

# Proposed Rules

Federal Register

Vol. 84, No. 22

Friday, February 1, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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:** Proposed rule.

**SUMMARY:** Federal law 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, unless the individual meets certain work requirements. On the request of a State SNAP agency, the law also gives the 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 law also provides State agencies with a limited number of percentage exemptions that can be used by States to extend SNAP eligibility for ABAWDs subject to the time limit. The Department proposes to amend the regulatory standards by which the Department evaluates State SNAP agency requests to waive the time limit and to end the unlimited carryover of ABAWD percentage exemptions. The proposed rule would encourage broader application of the statutory ABAWD work requirement, consistent with the Administration's focus on fostering self-sufficiency. The Department seeks comments from the public on the proposed regulations.

**DATES:** Written comments must be received on or before April 2, 2019 to be assured of consideration.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit written comments on

this proposed rule. Comments may be submitted in writing by one of the following methods:

- **Preferred Method:** Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** Send comments to Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302.

- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via <http://www.regulations.gov>.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

##### Acronyms or Abbreviations

[Phrase, Acronym or Abbreviation]

Able-Bodied Adult without Dependent(s), ABAWD(s)  
Advanced Notice of Public Rulemaking, ANPRM

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)  
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 useful to help inform those wishing to provide comments.

- (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](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) BLS Local Area Unemployment Statistics. Available at: <https://www.bls.gov/lau/>
- (12) BLS Labor Surplus Area. Available at: <https://www.doleta.gov/programs/lsa.cfm>

#### The Rationale for Modifying Waiver Standards

The President's Executive Order on Reducing Poverty in America by

Promoting Opportunity and Economic Mobility (April 10, 2018) provided guiding principles for public assistance programs, one of which was to improve employment outcomes and economic independence by strengthening existing work requirements for work-capable individuals. The Executive Order directed Federal agencies to review regulations and guidance documents to determine whether such documents are consistent with the principles of increasing self-sufficiency, well-being, and economic mobility. Consistent with the Executive Order and the Administration's focus on fostering self-sufficiency, as well as the Department's extensive operational experience with ABAWD waivers, the Department has determined that the standards for waivers must be strengthened so that the ABAWD work requirement is applied to ABAWDs more broadly. The Department is confident that these changes would encourage more ABAWDs to engage in work or work activities if they wish to continue to receive SNAP benefits.

The Department believes that the proposed changes reinforce the Act's intent to require these individuals to work or participate in work activities in order to receive SNAP benefits for more than 3 months in a 36 month period. Section 6(o) of the Act, entitled, "Work Requirements," allows these individuals to meet the ABAWD work requirement by working and/or participating in a qualifying work program at least 20 hours per week (averaged monthly to 80 hours per month) or by participating in and complying with workfare. For the purposes of meeting the ABAWD work requirement, working includes unpaid or volunteer work that is verified by the State agency. The Act specifically exempts individuals from the ABAWD time limit and corresponding work requirement for several reasons, including, but not limited to, age, unfitness for work, having a dependent child, or being pregnant.

The Act authorizes waivers of the ABAWD time limit and work requirement in areas in which the unemployment rate is above 10 percent, or where there is a lack of sufficient jobs. The Department believes waivers of the ABAWD time limit are meant to be used in a limited manner in situations in which jobs are truly unavailable to ensure enforcement of the ABAWD work requirements as much as possible to promote greater engagement in work or work activities.

Immediately following the Great Recession, the vast majority of the States, including the District of Columbia, Guam, and the Virgin

Islands, qualified for and implemented statewide ABAWD time limit waivers in response to a depressed labor market. In the years since the Great Recession, the national unemployment rate has dramatically declined. Despite the national unemployment rate's decline from 9.9 percent in April 2010 to 3.9 percent in April 2018, a significant number of States continue to qualify for and use ABAWD waivers under the current waiver standards. Right now, nearly half of ABAWDs live in areas that are covered by waivers despite a strong economy. The Department believes waiver criteria need to be strengthened to better align with economic reality. These changes would ensure that such a large percentage of the country can no longer be waived when the economy is booming and unemployment is low.

The Department is committed to enforcing the work requirements established by Congress and is concerned about the current level of waiver use in light of the current economy. The regulations afforded States broad flexibility to develop approvable waiver requests. The Department's operational experience has shown that some States have used this flexibility to waive areas in such a way that was likely not foreseen by the Department.

Some of the key concerns have stemmed from the combining of data from multiple individual areas to waive a larger geographic area (e.g., a group of contiguous counties) and the application of waivers in individual areas with low unemployment rates that do not demonstrate a lack of sufficient jobs. For example, some States have maximized the number of areas or people covered by waivers by combining data from areas with high unemployment with areas with low unemployment. This grouping has resulted in the combined area qualifying for a waiver when not all individual sub-areas would have qualified on their own. States have combined counties with unemployment rates under 5 percent with counties with significantly higher unemployment rates in order to waive larger areas. For example, current regulations required the Department to approve a State request to combine unemployment data for a populous county with a high unemployment rate of over 10 percent with the unemployment data of several other less populous counties with very low unemployment rates that ranged between 3 and 4 percent. Other States have combined data from multiple areas that may only tenuously be considered an economic region. In some cases, States have grouped areas that are

contiguous but left out certain low-unemployment areas that would otherwise logically be considered part of the region. In this manner, States have created questionable self-defined economic areas with gaping holes to leverage the flexibility of the regulations.

The Department has also noted that, despite the improving economy, the lack of a minimum unemployment rate has allowed local areas to qualify for waivers based solely on having relatively high unemployment rates as compared to national average, regardless of how low local areas unemployment rates fall. Since the current waiver criteria have no floor, a certain percentage of States will continue to qualify for waivers even if unemployment continues to drop.

It is the Department's understanding that the intent of Congress in passing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was to provide SNAP to unemployed ABAWDs on a temporary basis (3 months in any 3-year period) with the expectation that they work and/or engage in a work program at least 20 hours per week, or participate in workfare, to receive SNAP on an ongoing basis. The Department is committed to implementing SNAP as Congress intended and believes that those who can work should work. The widespread use of waivers has allowed some ABAWDs to continue to receive SNAP benefits while not meeting the ABAWD work requirement for longer than 3 months. The proposed rule addresses these areas of concern and places safeguards to avoid approving waivers that were not foreseen by Congress and the Department, and to restrict States from receiving waivers in areas that do not clearly demonstrate a lack of sufficient jobs.

As stated above, given the widespread use of ABAWD waivers during a period of historically low unemployment, the Department believes that the current regulatory standards should be reevaluated. Based on the Department's approximately two decades' experience with reviewing ABAWD waivers, the Department is proposing that the standards for approving these waivers be updated to ensure the waivers are applied on a more limited basis. The application of waivers on a more limited basis would encourage more ABAWDs to take steps towards self-sufficiency.

The Department proposes stricter criteria for ABAWD waiver approvals that would establish stronger, updated standards for determining when and where a lack of sufficient jobs justifies temporarily waiving the ABAWD time

limit. The proposed rule would also ensure the Department only issues waivers based on representative, accurate, and consistent economic data, where it is available. Limiting waivers would make more ABAWDs subject to the time limit and thereby encourage more ABAWDs to engage in meaningful work activities if they wish to continue to receive SNAP benefits. The Department recognizes that long-term, stable employment provides the best path to self-sufficiency for those who are able to work. The Department believes it is appropriate and necessary to encourage greater ABAWD engagement with respect to job training and employment opportunities that would not only benefit ABAWDs, but would also save taxpayers' money. The Department and the States share a responsibility to help SNAP participants—especially ABAWDs—find a path to self-sufficiency. Through the stricter criteria for waiver approvals, the Department would encourage greater engagement in meaningful work activities and movement toward self-sufficiency among ABAWDs, thus reducing the need for nutrition assistance.

