployment rate for LSAs. So, together, an area must have an average unemployment rate at least 20 percent above the national average *and* at least 6 percent for the previous 2 calendar years in order to be designated as an LSA.

Current regulations at § 273.24(f)(2) and (3) also provide for ABAWD time limit waiver approvals for requested areas with an average unemployment rate at least 20 percent above the national average for a recent 24-month period, beginning no earlier than the same 24-month period that DOL uses to determine LSAs for the current fiscal year (otherwise known as the ''20 percent standard''). The Department introduced the 20 percent standard in its March 1997 memorandum *FSP—Waivers of Work Requirement Time Limits Based on Insufficient Jobs.* The Department explained in that memo that its reason for introducing the 20 percent standard was to give States a method to demonstrate a lack of sufficient jobs for areas that are not considered by DOL for LSA designation. In the current regulations, the Department adopted the 20 percent standard as a standalone criterion beyond the LSA designation, to provide States with the flexibility to support waivers of areas that are not considered by DOL for LSA designation, and to allow States to use a more flexible 24-month reference period. Importantly, while the 20 percent standard was modeled after and is similar to the calculation of an LSA, the 20 percent standard does not include an unemployment rate floor, as the LSA criteria does. Because the 20 percent standard lacks an unemployment rate floor, areas that do not clearly lack sufficient jobs qualify for waivers solely because they are 20 percent above the national unemployment rate. For example, the national average unemployment rate for the 24-month period of May 2017 through June 2019 was 3.9 percent.[1] Given this national average, a State could request and qualify for a waiver in areas with an unemployment rate as low as 4.7 percent for the same 24-month period. Not including a floor has had the effect of allowing areas with low rates of unemployment to qualify for waivers.

In the February 1, 2019, proposed rule, the Department proposed to include a 7 percent unemployment rate floor within the 20 percent standard, meaning that an area would need to have an average unemployment rate at least 20 percent above the national average and of at least 7 percent for the 24-month period. In so doing, the

[1] Calculations based on BLS unemployment data, not seasonally adjusted, pulled from *https://www.bls.gov/data/#unemployment* on August 15, 2019.

Department also requested evidence-based and data-driven feedback on the appropriate threshold for the floor, specifically whether a 6 percent, 7 percent, or 10 percent floor would be most effective and consistent with the Act's requirement that waivers be determined based on a lack of sufficient jobs. In addition, the Department proposed to eliminate the LSA designation as a basis of waiver approval because the LSA unemployment rate floor of 6 percent was inconsistent with the 7 percent unemployment rate the Department proposed for the similar 20 percent standard.

The vast majority of those who commented on the unemployment rate floor opposed setting any unemployment rate floor within the 20 percent standard. However, the Department did receive several other important comments with respect to the unemployment rate floor options described in the proposed rule. The comments regarding the 6 percent, 7 percent, and 10 percent options are addressed below, along with the comments of those who opposed any floor and comments recommending alternatives.

Comments on a 6 Percent Unemployment Rate Floor for the 20 Percent Standard

Several commenters argued that, if the Department is to set an unemployment rate floor, then 6 percent is the best option. These commenters provided evidence-based support that the 20 percent standard with a 6 percent floor would demonstrate that an area lacks sufficient jobs better than 7 percent or other potential options. Some of these commenters stated that a 6 percent floor would align with DOL's LSA designation criteria. These commenters pointed out that LSA designation is a longstanding Federal standard for job insufficiency relied upon by Federal and State governments and other workforce development partners.

Some commenters suggested that in the context of the 20 percent standard, setting the floor at 6 percent makes sense in that it could be viewed as 20 percent above the natural rate of unemployment,[2] which has historically hovered around 5 percent and is one way to define a ''normal'' level of unemployment. These commenters indicated that it would be logical and appropriate to only allow areas at least 20 percent above the natural rate of unemployment to be considered for waivers under this standard.

A few commenters compared the proposed 7 percent floor to the 6 percent floor, and provided data and evidence to show that including a 6 percent floor would more appropriately target areas qualifying under the 20 percent standard to areas demonstrating a ''lack of sufficient jobs'' than would a 7 percent floor. In particular, a commenter provided analysis showing that, when looking at economic metrics other than unemployment rates, such as a county's poverty rates, education levels, and other demographics associated with poverty, counties with 6 to 7 percent unemployment more closely resemble areas above 7 percent unemployment than areas below 6 percent unemployment, indicating that 6 percent was a meaningful threshold for economic distress.

The Department is persuaded and agrees with these commenters that 6 percent is the best option for an unemployment rate floor within the 20 percent standard. The Department finds 6 percent to be particularly justified, relative to the other options, in that it aligns with DOL's LSA standard. Including the 6 percent floor within the 20 percent standard would further align the 20 percent standard with the longstanding LSA criteria on which the 20 percent standard was originally based. The Department is also influenced by the data and analysis provided by commenters that demonstrated 6 percent as a relatively meaningful threshold for economic distress and for targeting waivers to areas with a ''lack of sufficient jobs''. Moreover, the Department has determined that as a practical outcome, a 6 percent floor will ensure that the 20 percent standard appropriately demonstrates a lack of sufficient jobs and acts as an effective safeguard against any future waiver misuse. For these reasons, the Department has decided that a 6 percent floor represents areas that demonstrate a lack of sufficient jobs better than the proposed rule's 7 percent floor. As explained earlier in this section, a 20 percent standard without an unemployment rate floor can be misused because areas that do not clearly lack sufficient jobs will continue to qualify for waivers solely because they are 20 percent above the national unemployment rate.

The Department also agrees with the comments suggesting that a 6 percent floor could be viewed as sensible in that it is about 20 percent above where the natural rate of unemployment has hovered. However, as discussed in detail in later sections, the Department acknowledges that the natural rate of unemployment is a theoretical concept that is not fixed at 5 percent, but fluctuates over time and has a large range of estimates, making it an impractical basis by which to set a floor for the 20 percent standard. As a result, the Department did not view the natural rate of unemployment as a deciding factor in its decision to set the floor at 6 percent. Rather, as explained in the preceding paragraphs, the Department's decision to set the floor at 6 percent is primarily driven by the fact that it aligns with DOL's LSA standard and that it represents the most justified option relative to the proposed rule's 7 percent floor or other potential unemployment rate floors. While the comments received on the proposed rule included strong arguments, data, and evidence to support a 6 percent floor, they also exposed the relative weakness of the 7 percent proposal and the 10 percent option.

The Department is therefore adopting a 6 percent unemployment rate floor within the 20 percent standard at § 273.24(f)(2)(ii). As explained later in this rule in the section entitled *Restricting the Combining of Data to Group Substate Areas and Redefining ''Area''* and the section entitled *Other Changes to Waivers,* the Department is not including LSA designation as a criterion for waiver approval under the core standards because the Department is redefining ''area'' in such a way that will exclude civil jurisdictions used by DOL when designating LSAs.

The following subsections will focus on the comments made regarding the proposed 7 percent floor, the 10 percent floor, and other options suggested by commenters. While the Department's decision not to adopt any of these other options is based, in part, on its belief that a 6 percent floor has a stronger rationale for determining which areas demonstrate a lack of sufficient jobs than do these other options, the following subsections will not repeat the rationale for adopting the 6 percent floor, as that has already been discussed.

Comments on a 7 Percent Unemployment Rate Floor for the 20 Percent Standard

Many commenters opposed the proposed 7 percent unemployment rate floor to the 20 percent standard. A number of commenters stated that the 7 percent floor lacks justification and is arbitrary, as the proposed rule did not clearly tie the 7 percent floor to evidence for lack of sufficient jobs. Some commenters pointed to the justification provided in the proposed

[2] For more information on the natural rate of unemployment, see *https://fred.stlouisfed.org/series/NROU.*

rule that a 7 percent floor aligns with a proposal in the Agriculture and Nutrition Act of 2018, H.R. 2, 115th Cong. section 4015 (as passed by House, June 21, 2018). These commenters argued that this rationale is invalid because Congress ultimately did not include that provision when it enacted the Agriculture Improvement Act of 2018 (Pub. L. 115–334) (the 2018 Farm Bill).

Several commenters argued that setting a floor at 7 percent unemployment is too high. Some commenters asserted that jobs are not widely available to all who may seek them when unemployment is below 7 percent. Commenters also suggested that ABAWDs face barriers to employment that the general population does not. These commenters noted that unemployment rates for ABAWDs, as a distinct group, would generally be higher than the official unemployment rate because many ABAWDs share demographic characteristics with subpopulations that have relatively high unemployment rates. One commenter pointed out that areas with unemployment rates just below the 7 percent floor would share many of the same characteristics as those above the 7 percent floor, for example: Unemployment higher than at any point nationally during the 2001–2002 recession; hidden unemployment due to cyclically low labor force participation; and, very limited employer demand for the ''hardest to employ'' groups, such as those with criminal records, lengthy periods of unemployment, or other barriers to work. Another commenter argued that the proposed 7 percent floor is too high because it is well above 4 percent, which is the statutory definition of full employment set by the Full Employment and Balanced Growth Act of 1978.

Commenters also suggested that the proposed 7 percent floor would not adequately provide States with waiver coverage during times of rising unemployment because the combination of an unemployment rate floor with the lengthy 24-month data reference period would prevent many areas with rising unemployment from qualifying for waivers.

One commenter provided data analysis showing that many areas considered ''distressed communities'' according to a series of economic metrics would not have met the 7 percent unemployment rate threshold. This commenter argued that the 7 percent floor fails to capture the economic realities of regions, and that this divergence highlights the shortcomings of a 7 percent unemployment rate floor.

Many commenters provided specific examples that the proposed 7 percent floor would harm their State or locality, with some citing specific poor, food insecure, or economically distressed areas in their State, that would not currently meet the 7 percent floor.

Several commenters suggested that the Department did not properly apply the concept of the natural rate of unemployment in choosing a 7 percent floor. Some commenters suggested that the proposed rule did not provide adequate justification to explain the relationship between the 7 percent floor and the natural rate of unemployment.

The detailed comments in opposition to the 7 percent floor described in the preceding paragraphs provided the Department with helpful perspective, in particular those that provided data and analysis to illustrate that some areas with unemployment rates below 7 percent may be considered economically distressed or in recession. The Department took these comments into consideration in its decision to adopt DOL's 6 percent floor, instead of a 7 percent floor.

A few commenters expressed support for the 7 percent unemployment rate floor. While these comments did not provide evidence or data to support that a 7 percent floor within the 20 percent standard would better demonstrate a lack of sufficient jobs, they did suggest that a 7 percent floor represented a reasonable middle ground between a 10 percent floor and a 6 percent floor. The Department appreciates that when considering among several options, it is sometimes prudent to select that option which best represents a reasonable middle ground, especially when there is a lack of data or evidence to distinguish one option as more or less justified as another. However, in this situation there is clear justification supporting a 6 percent floor versus the other options, as explained in the immediately preceding section.

Comments on a 10 Percent Unemployment Rate Floor for the 20 Percent Standard

Many commenters opposed a 10 percent unemployment rate floor for the 20 percent standard. Some commenters argued that this proposal conflicts with Congressional intent. In particular, these commenters argued that Congress designated a 10 percent unemployment rate as one way for a State to qualify for a waiver, and a second criterion of ''insufficient jobs'' as an alternative to demonstrating a 10 percent unemployment rate. These commenters stated that adopting a 10 percent unemployment rate floor would make the lack of sufficient jobs criterion too similar to the 10 percent unemployment rate criterion in the statute. Commenters also suggested that this proposal would be largely duplicative of existing criteria allowing waiver approval for areas with over 10 percent unemployment during a recent 12-month period.

A few commenters supported setting an unemployment rate floor at 10 percent. These commenters argued that this high floor would most effectively reduce the number of ABAWDs living in waived areas. One commenter used data to argue that a 10 percent floor would more often act to reduce the number of areas that would qualify than would a 7 percent floor. Another commenter suggested that a 10 percent unemployment rate floor is appropriate because the current economic conditions in the United States are favorable for ABAWDs finding jobs.

The Department has not been persuaded to adopt the 10 percent floor option presented in the proposed rule, in part, because the Department found the comments expressing concern over Congressional intent and duplication with other waiver standards to be valid, and in part because sufficient evidence-based and data-driven support was not provided to go in this direction.

Opposition to any Unemployment Rate Floor Within the 20 Percent Standard

As previously mentioned, the vast majority of those who commented on the unemployment rate floor opposed setting any unemployment rate floor within the 20 percent standard. Commenters argued that the statutory language requires the Department to base the waiver standards on whether there are a lack of sufficient jobs for the specific ABAWD population, not the broader population. Many commenters opposed setting an unemployment floor because they argued unemployment rates fail to accurately capture the availability of jobs specifically for ABAWDs who face particular barriers to employment. They argued that the proposed rule represents an overreliance on unemployment data, especially with regard to an unemployment rate floor in the 20 percent standard. Many suggested that while the standard unemployment rate available in local areas does provide essential data, it does not accurately reflect labor market prospects for ABAWDs, and it does not fully account for the ability of ABAWDs to find and keep jobs due to lack of skills, training, or other barriers. Commenters argued that ABAWDs should not be subject to

the unemployment rate floor used in designating LSAs because ABAWDs face labor market disadvantages that the general public does not.

Commenters also provided analysis, based on the 2017 USDA Household Characteristics data,[3] that non-disabled individuals aged 18 through 49 in households without children in SNAP report lower than average educational attainment. Commenters pointed to research indicating that, on average, unemployment rates for people with low-education attainment are much higher than what BLS unemployment rates for the general public indicate. Commenters provided research indicating that lower unemployment rates are less indicative of strong labor markets in recent years than in the past, and particularly for those with lower levels of education. Commenters also provided research indicating that employment rates for workers with low levels of education still have not recovered from the recession and pointed to evidence that workers with less education may be hit harder by recessions. In addition, commenters suggested that ABAWDs are more likely to have part-time work, irregular hours, seasonal work, underemployment, high turnover, and low job security within low-skill professions. Commenters pointed to analysis commissioned by the Department that indicates that those subject to SNAP work requirements face substantial barriers to employment. Commenters provided research indicating that involuntary part-time work is increasing at dramatically higher rates than other types of work. These commenters argued that this impacts the ability of ABAWDs to be able to meet the work requirement. Commenters provided data indicating that individuals who were projected to lose their benefits due to the time limit also faced other barriers to work. One State provided data indicating that ABAWDs have higher levels of homelessness than other SNAP participants. Commenters asserted that formerly incarcerated persons encounter obstacles attaching to employment quickly and provided data showing that unemployment rates among this population was significantly higher than the unemployment rate of the general public. Other commenters provided recent studies finding significant racial discrimination in the labor market and hiring in particular. These commenters asked the Department to consider racial discrimination and other reasons that result in significant racial and ethnic employment disparities, and these commenters argued that evidence of discrimination and employment disparities indicates that general unemployment rates are not a good predictor of job availability for people of color. Commenters also asked the Department to consider access to transportation, housing stability, and forced moves among the ABAWD population that lead to particular problems maintaining stable employment.

Commenters argued that the Department has previously acknowledged that time limit waivers were intended by Congress to recognize the challenges that the ABAWD population faces when finding permanent employment. Commenters pointed to the Department's December 1996 guidance in which it offered several reflections on its understanding of Congressional intent at the time. In this guidance, the Department stated, ''USDA believes that the law provided authority to waive these provisions in recognition of the challenges that low-skilled workers may face in finding and keeping permanent employment. In some areas, including parts of rural America, the number of employed persons and the number of job seekers may be far larger than the number of vacant jobs. This may be especially so for person with limited skills and minimal work history.'' Commenters also argued that in its original rulemaking the Department realized that ABAWDs were a more diverse population than had originally been anticipated and that many faced barriers to employment. In response to these comments, the Department recognizes that ABAWDs may face barriers to employment and have more limited employment prospects than the general public due to low educational attainment or other factors discussed above. The Department also recognizes that there is no measure available for determining the number of available jobs specifically for ABAWDs participating in SNAP in any given area. However, notwithstanding the issues raised by these comments, the Department is resolute that establishing an unemployment rate floor within the 20 percent standard is necessary to ensure that the standard is designed to accurately reflect a lack of sufficient jobs in a given area. The Department's position is based on its operational experience, during which it has recognized that, without an unemployment rate floor, areas that do not clearly lack sufficient jobs will continue to qualify for waivers solely because they are 20 percent above the national unemployment rate. For example, the national average unemployment rate for the 24-month period of May 2017 through June 2019 was 3.9 percent.[4] Given this national average, a State could request and qualify for a waiver in areas with an unemployment rate as low as 4.7 percent for the same 24-month period. Not including a floor has had the effect of allowing areas with low rates of unemployment to qualify for waivers.

As discussed in the previous section, the Department finds the 20 percent standard with a 6 percent floor to be one of the most objective and defensible ways of determining a lack of sufficient jobs, as it aligns with a longstanding DOL measure of job insufficiency. The LSA designation criteria developed by DOL was used by the Department when originally developing the 20 percent standard. Including a 6 percent floor within the 20 percent standard would further align the 20 percent standard with the longstanding LSA standard on which it was originally based. This will improve the 20 percent standard and make it a better measure of job insufficiency.