#### Waiver Standards Framework

Current regulations at 7 CFR 273.24(f) set standards and requirements for the data and evidence that States must provide to FNS to support a waiver request. States enjoy considerable flexibility to make these waiver requests pursuant to the current regulations. For example, these regulatory standards give States broad flexibility to define the waiver's geographic scope. The discretion for States to define areas allows waivers based on data for combined areas that are not necessarily economically tied. An economically tied area is an area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, while the current regulations establish criteria for unemployment data that rely on standard Bureau of Labor Statistics (BLS) data or methods, the regulations also allow States to rely on alternative, less robust economic indicators, which include data other than unemployment data from BLS, to demonstrate a lack of sufficient jobs. Moreover, the waiver standards allow areas within States to qualify for waivers as a result of unemployment rates relative to the national average, without consideration for whether the national or local area unemployment rate is high or low. Put differently, under the current regulations, which do not include a

local unemployment rate floor, even if the national unemployment rate falls, a particular area's unemployment rate may support a waiver if that area's unemployment rate is low but sufficiently higher than the national average. As a result of these and other shortcomings, the current regulations give States an opportunity to qualify for waivers and avoid the ABAWD time limit when economic conditions do not justify such relief. For these reasons, the Department believes that the waiver standards under this proposed rule will better identify areas that do not have a sufficient number of jobs to provide employment for ABAWDs.

As of September 2018, the national unemployment rate is the lowest unemployment rate since 1969; however, States continue to request and qualify for ABAWD waivers based on the current waiver criteria, which define the lack of sufficient jobs in an area too broadly. In April 2010, the national unemployment rate stood at 9.9 percent. From 2010 through 2013, the vast majority of States qualified for and continued to implement statewide ABAWD time limit waivers. SNAP participation peaked at an average of 47.6 million recipients per month in FY 2013 and has gradually declined since then. In July 2013, the national unemployment rate was 7.3 percent; 45 ABAWD time limit waivers covered the entire State,<sup>1</sup> and 6 waivers covered specific areas within the State. In April 2018, SNAP participation totaled 39.6 million participants, and the national unemployment rate stood at 3.9 percent. In April 2018, 8 waivers applied to an entire State, and 28 covered specific areas within a State. Although the national unemployment rate has dropped from 9.9 percent in April 2010 to 3.9 percent in April 2018, many States continue to qualify for and use ABAWD time limit waivers under the current waiver standards, and nearly half of all ABAWDs live in areas that are covered by waivers.

The Department is concerned that ABAWD time limit waivers continue to cover significant portions of the country and are out of step with a national unemployment rate hovering at less than 4 percent. Since the current waiver criteria have no floor, a certain percentage of States will continue to qualify for waivers even if unemployment continues to drop. In other words, regardless of how strong the economy is, the criteria are written in such a way that areas will continue to qualify even with objectively low

unemployment rates. Many currently-waived areas qualified based on 24-month local unemployment rates below 6 percent.

The current criteria for waiver approval permit States to qualify for waivers without a sufficiently robust standard for a lack of sufficient jobs. The waiver criteria should be updated to ensure States submit data that is more representative of the economic conditions in the requested areas. Such reforms would make sure the Department issues waivers based on representative, accurate, and consistent economic data.

This proposed rule would set clear, robust, and quantitative standards for waivers of the ABAWD time limit. The proposal would also: Eliminate waivers for areas that are not economically tied together; eliminate the ability of an area to qualify for a waiver based on its designation as a Labor Surplus Area (LSA) by the Department of Labor; limit the use of alternative economic indicators to areas for which standard data is limited or unavailable, such as Indian Reservations and U.S. Territories; and provide additional clarity for States regarding the waiver request process. The proposed changes would ensure the Department issues waivers only to provide targeted relief to areas that demonstrate a lack of sufficient jobs or have an unemployment rate above 10 percent and that the ABAWD time limit encourages SNAP participants to find and keep work if they live in areas that do not lack sufficient jobs.

#### Background

##### *Previous Action*

On February 23, 2018, the Department published an Advanced Notice of Public Rulemaking (ANPRM) entitled "Supplemental Nutrition Assistance Program: Requirements and Services for Able-Bodied Adults Without Dependents" (83 FR 8013) to seek public input to inform potential policy, program, and regulatory changes that could consistently encourage ABAWDs to obtain and maintain employment and thereby decrease food insecurity. The Department specifically asked whether changes should be made to: (1) The existing process by which State agencies request waivers of the ABAWD time limit; (2) the information and data States must provide to support the waiver request; (3) the Department's implementation of the waiver approval; and (4) the waiver's duration. The ANPRM generated nearly 39,000 comments from a range of stakeholders including private citizens, government

<sup>1</sup> The term "State" refers to any of the 50 States, the District of Columbia, and the U.S. territories

agencies and officials, food banks, advocacy organizations, and professional associations.

The comments addressed the broad scope of topics covered by the ANPRM. Comments about the ABAWD waiver included diverse perspectives, ranging from those who supported stricter waiver approval requirements to those who favored maintaining or expanding the criteria for waiver approval. Many commenters favored no change or expressed support for greater flexibility. Other commenters identified a number of areas of concern with current practices, including the use of waivers by States to waive the ABAWD work requirement and avoid promoting work, waiving areas with relatively low unemployment rates, and allowing the use of certain metrics for waiver approvals.

The Department received more than 3,500 comments regarding potential reforms to the ABAWD time limit and waivers of the time limit through the Department's request for information (RFI) entitled, "Identifying Regulatory Reform Initiatives" published July 17, 2017 (82 FR 32649). This RFI requested ideas on how the Department can provide better customer service and remove unintended barriers to participation in the Department's programs in ways that least interfere with the Department's customers and allow the Department to accomplish its mission. The Department specifically requested ideas on regulations, guidance documents, or any other policy documents that require reform. While commenters disagreed with certain SNAP provisions outlined previously, specific changes to regulations and policies were not provided. The Department received a range of comments to the RFI in addition to the comments listed above that are not relevant to this proposed rule.

#### *Summary of Proposed Changes*

The Department believes current regulations at 7 CFR 273.24(c) and 7 CFR 273.24(f) should be updated and strengthened. The proposed rule focuses on updating the standards for ABAWD waivers. Current regulations at 7 CFR 273.24(f) set standards and requirements for the data and evidence that States must provide to FNS to support an ABAWD waiver request. States enjoy considerable flexibility to make these waiver requests pursuant to the current regulations. This flexibility has resulted in the widespread use of waivers during a period of low unemployment, which reduces the application of the work requirement.

The Department proposes several changes. First, the proposed rule would limit the ability of areas to qualify for waivers as local economies and the overall national economy improve. Second, the proposed rule would no longer allow State agencies to combine unemployment data from areas with high unemployment with areas with lower unemployment and more plentiful employment opportunities in order to maximize the area waived. Instead, the proposed rule would ensure the Department issues waivers only to economically tied areas that meet the new criteria defining what is meant by a lack of sufficient jobs. The proposed rule would also limit the duration of waivers to one year, and curtail the use of less robust data to approve waivers. The subsequent sections provide details about the changes proposed in this rule.