Some commenters argued that the proposed rule's justification for applying an unemployment rate floor is not in line with Congressional intent. One commenter pointed to the House Committee on Budget's report (H. Rept. 104–651) on its original version of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which stated that waivers would be based on ''high unemployment . . . or other specified circumstances'' limiting the availability of jobs. The commenter argued that the ''other specified circumstances'' language means that Congress did not intend for unemployment rates alone to govern waiver decisions. Commenters argued that unemployment rates measure the proportion of the workforce who are employed or unemployed, but they do not measure how many jobs are available. Commenters also suggested that, if Congress intended to include an unemployment rate threshold for the ''sufficient number of jobs'' criteria, Congress would have done so. Commenters stated that Congress did not intend for lack of sufficient jobs criteria to be based on whether there are

[3] The Department publishes a characteristics report and corresponding SNAP Quality Control data annually, which provide information about the demographic and economic circumstances of SNAP households.

[4] Calculations based on BLS unemployment data, not seasonally adjusted, pulled from *https://www.bls.gov/data/#unemployment* on August 15, 2019.

too many or too few waivers that result from the criteria—Congress did not establish a desired level of waiver coverage. Another commenter stated that Congress intended for there to be many different ways to meet ''insufficient jobs,'' and that the Department acknowledged this when first implementing the policy in the late 1990s and early 2000s.

While the Department appreciates these commenters' references to the legislative history, the Department does not find setting an unemployment rate floor to be in conflict with Congressional intent. The Department is limiting the number of ways that a State may demonstrate a lack of jobs in order to prevent the misapplication of waivers in areas in which the lack of jobs is questionable. These changes are well within the authority under section 6(o)(4)(A) of the Act, which provides the Secretary with broad discretion on how to define what does and does not constitute a lack of sufficient jobs. By introducing a 6 percent unemployment rate floor, the Department aims to prevent the misapplication of waivers to areas with unemployment rates that do not demonstrate a lack of sufficient jobs.

One commenter argued that the proposed rule's assertion that the current rate of waivers was unforeseen is inconsistent with the historical record. This commenter provided evidence that USDA's original estimate of the extent of waiver coverage under its rules is in line with current actual waiver coverage. This commenter pointed to a document sent from Department staff to Office of Management and Budget (OMB) staff in 1997 that stated, ''Thirty percent to 45 percent of the able-bodied caseload may be waived. However, USDA's best estimate is that the areas that have been waived represent approximately 35 percent of the able-bodied caseload in the nation as a whole.''

In response to this comment, the Department sees fit to reiterate that its concern over the current number of waivers is based on the number of areas that continue to qualify when their unemployment rates are relatively low and the areas do not clearly demonstrate a lack of sufficient jobs. Over the past 20 years, the Department has identified the lack of a floor in the 20 percent standard as a particular weakness in the current regulations. The Department did not foresee the extent to which States would take advantage of this weakness to request and qualify for waivers in areas with unemployment rates not generally considered to indicate a lack of jobs, such as the 4.7 percent unemployment rate used as an example previously. The Department aims to address this and other weaknesses with reasonable policy changes, based on objective data and evidence. In the case of the 20 percent standard, the introduction of a 6 percent unemployment rate floor will ensure that the waiver standards appropriately account for fluctuations in the national unemployment rate without allowing areas in which unemployment is objectively low to qualify for waivers.

Commenters also pointed to research asserting that there is no one way to identify conditions that make it difficult to secure employment, but there are several measures of labor market weakness that can indicate a lack of sufficient jobs. In stating their opposition to the floor, some commenters noted that unemployment relative to the national average is an important signal that the economic conditions warrant waiving work requirements. Commenters stated that, by generally tying waiver eligibility to a ratio threshold of the overall U.S. unemployment rate, as the Department currently does with the 20 percent standard, States are able to target their waivers to jurisdictions that are lagging behind in comparison to the state and national economy. Commenters provided data showing that these areas with higher relative unemployment share significant overlap with the areas that have the greatest rates of poverty and food insecurity. These commenters argued that adding an unemployment rate floor to the 20 percent standard provides less flexibility for States to capture insufficient jobs for the ABAWD population.

The Department appreciates this information provided by commenters, but disagrees that a relative unemployment rate is a sufficient indicator of a lack of sufficient jobs in and of itself. As explained in several other sections of this rule, the Department is adding a 6 percent floor to the 20 percent standard based on its operational experience, during which it has recognized that, without an unemployment rate floor, areas that do not clearly lack sufficient jobs will continue to qualify for waivers solely because they are 20 percent above the national unemployment rate.

Some commenters argued that the natural rate of unemployment is an impractical measure by which to set a floor. They argued that it has a very wide range of estimates, is a macroeconomic concept that is not a fixed or precisely identifiable unemployment rate, has not been a useful tool for setting policy or for predicting inflation, and is the subject of disagreement among economists.

As described previously, though substate unemployment data for the general population is available, the Department recognizes there is no measure available for determining the number of available jobs specifically for ABAWDs on SNAP in any given area. The Department also acknowledges that the natural rate of unemployment is a theoretical concept that is not fixed at 5 percent, but fluctuates over time and has a wide range of estimates, making it an impractical basis by which to set a floor for the 20 percent standard. As a result, the Department did not view the natural rate of unemployment as a deciding factor in its decision to set the floor at 6 percent. The Department is also not persuaded by the arguments for no unemployment rate floor. Rather, the Department is adopting a 6 percent floor within the 20 percent standard because it aligns with DOL's LSA standard and it represents the most meaningful, justified option relative to the proposed rule's 7 percent floor or other potential unemployment rate floors.

Alternative Measures of Unemployment Rates

Several commenters argued that using the standard unemployment rate [5]—the U–3 rate, which is defined by BLS as the number of people unemployed as a percent of the civilian labor force—as a floor does not adequately capture job availability for ABAWDs and suggested that some alternative measures better represent labor market conditions for this population. Some commenters provided evidence that an alternative measure of unemployment published by BLS, known as the U–6 unemployment rate, indicates that job prospects for

[5] BLS publishes 6 measures of labor underutilization (U–1 through U–6). U–3 is the official unemployment rate, and it is equal to the total number of unemployed persons, as a percent of the civilian labor force. The number of unemployed persons includes all jobless persons who are available to take a job and have actively sought work in the past four weeks. U–6 is an alternative measure defined as total unemployed persons, plus all marginally attached workers, plus total employed part time for economic reasons, as a percent of the civilian labor force plus all marginally attached workers. ''Marginally attached workers'' include ''discouraged workers'' who are persons who are not in the labor force, want and are available for work, and had looked for a job sometime in the prior 12 months. They are not counted as unemployed because they had not searched for work in the prior 4 weeks. Persons employed part time for economic reasons are those working less than 35 hours per week who want to work full time, are available to do so, and gave an economic reason (their hours had been cut back or they were unable to find a full-time job) for working part time. These individuals are sometimes referred to as involuntary part-time workers. U–6 data is not published by BLS on the substate level.

some disadvantaged groups have not improved as much as the unemployment rate for the general population. The U–6 unemployment rate is defined by BLS as the total number of people unemployed, plus all marginally attached workers, plus the total number of people employed part time for economic reasons, as a percent of the civilian labor force and all persons marginally attached to the labor force. Put more generally, the U–6 measure is the percent of people unemployed, people underemployed, and people who want a job but are not looking because they are unable to find jobs or are discouraged. These commenters point out that the standard U–3 rate includes the employed and unemployed people who have searched for a job in the past 4 weeks. The commenter argued that the U–6 rate, which includes people who want full-time work but had to settle for part-time work and unemployed people who have looked for a job in the last 12 months, more accurately captures the condition of the labor market for ABAWDs. Commenters provided evidence showing that the U–6 unemployment rate recovered more slowly during the recovery from the Great Recession than did the U–3 rate. Additionally, one State suggested that the U–3 unemployment rate fails to include working-age people who are not in the labor force, and this group includes many so-called ''discouraged workers'' who have given up on searching for employment. The State argued that because these individuals are not included in the BLS unemployment calculation, the BLS will underestimate the true joblessness rate in areas with proportionately larger populations of these individuals. Another State provided data showing that the Labor Force Participation Rate had increased by only 0.1 percent between September 2014 and November 2018, even though the U–3 unemployment rate had fallen significantly over that time period. Commenters also suggested that an unemployment rate floor based on the U–3 rate could disadvantage rural areas or other areas that primarily rely on declining industries because ABAWDs living in these areas may ultimately be unable to secure employment even if it is not reflected in a sustained high U–3 unemployment rate. Other commenters said that, in addition to facing higher unemployment rates, racial minorities are more likely to be marginally attached to the workforce, and thus ignored by the U–3 unemployment rates.

While these comments about alternative unemployment measures are appreciated, the Department also recognizes that there is no measure available for precisely determining the number of available jobs specifically for SNAP ABAWDs in any given area. For example, while some commenters argued that the U–6 unemployment rate may better reflect the unemployment situation for ABAWDs, this measure is deficient for purposes of time limit waivers because it is not available at the substate level and therefore cannot be used to support or validate waiver requests for substate areas. Only U–3 unemployment data is available at the substate level.

As stated previously, the Department believes that setting a 6 percent floor within the 20 percent standard strengthens the standard by aligning it more closely with the DOL LSA criteria upon which it was originally modeled. Section 6(o)(4) of the Act states that the Secretary may waive the ABAWD time limit if an area has an unemployment rate of over 10 percent or if an area does not have a sufficient number of jobs. In this rule, the Department aims to prevent the misapplication of waivers to areas with unemployment rates that do not clearly meet the statutory conditions for waivers, and setting an unemployment rate floor using the BLS U–3 rate for the 20 percent standard is one of the means by which the Department will do so.

Alternative Unemployment Rate Floors

Some commenters suggested that, if the Department is to set an unemployment rate floor within the 20 percent standard, the floor should be set at or closer to the natural rate of unemployment. In particular, some commenters suggested that the Department set a floor at the current estimate of the natural rate of unemployment or adopt a fluctuating floor based on the quarterly estimates of the natural rate of unemployment from the Congressional Budget Office (CBO).

The Department appreciates these alternative suggestions. However, as previously discussed the Department believes that setting a fluctuating floor could be administratively difficult and setting a floor based solely on the current natural rate of unemployment may not account for changes to the natural rate of unemployment in the future. The Department is not persuaded by the arguments for alternative unemployment rate floors, and, as previously discussed, is adopting a 6 percent floor within the 20 percent standard.

Ceiling for the 20 Percent Standard

A commenter argued that imposing a floor similar to that used in LSA determinations is inconsistent with the Department's decision not to apply the LSA unemployment ceiling at 10 percent. The commenter stated that FNS is picking and choosing elements of LSA determinations without rationale.

The Department acknowledges that the LSAs have a 10 percent ceiling and that any civil jurisdiction above 10 percent unemployment for the appropriate 24-month period qualifies as an LSA regardless of whether the area is 20 percent above the national average. However, the Department believes it is unnecessary to include a 10 percent ceiling in the 20 percent standard, as the Department will continue to approve waivers for areas that have an unemployment rate over 10 percent during a recent 12-month period. As this commenter pointed out, areas with an unemployment rate over 10 percent during a recent 24-month period typically also have an unemployment rate above 10 percent for a recent 12-month period. For this reason, the Department is not adopting a 10 percent ceiling at § 273.24(f)(2)(ii).

Core Standards: Eliminating the Extended Unemployment Benefits Qualification Standard

The Department proposed that it would continue to approve any waiver request that is supported by the requesting State's qualification for extended unemployment benefits, as determined by DOL's Unemployment Insurance Service. The Department also proposed to prohibit statewide waivers when substate data is available, except for those States qualifying under the extended unemployment benefits standard.

Although the Department did not receive many comments with regard to retaining the extended unemployment benefits standard, some commenters supported the proposal to retain the extended unemployment benefits standard, arguing that this standard is an appropriate indicator that a State lacks sufficient jobs. Some of those who supported the proposal also argued that it is insufficient to have this as the only remaining criterion for statewide waivers, as this criterion does not adequately capture all States with a lack of sufficient jobs. These commenters noted that, under the extended unemployment benefits criterion, States must have increasing unemployment, and States that have continuing high unemployment that is flat and not increasing would not qualify under this

criterion. Other commenters cited research finding that extended unemployment triggers are set too high and asserted that Congress has had to step in too often to establish temporary programs of extended unemployment insurance benefits. Commenters also argued that States should not need to wait until statewide labor market conditions become so dire that the State qualifies for extended unemployment benefits before they are eligible for a statewide waiver.

Although the Department appreciates these comments in support of the criterion, the Department has decided not to adopt the rule as proposed because the Department is concerned that the extended unemployment benefits criterion would allow States to receive statewide waivers even when there is not a lack of sufficient jobs within certain areas of the State. One commenter stated that, while remaining sensitive to the administrative burden placed on State agencies, the Department should strive to approve waivers for distinct economic regions, as State boundaries often encompass multiple labor markets with significant variation in economic conditions. The Department agrees that waivers should be targeted to economically-tied areas with a lack of sufficient jobs, rather than entire states that contain distinct economic regions. In fact, the Department referenced a similar concept in the preamble to proposed rule for the current regulations at § 273.24, noting that statewide unemployment averages may mask ''slack'' job markets (insufficient jobs) in some substate areas.[6] The Department maintains the validity of this concept, and notes it is also true that statewide averages may mask tight labor markets in some substate areas. Additionally, as discussed later in the *Restricting the Combining of Data to Group Substate Areas and Establishing Strict Definition of Waiver ''Area''* section, the Department is choosing to provide a strict definition of a waiver area that will also restrict statewide waivers. Therefore, the Department is removing the extended unemployment benefits criterion from the core standards, which was included at § 273.24(f)(2)(iii) in the proposed rule, as qualification for extended unemployment benefits is designated only at the state level, not at the LMA level. Accordingly, the Department is also eliminating the proposed exception to the restriction on statewide waivers for extended unemployment benefits that was included at § 273.24(f)(4) in the proposed rule. The Department believes this change will ensure that waivers of the ABAWD time limit are more appropriately targeted to those particular areas that have unemployment rates over 10 percent or lack sufficient jobs, rather than the larger areas of entire states. This is discussed further in the later section, *Restricting Statewide Waivers.*

Criteria Excluded From Core Standards

The Department proposed excluding some of the current ABAWD time limit waiver criteria when standard BLS unemployment data is available. These excluded criteria include a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s) that describes an area's lack of jobs.

Many commenters opposed excluding these criteria. Some commenters argued specifically that a low and declining employment-to-population ratio should be retained as a criterion for all areas. These commenters stated that this metric is well-defined and widely-used. Commenters asserted that data for this metric is readily available from the U.S. Census Bureau and BLS, and BLS regularly calculates this metric. Commenters argued that because employment-to-population ratio includes individuals who are employable but have not looked for a job in more than a year, during periods of severe and long-term economic recessions, the number of individuals in this category will grow and the employment-to-population ratio will paint a clearer picture of the strength of the labor market than other measures. Commenters argued that the employment-to-population ratio captures valuable information about discouraged workers and those classified as ''marginally attached to the workforce'' who are not actively looking for work, which is valuable because labor market depressions can discourage some ABAWDs from even searching for employment. Commenters argued that, compared to U–3 unemployment rates, the employment-to-population ratio is a more appropriate measure in some cases for labor market conditions for low-skill workers who face serious barriers to employment. Commenters provided evidence that researchers routinely use the employment-to-population ratio in addition to, or instead of, the unemployment rate to measure labor market conditions. One commenter asserted that the employment-to-population ratio provides useful information in assessing labor market conditions over the business cycle because it takes into account changes in labor market ''slack'' due to changes in both unemployment and labor-force participation. This commenter noted that employment-to-population ratio is a measure that labor economists use to capture weak labor markets in areas where there is a notable lack of jobs relative to the size of the working-age population. The commenter also pointed to previous Department guidance which stated that the employment-to-population ratio complements measures of unemployment by taking into account working age persons who may have dropped out of the labor force altogether, and that a decline in this ratio over a period of months could indicate an adverse job growth rate for the area. This commenter provided data indicating that an improved unemployment rate does not necessarily directly correspond to an improvement of the employment situation, and only a stable participation rate allows for unambiguous conclusions from a changing unemployment rate. This commenter also pointed out that States have used the employment-to-population criterion sparingly, and the Department requires States to provide additional evidence showing the requested area's labor market weakness for approval.

The Department is not adding the low and declining employment-to-population ratio criterion to the core standards and is maintaining this criterion only for areas with limited data or evidence, consistent with the proposed rule. While the employment-to-population ratio metric is standardized, it is not produced by BLS at the substate level. Just as importantly, the employment-to-population ratio's meaning in terms of job-availability can be ambiguous due to shifting demographics at the local or national level. As one of the commenters pointed out, due to the potential for ambiguity, the Department currently requires the few States using the employment-to-population criterion to provide additional evidence showing the requested area's labor market weaknesses. Therefore, the Department believes this criterion is not as robust as standard unemployment data in demonstrating a lack of sufficient jobs and is not adding the low-and-declining population ratio criterion.

Commenters also argued that information about declining industries or occupations should be retained as a criterion, arguing that such information

[6] Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Proposed Rule, 64 FR 70920 (December 17, 1999).

provides appropriate flexibility for local labor conditions. One commenter argued that, while a population may as a whole remain employed, a large subset may be significantly affected by declining occupations. Another commenter argued that this criterion is especially important for smaller, rural areas in which the loss of a single job provider, such a major manufacturing plant or mining industry, can have a major effect on local job availability. The commenter stated that the impact of a plant closure may not impact a 24-month unemployment rate until several months, or even a year, have passed. The commenter argued that the criterion regarding declining industries or occupations allows waivers to quickly respond to deteriorating labor market conditions. This commenter pointed out that, although states have rarely used this criterion to request waivers, the Department has approved them on a limited case-by-case basis, including cases in which the State agencies provided evidence of the number of workers affected by layoffs and rapidly increasing unemployment rates over a short period of time due to plant closings. A few commenters also stated that academic studies and publications can often provide a more accurate description of a region's unemployment or can more accurately describe job availability among the ABAWD population than unemployment rates.

The Department agrees that information about declining industries or occupations, and academic studies can be used to help understand employment changes in an area. However, information about declining industries or occupations, and academic studies are not as standardized and reliable as unemployment data, and the Department believes the best data should be used when it is available.

Commenters broadly argued that excluding a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s), along with the change to include an unemployment rate floor in the 20 percent standard, results in an overreliance on unemployment rates. These commenters assert, as previously noted, that unemployment rates do not precisely capture job availability for ABAWDs, and States should have other options to demonstrate a lack of sufficient jobs, through other evidence and consideration of other economic factors. Commenters stated that States should retain flexibility to rely on metrics other than BLS' U–3 unemployment rates in their waiver requests. Commenters pointed to the fact that labor market participation has not recovered since the Great Recession, even though unemployment rates have. As already noted, commenters stated that U–3 unemployment rates do not capture the underemployed and those who drop out of the labor force altogether. One commenter stated that the unemployment rate is a lagging indicator and does not indicate job insufficiency soon enough, so a one-size fits all approach is ill-advised. Another commenter asserted that, due to weaknesses in existing data sets and challenges in defining economic conditions, many researchers use qualitative data to support an understanding of employment challenges. This commenter noted that even the National Bureau of Economic Research does not use a single formula or data set for a definition of a recession. Some commenters stated that not including these criteria in the core standards would undercut a more nuanced understanding of local job markets. Commenters also argued that Congress intended for there to be many different ways to meet ''insufficient jobs'' and stated that the Department acknowledged this when implementing in the late 1990s and early 2000s.

Although the Department believes a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s) can enhance the understanding of the job market, the arguments made by the commenters were not sufficiently compelling to justify making changes to the proposed rule. The core standards established in this final rule are designed to provide States with a set of consistent criteria for approval based on reliable and robust available evidence for evaluating labor market conditions. Through its operational experience, the Department has recognized that a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s) are less reliable and consistent than standard unemployment data in demonstrating a lack of sufficient jobs. Therefore, the Department does not believe that these criteria should be included as part of the core standards for waiver approval. The final rule, however, is including these criteria as available for areas with limited data or evidence as the Department believes these are appropriate alternative measures when standard unemployment data is not available for an area. The final rule is adopting the language for those criteria as proposed. This language was included within § 273.24(f)(7) in the proposed rule, and is located within § 273.24(f)(6) in the final rule.

Other Data and Evidence in an Exceptional Circumstance

The Department proposed that waiver requests that are supported by data or evidence other than the core standards may be approved if the request demonstrates an exceptional circumstance in an area. Though requests tied to an exceptional circumstance need not necessarily meet the core standards, the Department proposed that the requests include some form of data or evidence showing that the exceptional circumstance has caused a lack of sufficient jobs in the area. As an example of the kind of data or evidence that could support a waiver under exceptional circumstances, the Department cited a most recent three-month average unemployment rate over 10 percent. Under the proposed rule, any supporting unemployment data provided by the State under this criterion must rely on standard BLS data or methods.

Exceptional Circumstances

A few commenters expressed concerns with elements of this provision. Commenters pointed out that the proposed language in § 273.24(f)(3) would require that the request demonstrate that the exceptional circumstance has caused a lack of sufficient jobs, but then provided an example of a State showing that an area has a most recent 3-month average unemployment rate over 10 percent. Commenters noted that the Act provides for two separate bases for waiver approvals, if the area ''has an unemployment rate of over 10 percent'' or ''does not have a sufficient number of jobs to provide employment for the individuals.'' The Department acknowledges that an example of an exceptional circumstance causing a 3-month average unemployment rate over 10 percent is an example of ''an unemployment rate of over 10 percent.'' The Department is, therefore, correcting this language at § 273.24(f)(3) to include the phrase ''or an unemployment rate over 10 percent'' after the phrase ''has caused a lack of sufficient number of jobs.'' Some commenters suggested that the term ''exceptional circumstance'' was unclear. As stated in the preamble to the proposed rule, given that economic conditions can change dramatically due to sudden and unforeseen forces, the Department believes it is appropriate to maintain a

level of flexibility to approve waivers as needed in extreme, dynamic circumstances. Therefore, the Department does not believe an exhaustive list of all circumstances that will be considered exceptional can be provided. However, the Department can reiterate and further clarify the examples provided in the proposed rule. An exceptional circumstance may arise from the rapid disintegration of an economically and regionally important industry, the prolonged impact of a natural disaster, or a sharp continuing economic decline. As stated in the proposed rule, a short-term aberration, such as a temporary closure of a plant, would not constitute an exceptional circumstance.

One commenter pointed to the closing of an automobile plant earlier this year. This commenter stated that this plant was major driver of the economy in the region, and its closing is having an immediate and massive ripple effect throughout the area. The commenter noted that the county the plant was located in would have qualified under the current regulations, but was unsure if the area would qualify under the new regulations, including the exceptional circumstance criterion. The Department would like to make it clear that permanent closure of a large plant (relative to the labor market area) or an ongoing significant reduction in the plant's workforce would be considered an exceptional circumstance, as long as it is not a temporary closing. If the closing were temporary and its impact not ongoing, then it would not justify a waiver. To provide more clarity regarding this criterion, the Department is editing the amendatory text at § 273.24(f)(3) to require that, under the exceptional circumstance criterion, the waiver request demonstrate that the impact of the exceptional circumstance is ongoing at the time of the request.

Based on these comments, the Department also sees fit to underscore that the example provided in the proposed regulatory text, a 3-month average unemployment rate over 10 percent, is not the only potential way that States could demonstrate that an area has an unemployment rate over 10 percent or a lack of sufficient jobs due to an exceptional circumstance. The Department is editing the amendatory text at § 273.24(f)(3) to more clearly indicate that this is simply one example. States are free to provide other data and/or evidence and to construct arguments that there are not enough jobs for individuals in an area due to an exceptional circumstance. For example, a State might provide unemployment data or other evidence that is similar to the core standards except in that it covers a shorter duration because the area's economy suffered a rapid decline due to the exceptional circumstance that is not yet demonstrated by a full 12-month or 24-month data period. The Department will evaluate requests made based on exceptional circumstances carefully to ensure that that the sudden lack of jobs or high unemployment in the area is clearly connected to a recent exceptional circumstance, that the lack of jobs or high unemployment is ongoing, and that the lack of jobs or high unemployment is demonstrated by recent data or evidence.

3-Month Unemployment Rate of Over 10 Percent

Commenters argued that restricting the use of a recent 3-month unemployment rate of over 10 percent to exceptional circumstances, rather than including it as a core standard, is contrary to the proposed rule's stated preference that waivers reflect current economic conditions. The Department points out that, while the current regulations suggest that States could submit evidence that an area has a recent 3-month average unemployment rate over 10 percent provide to support a claim of unemployment over 10 percent, the current regulations do not categorize this type of waiver as ''readily approvable.'' In this way, the Department believes that the proposed rule is relatively similar to the current regulations in excluding a recent 3-month average unemployment rate over 10 percent from the core standards. Moreover, the Department believes that requiring a 3-month average unemployment rate over 10 percent be tied to an exceptional circumstance will strengthen this criterion so that a 3-month average would not be used to grant a year-long waiver when that 3-month average is simply a short-term aberration or reflective of regular seasonal employment.

Commenters also argued that restricting the use of a recent 3-month unemployment rate of over 10 percent to only exceptional circumstances, along with the elimination of the historical seasonal unemployment rate over 10 percent criterion, is inconsistent with the Act. Commenters noted that the proposed rule would essentially leave only one criterion—having a 12-month average unemployment rate over 10 percent—as the basis for approval using an average unemployment rate over 10 percent. These commenters argued that these changes are inconsistent with the Act, as the Act does not specify requirements regarding the duration of time that an area must have an unemployment rate above 10 percent.

Commenters argued that the Department has previously discussed shortcomings with requiring a 12-month average unemployment rate to demonstrate an unemployment rate over 10 percent. Commenters noted that in guidance issued in December 1996, the Department stated that it would not require a 12-month average to approve a waiver based on an unemployment rate over 10 percent. Commenters noted that this guidance stated, ''A 12-month average will mask portions of the year when the unemployment rate rises above or falls below 10 percent. In addition, requiring a 12-month average before a waiver could be approved would necessitate a sustained period of high unemployment before an area became eligible for a waiver.'' Commenters argued that to address these issues, the guidance document stated, ''. . . states have several options. First, a state might opt to use a shorter moving average. A moving average of at least three months is preferred. In periods of rising unemployment, a three-month average provides a reliable and relatively early signal of a labor market with high unemployment. A state might also consider using historical unemployment trends to show that such an increase is not part of a predictable seasonal pattern to support a waiver for an extended period (up to one year).'' Commenters argued that this guidance was reinforced in the preamble of the 1999 proposed rule.

Commenters also argued that eliminating the 3-month average unemployment rate over 10 percent as the basis for waiver approval is contrary to the Department's preference that waivers reflect current economic conditions, as stated in the 2019 proposed rule. These commenters asserted that a most recent three-month average unemployment rate over 10 percent is the criterion that most closely aligns with current economic conditions and signals deteriorating labor market conditions in an area.

The Department believes the changes being made are consistent with the Act. In fact, the current regulations also include duration requirements to demonstrate an area has an unemployment rate above 10 percent, and only guarantee approval of waivers based on unemployment over 10 percent for a 12-month period. For example, an area with a 1-month unemployment rate of over 10 percent cannot qualify for a waiver based on that evidence alone. Similarly, in order for a State to demonstrate an area has an unemployment rate above 10 percent,

the core standards in the final regulations only guarantee approval of waivers based on unemployment over 10 percent for a 12-month period. As the Act does not specify duration requirements, the Department is within its authority to define how 10 percent unemployment is to be measured through the rulemaking process, as it did when it originally promulgated regulations regarding the ABAWD time limit.

One commenter also argued that requiring that the 3-month unemployment rate be above 10 percent is too high and provided data from recent economic downturns to argue that a 10 percent unemployment rate is not always reached, even in times that are considered times of severe economic distress. The commenter argued that the waiver standards need to be more responsive to economic declines in order to serve as an automatic stabilizer and help mitigate the negative economic impacts of the decline. As explained in the preceding section, in the event of an exceptional circumstance a recent 3-month unemployment rate is only one example of evidence that can be provided to support a waiver.

Restricting the Combining of Data to Group Substate Areas and Establishing a Strict Definition of Waiver ''Area''

Comments on Restricting the Combining of Data to Group Substate Areas

The Department proposed to prohibit States from combining unemployment data from individual substate areas to calculate an unemployment rate for the combined area (otherwise referred to as ''grouped'' areas or ''grouping''), unless the combined area is designated as a Labor Market Area (LMA) by the Federal government. According to DOL, an LMA is an economically integrated area within which individuals can reside and find employment within a reasonable distance or can readily change jobs without changing their place of residence. LMAs are an exhaustive level of substate geography delineated in partnership by DOL and OMB, then published by the DOL BLS Local Area Unemployment Statistics program.[7] The Department also proposed that States would not be able to omit certain areas within the LMA in the State from the area covered by the waiver. In addition, the Department specifically asked for comment on whether grouping should be limited to LMAs or whether grouping should be prohibited entirely.

Some commenters generally supported the restriction on States' ability to group areas, stating that using LMAs would limit grouping to regions with demonstrable economic ties and prevent manipulative grouping practices by States. Commenters noted that LMAs are a relevant and reliable tool for evaluating labor market conditions within a local area. Commenters stated that States should not be able to combine areas on the basis of their own judgment, as they will seek to maximize any discretion in order to receive and use as much Federal money as possible. One commenter noted that allowing States to combine areas has led to combining low unemployment counties with high unemployment counties as a means to waive the work requirement for as many ABAWDs as possible, which this commenter considered abuse.

Many commenters opposed the proposed restriction on grouping to only LMAs. Some commenters argued that the current discretion given to States works and that this is shown by evidence that States are gradually phasing out waivers in the areas with the lowest rates of unemployment as the economy improves. The Department does not share this view. Based on the Department's extensive experience reviewing and processing ABAWD waiver requests, it believes that many areas have remained under waivers for longer than appropriate due to, in particular, States' strategic use of grouping to maximize the geographic coverage of waived areas rather than to demonstrate high unemployment or a lack of sufficient jobs for ABAWDs, as outlined in the Act. In the Department's view, States' strategic use of grouping to maximize the geographic coverage of waived areas subverts the Act's condition that waivers apply where unemployment exceeds 10 percent or there is a lack of sufficient jobs.

Some commenters suggested the Department used too narrow of a definition of the terms ''economically tied'' and ''labor market area.'' They suggested that LMAs are not the only appropriate areas for grouping because LMAs are based on commuting patterns of the general workforce and are not specific to low-income, low-skilled ABAWDs who lack affordable transportation options. Commenters argued that LMAs are not always an accurate indication of which communities interact economically or are accessible for the purposes of employment. Commenters stated that the LMA designation does not take into account variations by industry or socioeconomic characteristics. Commenters provided research showing that a given county may belong to multiple commuting areas depending on the industry or type of occupation. Commenters also stated that job losses in some LMAs can have significant ripple effects in other neighboring LMAs. Commenters gave examples in which some LMAs are too big to properly define commuting patterns for ABAWDs because it could take more than two hours without traffic to commute one way from one end of an LMA to the other by car and provided examples where it is impossible to access most of the communities within an LMA using public transportation. Commenters argued that the LMA methodology misses the fact that, in some counties, workers may have to travel in all directions and often beyond a contiguous county for their job, and, therefore, LMAs are too small in some cases. Commenters provided research indicating that the change in proximity to jobs in recent years varies by socioeconomic characteristics, with poor, minority residents seeing the biggest decline in jobs within a reasonable commuting distance.

The Department is not compelled by the commenters' suggestions described in the preceding paragraphs, which generally argue that LMAs do not account for specific ABAWD commuting patterns and other factors specific to ABAWDs. While commenters suggested alternatives that the Department considered, as discussed below, LMAs remain the best available and most appropriate delineation to address the issue of grouping, as there are no Federally-designated areas that specifically assess commuting patterns and other related economic factors for ABAWDs. According to DOL, an LMA is an economically integrated area within which individuals can reside and find employment within a reasonable distance or can readily change jobs without changing their place of residence; therefore the Department maintains that they are the best available and most appropriate area delineation at this time. However, the Department notes that if in the future a more robust delineation becomes available from a Federal source, the Department may consider its appropriateness in the context of future rulemaking.

Other commenters argued that States have the best understanding of the regional patterns in their labor markets, local commuting burdens, and other local nuances specific to ABAWDs, and should retain flexibility in combining data to group areas. A State agency commented that each State has the

[7] For more information on LMAs, please visit *https://www.bls.gov/lau/laugeo.htm.*

contextual knowledge and experience to identify the most appropriate grouping areas for a waiver. Commenters suggested that the proposal to impose restrictions on grouping substate areas is inconsistent with the philosophy that the government closest to the people governs best. Commenters stated that an erosion of State autonomy in forming these substate groupings could result in SNAP participants being removed from the program despite a demonstrable lack of sufficient jobs in their labor market.

Commenters argued that in its original rulemaking the Department recognized that it did not have sufficient expertise to evaluate whether local labor markets could offer ''a sufficient number of jobs to provide employment for the individuals'' because the Department was not in a position to know where new jobs were located or the feasibility of commuting to them given driving times and public transportation. Commenters argued that in its original rulemaking the Department found that county unemployment rates were the most available measure of the vitality of local labor markets, and the Department specifically allowed States to determine which areas would be grouped together to receive waivers because the patterns of employment and mobility for the low-skilled employment market can be quite different from those for the overall employment market. Commenters argued that the Department concluded that States were best-equipped to determine whether high unemployment in some areas adversely affected employment prospects in others.

Commenters suggested that there are numerous reasons that a State would choose to group towns other than by LMA, such as cost of living, lack of access to or availability of transportation, lack of employers with a certain job field, or other demographic considerations.

Commenters argued that the proposed change to State flexibility in grouping areas is contrary to years of FNS guidance and departs from USDA's longstanding position without reasoned support. They pointed out that in regulations and guidance over the past two decades, the Department has given States broad discretion to define areas and has never expressed that commuting patterns be the primary or only basis for whether or not substate areas could be grouped together.

The Department appreciates and has considered the comments described in the preceding paragraphs, which broadly argue that States should maintain their current flexibility to group substate areas. However, the Department disagrees. The Department has learned through its extensive operational experience that this flexibility allows States to strategically group substate areas to maximize the geographic coverage of waived areas rather than to demonstrate high unemployment or a lack of sufficient jobs for ABAWDs, as outlined in the Act. The Department has determined that this problem is one of the primary reasons why about half of the ABAWDs participating in SNAP live in waived areas, despite current low unemployment levels across the majority of the country. Therefore, the need to address this problem outweighs the arguments received in support of States' need to maintain current flexibility.