#### **Discussion of Proposed Changes**

##### *General*

The Department proposes that the rule, once finalized, would go into effect on October 1, 2019, which is the beginning of federal fiscal year 2020. All waivers in effect on October 1, 2019, or thereafter, would need to be approvable according to the new rule at that time. 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. The Department requests feedback from States regarding the implementation date. In addition, the Department proposes clarifying that any State agency's waiver request must have the Governor's endorsement to ensure that such a critical request is supported at the highest levels of State government.

##### *Establishing Core Standards for Approval*

The Department proposes updating criteria for ABAWD time limit waivers to improve consistency across States and only allow approvals in areas where waivers are truly necessary. These revisions would include the establishment of core standards that would allow a State to reasonably anticipate whether it would receive approval from the Department. These core standards would serve as the basis for approval for the vast majority of waiver requests, save for areas with exceptional circumstances or areas with limited data or evidence, such as Indian Reservations and U.S. Territories. The proposed rule would continue to allow approvals for waivers based on data from BLS or a BLS-cooperating agency

that show an area has a recent, 12-month average unemployment rate over 10 percent.

The proposed rule emphasizes that the basis for approval of waivers would be sound data and evidence that primarily relies on data from BLS or BLS-cooperating agencies. Any supporting unemployment data provided by the State would need to rely on standard BLS data or methods. BLS unemployment data is generally considered to be reliable and robust evidence for evaluating labor market conditions. BLS is an independent Federal statistical agency that is required to provide accurate and objective statistical information and is the principal fact-finding agency for the Federal government in the broad field of labor economics and statistics. It collects, processes, analyzes, and disseminates essential statistical data for the public and Federal agencies.

The proposed core standards for waiver approval would be codified in 7 CFR 273.24(f)(2).

##### **Core Standards: Retaining Waivers Based on an Unemployment Rate Over 10 Percent**

The Department does not propose changes to the regulations for waivers when an area has an unemployment rate over 10 percent. The proposed rule would continue to allow approvals for waivers based on data from BLS or a BLS-cooperating agency that show an area has a recent, 12-month average unemployment rate over 10 percent.

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

Current regulations at 7 CFR 273.24(f)(2) and (3) provide for 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"). Under the current regulations, the Department adopted the 20 percent standard, in addition to LSA designation, to provide States with the flexibility to support waivers for areas in the country that are not considered by DOL for LSA designation and to allow States to use a more flexible 24-month reference period.

There are key differences between the two standards. DOL's criteria for LSAs require an average unemployment rate that is at least 20 percent above the national average and at least 6 percent for the preceding two calendar years (a

24-month period). DOL's local unemployment rate floor of 6 percent prevents areas with unemployment rates below that threshold from qualifying as LSAs. The 20 percent standard is the same, except that it allows for a flexible 24-month data reference period (no earlier than that which is used for LSAs) and it does not include any unemployment rate floor.

Based upon operational experience, the Department has observed that, without an unemployment rate floor, local areas will continue to qualify for waivers under the Department's 20 percent standard based on high unemployment relative to the national average even as local unemployment rates fall to levels as low as 5 to 6 percent (depending upon the national rate). The Department believes that amending the waiver regulations to include an unemployment floor is a critical step in achieving more targeted criteria. While the 20 percent standard is similar to the calculation of an LSA, the Department believes it is appropriate to request public comment to explore a floor that is designed specifically for ABAWD waivers.

The Department believes a floor should be set for the 20 percent standard so that areas do not qualify for waivers when their unemployment rates are generally considered to be normal or low. The "natural rate of unemployment" is the rate of unemployment expected given normal churn in the labor market, with unemployment rates lower than the natural rate tending to result in inflationary pressure on prices. Thus, unemployment rates near or below the "natural rate of unemployment" are more indicative of the normal delay in unemployed workers filling the best existing job opening for them than a "lack of sufficient jobs" in an area. Generally, the "natural rate of unemployment" hovers around 5 percent. The Department believes that only areas with unemployment rates above the "natural rate of unemployment" should be considered for waivers. The Department seeks to establish a floor that is in line with the Administration's effort to encourage greater engagement in work and work activities. The Department believes that the 7 percent floor for the 20 percent standard would strengthen the standards for waivers so that the ABAWD work requirement would be applied more broadly and fully consider the "lack of sufficient jobs" criteria in the statute. Furthermore, this aligns with the proposal in the Agriculture and Nutrition Act of 2018, H.R. 2, 115th Cong. § 4015 (as passed by House, June

21, 2018). As stated previously, the Department seeks to make the work requirements the norm rather than the exception to the rule because of excessive use of ABAWD time limit waivers to date. Using the proposed rule's 7 percent floor for this criterion and eliminating waiver approvals based on an LSA designation (as well as utilizing the proposed limit on combining areas discussed below), an estimated 11 percent of ABAWDs would live in areas subject to a waiver. Currently, approximately 44 percent of ABAWDs live in a waived area. The Department views the proposal as more suitable for achieving a more comprehensive application of work requirements so that ABAWDs in areas that have sufficient number of jobs have a greater level of engagement in work and work activities, including job training. In sum, the proposed rule modifies the current waiver criterion so that an area must have an average unemployment rate at least 20 percent above the national average and at least 7 percent 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, to qualify for a waiver. The 7 percent floor prevents a requested area with an unemployment rate 20 percent above the national average, but below 7 percent, from qualifying for a waiver.

Although the Department believes the local unemployment floor should be set at 7 percent to best meet its goals of promoting self-sufficiency and ensuring areas with unemployment rates generally considered normal are not waived, it is requesting evidence-based and data-driven feedback on the appropriate threshold for the floor. Specifically, the Department requests feedback on which unemployment rate floor—6 percent, 7 percent, or 10 percent—would be most effective at limiting waivers consistent with the Act's requirement that waivers be determined based on a lack of sufficient jobs.

The Department is interested in public comments on establishing an unemployment floor of 6 percent, which would be consistent with DOL standards for LSAs. A 6 percent floor would require that an area demonstrate an unemployment rate of at least 20 percent above the national average for a recent 24-month period and at least a 6 percent unemployment rate for that same time period in order to receive waiver approval. The 6-percent floor also bears a relationship to the "natural rate of unemployment," in that it is approximately 20 percent higher. As previously noted, the "natural rate of

unemployment" generally hovers around 5 percent, meaning that 20 percent above that rate is 6.0 percent. In combination with other changes in the proposed rule, the Department estimates that a 6-percent floor would reduce waivers to the extent that approximately 24 percent of ABAWDs would live in waived areas. The Department is concerned that too many areas would qualify for a waiver of the ABAWD time limit with a 6 percent floor and that too few individuals would be subject to the ABAWD work requirements, which can be met through working or participating in a work program or workfare program, thereby moving fewer individuals towards self-sufficiency.

The Department would also like to receive comments on establishing a floor of 10 percent for the 20 percent standard. A 10-percent floor would allow for even fewer waivers than the other options and would result in the work requirements being applied in almost all areas of the country. In combination with other changes in the proposed rule, the Department estimates that a 10-percent floor would reduce waivers to the extent that approximately 2 percent of ABAWDs would live in waived areas.

It is important to note that a 10-percent floor would be distinct from the criteria for approval of an area with an unemployment rate of over 10 percent. The 10-percent unemployment floor would be attached to the 20 percent standard, which would mean an area would require an average unemployment rate 20 percent above the national average for a recent 24-month period and at least 10 percent for the same period; the other similar, but separate standard requires an area to have an average unemployment rate of over 10 percent for a 12-month period.

Based on the Department's analysis, nearly 90 percent of ABAWDs would live in areas without waivers and would be encouraged to take steps towards self-sufficiency if a floor of 7 percent was established. In comparison, a 6 percent floor would mean that 76 percent of ABAWDs would live in areas without waivers and a 10 percent floor would mean that 98 percent of ABAWDs would live in areas without waivers. A higher floor allows for the broader application of the time limit to encourage self-sufficiency.

The Department is thus requesting comments on the various proposed options for setting a floor for the 20 percent standard. This will ensure that the Department fully considers the range of evidence available to establish a floor that meets the need of evaluating waivers.

### Core Standards: Retaining the Extended Unemployment Benefits Qualification Standard

Under the proposed rule, the Department would continue to approve a State's waiver request that is based upon the requesting State's qualification for extended unemployment benefits, as determined by DOL's Unemployment Insurance Service. Extended unemployment benefits are available to workers who have exhausted regular unemployment insurance benefits during periods when certain economic conditions exist within the State. The extended benefit program is triggered when the State's unemployment rate reaches certain levels. Qualifying for extended benefits is an indicator, based on DOL data, that a state lacks sufficient jobs. Current regulations include this criterion as evidence of lack of sufficient jobs. The Department has consistently approved waivers based on qualification for extended unemployment benefits because it has been a clear indicator of lack of sufficient jobs and an especially responsive indicator of sudden economic downturns, such as the Great Recession. Therefore, the Department proposes to continue to include this criterion, reframed as a core standard for approval in this proposed regulation.

The three provisions described above (the unemployment rate over 10 percent standard, the 20 percent standard, and the qualification for extended unemployment benefits standard), would be considered the core standards for approval and, thus, the basis for most conventional waiver requests and approvals. The core standards would be codified in 7 CFR 273.24(f)(2).

### Criteria Excluded From Core Standards

The proposed core standards would not include some of the current ABAWD time limit waiver criteria that are rarely used, sometimes subjective, and not appropriate when other more specific and robust data is available, such as unemployment rates from BLS. 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. These standards would no longer suffice for a waiver's approval if BLS data is available. These proposed changes would ensure that ABAWD time limit waiver requests are only approved in areas where waivers are truly necessary.

The proposed rule would emphasize sound data and evidence that primarily relies on BLS and other DOL data for waiver approvals. Any supporting

unemployment data that a State provides must, under the core standards, rely on standard data from BLS or a BLS-cooperating agency.

### *Other Data and Evidence in Exceptional Circumstances*

The proposed core standards would form the primary basis for determining waiver approval. However, the rule also proposes that the Department can approve waiver requests in exceptional circumstances based on other data and evidence. The Department proposes that other data and evidence still primarily rely on BLS unemployment data. Such alternative data would only be considered in exceptional circumstances or if BLS data is limited, unavailable, or if BLS develops a new method or data that may be applicable to the waiver review process. Given that economic conditions can change quickly, the Department believes it is appropriate to maintain a level of flexibility to approve waivers as needed in extreme, dynamic circumstances. Such waiver requests must demonstrate that an area faces an exceptional circumstance and provide data or evidence that the exceptional circumstance gives rise to an area not having a sufficient number of jobs to provide employment for the individuals in the area. For example, an exceptional circumstance may arise from the rapid disintegration of an economically and regionally important industry or the prolonged impact of a natural disaster. A short-term aberration, such as a temporary closure of a plant, would not fall within the scope of exceptional circumstances. For waiver requests in exceptional circumstances, the State agency may use additional data or evidence other than those listed in the core standards to support its need for a waiver under exceptional circumstances. In these instances, the State may provide data from the BLS or a BLS-cooperating agency showing an area has a most recent three-month average unemployment rate over 10 percent. This provision to strengthen the standards for waivers would be codified in 7 CFR 273.24(f)(3).

### *Restricting Statewide Waivers*

Current regulations at 7 CFR 273.24(f)(6) and the Department's policy guidance provide States with the discretion to define the areas to be covered by waivers. A State may request that a waiver apply to the entire State (statewide) or only to certain areas within the State (e.g., individual counties, cities, or towns), as long as the State provides data that corresponds to each requested area showing that the

area meets one of the qualifying standards for approval.

The proposed rule would eliminate statewide waiver approvals when substate data is 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. The Department proposes this change so that waivers of the ABAWD time limit are more appropriately targeted to those particular areas in which unemployment rates are high. Since statewide unemployment figures may include areas in which unemployment rates are relatively low, the Department believes that a more targeted approach would ensure that waivers exist only in areas that do not have a sufficient number of jobs to provide employment for the individuals living in that specific area. This proposed change further supports the Department's goal that more individuals are subject to the ABAWD time limit and work requirement, which can be met through working or participating in a work program or workfare program, consistent with the intent of the Act.

The Department requests public comment specific to the proposed restriction on statewide waivers, especially with consideration to how the change may affect different States in different ways based upon geographic size, population, and other factors.

These changes would be codified in 7 CFR 273.24(f)(4).

### *Restricting the Combining of Data to Group Substate Areas*

Current regulations at 7 CFR 273.24(f)(6) and the Department's policy guidance provide States considerable flexibility to define areas covered by ABAWD waivers. This flexibility allows States to combine data to group two or more substate areas, such as counties, together (otherwise referred to as "grouped" areas or "grouping"). In order to meet the requirement for qualifying data or evidence that corresponds to the requested area, States use the unemployment and labor force data from the individual areas in the group to calculate an unemployment rate representative of the whole group. States can only group areas and support approval based on qualifying unemployment data. Under current regulations, States must demonstrate that the areas within any such group are contiguous and/or share the same Federal- or State-recognized economic region. For example, two or more contiguous counties could be grouped together, and the group's average unemployment rate could be calculated,

by combining the unemployment and labor force data from each individual county.

The Department's existing general conditions for the grouping of areas—that the areas must be either contiguous and/or share the same economic region—were intended to ensure that the areas grouped together are economically tied. However, in practice, the Department has learned that its standards for combining areas provide too much flexibility for State agencies and are often ineffective at ensuring that States are only grouping areas that are economically tied. 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.

The proposed rule would prohibit States from grouping areas, except for areas that are designated a Labor Market Area (LMA) by the Federal government.<sup>2</sup> This change would ensure that only areas that are economically tied are grouped together. Moreover, the proposed rule would require States to include the unemployment data representative of all areas in the LMA in the State. As a result, States would be unable to omit certain areas within the LMA in the State for the purposes of achieving a qualifying unemployment rate for part of an LMA. These changes would be codified in 7 CFR 273.24(f)(5).

The Department requests public comments on whether it should include Labor Market Areas (LMAs) defined by the Federal government as the basis for grouping areas or whether it should prohibit grouping entirely. If grouping were prohibited entirely, waived areas would be limited to individually qualifying jurisdictions with corresponding data (for example, counties and their equivalents, cities, and towns). The Department requests comments on the potential impacts of either policy. The Department believes that only allowing the use of Federally designated LMAs will limit the

<sup>2</sup> An LMA is an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. LMAs include Federally-designated statistical areas such as metropolitan statistical areas, micropolitan statistical areas, and other combined statistical areas. A nationwide list of every LMA is maintained by BLS.

combination of areas that are not contiguous and economically integrated. The Department is interested in feedback on whether the LMA definition will target waivers to jurisdictions with a demonstrable lack of sufficient jobs without including jurisdictions that do not lack sufficient jobs.