The Department is within its authority to revise its regulations as the statute does not define what constitutes an ''area'', and the Department's operational experience has shown that current regulations provide States with too much flexibility. As previously stated, States are grouping areas in such a way to maximize waived areas rather than demonstrate high unemployment or lack of sufficient jobs for ABAWDs. As noted in the proposed rule, the Department has learned that its standards for combining areas provide too much flexibility for State agencies. While the Department has attempted to clarify its intention that areas be economically tied through policy guidance,[8] this has not prevented States from strategically using grouping to maximize waived areas. For example, some States have grouped nearly all contiguous counties in the State together while omitting a few counties with relatively low unemployment in order to maximize the waived areas in the State. In other cases, States have grouped certain towns together that share the same economic region while omitting others with relatively low unemployment from the group, thereby maximizing the waived areas in the State.

A few commenters stated that the proposed rule's restriction on grouping contradicts the statutory language permitting waivers for ''any group of individuals in the State if the Secretary makes a determination that the area in which the individuals reside'' has an unemployment rate above 10 percent or lacks sufficient jobs. Commenters suggested that Congress intended to allow States to use their discretion in how to group regions together for the purposes of obtaining a waiver. Commenters argued that States are not using waivers in ways that were ''not foreseen by Congress'' as described in the proposed rule. Commenters noted that Congress specifically considered language in the House-passed version of the 2018 Farm Bill that would have limited grouping and then rejected this provision in the final enacted 2018 Farm Bill. Commenters also pointed to the Conference Report that accompanied the 2018 Farm Bill, which states, in particular, ''[t]he Managers intend to maintain the practice that bestows authority on the State agency responsible for administering SNAP to determine when and how waiver requests for ABAWDs are submitted.'' These commenters argued that to add new geographic restrictions through this rulemaking would contradict the intent of Congress.

In response to these comments, the Department points out that Congress has been silent on the specific issue of combining data to group substate areas. Nothing in the statute or legislative history clearly states how the Department should handle this issue. The Department believes the Conference Report that accompanied the 2018 Farm Bill is referring broadly to maintaining the States' ability to choose which areas it wishes to request when submitting a request to the Department, not referring to maintaining the discretion of States to combine data from substate areas to form an economic region.

Other commenters argued that the LMA standard is reliant on outdated data. They pointed out that the current list of LMAs are based on population data from the 2010 Census and commuting data from the American Community Survey five-year dataset for 2006–2010. These commenters argued that LMAs are not updated frequently enough to capture recent labor market trends. Commenters also stated that OMB has cautioned that LMA delineations (specifically Metropolitan Statistical Area and Micropolitan Statistical Area delineations) should not be used to develop and implement Federal, State, and local non-statistical programs and policies without full consideration of the effects of using these delineations for such purposes.

The Department appreciates the concerns described in the preceding paragraph regarding the age of the data used for LMAs and using caution when applying LMAs to implementing Federal policies. However, after assessing alternative options, the Department has not identified any other labor market definition that uses more

[8] Guide to Supporting Requests to Waive the Time Limit for Able-Bodied Adults without Dependents, 2016. Available at: *https://fns-prod.azureedge.net/sites/default/files/snap/SNAP-Guide-to-Supporting-Requests-to-Waive-the-Time-Limit-for-ABAWDs.pdf.*

recent data and would equally address the problem of States' manipulative usage of grouping substate areas to maximize waived areas. The Department is resolute that it must address this problem, and that LMAs represent the best available and most practical solution.

Commenters also stated that the proposed rule ignores that a variety of other factors that can account for areas having ''economic ties,'' such as employer recruiting practices, regional workforce development strategies, regional economic development and investment patterns, service delivery models, and migration patterns. Commenters asserted that States consider multiple factors when grouping areas to align resources, administrative capacity, and service delivery, and may also consider the location of SNAP E&T services, Workforce Innovation and Opportunity Act (WIOA) services, and other work programs or grant programs. In particular, commenters stated that the proposed restriction on grouping would reduce States' ability to allocate and coordinate E&T resources effectively. One commenter provided examples of States that coordinated E&T programs with unwaived areas when the State could not provide or guarantee SNAP E&T slots in all counties. Commenters argued that the proposed rule would make State planning more difficult given the inability to group areas consistent with Workforce Development Boards. Commenters suggested that the Department consider other alternative frameworks for grouping areas, such as areas covered by Workforce Development Boards. They noted that, under WIOA, states have discretion to define regions and are encouraged to take an integrated approach to account for a range of different factors, starting with LMAs, but then also considering funding streams and service delivery.

While the Department appreciates that States consider administrative needs, the availability of work programs and employment and training services, and other factors in considering when and where to request a waiver, the Department interprets the Act to plainly mean that the Department's authority to grant waivers is limited to areas with unemployment rates of over 10 percent or areas that demonstrate lack of sufficient jobs. The Department is not compelled by arguments that E&T services or other work program availability should be factored in when defining which areas have high unemployment or lack sufficient jobs. However, the Department also notes that States still maintain the ability to choose which areas to request. If the State wants to choose areas to request, among those that qualify, based on E&T services or other work programs, the State is free to do so.

Commenters also suggested that the Department allow grouping consistent with Bureau of Economic Analysis (BEA) economic areas. Commenters pointed out that these areas were listed as an example of an area for grouping in past Department guidance. The Department appreciates these suggestions but has evaluated BEA economic areas and determined that they are no longer appropriate for grouping areas for ABAWD waiver requests, as BEA is no longer producing or publishing this data.

Commuting Zones

Some commenters urged the Department to consider using Commuting Zones (CZs) as another, possibly more accurate, metric for evaluating labor market conditions within a local area and grouping substate areas for waivers. Some commenters pointed out that, while many LMAs encompass a single county, very few CZs do. Other commenters asserted that the USDA Economic Research Service (ERS) created CZs to better reflect commuting patterns in rural areas. One commenter pointed to research by ERS examining the relationship between labor market area conditions and length of SNAP participation spell, which found that using the CZ definition had the largest estimated effects among several labor market definitions. Other commenters argued that the Department should consider replacing LMAs with CZs because it would result in the application of the work requirement in more areas. One commenter stated that limiting grouping to either LMAs or CZs would be a vast improvement over current rules. Another commenter argued that CZs face the same limitation as LMAs in that they are based on commuting patterns of the general public and do not account for other factors specific to ABAWDs.

While the Department appreciates the suggestions to consider using CZs, the Department is not adopting this alternative proposal. While CZs were originally developed by USDA ERS, the list of CZs is no longer published by a government agency. This is in contrast to the LMA list, which is still published by DOL. Though university researchers published data similar to USDA ERS's CZs following the 2010 Census, the Department believes the basis for approval of waivers must be sound data and evidence that primarily relies on data from BLS or BLS-cooperating agencies. For these reasons, the Department views the use of LMAs for ABAWD waivers as vastly superior to CZs, and does not think it prudent to include CZs as a substitute for LMAs nor as an additional means by which to group substate areas.

Establishing Strict Definition of Waiver ''Area''

The Act states that ''the Secretary may waive the applicability of [the time limit] to any group of individuals in the State if the Secretary makes a determination that the area in which the individuals reside . . . has an unemployment rate of over 10 percent; or . . . does not have a sufficient number of jobs to provide employment for the individuals.'' Current regulations generally allow States to define ''the area in which the individuals reside.'' That is, the current regulation at § 273.24(f)(6) provides the following: ''States may define areas to be covered by waivers. We encourage State agencies to submit data and analyses that correspond to the defined area. If corresponding data does not exist, State agencies should submit data that corresponds as closely to the area as possible.''

In response to the proposed rule's restriction on the combining of data to group substate areas, one commenter suggested that the Department should instead define ''area'' as a jurisdiction, such as a county, and then adopt a two-step approach to approving waivers. During this two-step process, the Department would first determine whether the requested jurisdiction would meet any of the waiver criteria, and, if it does, the Department should also determine whether the commuting zone surrounding the jurisdiction would also meet the waiver criteria. Unless the waiver criteria is met in both steps, both for the jurisdiction in which the individual resides and for the larger CZ, the waiver would not be granted.

The Department does not believe that defining ''area'' in this way and adding this two-step process would be consistent with section 6(o)(4) of the Act. The Act gives the Secretary authority to waive an ''area in which the individuals reside,'' if the area ''has an unemployment rate of over 10 percent'' or ''does not have a sufficient number of jobs to provide employment for the individuals.'' Including the two step process suggested by the commenter would actually result in many individual jurisdictions, defined as ''areas,'' being denied waivers even if the area demonstrates an unemployment rate of over 10 percent or a lack of

sufficient jobs based on robust, reliable BLS data. This is because an additional area (*e.g.,* the commuting zone) would also need to demonstrate an unemployment rate of over 10 percent or a lack of sufficient jobs. In other words, two areas (the jurisdiction and the commuting zone) would need to meet the criteria in the Act for a waiver to be approved, which the Department believes is inconsistent with the Act.

In response to the proposed rule's restriction on the combining of data to group substate areas, some commenters also argued that States should not have the option to request varying levels of jurisdictions within the same waiver and that States should not be able to choose when to apply for a combined area using the LMA definition and when to apply for a single-jurisdiction waiver. Commenters argued that areas should not qualify for waivers if there are available jobs within a reasonable commuting distance. Commenters also argued that ABAWD time limit waiver policy should not stifle geographic mobility by reinforcing perverse incentives for working-age individuals to remain in an economically depressed area to receive SNAP benefits for an unlimited period of time without working or engaging in work training. In addition, commenters asserted that ''area'' should be defined to ensure the maximum number of people possible are moved off of SNAP and into the workforce, where they can improve their lives, families, and communities. Commenters provided data indicating that not allowing States to waive the ABAWD time limit unless the LMA qualifies for the waiver would result in a broader application of the time limit.

The Department agrees with the comments described in the preceding paragraph. Therefore, the Department is expanding upon the proposed rule's restriction on the combining of data to group substate areas to explicitly define the statutory phrase ''an area in which the individuals reside'' to mean an area considered to be an LMA, as defined by OMB/DOL. The Department is also including the intrastate part of an interstate LMA, an Indian reservation area, and a U.S. Territory in this new waiver area definition, as explained later in this section. In general, this means that the final rule will only allow for waivers covering LMAs; not individual jurisdictions within LMAs, such as counties or county equivalents, and not for any State-defined groupings of substate areas. Thus, this change effectively replaces the proposed amendatory text of § 273.24(f)(4) and (5) of the proposed rule, which had proposed restricting Statewide waivers and the combining of data to group substate areas (grouping).

The Department is making this change in the final rule because it is concerned about the potential for misuse by States if States have the choice to obtain waivers for LMAs or individual jurisdictions, such as counties and county equivalents. For example, if a State has the choice to obtain waivers for LMAs or for individual counties, and a given LMA does not qualify but a county within it does qualify, the State could waive the county without consideration for the job availability in its surrounding LMA. Consistent with the aforementioned comments, the Department does not think providing this type of choice is appropriate in the context of ABAWD time limit waivers. The Department is therefore establishing a strict definition of waiver area because it believes that individual jurisdictions, such as counties or county equivalents, should not receive waivers if there are jobs available in a nearby jurisdiction, within a reasonable commuting distance. LMAs, as listed by DOL, represent the best available government definition of an area for defining a reasonable commuting distance.

The Department also believes that generally restricting waivers to qualifying LMAs will result in a broader application of the time limit, encourage geographic mobility among ABAWDs, and reduce dependence on government benefits. In other words, the Department is implementing a clear regulatory definition of ''area'' for waiver purposes because it expects unemployed ABAWDs to proactively pursue any and all work and/or work training opportunities within reasonable commuting distance of their homes. In that same vein, the Department expects States to support ABAWDs in their efforts to find work and meet the work requirement by expanding access to work programs and other supportive services for ABAWDs.

Some commenters pointed out that many LMAs cross State lines, while individual States are responsible for requesting waivers for areas within each State. Commenters noted that the proposed rule did not explain what would happen in these circumstances. In the final rule, the Department is choosing to require that waiver approval be based on data from the entire interstate LMA, not data from the part of the LMA within the State. In other words, a State with an interstate LMA may request and be approved for the portion of the LMA that falls within its jurisdiction as long as the entire interstate LMA qualifies. The Department believes this requirement is consistent with the rationale that areas should not qualify for waivers if there are available jobs within a reasonable commuting distance, and is consistent with the restriction on waiving individual jurisdictions within LMAs. Therefore, the Department is specifically including the intrastate part of an interstate LMA in its strict definition of an area.

The Department sees fit to point out that if an entire State is encompassed by one larger interstate LMA, then the State may request and be approved for a statewide waiver if the entire interstate LMA qualifies. Currently, the only example of this situation would be the District of Columbia, which is encompassed by one larger interstate LMA.

Based on the Department's decision to strictly define waiver area as an LMA (or the intrastate part of an interstate LMA, a reservation area, or a U.S. Territory), the Department also sees fit to clarify a few potential points of confusion about LMA data availability. In the proposed rule, the Department proposed that the practice of grouping be restricted to only LMAs by amending 273.24(f)(5) to stipulate that the State agency ''may only combine data from individual areas that are collectively considered to be Labor Market Area by DOL.'' However, in the proposed rule the Department did not reference the fact that BLS publishes directly corresponding, representative unemployment data for all LMAs, just as it does for counties, county equivalents, and a limited number of other areas.[9] To clarify, because corresponding LMA data is available, States would not need to use unemployment data and labor force data from individual areas within an LMA (*e.g.,* for multi-county LMAs) to calculate an unemployment rate representative of the LMA. In other words, under the final rule's strict definition of waiver area, States requesting waivers for an LMA would not be required to combine data. Therefore, the Department has revised the amendatory text in the final rule to better reflect that directly corresponding, representative BLS unemployment data is currently available for LMAs. If such corresponding data were to become unavailable in the future, States may combine the data of the individual areas within the LMA (*e.g.,* for multi-county LMAs) to calculate an unemployment rate representative of the LMA. The Department is addressing the potential

[9] For more information on the available BLS data, please visit *https://www.bls.gov/lau/laugeo.htm.*

scenario in the amendatory text so that if corresponding data were to become temporarily or permanently unavailable in the future for any LMA, that States would continue to be able to exercise their option to request and support waivers for any LMA.

As noted in a preceding paragraph, the final rule also includes Indian reservation areas and U.S. Territories in the strict definition of waiver area. This means that though other individual jurisdictions (*e.g.,* counties or county-equivalents within a larger LMA) are not allowable waiver areas, reservation areas and U.S. Territories are allowable waiver areas, consistent with longstanding policy. The U.S. Government has a unique legal relationship with Indian tribal governments that differentiates reservation areas from other areas within the United States. Agencies have been instructed by Executive Order 13175 to respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. As such, the Department recognizes that reservation areas have unique circumstances and do not fit neatly within the LMA definition. In addition, U.S. Territories participating in SNAP, including Guam and the U.S. Virgin Islands, do not have Labor Market Areas and would therefore have no basis for qualifying for a waiver if they were not explicitly included in the strict definition of an area. Therefore, the Department is recognizing these areas as potential waiver areas in the amendatory text. The Department sees fit, however, to also explain that while reservation areas could be waived independently, they may be also be waived as part of one or more LMAs that they are geographically located within, without the need for the State to request to waive that reservation area independently.

The Department is adopting these changes to establish a strict definition of waiver area, to include an LMA, the intrastate part of an interstate LMA, a reservation area, or a U.S. Territory, at § 273.24(f)(4).

Restricting Statewide Waivers

The Department proposed eliminating statewide waiver approvals requested on the basis of statewide data averages when substate data averages are available through BLS, except for those waivers based upon a State's qualification for extended unemployment benefits, as determined by DOL's Unemployment Insurance Service.

A few commenters supported this proposal. One commenter, in particular, stated that while remaining sensitive to the administrative burden placed on State agencies, the Department should strive to approve waivers for distinct economic regions, as State boundaries often encompass multiple labor markets with significant variation in economic conditions.

As discussed previously in the *Core Standards: Eliminating the Extended Unemployment Qualification Standard* section, the Department agrees with this comment and notes that statewide data may mask tight labor markets in some substate areas. Additionally, as discussed in the immediately preceding section, *Restricting the Combining of Data to Group Substate Areas and Establishing a Strict Definition of Waiver ''Area'',* the Department is choosing to codify a strict definition of waiver ''area'' that will also effectively restrict statewide waivers.

In addition, as discussed in the *Core Standards: Eliminating the Extended Unemployment Benefits Qualification Standard* section, the Department is modifying its proposals to remove the extended unemployment benefits criterion from the core standards that was included at § 273.24(f)(2)(iii) in the proposed rule and to eliminate the proposed exception for extended unemployment benefits from the restriction on statewide waivers that was included at § 273.24(f)(4) in the proposed rule. These changes will effectively eliminate all statewide waivers based on statewide data, except for U.S. Territories, as explained in preceding sections. Consistent with the general rationale for restricting statewide waivers, the Department believes this change will ensure that waivers of the ABAWD time limit are more appropriately targeted to those particular areas that have unemployment rates over 10 percent or lack sufficient jobs. However, the Department sees fit to point out a particular nuance on the restriction of statewide waivers. That is, while this change generally eliminates statewide waivers based on statewide data, it would be possible for all LMAs in a State to qualify for waivers provided that each requested LMA separately meets the standards for approval. Similarly, it would be possible for a single LMA's boundaries to match or encompass a State's boundaries, in which case a waiver for the LMA would effectively waive the entire State. The Department does not see the potential for such scenarios to be problematic because they would not contradict the strict definition of waiver area in that the waiver area would still consist of one or more individually qualifying LMAs.

Many commenters expressed opposition to the proposed restriction of statewide waivers. A few of these commenters argued that this proposal is arbitrary and capricious because it departs from USDA's longstanding position without reasoned support. In particular, these commenters argued that the Department fails to identify data or evidence that justifies a restriction on statewide waivers. A commenter also provided text from the House Committee on Budget report (H. Rept. 104–651) from June 1996, when it reported out its original version of PRWORA, which stated, ''The committee understands that there may be instances in which high unemployment rates in all or part of a State or other specified circumstances may limit the jobs available for able-bodied food stamp participants between 18 and 50 years with no dependents.'' Another commenter provided text from the House Committee on Agriculture materials when it marked up the Food Stamp Reform and Commodity Distribution Act in March 1995, which eventually was incorporated into PRWORA and was the basis for what is now section 6(o) of the Act. These materials stated, ''The new work requirement could be waived by the Secretary, for some or all individuals within a State or part of a State, if, on a State's request, the Secretary finds that the area has an unemployment rate of over 10 percent, or the area does not have a sufficient number of jobs to provide employment to those subject to the new requirement (but, the Secretary must report to Congress on the basis on which the waiver decision was made).''

Commenters also challenged the Department's rationale that statewide unemployment figures may include areas in which unemployment rates are relatively low and that eliminating statewide waivers will help target areas in which unemployment rates are high. These commenters asserted that this proposal is arbitrary because variation in unemployment rates exists at all geographic levels. One commenter also asserted that the proposed rule's stated rationale ignores the statistical principle of weighted averages. This commenter said that, in order for an entire State to qualify under current rules, unemployment rates in the State must be generally high across the State, particularly in the most populous areas of the state. Commenters said that statewide waivers are appropriate when

the areas being impacted by economic forces are fluid and the State can demonstrate an overall lack of sufficient jobs.

The Department is not compelled by commenters' suggestions that the elimination of statewide waivers is arbitrary. The Department believes this change will ensure that waivers of the ABAWD time limit are more appropriately targeted to those particular areas that have unemployment rates over 10 percent or lack sufficient jobs, as required by the Act. Moreover, as pointed out in a preceding paragraph, it would be possible for all LMAs in a State to qualify for waivers provided that each requested LMA meets the standards for approval, or for a single LMA's boundaries to match or encompass a State's boundaries.

Some commenters, including a State agency, expressed disagreement with the idea that an entire State should not be treated as a large ''economically tied'' area. The State agency argued that residents of a State are economically tied together in that they share the same State minimum wage laws, labor regulations, occupational licensing requirements, and income tax rates.

Several commenters stated that this proposal would limit State flexibility and would increase administrative complexities and burdens. Another commenter argued that there is no evidence of States abusing statewide waivers. One commenter pointed to data showing that the number of statewide waivers has been decreasing as the economy has improved, indicating that there is no need for this provision.

The Department has observed that statewide waivers have resulted in the waiving of substate areas that do not have unemployment rates over 10 percent nor lack sufficient jobs. In these cases, the statewide averages mask tight labor markets in some substate areas, just as they may mask slack labor markets in other substate areas. For example, two recent statewide waiver requests included multiple substate areas with individual unemployment rates of under 4 percent. Under current regulations, these statewide waiver requests qualify because they are based on the statewide averages that meet the current standards for approval. In the Department's view, informed by over 20 years of operational experience, it is more appropriate, precise, and accurate to base ABAWD time limit waiver approvals on robust, reliable substate BLS data when it is available. Moreover, as explained in the preceding section *Establishing a Strict Definition of Waiver ''Area,''* the Department is including LMAs, intrastate portions of interstate LMAs, U.S. Territories, and reservation areas in its strict definition of waiver area which are generally based on substate (and sometimes include interstate) data.

The Department is modifying the proposal to restrict statewide waivers because it is no longer explicitly restricting statewide waivers, as was included at § 273.24(f)(4) in the proposed rule. Instead, the Department is effectively restricting statewide waivers by removing the extended unemployment benefits criterion from the core standards that was included at § 273.24(f)(2)(iii) in the proposed rule, and by including a strict definition of waiver area limited to an LMA, the intrastate part of an interstate LMAs, and a reservation area or a U.S. Territory at § 273.24(f)(4).

Duration of Waiver Approvals and Timeliness of Data

Limiting a Waiver's Duration to One Year or Less

The Department proposed to limit a waiver's duration to one year and continue to allow a waiver for a shorter period at a State's request. This proposal was included in paragraph § 273.24(f)(6) in the proposed rule. Commenters stated that requiring annual waiver requests during very poor economic conditions was unnecessary, burdensome, and wasteful, and that it could cause delays in waiver implementation. Another commenter stated that two-year waivers had historically been used in narrow, appropriate circumstances because two-year waivers already have burdensome data requirements that ensure that they are not implemented in inappropriate circumstances.

The Department is maintaining this provision as proposed. In the final rule, this provision is included in paragraph § 273.24(f)(5). The Department believes that a 1-year waiver term allows sufficient predictability for States to plan and implement the waiver. At the same time, a 1-year waiver term ensures that the waiver request reflects recent economic conditions.

Timeliness of Data

The Department proposed that waivers based on the 20 percent standard would not be approved beyond the fiscal year in which the waiver is implemented. This provision was included in paragraph § 273.24(f)(6) in the proposed rule. This proposal is connected to the existing regulation that these waivers must be supported by data from a 24-month period no less recent than what DOL used in its current fiscal year Labor Surplus Area (LSA) designation. When these waivers start late in the fiscal year, the data period used by the State may meet current regulatory requirements for waivers starting in that fiscal year, but it also may be relatively outdated support for a full 12-month approval period that spans into the next fiscal year. This is because when the waiver approval crosses fiscal years, the data supporting the waiver may, in fact, be older than the data used by DOL for LSAs for the more recent fiscal year. By proposing to limit the duration of these waivers to the current fiscal year, the Department sought to stop States from using older data to waive more areas than justified by more recent data used by DOL.

Commenters, including State agencies, suggested that this proposal would be administratively burdensome. One State agency argued that the proposed change would be inefficient, as its E&T programs and its own fiscal year calendar is different than the Federal fiscal year calendar. A State agency also requested that it retain its right to request waivers for durations exceeding the current fiscal year if it has compelling reasons.

Based on these comments, the Department is modifying this provision to preserve State flexibility and to allow qualifying 20 percent standard waivers to be implemented for 12-month periods that may cross fiscal years. At the same time, the modification also addresses the Department's concerns about the timeliness of data. Instead of limiting the implementation of 20 percent standard waivers to the fiscal year, as proposed, the modification will require that States always use data as recent as DOL uses to determine LSAs for a given fiscal year, no matter the month in which the waiver would start. States will maintain the discretion to set their own waiver schedule, but only if they support their request with qualifying, recent data. The modification is modeled after DOL's data reference period for LSAs and explained in detail in the following paragraphs.

In determining which areas qualify as LSAs for each fiscal year, DOL reviews areas' unemployment rates for the 2 preceding calendar years (the LSA data reference period). If an area qualifies, it is an LSA for the 12-month duration of the coming fiscal year, which starts in October and runs through September of the following year. Put simply, there are 21 months from the last month of the LSA data reference period through the last month in which the LSA designation is effective. For example, for an LSA designation of October 2020 through September 2021, the data from

the previous 2 calendar years is from January 2018 through December 2019. The number of months from December 2019 (the last month of the LSA data reference period) through September 2021 (the last month in which the LSA designation is effective) is 21 months.

Similarly, for the 20 percent standard data to be considered recent, the Department is requiring that there be no more than 21 months from the last month of the data reference period through the last month in which the waiver would be effective. Below are examples of how the policy will work in practice.

Example 1: The State has requested a 12-month waiver for October 2020 through September 2021. The State provided a 24-month data period from June 2018 through May 2020 showing that the requested areas meet the 20 percent standard. The waiver is approvable as requested, since the number of months from the end of May 2020 through the end of September 2021 is 16 months and does not exceed 21 months.

Example 2: The State has requested a 12-month waiver for January 2020 through December 2020. The State provided a 24-month data period from April 2017 through March 2019 showing that the requested areas meet the 20 percent standard. The waiver is approvable, since the number of months from the end of March 2019 through the end of December 2020 equals 21 months and does not exceed 21 months.

In modifying this provision to preserve State flexibility, the Department also sees fit to explain the potential for a State to request a waiver for less than 1 year and still support that request using the 20 percent standard data. In this potential scenario, the Department would follow the same requirement that there be no more than 21 months from the last month of the data reference period through the last month in which the waiver would be effective—but the waiver would not be approvable for a 1-year period.

For example, the State requested a 6-month waiver for June 2020 through December 2020. The State provided a 24-month data period from April 2017 through March 2019 showing that the requested areas meet the 20 percent standard. The waiver is approvable, since the number of months from the end of March 2019 through the end of December 2020 equals 21 months and does not exceed 21 months. The Department is adopting this change in the core standards at § 273.24(f)(2)(ii) and is including the revised provision regarding approval periods for waivers based on the 20 percent standard in paragraph § 273.24(f)(5).

Areas With Limited Data or Evidence

The Department proposed that waiver requests for areas for which standard BLS data or a BLS cooperating agency data is limited or unavailable, such as a reservation area or U.S. Territory, are not required to conform to the criteria for approval that is required of other areas. This provision was included in paragraph § 273.24(f)(7) in the proposed rule.

One State agency asked that the U.S. Territories and reservation areas be specifically exempted from the core standards, rather than listed as examples of areas in which standard BLS data or data from a BLS cooperating agency may be limited or unavailable, citing its unique economic circumstances.

The Department is adopting the provision mostly as proposed with two exceptions. The first exception is that the Department is not including the proposed language describing the potential for the combining of data within this subparagraph of the amendatory text. The Department has determined that language to be unnecessary. The second exception that the Department has added is that the data or evidence provided by the State must be ''recent.'' The Department is making this change for consistency with the general requirement that the data or evidence used to support a waiver request be reflective of the current economic circumstances in the area.

In the final rule, this provision is included in paragraph § 273.24(f)(6). As previously described, the Department is including a low and declining employment-to-population ratio, a lack of jobs in declining occupations or industries, or an academic study or other publication(s) as criteria for areas with limited data or evidence at § 273.24(f)(6).

Other Changes to Waivers

Eliminating the Labor Surplus Area (LSA) Waiver Criterion

Current regulations at § 273.24(f) include the LSA designation by DOL as a basis of ABAWD time limit waiver approval. As stated earlier, the Department proposed to eliminate the LSA designation as a basis of waiver approval as the LSA unemployment rate floor of 6 percent is inconsistent with the 7 percent unemployment rate that was proposed for the 20 percent standard.

Commenters, including States, stated opposition to eliminating the LSA designation as a basis for waiver approval. Some commenters pointed out that the LSA designation criteria is a long-accepted Federal standard for job insufficiency, developed by experts at DOL, and relied upon by Federal and State governments. Commenters also provided language from the Conference Report that accompanied the 2018 Farm Bill, in which the managers ''acknowledge that waivers from the ABAWD time limit are necessary in times of recession and in areas with labor surpluses or higher rates of unemployment.''

Commenters argued that LSAs target specific areas of job insufficiency. Commenters pointed to previous guidance provided by the Department in December 1996, which stated, ''Labor surplus areas are classified on the basis of civil jurisdictions rather than on a metropolitan area or labor market area basis. By classifying labor surplus areas in this way, specific localities with high unemployment rather than all civil jurisdictions within a metropolitan area, (not all of which may suffer from the same degree of unemployment) can be identified. This feature also makes the classification potentially useful to identify areas for which to seek waivers.''

Commenters argued that eliminating the LSA designation criterion would increase administrative burden on States and the Department. Commenters stated that the LSA designation criterion is one of the least burdensome ways for States to submit a request and for the Department to evaluate a request, as the list of areas is simply published by DOL. These commenters argued that increasing the administrative burden in this way is inconsistent with the fact that the Department asked for public input in 2018 on how to simplify the waiver process.

Commenters also argued that eliminating LSA designation as a basis for waiver approval would hinder the ability of SNAP to respond to severe setbacks in local economies because the LSA classification procedures also provide for the designation of LSAs under exceptional circumstance criteria. These procedures provide for LSA classification when an area experiences a significant increase in unemployment which is not temporary or seasonal, and which was not reflected in the data for the 2-year reference period. The current criteria for an LSA exceptional circumstance classification are: An area's unemployment rate is at least the LSA qualifying rate of 20 percent above the national average and 6 percent for each of the three most recent months; a projected unemployment rate of at least

the LSA qualifying rate for each of the next 12 months; and documentation (a list of the areas with the average unemployment rate of the three most recent months) that the exceptional circumstance event has already occurred. In order for an area to be classified as a LSA under the exceptional circumstance criteria, the State workforce agency must submit a petition requesting such classification to ETA.

The Department did not receive any comments that specifically stated support for eliminating LSA designation as a waiver criterion.

While the Department appreciates the comments received in opposition to eliminating LSA designation as a waiver criterion, the Department is choosing to eliminate this criterion, as proposed. As discussed in the preceding sections, the final rule is establishing a strict definition of waiver ''area'' to include an LMA, the intrastate part of an interstate LMA, a reservation area, or a U.S. Territory. LMAs and LSAs are often geographically inconsistent. Therefore, including LSA designation as a waiver criterion would be inconsistent with the final rule's definition of an area. The Department believes that States should not be able to pick and choose when to use the LMA definition and when to apply for a single-jurisdiction waiver. The Department also believes that areas should not qualify for waivers if there are available jobs within a reasonable commuting distance.

Eliminating Waiver Implementation Prior to Approval

The Department proposed removing the current provision at § 273.24(f)(4), which allows a State to implement an ABAWD waiver as soon as the State submits the waiver request, provided the State certifies that the requested area has a most recent 12-month unemployment rate over 10 percent; or the area has been designated a Labor Surplus Area by DOL for the current fiscal year. As a result of the removal of this provision, States would no longer have the discretion to implement a waiver prior to requesting and receiving FNS approval.

One commenter stated that the proposed change would hinder States' ability to respond to sudden economic changes. In response to this comment, the Department notes that the current regulations at § 273.24(f)(4) require States to provide either 12-months of data demonstrating the requested area has a most recent unemployment rate above 10 percent or evidence that the requested area has been designated an LSA for the current fiscal year, which is generally based on 24-months of data from the preceding 2 calendar years. Given that sudden economic changes take time to impact an area's 12-month or 24-month average, the Department does not find the current regulations at § 273.24(f)(4) particularly relevant to responding to sudden economic changes. Moreover, when the Department proposed § 273.24(f)(4) in 1999, it made no mention of this particular provision in terms of the responding to sudden economic changes, but did so in detail with regard to other proposed provisions.[10]

Several commenters stated opposition to the proposal on the grounds that it would increase administrative burden and cause uncertainty for States. For example, commenters asserted that the Department's rationale for the proposal is unclear and that the proposal runs contrary to the proposed rule's stated purpose of improving certainty and consistency in the waiver process. One commenter recommended allowing automatic implementation for the proposed core standards and for the exceptional circumstance standard to encourage efficiency and reduce unnecessary review processes.

The Department agrees that it is sometimes appropriate to balance flexibility with accountability in the interest of easing administrative burden, when doing so is effective and necessary. The Department also recognizes that, when it proposed § 273.24(f)(4) in 1999, it explained that it did so in the interest of making the waiver request process ''as simple as possible,'' while also noting that ''FNS must be able to reexamine the basis for waivers in those areas.'' However, based on the Department's over 20 years of operational experience, this flexibility has been used on an exceedingly rare basis and has not proven to be particularly necessary or effective at simplifying the waiver request process. Because the Department has been committed to responding to waiver requests prior to the State's requested implementation date, and has met this commitment consistently, it does not see a need to allow implementation prior to approval.

Other commenters stated that the proposal's application process limitations would harmfully restrict States' ability to implement waivers, as States need to take several steps to prepare to implement the time limit, including to identify and notify individuals subject to the time limit, develop policies and guidance to support implementation, train workers, ready computer systems, and potentially develop slots in work programs. In response to these comments, the Department sees fit to underscore the fact that ABAWD time limit waivers are temporary (generally 12 months or less) and only waive the 3-month participation time limit for ABAWDs. These waivers do not waive States' responsibility to identify ABAWDs (screen household members for the exceptions from the time limit at § 273.24(c)) or to measure and track the 36-month period. In short, States must maintain their administrative capacity to implement the 3 in 36-month time limit for ABAWDs continuously, and waiver implementation prior to approval is irrelevant to that administrative requirement.

The Department carefully reviews all State waiver requests, which includes independently obtaining and validating the data and evidence presented by the State in support of all requested areas to determine if the areas meet the standards for approval. For example, it is not uncommon for FNS to identify discrepancies or inaccuracies in the data presented by the waiver requesting State. In some cases, these issues result in FNS denying the waiver request or only partially approving the waiver request because not all areas meet the standards for approval.

For the reasons noted in the preceding paragraphs, the Department is maintaining the proposed change to eliminate waiver implementation prior to approval.

Eliminating the Historical Seasonal Unemployment Waiver Criterion

The Department proposed removing the criterion of a historical seasonal unemployment rate over 10 percent as a basis for approval. The Department stated that historical seasonal unemployment is not an appropriate measure because it does not demonstrate a prolonged lack of jobs and does not indicate early signs of a declining labor market. The Department also noted that it has not approved a waiver under this criterion in more than two decades.