#### *Duration of Waiver Approvals and Timeliness of Data*

The proposed approach would limit the duration of waiver approvals. Under the current regulations, the Department typically approves waivers for one year. However, the current regulations allow the Department to approve shorter or longer waivers in certain circumstances. The Department proposes limiting a waiver's duration to one year, but continuing to allow a waiver for a shorter period at a State's request. The Department believes that a one year waiver term allows sufficient predictability for States to plan and implement the waiver; at the same time, a one-year waiver term ensures that the waiver request reflects current economic conditions.

The proposed rule would also prioritize recent data by preventing States from requesting to implement waivers late in the Federal fiscal year, which broadens the available data reference period. Through operational experience, the Department has observed that several States that have historically requested 12-month waivers on a fiscal year basis (*i.e.*, October 1 of one year through September 30 of the following year), have shifted their waiver request and implementation dates to later in the fiscal year (*e.g.*, September 1 through August 31). The States that have made this shift have supported their waivers based on the 20 percent standard. In the current regulations, the 24-month data reference period for this waiver is tied to the fiscal year and only updates each year on October 1. The Department has noticed that as the unemployment rates have improved, States that shift the waiver operational period to later in the fiscal year have been able to capitalize on older data and qualify for waivers of the ABAWD time limit for additional time. States are able to take advantage of this loophole if their unemployment rates for the requested areas have been improving relative to the national average. As a result, these States are able to obtain a waiver and maximize the areas waived into the next fiscal year, using data that is no longer appropriate as of the October 1 update.

To curtail this practice, the Department proposes that waivers based

on the 20 percent standard would not be approved beyond the fiscal year in which the waiver is implemented. In addition, these waivers must utilize data from a 24-month period no less recent than that DOL used in its current fiscal year LSA designation. Such an approach ensures waivers rely on sufficiently recent data for the current fiscal year and prevents States from using older data, which may not accurately reflect current economic conditions.

This provision would streamline the implementation of the program and would be codified in 7 CFR 273.24(f)(6).

#### *Areas With Limited Data or Evidence*

Current practices provide flexibility to State agencies to rely on alternative data sources regardless of whether the area has corresponding BLS unemployment data available. Currently, the Department may approve requests supported by an estimated unemployment rate of an area based on available data from BLS and Census Bureau's American Community Survey (ACS), a low and declining employment-to-population ratio, a lack of jobs as a consequence of declining occupations or industries, or an academic study or other publication describing the area's lack of a sufficient number of jobs. At times, State agencies will use these alternative data sources to justify a waiver request even when the corresponding BLS data shows that the unemployment rate in the area is relatively low. As stated previously, the Department believes that waivers of the ABAWD time limit should be limited to only circumstances in which the area clearly does not have a sufficient number of jobs to provide employment for the individuals. By not restricting the use of these alternative to areas with limited data or evidence, the Department has permitted States to take advantage of these alternative data sources, when BLS employment data is readily available.

Under the proposed rule, all of these criteria would only be applicable to areas for which BLS or a BLS-cooperating agency data is limited or unavailable, such as a reservation area or U.S. Territory. In these areas, the Department could approve requests supported by an estimated unemployment rate of an area based on available data from BLS and ACS, a low and declining employment-to-population ratio, a lack of jobs as a consequence of declining occupations or industries, or an academic study or other publication describing the area's lack of a sufficient number of jobs. Waiver requests for an area for which standard data from BLS or a BLS-

cooperating agency is limited or unavailable would not be required to conform to the criteria for approval proposed under paragraphs (f)(2), (f)(3), (f)(4), (f)(5), and (f)(6). Additionally, the Department would consider other data in line with BLS methods or considered reliable. This allows for flexibility if new methods or data are developed for Indian Reservation or U.S. Territory regions currently with limited or no data.

Using an estimated unemployment rate based on available data from BLS and ACS is part of current practice. The Department proposes codifying this criteria in the regulations only for areas with limited data or evidence, such as a reservation area or U.S. Territory. Currently, States often estimate unemployment rates for reservation areas by applying data from ACS to available BLS data. In addition, some tribal governments generate their own labor force and/or unemployment data, which would remain acceptable to support a waiver.

These changes would be codified in 7 CFR 273.24(f)(7).

#### *Other Changes to Waivers*

The proposed rule would eliminate three provisions in current regulations: The designation as an LSA as a criterion for approval; the implementation of waivers before approval; and the historical seasonal unemployment as a criterion for approval. These provisions are eliminated to ensure that the ABAWD work requirement is applied in accordance with the Department's goal to strengthen work requirements.

The proposed rule would no longer allow an area to qualify for a waiver based on DOL's Employment and Training Administration (ETA) designation of the area as an LSA for the current fiscal year. This change is central to the Department's efforts to raise the standards by which it determines whether an area is lacking a sufficient number of jobs to provide employment for ABAWDs in order to require more ABAWDs to engage in work, work training, or workfare if they wish to receive SNAP. As explained in a previous section, DOL's criteria for LSAs require an average unemployment rate that is at least 20 percent above the national average and at least 6 percent for the preceding two calendar years (a 24-month period). The Department is eliminating LSA designation as a basis for waiver approval because LSAs are determined using a minimum unemployment rate floor of 6 percent, whereas the Department proposes using a minimum unemployment rate of 7 percent for its similar, but more flexible,

20 percent standard. Continuing to allow LSA designation as a basis for waiver approval would be inconsistent. Moreover, LSAs are not designated for all different types of areas across the country, and having an LSA criteria separate from the 20 percent criteria could be seen as unnecessary moving forward.

The proposed rule would bar States from implementing a waiver prior to its approval. Though rarely used, current regulations allow a State to implement an ABAWD waiver as soon as the State submits the waiver request based on certain criteria.<sup>3</sup> By removing the current pertinent text in 273.24(f)(4), the proposed rule would require States to request and receive approval before implementing a waiver. This would allow the Department to have a more accurate understanding of the status of existing waivers and would provide better oversight in the waiver process. It would also prevent waivers from being implemented until the Department explicitly reviewed and approved the waiver.

The proposed rule would also remove the criterion of a historical seasonal unemployment rate over 10 percent as a basis for approval. Historical seasonal unemployment does not demonstrate a prolonged lack of sufficient number of jobs to provide employment for the individuals. Historical seasonal unemployment rates, by definition, are limited to a relatively short period of time each year. Nor does a historical seasonal unemployment rate indicate early signs of a declining labor market. Historical seasonal unemployment rates are cyclical rather than indicative of declining conditions. Based on operational experience, the Department has not typically seen the use of this criterion by States. The Department has not approved a waiver under this criterion in more than two decades. For these reasons, the Department proposes removing a historical seasonal average unemployment rate as a way to qualify for a waiver.

In addition, as stated previously, the proposed rule would no longer provide for statewide waivers except for those waivers approved based upon a state's qualification for extended unemployment benefits.

<sup>3</sup> Under current regulations, the State must certify that data from the BLS or the BLS-cooperating agency show a most recent 12-month average unemployment rate over 10 percent or that ETA designated the area as an LSA for the current fiscal year.