Some commenters stated opposition to this provision. Some of these commenters argued that seasonal unemployment was an issue that SNAP was designed to address and that the time limit should be able to be waived during the time period of high seasonal

[10] Food Stamp Program: Personal Responsibility Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Proposed Rule, 64 FR 70920 (December 17, 1999). Available at: *https://www.federalregister.gov/documents/1999/12/17/99-32527/food-stamp-program-personalresponsibility-provisions-of-the-personalresponsibility-and-work*

unemployment, so that seasonal workers are not unfairly punished for not being able to find work in the off-season. Another commenter argued that the proposed rule improperly considers the duration of the unavailability of jobs, and argues that this is contrary to the Act. This commenter stated that the intent of the current historical seasonal unemployment criteria, according to Departmental guidance, was to align the period covered by the waiver to the period when unemployment is high, and that the proposed rule would designate an arbitrary unemployment duration requirement without proper justification. Other commenters suggested that the mere fact that the historical seasonal unemployment criterion has not been utilized is not sufficient to justify the removal of the provision and that States would be more likely to use the criterion in the future if other criteria were removed, as proposed.

Despite these comments, the Department is maintaining the elimination of the historical seasonal unemployment criterion as proposed. The Department believes that the historical seasonal unemployment criterion was not appropriate, as an area could receive a waiver for up to 12 months, even though it only demonstrated a few months of high unemployment per year. The Department is also relying on the fact that States have not utilized this metric in more than 20 years, through many economic changes. The Department believes this provides important evidence that this is not a necessary metric for waiver approval.

Requiring That Waiver Requests Be Supported by the Chief Executive Officer of the State

The Department proposed clarifying that any State agency's waiver request must ''be endorsed by the State's governor.'' Those who commented on this provision opposed it. Some commenters argued that the proposal is inconsistent with the 2018 Farm Bill, which requires that any State agency's waiver request have only ''the support of the chief executive officer of the State.'' Other commenters expressed concerns over the proposed rule's use of the word ''endorsed,'' which they suggested implies that a signature is required. Commenters opined that this provision would lengthen the waiver request process and require unnecessary administrative steps for States and potentially Tribal governments. Commenters also noted that the House-passed version of the Farm Bill provided that the waiver request must have the ''approval'' of the chief executive officer of the State. These commenters argued that the language was changed from ''approval'' in the House-passed bill to ''support'' in the final enacted law to indicate that the chief executive officer is not required to personally sign the waiver request. These commenters also pointed to the Conference Report that accompanied the 2018 Farm Bill,[11] which states, in particular, ''nor should the language result in any additional paperwork or administrative steps under the waiver process.'' Additionally, while the proposed rule used the title ''Governor,'' the 2018 Farm Bill used the title ''chief executive officer.'' Chief executive officer is the equivalent of a Governor but better captures all States and State agencies. For example, the chief executive officer in Washington, DC is the Mayor.

The Department finds these comments compelling. Based on these comments, the Department is adjusting the proposed language in § 273.24(f)(1) to state, ''with the support of the chief executive officer of the State,'' in order to more closely match the language from the 2018 Farm Bill. The Department also agrees that the language should refer to the chief executive officer rather than the Governor, to be inclusive of all the States, Washington, DC, and the U.S. Territories.

On the other hand, the Conference Report did express ''concerns that have been raised by some Members that State agencies have not fully communicated to the chief executive their intent to request a waiver under section 6(o).'' In order to avoid these concerns in the future, the Department is requiring State agencies to indicate that the request has the support of the chief executive officer in whatever method they see fit.

Commenters also argued that this provision should not be included in the rulemaking due to the language in the Conference Report that states, ''It is not the Managers' intent that USDA undertake any new rulemaking in order to facilitate support for requests from State agencies.'' Other commenters stated that this provision is unnecessary because Governors appoint department directors and cabinet members for the purpose of delegating control over certain areas of government, and requiring Governors to become involved in something as specific as SNAP ABAWD time limit waiver requests interferes with the ability of State governments to function efficiently and productively. However, since the 2018 Farm Bill requires that ABAWD time limit waiver requests have the support of the chief executive officer of the State, the Department does not believe there is discretion to dismiss this statutory requirement and thinks it appropriate to codify the requirement.

Implementation Date for Waiver Changes

The Department proposed that the changes to the waiver standards, once finalized, would go into effect on October 1, 2019, and stated that all waivers in effect on October 1, 2019, or thereafter, would need to be approvable according to the new rule at that time, and any approved waiver that does not meet the criteria established in the new rule would be terminated on October 1, 2019. States would be able to request new waivers if the State's waiver is expected to be terminated.

Commenters who commented on this provision opposed it. Commenters, including several States, opposed this implementation date because it did not provide States with enough time to implement the provision successfully. Commenters said that this timeline would provide States with an unrealistic, impractical, and inadequate amount of time to understand the final rule, send a request to amend their current waivers, and have that request reviewed by the Department. Commenters suggested that this implementation date would lead to errors, confusion, and potential violation of individuals' procedural due process rights. In addition, commenters argued that implementing the provisions so quickly would result in significant administrative costs. Several commenters expressed concern that the Department did not acknowledge the additional burden it would place on States to devote resources to quickly analyzing data for new requests and implementing the time limit in new areas. These commenters argued that the October 1, 2019, implementation date would not provide sufficient time for the State to coordinate with counties and provide adequate notice so that

[11] The Conference Report states, ''The Managers intend to maintain the practice that bestows authority on the State agency responsible for administering SNAP to determine when and how waiver requests for ABAWDs are submitted. In response to concerns that have been raised by some Members that State agencies have not fully communicated to the chief executive their intent to request a waiver under section 6(o), the Managers have included a provision to encourage communication between the State agency and the chief executive officer of the State. The Managers agree that State agencies should have the support of these officials in their application for waiver, ensuring maximum State coordination. It is not the Managers' intent that USDA undertake any new rulemaking in order to facilitate support for requests from State agencies, nor should the language result in any additional paperwork or administrative steps under the waiver process.''

individuals properly understand the ABAWD time limit. Commenters stated that forcing such a large, complex change so quickly will make it difficult for States to plan sufficiently and provide appropriate oversight and training for counties.

In addition, commenters argued that this timeline does not give adequate time for E&T providers and community based organizations to prepare for the impacts of the waiver changes. Some commenters asserted that the proposed implementation date demonstrates that the Administration does not fully understand the significant barriers that many people face and the significant investment it would take to engage every unemployed and underemployed ABAWDs in meaningful work activities.

Although those who commented on this provision generally agreed that the proposed implementation date was too soon to ensure successful implementation of the provisions, commenters offered several suggestions on how the date could be modified. Some commenters recommended that the final rule should not be implemented any sooner than October 1, 2020. Other commenters recommended that, at a minimum, the Department should honor any currently approved waiver's expiration date and not end the waiver pre-maturely. In addition, some Tribes requested that the Department delay implementation for at least one calendar year, in order to allow the Department enough time to more properly and accurately address the economic ramifications of the government shutdown that occurred from December 22, 2018, until January 25, 2019, which particularly impacted Tribes, and conduct meaningful consultation with Tribal leaders on this rule.

In response to these comments, the Department has modified the implementation dates for the final rule. Regarding waivers of the ABAWD time limit, the Department recognizes that States will need some time after the publication of the final rule to analyze data, request new waivers, train certain staff, inform ABAWDs of the rules, and otherwise prepare to implement the ABAWD work requirement in an effective manner. However, the Department also notes that it has provided ongoing guidance to States that States must continue to track ABAWDs, even when a waiver is in place. The Department also believes the changes to ABAWD waivers should happen as soon as possible to bring to an end current waiver practices by States.

Therefore, the Department is modifying the implementation date in the final rule regarding the final rule's changes to § 273.24(f), which concern the ABAWD waiver approval standards. The implementation date will be April 1, 2020. Waivers beginning before April 1, 2020, will be evaluated under the current regulatory standards for waivers, but these waivers will not be approved beyond March 31, 2020. Waivers that are currently in place will not be in effect beyond March 31, 2020, or their current expiration date, whichever occurs sooner. If a State chooses to submit a new waiver request after the publication of this rule, the new waiver request would need to meet the new standards in order to be approvable beyond March 31, 2020. As of April 1, 2020, State agencies must have received a new waiver approval under the new standards set at § 273.24(f) by this final rule in order to waive the time limit. Waivers approved under the previous standards will not be in effect. For areas not waived, the State must administer the ABAWD time limit as appropriate.

The Department believes that the implementation period will provide enough time for States to pose questions about the final rule and for the Department to provide clarifying guidance to the States. During the implementation period, States with existing waivers will also have the opportunity to request new waivers based on the approval standards of the final rule.

The final rule's changes to § 273.24(h), which involve changes to discretionary exemptions, will be implemented on October 1, 2020, as described in another section below.

Limiting the ''Carryover'' of ABAWD Discretionary Exemptions

Prior to enactment of the 2018 Farm Bill, section 6(o)(6) of the Food and Nutrition Act provided that each State agency be allotted exemptions from the ABAWD time limit equal to 15 percent of covered individuals. These were generally referred to as 15 percent exemptions and were codified in the regulations at § 273.24(g) and (h). The 2018 Farm Bill amended section 6(o)(6) of the Act to reduce the amount of exemptions from 15 percent to 12 percent, starting in fiscal year 2020. (The Department intends to codify this change in the regulations through a future rulemaking, *Employment and Training Opportunities in the Supplemental Nutrition Assistance Program, RIN: 0584–AE68.*) In the proposed rule, the Department referred to these as ''percentage exemptions'' as a way to avoid confusion as the calculation transitioned from 15 percent to 12 percent. In this final rule, the Department has chosen to refer to these exemptions as ''discretionary'' exemptions. The Department believes this term better describes these exemptions because States have discretion on whether to use these exemptions. This is in contrast to the list of ''exceptions'' in section 6(o)(3) of the Act and § 273.24(c), which are not discretionary. States must exempt individuals from the ABAWD time limit if the individual meets at least one of those listed exceptions. The Department intends to make the regulatory change to replace the name ''15 percent exemptions'' with ''discretionary exemptions'' through the above referenced future rulemaking (RIN: 0584–AE68).

The Department proposed to end the unlimited carryover and accumulation of ABAWD discretionary exemptions at § 273.24(h). The regulation's current interpretation of Section 6(o)(6)(G) of the Act, which requires the adjustment of exemptions, allows any unused exemptions to carry over and accumulate from one year to the next, indefinitely. As a result, States have accumulated extremely high amounts of unused discretionary exemptions that well exceed the number allotted to each State for the fiscal year. For example, in FY 2019, States earned approximately 1.3 million exemptions, but had about 7.4 million exemptions available for use in total due to the carryover of unused exemptions from previous fiscal years. The Department views the indefinite carryover and accumulation of such significant amounts of unused exemptions to be an unintended outcome of the current regulations. In the Department's view, the indefinite carryover and accumulation of unused exemptions is inconsistent with Congress' decision to limit the number of exemptions available to States in a given fiscal year, as expressed by sections 6(o)(6)(C), (D), and (E) of the Act.

The Department proposed changing the adjustment calculation to no longer allow for unlimited carryover from all preceding years. Instead, each State agency's carryover adjustment would be based on the number of exemptions earned in the preceding fiscal year minus the number of exemptions used in the preceding fiscal year. In addition, the Department proposed that the carryover adjustment would apply only to the fiscal year in which the adjustment is made.

Many commenters stated their opposition to the proposal to end the unlimited carryover and accumulation

of discretionary exemptions. Several commenters argued that this proposal was out of line with Congressional intent and pointed to the Conference Committee Report that accompanied the 2018 Farm Bill, which states that ''States will maintain the ability to exempt up to 12 percent of their SNAP population subject to ABAWD work requirements, down from 15 percent, and continue to accrue exemptions and retain any carryover exemptions from previous years, consistent with current law.''

Commenters also raised concerns over the complexity associated with the new calculation, the difficulty in planning based on variation from year to year, the likelihood of increased errors, and the likelihood of increased overuse resulting in legal liability.

Other commenters asserted that this proposed change would punish States for being judicious administrators of their exemptions. One commenter stated that there is no economic rationale for imposing a ''use it or lose it'' provision. The commenter reasoned that, under the current system, States have the flexibility to target the use of exemptions to people in the greatest need. Another commenter stated that implementing a ''use it or lose it'' system in regard to the carryover of ABAWD exemptions may actually incentivize States to use exemptions at a higher rate, something which seems inconsistent with the stipulated goal of reducing waste.

A few commenters stated that the proposal would cause retroactive harm to States by removing already earned exemptions and penalizing States for usage of earned exemptions in the fiscal year before the rule is finalized or implemented.

Some commenters stated that the proposal would negatively impact the ability of States to respond to unknown, future recessions and other economic hardships. Commenters, including States, argued that the rule is too focused on current national economic conditions and that States often use discretionary exemptions to respond to quickly deteriorating economic conditions, the deterioration of a major local industry or employer, or other similar situations where areas do not yet qualify for waivers.

Several commenters stated that discretionary exemptions are used to help individuals achieve self-sufficiency and to deal with changing policies. Some of these commenters, including counties, stated that some States have structured the use of exemptions so that they can be used to encourage individuals to engage in employment and training activities. For example, exemptions could be used for individuals who are engaged in employment and training but who do not reach 80 hours a month. Commenters noted that some States also use them for people participating in ''non-qualifying education or training activities'' when such training is in the best interest of specific clients. One State agency commented that the proposal would limit a State's ability to respond to new circumstances and policies, such as E&T vendor transitions, in addition to also using these exemptions in specific situations, such as the first month of a certification period if an ABAWD applies on the first day of the month.

Commenters also argued that discretionary exemptions should not be restricted because they are used to help people remain food secure when these individuals have barriers to work that are not listed in the specific exception list at § 273.24(c). As indicated in the comments, these individuals include domestic violence victims, youth leaving foster care, people leaving incarceration, veterans, homeless individuals, rural residents with no transportation, certain students, those suffering from addiction in waiting lines for treatment, those transitioning into the new requirements, those facing employment discrimination or temporary change in work hours, and those who can work but lack credentials for white-collar jobs but cannot do physical labor.

One State recommended modifying the proposal to permanently grandfather current discretionary exemptions, allow new exemptions to be carried over for 3 years, and not penalize States when they use the carried-over exemptions.

In response to these comments, the Department is adopting a modification to the proposal at § 273.24(h) that will limit carryover and allow States to carry over only one year's worth of exemptions from previous years. Specifically, the modification will limit or cap the amount that could be carried over to 12 percent of the covered individuals in the State for the preceding fiscal year. The modification, as described in the following paragraphs, will provide States with more time to use exemptions but will not allow the States to indefinitely accumulate discretionary exemptions.

The modification will address several of the concerns expressed by commenters. It will allow unused exemptions to carry over, but will still achieve the Department's goal to limit that carryover to 12 percent of covered individuals consistent with the rationale explained earlier in this section and the proposed rule. In addition, the modification will be less complex than what was in the proposed rule. Under the modification, States will face less variation from year to year, and States will know in advance the number of exemptions they could use for the fiscal year. Although States will continue to be liable for overuse of discretionary exemptions, the Department does not believe that this rule will increase the likelihood of errors or legal liability, as they will be able to plan in advance. The rule will give States some flexibility to ''save up'' a limited number of exemptions and carry them over into a future year in order to deal with potential unforeseen sharp economic declines or other quickly changing circumstances. The Department agrees that these comments demonstrate the importance of discretionary exemptions, but does not believe they provide compelling evidence that these exemptions should be carried over indefinitely.

The Department also sought comments on how to best handle the State agencies' existing accumulated discretionary exemptions, which in some cases have been carried over and accumulated for many years. As stated previously, some commenters said that States should retain these existing exemptions and that removing them would punish States for demonstrating restraint in the past. The final rule will not allow States to retain their existing accumulated discretionary exemptions past the end of FY 2020. As explained earlier, the Department views the accumulation of unused exemptions over several years to be inappropriate and inconsistent with the Act.

As proposed, the Department is also taking the opportunity to correct a cross-reference in § 273.24(h)(1). The corrected language cross-references § 273.24(g)(3), instead of (g)(2). The Department is making this change because it is more accurate and precise to cross-reference to § 273.24(g)(3), given that the caseload adjustments apply to the number of exemptions estimated as earned for each State for each fiscal year. The Department did not receive any comments on this proposed action. The Department also notes that it intends to change the reference to ''15 percent'' in § 273.24(g)(3) through the previously referenced future rulemaking (RIN: 0584–AE68), in order to codify the statutory change from 15 percent to 12 percent made in the 2018 Farm Bill.

The Department did not propose an implementation date with regard to the provision to restrict the carryover of ABAWD discretionary exemptions but

sought comments on when this provision should be implemented. The Department also noted that, under the proposed rule, the adjusted number of exemptions was based on the preceding fiscal year, and the change in regulatory text will, therefore, impact a State's ability to use exemptions in the fiscal year preceding the fiscal year that the provision goes into effect.

One State recommended implementing these changes in October 2020. This State suggested that many States utilize their exemptions over broad sections of population and that States may need to make significant changes to ensure they do not overuse exemptions. As discussed previously, other commenters stated that the Department should ensure that this provision does not have a retroactive impact.

Based on these comments, the final rule is adopting an implementation date of October 1, 2020, for this provision. The Department agrees that it is prudent to implement changes to discretionary exemptions during the next scheduled adjustment in Fiscal Year (FY) 2021, rather than to make changes during this fiscal year, which is already underway. Implementing this change during this fiscal year could make it difficult for States to properly plan their exemption use for this fiscal year and avoid liability status, as they have already begun using exemptions this fiscal year. States will not be adversely affected for actions taken before the rule is finalized, as the changes to carryover will not go into effect until FY 2021. Unlike the proposed rule, which could have sent a State into liability status based solely on the amount of exemptions earned and used in the previous year, the modification in the final rule provides States with one year to offset any overuse, consistent with current policy.