#### *Ending the "Carryover" of ABAWD Exemptions*

The proposed rule would end the unlimited carryover and accumulation of ABAWD percentage exemptions, previously referred to as 15 percent exemptions before the enactment of the Agriculture Improvement Act of 2018. Upon enactment, Section 6(o)(6) of the Act provides that each State agency be allotted exemptions equal to an estimated 12 percent of "covered individuals," which are the ABAWDs who are subject to the ABAWD time limit in the State in Fiscal Year 2020 and each subsequent Fiscal Year. States can use these exemptions available to them to extend SNAP eligibility for a limited number of ABAWDs subject to the time limit. When one of these exemptions is provided to an ABAWD, that one ABAWD is able to receive one additional month of SNAP benefits. The Act and current regulations give States discretion whether to use these exemptions, and, as a result, some States use the exemptions that are available to them and others do not.

Each fiscal year, the Act requires the Department to estimate the number of exemptions that each State be allotted and to adjust the number of exemptions available to each State. Based on the Act's instructions, the regulations provide the specific formulas that the Department must use to estimate the number of exemptions, which are referred to as "earned" exemptions, and to adjust the exemptions available to the State each year. The proposed rule would not change any part of the calculation that the Department follows to estimate earned exemptions, or any other part of 273.24(g). The proposed rule would only change the calculation that the Department uses to adjust the number of exemptions available for each fiscal year at 7 CFR 273.24(h).

The regulation's current interpretation of Section 6(o)(6)(G) of the Act, which requires the adjustment of exemptions, causes unused exemptions to carry over and accumulate from one year to the next, unless the State uses all of its available exemptions in a given year. For FY 2018, States earned approximately 1.2 million exemptions, but had about an additional 7.4 million exemptions available for use due to the carryover of unused exemptions from previous fiscal years. The Department views the carryover of significant amounts of unused exemptions to be an unintended outcome of the current regulations. The Department is concerned that such an outcome is inconsistent with Congressional intent to limit the number of exemptions

available to States each year. Concerns about the carryover of exemptions were also expressed by the September 2016, USDA Office of the Inspector General (OIG) audit report “FNS Controls Over SNAP Benefits for Able-Bodied Adults Without Dependents.” Therefore, the Department proposes revising 7 CFR 273.24(h) to end the unlimited carryover of unused percentage exemptions. The Department proposes this change to implement the Act more effectively and to advance further the Department’s goal to promote self-sufficiency.

In order to address the carryover issue, the proposed rule would change the adjustment calculation that the Department uses to increase or decrease the number of exemptions available to each State for the fiscal year based on usage during the preceding fiscal year. The proposed rule would no longer allow for unlimited carryover from all preceding years. Instead, each State agency’s 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. The resulting difference would be used to adjust (by increasing or decreasing) the earned exemption amount. In addition, the adjustment will apply only to the fiscal year in which the adjustment is made.

The three examples below show how the proposed rule’s adjustment calculation would work in practice based on no exemption use, varied exemption use, and exemption overuse. These examples assume that a State earns five new exemptions every year over a 4-year period.

Example 1, No Exemption Use

Example 1 shows how the proposed adjustment calculation would work for a State that uses zero exemptions, and how it would end the carryover and accumulation of unused exemptions. The State earned five exemptions for the current fiscal year (FY) of 2021 in this example (row A). The State’s adjustment for FY 2021 is based on the number of exemptions earned in the previous year (FY 2020) minus the number of exemptions used for the previous year

(FY 2020). In this example, we assume the State earned five exemptions in FY 2020 and used no exemptions in FY 2020, so the adjustment for FY 2021 is five (row B). The adjustment of five (row B) is then added to the five earned for FY 2021 (row A) to obtain the State’s total of 10 exemptions after adjustment for FY 2021 (row C). In FY 2021, the State uses zero exemptions (row D), so it does not have any overuse liability for that year because row E results in a positive number. 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 is increased based on the number earned for and used in the preceding fiscal year, but the State does not carryover accumulated exemptions indefinitely. Whereas the State would have 25 total exemptions after adjustment for FY 2024 under the current regulations, the State would have 10 total exemptions after adjustment for FY 2024 under the proposed regulation.

EXAMPLE 1

	Fiscal year (FY)	2021	2022	2023	2024
A .....	Earned for current FY .....	5	5	5	5
B .....	(+) Adjustment for current FY (earned minus used for previous FY) .....	5	5	5	5
C .....	(=) Total after adjustment for current FY .....	10	10	10	10
D .....	(-) Used in current FY .....	0	0	0	0
E .....	(=) Liability for overuse? (Yes or No) .....	10 (No)	10 (No)	10 (No)	10 (No)

Example 2, Varied Exemption Use

Example 2 shows how the proposed adjustment calculation would work for a State that uses different amounts of exemptions each fiscal year and therefore receives an increase or decrease in the exemptions available to it each subsequent fiscal year. In other words, the number of exemptions available to the State is adjusted for an increased total exemptions one year, then a decreased total exemptions the next. The State earned five exemptions for the current FY of 2021 (row A). The State’s adjustment for FY 2021 is based on the number of exemptions earned in the previous year (FY 2020) minus the number of exemptions used for the

previous year (FY 2020). We assume the State earned five exemptions in FY 2020 but used zero exemptions in FY 2020, so the State’s total after adjustment for FY 2021 is 10 (row C). In FY 2021, the State uses eight exemptions (row D), so it does not have any over-usage liability for that year (row E). That is, though the State only earned 5 exemptions for FY 2021, the adjustment allowed the State to avoid any over usage liability for FY 2021. However, for the purposes of adjustment in FY 2022, the 8 used exemptions are subtracted from the 5 earned exemptions for FY 2021, not from the 10 adjusted exemption amount available in FY 2021. Therefore, the adjustment amount for FY 2022 is negative three. In FY 2022, the State

again earns five exemptions but the adjustment is negative three (the result of subtracting row D, FY 2021 from row A, FY 2022). The State then has a total of two exemptions for FY 2022. The State chooses to use two exemptions for FY 2022, therefore it has no overuse in FY 2022. This example shows how the proposed regulation increases or decreases the number of exemptions available to States while also limiting the average number of exemptions in effect to 12 percent over time. As shown in row D, the State can use no more than 10 exemptions over the course of any 2-year period, which is equal to the 10 exemptions earned over every 2-year period.

EXAMPLE 2

	Fiscal year (FY)	2021	2022	2023	2024
A .....	Earned for current FY .....	5	5	5	5
B .....	(+) Adjustment for current FY (earned minus used for previous FY) .....	5	-3	3	-3
C .....	(=) Total after adjustment for current FY .....	10	2	8	2
D .....	(-) Used in current FY .....	8	2	8	2

EXAMPLE 2—Continued

	Fiscal year (FY)	2021	2022	2023	2024
E .....	(=) Liability for overuse? (Yes or No) .....	2 (No)	0 (No)	0 (No)	0 (No)

Example 3, Exemption Overuse

Example 3 shows how the proposed adjustment calculation would work for a State that overuses exemptions. In this example, we again assume the State earned five exemptions in FY 2020 but used zero exemptions in FY 2020, so the State's total after adjustment for FY 2021 is 10 (row C). In FY 2021, the State

uses six exemptions (row D); once again, it does not have any over-usage liability for that year (row E), but the adjustment for FY 2022 will be negative one (the result of subtracting row D, FY 2021 from row A, FY 2022). Put differently, the five exemptions earned for FY 2022 offset the adjustment of negative one. The State then has a total of four exemptions for FY 2022 (row C).