Under the final rule, the Department will continue to provide States with their estimated number of exemptions earned for each upcoming fiscal year as data becomes available, typically in September. The Department will also continue to provide States with the exemption adjustments as soon as updated caseload data is available and States have provided final data on exemptions from the preceding fiscal year, typically in January.

In addition, in the final rule, the Department has decided it prudent to codify its exemptions overuse policy, which was set by FNS through its November 8, 2007, policy memorandum *Overuse of the 15 Percent Able-Bodied Adults Without Dependents (ABAWD) Exemptions by States Agencies.* As referenced in an earlier paragraph of this section and in the proposed rule, this policy allows a State one year to ''offset'' a negative exemption balance using the new exemptions estimated for the State by FNS for the subsequent fiscal year. If the negative exemption balance is not fully offset, FNS will hold the State liable for the remaining negative balance. The Department is codifying this policy at § 273.24(h)(2)(ii).The four examples below show how the rule's adjustment calculation will work in practice based on no exemption use, varied exemption use, maximum exemption use, and exemption overuse.

Example 1, No Exemption Use

Example 1 shows how the adjustment calculation will work for a State that uses zero exemptions, and how it will limit the carryover of unused discretionary exemptions. In this example, the State had a balance of 50 exemptions for FY 2020 (row A). The State used no exemptions in FY 2020 (row B). The State had a potential carryover of 50 exemptions for FY 2021 (row C), but the State is limited to 12 percent of the covered individuals in the State estimated by FNS for FY 2020 (row D), which is equal to the number of exemptions earned for FY 2020. In this example, we assume the State earned 10 exemptions in FY 2020. The carryover of 10 exemptions (row D) is then added to the 10 earned for FY 2021 (row E) to obtain the State's total balance of 20 exemptions after adjustment for FY 2021 (row F). The State has a positive balance and does not have any overuse liability for that year. In FY 2022, FY 2023, and FY 2024, the calculation is the same and results are the same each year. The number of exemptions available to the State remains the same every year as it is earning the same amount and using zero exemptions each year. The State does not accumulate exemptions indefinitely, even though it is not using exemptions. Whereas the State would have a balance of 90 total exemptions after adjustment for FY 2024 under the current regulations, the State will have a balance of 20 total exemptions after adjustment for FY 2024 under the final rule.

EXAMPLE 1

	Fiscal year (FY)	2021	2022	2023	2024
A	Balance for prior FY	50	20	20	20
B	(−) Used in prior FY	0	0	0	0
C	(=) Potential carryover for current FY	50	20	20	20
D	(=) Actual carryover cap for current FY	10	10	10	10
E	(+) Earned exemptions for current FY	10	10	10	10
F	(=) Balance for current FY	20	20	20	20
G	Liability for overuse? (Yes or No)	No	No	No	No

Example 2, Varied Exemption Use and Earnings

Example 2 shows how the adjustment calculation will work for a State that uses and earns different amounts of exemptions each fiscal year. In this example, the State again had a balance of 50 exemptions for prior fiscal year (FY) of 2020 (row A). However, this time, the State used 30 exemptions in FY 2020 (row B). The State had a potential carryover of 20 exemptions for FY 2021 (row C), but the State is limited to the number of exemptions earned for FY 2020. In this example, we assume the State earned 10 exemptions in FY 2020. The carryover of 10 exemptions (row D) is then added to the 30 earned for FY 2021 (row E) to obtain the State's total balance of 40 exemptions after adjustment for FY 2021 (row F). The State has a positive balance and does not have any overuse liability for that year. For FY 2022, the State has a potential carryover of negative 10 exemptions because it used 50 exemptions in the prior year (row B) but only had a balance of 40 exemptions to use (row A). The State earned 35 exemptions for FY 2022, so the 35 earned exemptions offset the negative 10 exemptions, resulting in a balance of 25 exemptions for FY 2022. In FY 2022, the State uses exactly 25 exemptions, so they have no carryover for FY 2023.

EXAMPLE 2

	Fiscal year (FY)	2021	2022	2023	2024
A	Balance for prior FY	50	40	25	35
B	(−) Used in prior FY	30	50	25	20
C	(=) Potential carryover for current FY	20	−10	0	15
D	(=) Actual carryover cap for current FY	10	−10	0	15
E	(+) Earned exemptions for current FY	30	35	35	30
F	(=) Balance for current FY	40	25	35	45
G	Liability for overuse? (Yes or No)	No	No	No	No

Example 3, Maximum Exemption Use

Example 3 shows how the adjustment calculation will work for a State that uses its entire balance of exemptions every year, but does not overuse. In this example, the State again had a balance of 50 exemptions for prior fiscal year (FY) of 2020 (row A). In this example, the State used 50 exemptions in FY 2020 (row B). The State had a potential carryover of 0 exemptions for FY 2021 (row C), and therefore has no carryover for FY 2021 (row D). The State earned 10 exemptions for FY 2021 (row E). Since there is no carryover for FY 2021, the State's total balance is equal to the 10 that they earned for that year (row F). The State has a positive balance and does not have any overuse liability for that year. In FY 2022 and FY 2023, the State again uses all the exemptions it earns and has no carryover for the following year. For each of these years and FY 2024, the State earns 10 exemptions (row E) and has a balance of 10 exemptions (row F).

EXAMPLE 3

	Fiscal year (FY)	2021	2022	2023	2024
A	Balance for prior FY	50	10	10	10
B	(−) Used in prior FY	50	10	10	10
C	(=) Potential carryover for current FY	0	0	0	0
D	(=) Actual carryover cap for current	0	0	0	0
E	(+) Earned exemptions for current FY	10	10	10	10
F	(=) Balance for current FY	10	10	10	10
G	Liability for overuse? (Yes or No)	No	No	No	No

Example 4, Exemption Overuse

Example 4 shows how the adjustment calculation will work for a State that overuses exemptions. We again assume the State had a balance of 50 exemptions for prior fiscal year (FY) of 2020 (row A). In this example, the State used 60 exemptions in FY 2020 (row B). The State had a potential carryover of negative 10 exemptions for FY 2021 (row C), and therefore has negative 10 carryover for FY 2021 (row D). The State earned 10 exemptions for FY 2021 (row E), which offset the negative 10 carryover, and the State's total balance is zero for that year (row F). The State does not have any overuse liability for FY 2021 (row G). Even though the State had a balance of zero for FY 2021 (row F), the State used 20 exemptions in FY 2021 (row B). As a result, the State had a potential carryover of negative 20 exemptions for FY 2022 (row C), and therefore has negative 20 carryover for FY 2022 (row D). The State only earned 10 exemptions for FY 2022 (row E). The State's overuse results in a negative balance for FY 2022 (row F). Consistent with current policy, States will have 1 year to offset any overuse. In this case, the State will not go into liability status in FY 2022, but it will go into liability status in FY 2023 because the 10 exemptions earned for FY 2023 do not fully offset its overuse in FY 2022. Consistent with longstanding policy, the Department will consider the exemption overuse an overissuance.

EXAMPLE 4

	Fiscal year (FY)	2021	2022	2023	2024
A	Balance for prior FY	50	0	−10	−5
B	(−) Used in prior FY	60	20	5	0
C	(=) Potential carryover for current FY	−10	−20	−15	−5
D	(=) Actual carryover cap for current FY	−10	−20	−15	−5
E	(+) Earned exemptions for current FY	10	10	10	10
F	(=) Balance for current FY	0	−10	−5	5
G	Liability for overuse? (Yes or No)	No	No	Yes	No

Comments on the Rationale for the Rule

The Department's overall rationale for the proposed rule was that reducing the number of waivers and discretionary exemptions would improve economic outcomes, promote self-sufficiency, and encourage greater engagement in meaningful work activities among ABAWDs. The Department believes these goals are consistent with the stated goals of Congress when enacting PRWORA and with the principles the President outlined in E.O. 13828. In addition, the Department noted several times in the proposed rule that, based on its operational experience, the Department saw several areas of opportunity for the regulations to be amended to safeguard against the misapplication of waivers.

Some commenters supported the proposed rule as a way to encourage people to become self-sufficient. These commenters argued that applying the ABAWD time limit in more places and to more individuals would be effective in promoting self-sufficiency and beneficial to unemployed individuals. These commenters asserted that waivers are trapping people in poverty and long-term government dependency. Other comments argued that applying the ABAWD time limit in more places would help foster stronger communities. Some commenters argued that reducing the number of waived areas would reduce the number of SNAP beneficiaries, which the commenters felt is too high during current times of low national unemployment. Commenters suggested that the current regulations disincentivize economic independence and waste taxpayer money on people who should not qualify for waivers. Commenters argued that reducing the number of waived areas would encourage more people to fill open jobs and participate in employment and training programs.

Several of these commenters also argued that the current regulations need to be updated and that the rule as proposed would address waiver misuse and abuse. Commenters suggested it would address issues of States manipulating their unemployment data to receive waivers. Commenters argued that the current regulations go against the purpose of the waivers, which is to provide extended aid only for individuals who reside in areas with little economic opportunity.

The majority of commenters disagreed with the overall rationale for the proposed rule that reducing the number of waivers and discretionary exemptions would promote self-sufficiency for ABAWDs. These commenters were very critical of the Department's assertion that a broader application of time limits on SNAP eligibility would help adults find work. Commenters cited multiple recent academic studies and analyses which found that work rates for ABAWDs are generally similar in areas with and without waivers, supporting the notion that the proposed rule would not increase work. Commenters referred to studies commissioned by the Department in four States that found that, while a significant percentage of ABAWDs who left SNAP after the implementation of the time limit in the late 1990s were employed, their earnings and incomes were low and their poverty rates were high. Commenters pointed out that one of the main conclusions of these studies was that self-sufficiency was unlikely for many of those who left SNAP. While each of the studies in the four States was different and did not generally compare employment outcomes in waived areas against unwaived areas, commenters pointed to the study in South Carolina, which found that outcomes for ABAWDs who left SNAP in counties waived from the ABAWD time limit were similar to outcomes of ABAWDs leaving the program in unwaived counties. Commenters also cited numerous studies on TANF and Medicaid to support the assertion that work requirements harm program recipients while producing few lasting gains in employment. Commenters also cited a recent study finding that counties that lost waivers saw significant declines in ABAWD caseloads in SNAP, without any evidence of improvement in individual economic outcomes or well-being, when compared to economically similar counties with waivers. Several other commenters cited a study which found that ABAWD work requirements increased work participation by only 2 percent while decreasing SNAP participation by 8–10 percent.

Commenters cited recent research on SNAP work requirements that found that a majority of individuals exposed to these requirements were already attached to the labor force and were working part of the year, but many would be unable to consistently meet the ABAWD work requirement due to volatility in the low-wage labor market. One commenter provided research based on SNAP and unemployment insurance data during the Great Recession suggesting that ABAWDs who access SNAP are low-income workers who rely on SNAP while working and when they experience a spell of unemployment but they are not accessing SNAP while unemployed by some artifact of moral hazard. Other commenters cited research indicating that one of the most significant barriers inhibiting SNAP recipients from meeting work requirements is a lack of long-term employment opportunities that provide stable hours above the 80-hour-per-month threshold. Commenters referred to research finding that volatile hours and unstable employment are particularly common in the kind of low-paying jobs that employ the largest numbers of working-class people who are likely to receive SNAP. Commenters said that work documentation requirements are unduly burdensome for workers with unpredictable hours or multiple jobs. Some of these commenters argued that the proposed rule would lead to more ''churn'' because working SNAP participants who lose eligibility due to administrative hurdles would need to reapply, increasing administrative costs for the program.

Commenters argued that, as States began to implement the time limit after the passage of PRWORA in 1996, concern grew about its impact on people who are willing to work but could not find work, and that concern resulted in Congress passing legislation in 1997 to authorize 15 percent exemptions and increase funding for employment and training programs. Commenters argued that the combination of 15 percent exemptions, E&T slots, and waivers was seen as a way to mitigate the impact of the time limit on people who want to work but who could not find jobs.

Commenters also stressed the importance of SNAP and cited research indicating that receipt of SNAP improves health outcomes, and that work requirements harm health and productivity. Commenters cited studies indicating that access to SNAP benefits helps people find and maintain work. Commenters pointed to research studies, including those by the Department, indicating that the increased receipt of SNAP benefits stimulated local economic activity and increased employment during the Great Recession. Commenters also argued that the value of SNAP benefits is too small to disincentivize individual ABAWDs from finding work. Commenters argued that, even without work requirements, the SNAP benefit structure is already designed to incentivize work through the earned income deduction and gradual benefit phase-out as earned income increases.

In addition, commenters asserted that the proposed rule did nothing to expand E&T programs for ABAWDs or decrease unemployment barriers for this population. Commenters expressed concern that the proposed rule could result in increased poverty and food insecurity for ABAWDs newly subject to the time limit who are unable to meet work requirements, which commenters felt contradicts the objectives of the E.O. 13828, cited by the Department. Commenters noted that there are significant limitations on SNAP E&T availability and accessibility.

The Department appreciates these comments but believes that, as explained earlier in the *Background on this Rulemaking* section of this final rule, in passing PRWORA, Congress intended to promote work by requiring ABAWDs to work or participate in a work program as a condition of eligibility. While the Department appreciates the studies provided by the

commenters and the concerns expressed related to the rationale provided in the proposed rule, this does not change the statutory work requirements established by Congress. The policy changes made by this final rule are based on the Department's goal to promote work by expanding the application of the ABAWD time limit, in line with the intent of Congress when passing PRWORA. The Department also believes that, as stated in E.O. 13828, assistance programs, such as SNAP, need to make reforms to increase self-sufficiency, well-being, and economic mobility. Many of the changes in the final rule are based on the Department's more than 20 years of operational experience. Through this experience, the Department has learned that the current regulations lack certain important limitations and safeguards to prevent the misapplication of ABAWD waivers and the accumulation of unused ABAWD discretionary exemptions, as illustrated by the numerous practical examples included in the proposed rule and this final rule. Therefore, the Department is putting limitations and safeguards into regulation that will address these weaknesses. Moreover, the Department believes that those who can work should work and that SNAP recipients should be expected to seek work whenever possible. While the Department acknowledges that the rule does not in and of itself provide ABAWDs with additional job opportunities, the Department expects States agencies to do what they can to increase the employability of ABAWDs, and help them find and gain work. The Department believes that the Department, and other partners, share the responsibility to ensure that SNAP participants can achieve self-sufficiency and better their lives.

Comments Expressing General Opposition to Work Requirements

Many commenters expressed general opposition to work requirements and the ABAWD time limit. The Department is not responding in detail to these comments in the final rule as they are considered outside the scope of the rule because they did not provide feedback on provisions that were proposed for revisions as part of this rulemaking. Moreover, the ABAWD time limit and work requirement are statutory provisions and therefore cannot be removed through the rulemaking process.

Procedural Matters

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required by Executive Order 12866, a Regulatory Impact Analysis (RIA) was developed for this final rule. It follows this rule as an appendix. The following summarizes the conclusions of the regulatory impact analysis:

The Department has estimated the net reduction in Federal SNAP spending associated with the final rule to be approximately $109 million in fiscal year (FY) 2020 and $5.48 billion over the five years 2020–2024. This savings represents a reduction in federal transfers (SNAP benefit payments), offset by a small increase in the federal share of State administrative costs; the reduction in transfers represents a 1.8 percent decrease in projected SNAP benefit spending over this time period. In addition, the Department estimates a small increase ($1.4 million) in State costs related to administrative burden for verifying work hours and exemptions and sending notices. ABAWD households will also face additional burden associated with verifying their circumstances and reading notices, at a cost of less than $1 million.

Under current authority, the Department estimates that less than half of ABAWDs live in areas that are not covered by a waiver and thus face the ABAWD time limit. Under the revised waiver criteria the Department estimates that about 88 percent of ABAWDs will live in such areas. Of those newly subject to the time limit, the Department estimates that 688,000 individuals (in FY 2021) will not meet the work requirement or be otherwise exempt.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

This final rule will not have an impact on small entities because the rule primarily impacts State agencies. As part of the requirements, State agencies will have to update their procedures to incorporate the new criteria for approval associated with requesting waivers of ABAWD time limit. Small entities, such as smaller retailers, will not be subject to any new requirements. However, retailers in geographic areas that lose the time limit wavier would likely see a drop in the amount of SNAP benefits redeemed at stores when these provisions are finalized, although impacts on small retailers are not expected to be disproportionate compared to impact on large entities. As of FY 2017, approximately 76 percent of authorized SNAP retailers (about 200,000 retailers) were small groceries, convenience stores, combination grocery stores, and specialty stores, store types that are likely to fall under the Small Business Administration gross sales threshold to qualify as a small business for Federal Government programs. While these stores make up the majority of authorized retailers, collectively they redeem less than 15 percent of all SNAP benefits.

The final rule is expected to reduce SNAP benefit payments by an average of about $1.1 billion per year. The rule is estimated to result in approximately 77 percent of counties losing their current time limit waiver. Assuming SNAP-authorized retailers are proportionately represented in these areas, this would equate to about a $177 loss of revenue per small store on average per month ($1.1 billion × 15%)/(77,420 stores/12 months). In 2017, the average small store redeemed more than $3,300 in SNAP each month; the potential loss of benefits represents about 5 percent of their SNAP redemptions and only a small portion of their gross sales. Based on 2017 redemption data, a 1.8 percent reduction in SNAP redemptions represented between 0.01 and 0.7 percent of these stores' gross sales.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs has designated this as a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This final rule is considered an E.O. 13771 regulatory action. The Department estimates that it will impose $0.16 million in annualized costs at a 7% discount rate, discounted to a 2016 equivalent, over a perpetual time horizon.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable*) in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance under Number 10.551. For the reasons set forth in Department of Agriculture Programs and Activities Excluded from Executive Order 12372 (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, imposes substantial direct compliance costs on State and local government, and is not required by statute, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has considered the impact of this rule on State and local governments and has determined that this rule has federalism implications. However, this rule does not impose substantial or direct compliance costs on State and local governments, nor does it preempt State or local law. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed the final rule, in accordance with the Department Regulation 4300–004, Civil Rights Impact Analysis, to identify and address any major civil rights impacts the final rule might have on minorities, women, and persons with disabilities. A comprehensive Civil Rights Impact Analysis (CRIA) was conducted on the final rule, including an analysis of participant data and provisions contained in the final rule. The CRIA outlines outreach and mitigation strategies to lessen any possible civil rights impacts. The CRIA concludes by stating while the Department believes that a reduction in the number of ABAWD waivers granted to States will affect potential SNAP program participants in all groups who are unable to meet the ABAWD work requirements, and have the potential for impacting certain protected groups due to factors affecting rates of employment of members of these groups, the Department finds that the implementation of mitigation strategies and monitoring by the FNS Civil Rights Division and FNS SNAP may lessen these impacts. If deemed necessary, the FNS Civil Rights Division will propose further rule changes to alleviate impacts that may result from the implementation of the final rule.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FNS briefed Tribes on this rule at the February 14th, 2019 listening session; Tribes were subsequently provided the opportunity for consultation on the issue but FNS received no feedback. If a tribe requests consultation in the future, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this final rule contains information collections that are subject to review and approval by the Office of Management and Budget; therefore, the Department submitted the proposed rule for public comment regarding changes in the information collection burden that would result from adoption of the proposals in this final rule.

These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, the Department will publish a separate action in the **Federal Register** announcing OMB approval.

Title: Supplemental Nutrition Assistance Program Waiver of Section 6(o) of the Food and Nutrition Act.

Form Number: N/A.

OMB Number: 0584–0479.

Expiration Date: July 31, 2020.

Type of Request: Revision of a currently approved collection.

Abstract: This rule revises the conditions under which USDA would waive, when requested by State agencies, the able-bodied adult without dependents (ABAWD) time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. In addition, the rule limits carryover of ABAWD discretionary exemptions. In the proposed rule, the Department proposed to revise the existing information collection OMB Control #0584–0479 (expiration date July 31, 2021) by adjusting the burden hours associated with submitting a waiver request. Commenters to the proposed rule noted that the rulemaking will increase the administrative burden for State agencies. The Department has addressed these concerns by including the burden for additional activities in the burden estimates.

The final rule includes an adjustment to the estimated burden for the submission of ABAWD waiver requests by State agencies, the burden created by the requirement to obtain and indicate the support of the State's chief executive office, and the one-time burden for State agencies and SNAP households associated with noticing and verification.

There is no new recordkeeping burden required for this new information collection request. The recordkeeping burden for State agencies for application processing is currently covered under the approved information collection burden, OMB Control #0584–0064 (expiration date: 7/31/2020).

First Year (One-Time Burden)

The reduction of areas waived because of this final rule will subject more individuals to the ABAWD time limit. FNS estimates implementation of the final rule will create a one-time burden of 170,229 hours for State agencies and SNAP households. The burden is a result of the requirement to submit a second waiver requests in a 12-month period, verifying work hours, and issuing notices of adverse action. The revised burden estimates in the final rule also include the burden to SNAP households for receiving notices of adverse action and verifying work hours.

State Agencies

The ABAWD waiver request process includes collection of data, analysis of data, and preparing and submitting a request. Based on the experience of FNS during calendar year 2018, FNS projects that 36 out of 53 State agencies will submit requests for a waiver of the time limit for ABAWD recipients based on a high unemployment rate or lack of sufficient number of jobs. State agencies typically only submit one waiver request in each 12-month period; however, the implementation timeline for the final rule will require State agencies that wish to continue waivers for FY 2020 to submit an additional waiver request. This initial waiver request based on the revised regulations will require one or more individuals in the State agency to understand the changes, train individuals who develop waiver requests, and develop the waiver request. FNS estimates a response time of 28.5 hours for each waiver request based on labor market data, which require detailed analysis of labor markets within the State. FNS is adding 120 hours for each State to reflect the time associated with understanding the new regulations and preparing the initial waiver based on the revised regulations. This represents an additional one-time burden of 5,346 hours for State agencies collectively.

The final rule will also newly subject an estimated 1,087,000 ABAWDs to the time limit. The Department estimates the vast majority, approximately 688,000, will not meet the work requirement. As a result, it is estimated that State agencies will have to issue Notice of Adverse Action (NOAAs) to those 688,000 ABAWDs who do not meet the work requirement. While the issuance of NOAAs is currently approved under OMB #0584–0064, it is estimated these 688,000 NOAAs will be considered a one-time activity upon implementation of this final rule. FNS used existing estimates from the approved OMB #0584–0064 as a basis to determine it would take each State agency approximately4 minutes to issue a NOAA. In general FNS used the existing collection as a starting point but has reestimated in instances where those estimates were not adequate. Therefore, FNS estimates 45,867 hours for this one-time activity.

FNS also estimates 399,000 will meet the work requirement or be exempt from the time limit. As a result, State agencies will have to verify work hours and exemptions for 399,000 ABAWDs that meet the work requirement or are exempt. FNS used existing estimates from the approved OMB #0584–0064 as a basis to determine the verification of work hours and exemptions. The current burden estimates a 3 minute burden. FNS increased this estimate to 5 minutes for each verification because it did not adequately capture the time needed to ensure the verifications that are provided area sufficient. While the activities related to verification are currently approved under OMB #0584–0064, it is estimated these 399,000 verifications will be considered a one-time activity upon implementation of this final rule. Therefore, FNS estimates 33,250 one-time burden hours for State agency verification of work hours and exemptions. These two activities collectively account for 79,116 hours. The total start up burden for State agencies, including the additional waiver request submission, will result in 84,463 burden hours.

Households

The 1,087,000 ABAWDs newly subjected to the time limit will face a one-time burden as well. FNS estimates 688,000 ABAWDS will not meet the work requirement and receive a NOAA. While the issuance of NOAAs is currently approved under OMB #0584–0064, it is estimated the reading of these 688,000 NOAAs will be considered a one-time activity upon implementation of this final rule. FNS estimates it would take each household 4 minutes to read a NOAA. Therefore, FNS estimates 45,867 burden hours for SNAP households for this one-time activity.

FNS estimates 399,000 will meet the work requirement. ABAWDs meeting the work requirement will have to respond to State agency request for verification of work hours. FNS used existing estimates from the approved OMB #0584–0064 as a basis to determine the response to State agency request for verification of work hours and exemptions will take the SNAP household approximately 6 minutes for each verification. While the activities related to household response to request for State agency verification are currently approved under OMB #0584–0064, it is estimated these 399,000 verifications will be considered a one-time activity upon implementation of this final rule. Therefore, FNS estimates 39,900 one-time burden hours for household verification of work hours and exemptions. These two startup burdens will result in an increase of 85,767 hours for SNAP households.

OMB No. 0584–0479	Requirement and citation	Estimated number respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours	Previous submission total hours	Differences due to program changes	Differences due to adjustment	Hourly wage rate	Estimated cost to respondents
Affected Public: State Agencies											
Start-Up	7 CFR 2(f)(1)&(2)—Additional one-time verification of hours worked and exemptions for ABAWDs newly subject to the work requirement.	36	11,083	399,000	0.08	33,250	0	33,250	0	$32.01	$1,064,332.50
	7 CFR 273.13(a)—One-time Issuance of Notice of Adverse Action to ABAWDs who do not meet the work requirement.	36	19,111	688,000	0.07	45,867	0	45,867	0	32.01	1,468,192.00
	7 CFR 273.24(f)—One-time Submission of waiver request based on labor market data.	36	1	36	148.5	5,346	0	5,346	0	32.01/45.45	229,897.97
	7 CFR 273.24 (f)—One-time Submission of waiver request based on Labor Surplus Area designation.	0	0	0	0	0	0	0	0	32.01/45.45	0.00
Ongoing	7 CFR 273.24(f)—Submission of waiver request based on labor market data.	36	1	36	28.5	1,026	1190	−164	0	32.01/45.45	33,570.82
	7 CFR 273.24 (f)—Submission of waiver request based on Labor Surplus Area designation.	0	0	0	0	0	8	−8	0	32.01/45.45	0.00
Reporting Totals		36	.....	1,087,072	0.08	85,489	1198	84,291	0	.....	2,795,993.30
Affected Public: Households											
Start-Up	7 CFR 2(f)(1)&(2)—One Time—respond to verification of hours worked.	399,000	1	399,000	0.1	39,900	0	39,900	0	7.25	289,275.00
	7 CFR 273.13(a)—One-time Review of Notice of Adverse Action.	688,000	1	688,000	0.07	45867	0	45,867	0	7.25	332,533.33
Reporting Totals		1,087,000	.....	1,087,000	0.08	85,767	0	85,767	0	.....	621,808.33
Total Reporting Burden		1,087,036	.....	2,174,072	0.08	171,255	1198	170,057	0	.....	3,417,801.63

Ongoing Burden

The ABAWD waiver request process includes collection of data, analysis of data, and preparing and submitting a request. The final rule establishes clear limitations under which waivers can be approved; generally, State agencies will only be able to receive waiver approval for areas defined as Labor Market Areas (LMAs). The final rule establishes clear core standards and eliminates the ability for States to group areas. The ability to group areas required States greater flexibility and resulted in more options for waiver requests. The core standards provide a simpler basis for requests. As a result, the Department has estimated a reduction in burden hours for State agencies to submit waiver requests.

Based on the experience of FNS during calendar year 2018, FNS projects that 36 out of 53 State agencies would submit requests for a waiver of the time limit for ABAWD recipients based on a high unemployment rate or lack of sufficient jobs.

In the currently approved information collection for OMB Control No.0584–0479, FNS estimates it takes 35 hours for each State agency to submit a waiver request. FNS assumed 34 States would request waivers using labor market data and two States would request waivers under the Labor Surplus Area delineation.

OMB No. 0584–0479	Requirement and citation	Estimated number respondents	Response annually per respondent	Total annual responses	Hours per response	Annual burden hours	Previous submission total hours	Differences due to program changes	Differences due to adjustment	Hourly wage rate	Estimated cost to respondents
Affected Public: State Agencies											
Reporting Burden.	7 CFR 273.24(f)—Submission of waiver request based on labor market data.	36	1	36	28.5	1,026	1,190	−164	0	$32.01/$45.45	$16,785.41
	7 CFR 273.24 (f)—Submission of waiver request based on Labor Surplus Area designation.	0	0	0	0	0	8	−8	0	0	0
State Agency Totals		36	.....	.....	.....	1,026	1198	−172	0	.....	16,785.41
Total Reporting Burden		.....	.....	.....	.....	.....	.....	−172	.....	.....	16,785.41

FNS now expects 36 States to request waivers using labor market data since the Labor Surplus Area delineation is no longer a basis for approval. State agencies that previously used the Labor Surplus Area delineation as a criterion for waiver requests will face an increased burden for waiver requests. FNS estimated in the proposed rule the time for a State agency to submit a waiver request based on labor market data would be reduced to 28 hours. The

final rule maintains this reduction and also adds .5 hours per response to incorporate the requirement to obtain and indicate the support of the chief executive of the State agency. This results in a total annual burden of 1,026 hours for State agencies to submit an ABAWD waiver request. Once merged with OMB Control #0584–0479 upon approval, this will result in a reduction of 172 annual burden hours, for a total of 1,026 hours.

Affected public: State agencies, SNAP households.

Estimated number of respondents: 36 State Agencies, 1,087,000 individuals.

Regulation Section: 7 CFR 272.24.

Estimated total annual responses: First year 2,174,036; Ongoing 36.

Estimated annual burden hours: First year 170,229 hours; Ongoing 1,026 hours.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 273

Able-bodied adults without dependents, Administrative practice and procedures, Employment, Indian Reservations, Time limit, U.S. Territories, Waivers, Work requirements.

Accordingly, 7 CFR part 273 is amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 273.24, revise paragraph (f) to read as follows:

§ 273.24 Time Limit for able-bodied adults.

* * * * *

(f) *Waivers*—(1) *General.* The State agency, with the support of the chief executive officer of the State, may request FNS approval to temporarily waive the time limit for a group of individuals in the State in the area in which the individuals reside. To be considered for approval, the request must be supported by corresponding data or evidence demonstrating that the requested area:

(i) Has an unemployment rate of over 10 percent; or

(ii) Does not have a sufficient number of jobs to provide employment for the individuals.

(2) *Core standards.* FNS will approve waiver requests under paragraphs (f)(1)(i) and (ii) of this section that are supported by any one of the following:

(i) Data from the Bureau of Labor Statistics (BLS) or a BLS-cooperating agency that shows an area has a recent 12-month average unemployment rate over 10 percent; or

(ii) Data from the BLS or a BLS-cooperating agency that shows an area has a 24-month average unemployment rate 20 percent or more above the national rate for a recent 24-month period, but in no case may the 24-month average unemployment rate of the requested area be less than 6 percent. In order for the 24-month data period to be considered recent, the number of months from the end of the last month of the 24-month data period through the last month that the waiver would be effective must not exceed 21 months.

(3) *Other data and evidence in an exceptional circumstance.* FNS may approve waiver requests that are supported by data or evidence other than those listed under paragraph (f)(2) of this section if the request demonstrates an exceptional circumstance in an area. The request must demonstrate that the exceptional circumstance has caused a lack of sufficient jobs or an unemployment rate over 10 percent, for example data from the BLS or a BLS-cooperating agency that shows an area has a most recent three-month average unemployment rate over 10 percent. In addition, the request must demonstrate that the impact of the exceptional circumstance is ongoing at the time of the request. Supporting unemployment data provided by the State must rely on standard BLS data or methods.

(4) *Definition of area.* For the purposes of this paragraph, ''area'' means:

(i) An area considered a Labor Market Area (LMA) by DOL. The State agency must support a waiver for an LMA using corresponding LMA data from the BLS. If such corresponding data is unavailable, the State agency may obtain corresponding data by combining data from sub-LMA areas that are collectively considered to be a LMA by DOL;

(ii) The intrastate part of an interstate LMA. Intrastate parts of interstate LMAs may qualify for waivers based on data from the entire interstate LMA. If the State Agency's geographic boundaries are entirely within one interstate LMA, such as the District of Columbia, the entire State may qualify for a waiver based on data from the entire interstate LMA;

(iii) A reservation area or a U.S. Territory. Each of these is considered to be an area for the purposes of waivers.

(5) *Duration of waiver approvals.* In general, FNS will approve waivers for one year. FNS may approve waivers for a shorter period at the State agency's request. Waivers under paragraph (f)(2)(ii) of this section will be approved in accordance with paragraph (f)(2)(ii).

(6) *Areas with limited data or evidence.* Waiver requests for an area for which standard BLS data or data from a BLS-cooperating agency is limited or unavailable, such as a reservation area or U.S. Territory, are not required to conform to the criteria for approval under paragraphs (f)(2), (3), and (5) of this section. The supporting data or evidence provided by the State must be recent and must correspond to the requested area.

(i) FNS may approve waivers for these areas if the requests are supported by sufficient data or evidence, such as:

(A) Estimated unemployment rate based on available data from BLS and the U.S. Census Bureau;

(B) A low and declining employment-to-population ratio;

(C) A lack of jobs in declining occupations or industries; or

(D) An academic study or other publication describing the area as lacking a sufficient number of jobs to provide employment for its residents.

(ii) [Reserved]

* * * * *

■ 3. Effective October 1, 2020, § 273.24 is further amended by revising paragraph (h) to read as follows:

§ 273.24 Time Limit for able-bodied adults.

* * * * *

(h) *Adjustments.* FNS will make adjustments as follows:

(1) *Caseload adjustments.* FNS will adjust the number of exemptions estimated for a State agency under paragraph (g)(3) of this section during a fiscal year if the number of SNAP participants in the State varies from the State's caseload by more than 10 percent, as estimated by FNS.

(2) *Exemption adjustments.* During each fiscal year, FNS will adjust the number of exemptions available to a State agency based on the number of exemptions in effect in the State for the preceding fiscal year. In doing so, FNS will determine the State's exemption balance for the fiscal year (the total number of exemptions available to the State for the fiscal year).

(i) If the State agency did not use all of its exemption balance for the

preceding fiscal year, FNS will add to the State agency's exemption balance a portion of the unused exemptions not to exceed 12 percent of the covered individuals in the State estimated by FNS for the preceding fiscal year.

(ii) If the State agency used more than its exemption balance for the preceding fiscal year, FNS will decrease the State agency's exemption balance by the corresponding number. If this decrease results in a negative exemption balance, the State agency must offset the negative balance using the new exemptions estimated by FNS for the subsequent fiscal year. If the negative exemption balance is not fully offset, FNS will hold the State liable for the remaining negative balance.

* * * * *

Dated: November 25, 2019.

Stephen L. Censky,

Deputy Secretary, U.S. Department of Agriculture.

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