However, the State uses six exemptions in FY 2022. Because the State used more exemptions in FY 2022 than its total after adjustment for FY 2022, it has an overuse liability of two for FY 2022. The Department would consider the exemption overuse an overissuance and would hold the State liable for the total dollar value of the exemptions, as estimated by the Department.

EXAMPLE 3

	Fiscal year (FY)	2021	2022	2023	2024
A .....	Earned for current FY .....	5	5	5	5
B .....	(+) Adjustment for current FY (earned minus used for previous FY) .....	5	-1	-1	1
C .....	(=) Total after adjustment for current FY .....	10	4	4	6
D .....	(-) Used for current FY .....	6	6	4	4
E .....	(=) Liability for overuse? (Yes or No) .....	4 (No)	-2 (Yes)	0 (No)	2 (No)

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

The Department also seeks comments from States on how to treat State agencies' existing total number of percentage exemptions, which in some cases have carried over and accumulated over many years, and on when the proposed change should be implemented. Under the proposed rule, these accumulated percentage exemptions would not be available to States once the change is implemented. Additionally, because the adjusted number of exemptions is based on the preceding fiscal year, the change in regulatory text will impact State's ability to use exemptions in the fiscal year preceding the fiscal year that the provision goes into effect. Therefore, the Department seeks comment on how to best handle these issues.

The proposed rule would not change or affect the "caseload adjustments" at 273.24(h)(1), which apply to any State that has a change of over 10 percent in its caseload amount. However, the Department is taking this opportunity to

correct the cross-reference that this paragraph makes to 273.24(g)(2) for accuracy. The proposed regulation 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.

**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 proposed 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 for rules that have been designated as economically significant by the Office of Management and Budget, a Regulatory Impact Analysis

(RIA) was developed for this proposed 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 spending associated with the proposed transfer rule to be approximately \$1.1 billion in fiscal year (FY) 2020 and \$7.9 billion over the five years 2020–2024. This is a reduction in federal transfers (SNAP benefit payments); the reduction in transfers represents a 2.5 percent decrease in projected SNAP benefit spending over this time period.

Under current authority, the Department estimates that about 60 percent of ABAWDs live in areas that are not subject to a waiver and thus face the ABAWD time limit. Under the revised waiver criteria the Department estimates that nearly 90 percent of ABAWDs would live in such an area. Of those newly subject to the time limit, the Department estimates that approximately two-thirds (755,000 individuals in FY 2020) would not meet the requirements for failure to engage meaningfully in work or work training.

*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,

it has been certified that this rule would not have a significant impact on a substantial number of small entities.

This proposed rule would not have an impact on small entities because the proposed rule primarily impacts State agencies. As part of the requirements, State agencies would 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, would not be subject to any new requirements. However, all retailers would likely see a drop in the amount of SNAP benefits redeemed at stores if these provisions were finalized, but impacts on small retailers are not expected to be disproportionate to impact on large entities. As of FY 2017, approximately 76 percent of authorized SNAP retailers (nearly 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 proposed rule is expected to reduce SNAP benefit payments by about \$1.7 billion per year. This would equate to about a \$100 loss of revenue per small store on average per month (\$1.7 billion  $\times$  15%/200,000 stores/12 months). In 2017, the average small store redeemed more than \$3,800 in SNAP each month; the potential loss of benefits represents less than 3 percent of their SNAP redemptions and only a small portion of their gross sales. Based on 2017 redemption data, a 2.7 percent reduction in SNAP redemptions represented between 0.01 and 0.5 percent of these stores gross sales.

#### **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 proposed rule is expected to be an Executive Order 13771 deregulatory action. The rule does not include any new costs. FNS is proposing a reduction in burden hours since State agencies are no longer able to group areas together for waiver approval. The reduction would result in an estimated collective savings of \$12,092 for State Agencies.

#### **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 \$100 million or more 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 proposed 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 \$100 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 No. 10.551. For the reasons set forth in the Final Rule codified in 7 CFR part 3015, subpart V and related Notice (48 FR 29115), 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, 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 determined that this rule does not have Federalism implications. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

#### **Executive Order 12988, Civil Justice Reform**

This proposed 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 proposed rule, in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis" to identify and address any major civil rights impacts the proposed rule might have on minorities, women, and persons with disabilities. While we believe that a reduction in the number of ABAWD waivers granted to State agencies will adversely affect potential program participants in all groups who are unable to meet the employment requirements, and have the potential for disparately impacting certain protected groups due to factors affecting rates of employment of members of these groups, we find that the implementation of mitigation strategies and monitoring by the Civil Rights Division of FNS will lessen these impacts.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." 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.

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and determined that this rule has tribal implications that require tribal consultation under E.O. 13175. FNS invited Tribal leaders to a consultation held on March 14, 2018. Tribal leaders did not provide any statement or feedback to the Department on the rule. FNS and OTR will determine if a future consultation is needed. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

**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 proposed rule will contain information collections that are subject to review and approval by the Office of Management and Budget; therefore, FNS is submitting for public comment the changes in the information collection burden that would result from adoption of the proposals in the rule.

Comments on this proposed rule must be received by April 2, 2019. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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

*OMB Number:* 0584-0479.

*Expiration Date:* [July 31, 2021].

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Section 6(o) of the Food and Nutrition Act of 2008, (the Act, as amended through Pub. L. 113-xxx), 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, unless the individual is working and/or participating in a work program half-time or more, or participating in workfare. The Act exempts individuals from the time limit for several reasons, including age, unfitness for work, or having a dependent child. The ABAWD time limit and work requirement currently apply to people ages 18 through 49, unless they are already exempt from the general work requirements, medically certified as physically or mentally unfit for employment, responsible for a child under 18, or pregnant. ABAWDs are also work registrants and must meet the general work requirements. In addition, ABAWDs subject to the time limit must work and/or participate in a work program 80 hours per month or more, or participate in and comply with workfare to receive SNAP for more than 3 months in a 36-month period. Participation in SNAP E&T, which is a type of work program, is one way a person can meet the 80 hour per month ABAWD work requirement, but other work programs are acceptable as well.

The Act also provides State agencies with flexibility to request a waiver of this time limit if unemployment is high or the area does not have a sufficient number of jobs to provide employment. State agencies can request to waive the ABAWD time limit if an area has an unemployment rate of over 10 percent or the State can meet one of the regulatory options to show it does not

have a sufficient number of jobs to provide employment. If the time limit is waived, individuals are not required to meet the ABAWD work requirement to receive SNAP for more than 3 months in a 36-month period. This collection of information is necessary for FNS to perform its statutory obligation to review waivers of the SNAP ABAWD time limit.

This is a revision of a currently approved information collection request associated with this rulemaking. In the previous submission, the Food and Nutrition Service (FNS) estimated 35 hours for each waiver request for a total of 1,198 hours. 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 number of jobs. FNS estimates a response time of 28 hours for each waiver request based on labor market data, which require detailed analysis of labor markets within the State. FNS projects a total of 1,008 hours, which would be a reduction of 190 hours compared to the 1,198 hours estimated provided in the pending approval.

FNS is proposing a reduction in burden hours since State agencies are no longer able to group areas together for waiver approval. The reduction will burden hours would result in an estimated collective savings of \$12,092 for State Agencies. This rule does not require any recordkeeping burden. Reporting detail burden details are provided below.

*Respondents:* State agencies.

*Estimated Number of Respondents:* 36.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1,008.

OMB No. 0584-0479	Requirement (7 CFR 273.24(f))	Estimated number of 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
<b>Affected Public: State Agencies</b>									
Reporting burden	Submissions of waiver request based on labor market data.	36	1	36	28	1,008	1,190	-182	0
	7 CFR 273.24(f)— Submission of waiver request based on Labor Surplus Area designation.	0	0	0	0	0	8	-8	0
Reporting totals	.....	36	.....	.....	.....	1,008	.....	-190	.....

OMB No. 0584-0479	Requirement (7 CFR 273.24(f))	Estimated number of 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
Total Reporting Burden due to Rulemaking.	.....	.....	.....	.....	.....	1,008	.....	.....	.....

**E-Government Act Compliance**

The Department is committed to complying with the E-Government Act of 2002, 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, FNS proposes to amend 7 CFR part 273 to read 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 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 endorsed by the State’s governor and supported with 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 (1)(i) and (ii) 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;
- (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 7 percent. The 24-month period must be no earlier than the same 24-month period used by the Department of Labor’s Employment and Training Administration to designate Labor Surplus Areas for the current fiscal year; or

(iii) Evidence that an area qualifies for extended unemployment benefits as determined by the Department of Labor (DOL).

(3) *Other data and evidence*. FNS may approve waiver requests that are supported by data or evidence other than that listed under paragraph (f)(2) of this section if the request demonstrates an exceptional circumstance in an area. In addition, the request must demonstrate that the exceptional circumstance has caused a lack of sufficient number of jobs, such as 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. Supporting unemployment data provided by the State must rely on standard BLS data or methods.

(4) *Restriction on statewide waivers*. FNS will not approve statewide waiver requests if data for the requesting State at the substate level is available from BLS, except for waivers under paragraph (f)(2)(iii) of this section.

(5) *Restricting the combining of data to group substate areas*. The State agency may only combine data from individual areas that are collectively considered to be a Labor Market Area by DOL.

(6) *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 and waivers under paragraph (f)(2)(ii) of this section will not be approved for a period beyond the fiscal year in which the waiver is implemented.

(7) *Areas with limited data or evidence*. Waiver requests for an area 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 under paragraphs (f)(2), (f)(3), (f)(4), (f)(5) and (f)(6) of this section. The supporting data or evidence provided by

the State 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 Census Bureau’s American Community Survey;
- (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) In areas with limited data or evidence, such as reservation areas or U.S. Territories, FNS may allow the State agency to combine data from individual areas to waive a group of areas if the State agency demonstrates that the areas are economically integrated.

\* \* \* \* \*  
■ 3. In § 273.24, revise paragraph (h) to read as follows:

\* \* \* \* \*

(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 recipients 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 increase or decrease the number of exemptions allocated to a State agency based on the difference between the number of exemptions used by the State for the preceding fiscal year and the number of exemptions estimated for the State for the preceding fiscal year under paragraphs (g)(3) and (h)(1) of this section. The increase or decrease will only apply for the fiscal year in which the adjustment is made. For example:

- (i) If the State agency uses fewer exemptions in the preceding fiscal year than were estimated for the State agency by FNS for the preceding fiscal year under paragraphs (g)(3) and (h)(1) of this section, FNS will increase the number of exemptions allocated to the State agency for the current fiscal year by the

difference to determine the adjusted exemption amount.

(ii) If the State agency uses more exemptions in the preceding fiscal year than were estimated for the State agency by FNS for the preceding fiscal year under paragraphs (g)(3) and (h)(1) of this section, FNS will decrease the number of exemptions allocated to the State agency for the current fiscal year by the difference to determine the adjusted exemption amount.

\* \* \* \* \*

Dated: December 20, 2018.

**Brandon Lipps,**

*Acting Deputy Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 2018–28059 Filed 1–31–19; 8:45 am]

BILLING CODE 3410–30–P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 35**

[Docket No. RM19–2–000]

**Refinements to Horizontal Market Power Analysis for Sellers in Certain Regional Transmission Organization and Independent System Operator Markets**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations regarding the horizontal market power analysis required for market-based rate sellers that study certain Regional Transmission Organization (RTO) or Independent System Operator (ISO) markets and submarkets therein. This proposed modification of the Commission’s horizontal market power analysis would relieve such sellers of the obligation to submit indicative screens when seeking to obtain or retain market-based rate authority. The Commission’s regulations would continue to require market-based rate sellers that study an RTO, ISO, or submarket therein, to submit indicative screens for authorization to make capacity sales at market-based rates in any RTO/ISO market that lacks an RTO/ISO-administered capacity market subject to Commission-approved RTO/ISO monitoring and mitigation. For those RTOs and ISOs lacking an RTO/ISO-administered capacity market, we propose that Commission-approved RTO/ISO monitoring and mitigation no longer be presumed sufficient to address any horizontal market power concerns for capacity sales where there are indicative screen failures.

**DATES:** Comments are due March 18, 2019.

**ADDRESSES:** Comments, identified by docket number, may be filed electronically at <http://www.ferc.gov> in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by mail or hand-delivery to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. The Comment Procedures Section of this document contains more detailed filing procedures.

**FOR FURTHER INFORMATION CONTACT:**

Gregory Basheda, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6479, [Gregory.basheda@ferc.gov](mailto:Gregory.basheda@ferc.gov).

Laura Chipkin, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8615, [Laura.chipkin@ferc.gov](mailto:Laura.chipkin@ferc.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

	Paragraph Nos.
I. Introduction .....	1
II. Background .....	3
A. The Market-Based Rate Program .....	3
B. Order No. 816 Proposal .....	7
C. Comments on Order No. 816 Proposal .....	10
III. Discussion .....	23
A. Overview of Existing RTO/ISO Market Power Monitoring and Mitigation .....	26
B. Proposal Implementation .....	42
C. Bilateral Transactions .....	56
D. The Commission Will Continue To Ensure That Market-Based Rates Are Just and Reasonable .....	61
IV. Information Collection Statement .....	71
V. Environmental Analysis .....	77
VI. Regulatory Flexibility Act .....	78
VII. Comment Procedures .....	84
VIII. Document Availability .....	88

**I. Introduction**

1. In this Notice of Proposed Rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) seeks comment on a proposal to modify the horizontal market power analysis for certain Regional Transmission Organization (RTO) and Independent System Operator (ISO) markets. Specifically, the Commission proposes to relieve market-based rate sellers, *i.e.*, sellers seeking to obtain or retain authorization to make market-based rate

sales, of the requirement to submit indicative screens for certain RTO/ISO markets and submarkets.<sup>1</sup> This proposed modification of the Commission’s horizontal market power analysis would apply in any RTO/ISO market with RTO/ISO-administered energy, ancillary services, and capacity markets subject to Commission-approved RTO/ISO monitoring and

<sup>1</sup> For purposes of this NOPR, references to RTO/ISO markets include any submarkets therein.

mitigation. In addition, for RTOs and ISOs that lack an RTO/ISO-administered capacity market, market-based rate sellers would be relieved of the requirement to submit indicative screens if their market-based rate authority is limited to sales of energy and/or ancillary services. We believe that this proposal would reduce the filing burden on market-based rate sellers in RTO/ISO markets without compromising the Commission’s ability