

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Parts 271 and 273**

[FNS-2019-0008]

RIN 0584-AE68

**Employment and Training Opportunities in the Supplemental Nutrition Assistance Program****AGENCY:** Food and Nutrition Service (FNS), USDA.**ACTION:** Proposed rule.

**SUMMARY:** The proposed rule would implement the changes made by section 4005 of the Agriculture Improvement Act of 2018 (the Act) to the Supplemental Nutrition Assistance Program (SNAP) pertaining to the Employment and Training (E&T) program and aspects of the work requirement for able-bodied adults without dependents (ABAWDs). In general, these changes are related to strengthening the SNAP E&T program, adding workforce partnerships as a way for SNAP participants to meet their work requirements, and modifying the work requirement for ABAWDs.

**DATES:** Written comments must be received on or before May 18, 2020 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:

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

- *Mail:* Send comments to Moira Johnston, Food and Nutrition Service, Office of Employment and Training, 1320 Braddock Place, Alexandria, VA 22314.

- *Email:* Send comments to [ETORule@usda.gov](mailto:ETORule@usda.gov). Include Docket ID Number [FNS-2019-0008], "Employment and Training Opportunities in the Supplemental Nutrition Assistance Program" in the subject line of the message.

- 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:** Moira Johnston, Food and Nutrition Service, Office of Employment and Training, 1320 Braddock Place, Alexandria, VA 22314, or [ETORule@usda.gov](mailto:ETORule@usda.gov).

**SUPPLEMENTARY INFORMATION:** The proposed rule would implement the changes made by section 4005 of the Agriculture Improvement Act of 2018 (Pub. L. 115-334) (the Act) to the Supplemental Nutrition Assistance Program (SNAP). The proposed rule would require State agencies to consult with their State workforce development boards on the design of their E&T programs and require State agencies to document in their E&T State plans the extent to which their E&T programs will be carried out in coordination with activities under title I of the Workforce Innovation and Opportunity Act (WIOA). The proposed rule would also make changes to E&T components including: Replacing job search with supervised job search as a component; eliminating job finding clubs; replacing job skills assessments with employability assessments; adding apprenticeships and subsidized employment as allowable activities; requiring a 30-day minimum for provision of job retention services; and allowing those activities from the E&T pilots authorized under the Agricultural Act of 2014 (Pub. L. 113-79) that have had the most demonstrable impact on the ability of participants to find and retain employment that leads to increased income and reduced reliance on public assistance to become allowable E&T activities.

The proposed rule would also require that, in addition to providing one or more E&T components, all E&T programs provide case management services to E&T participants. The rule would revise the definition of good cause for failure to comply with the requirement to participate in E&T to include instances in which an appropriate component or opening in an E&T program is not available and would also modify the required reporting elements in the final quarterly E&T Program Activity Report provided by State agencies to include the number of SNAP participants who are required to participate in E&T and, of those, the number who begin participation. The proposed rule would add workforce partnerships as a way for SNAP participants to meet their work requirements. It would also establish a funding formula for reallocated E&T funds, and increase the minimum allocation of 100 percent funds for each State agency to \$100,000, as prescribed

by the Act. The proposed rule would require State agencies to re-direct individuals who are determined ill-suited for an E&T program component to other more suitable activities.

The proposed rule would also codify some changes to ABAWD policy. These changes include updating the regulations to reflect the reduction in the number of ABAWD work exemptions from 15 percent to 12 percent (this change was implemented at the start of Fiscal Year 2020) and referring to such exemptions as "discretionary exemptions," as well as adding workforce partnerships and employment and training programs for veterans operated by the Department of Labor or the Department of Veteran's Affairs to the list of work programs for ABAWDs. The rule would also replace "job search" with "supervised job search" as a type of activity that cannot count as a work program for the purposes of an ABAWD fulfilling their work requirement, unless it comprises less than half the work requirement.

The proposed rule would add the requirement that all State agencies advise certain types of households subject to the general work requirement at recertification of employment and training opportunities. The rule would also require State agencies to provide to all households subject to work requirements with a consolidated written statement and comprehensive oral explanation of the work requirements for individuals within the household.

Overall, the Department believes the statutory changes made by section 4005 of the Act will strengthen E&T programs, and improve SNAP participants' ability to gain and retain employment, thus reducing participant reliance on the social safety net. Through this legislation, Congress has tasked the Department and State agencies with reviewing and bolstering the quality and accountability of E&T programs for SNAP participants. The proposed rule would allow for more evidence-based components and require more accountability on the part of both State agencies and E&T participants while also retaining State flexibility. Notably, the addition of case management to the definition of an E&T program fundamentally changes SNAP E&T and the expectation for how State agencies must engage with E&T participants. As a result, the Department proposes several changes to the way E&T programs are described. Under the proposed rule, an E&T program would be defined as a program providing both case management and one or more E&T components. E&T components may be

comprised of a number of activities which are designed to achieve the purpose of the component. The Department is also asking for input around the requirement to verify SNAP eligibility for E&T participation.

The Department will discuss each of the proposed regulatory changes in more detail below.

#### **Consultation With Workforce Development Boards and Coordination With the Workforce Innovation and Opportunity Act (WIOA)**

Current regulations at 7 CFR 273.7(c)(5) require that E&T components must be delivered through the State's statewide workforce development system, unless the component is not available locally through such a system. The Act added the requirement in section 6(d)(4)(A) of the Food and Nutrition Act (FNA) that State agencies must design their SNAP E&T programs in consultation with their State workforce development board or, if the State agency demonstrates that consultation with private employers or employer organizations would be more effective or efficient, in consultation with private employers or employer organizations. The Act also added a new requirement that State agencies include in their E&T State plans the extent to which the State agency will coordinate with the activities carried out under title I of the Workforce Innovation and Opportunity Act (WIOA). The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T (<https://www.fns.usda.gov/snap/snap-section-4005-agriculture-improvement-act-2018-informational-memorandum>) that these provisions were self-enacting and States should begin implementing them immediately and incorporate a description into their FY 2020 E&T State plans. The Department proposes to modify the regulation at 7 CFR 273.7(c)(5) to add the requirement that State agencies design their E&T programs in consultation with their State workforce development board or with employers or employer organizations, if the State agency demonstrates such consultation would be more effective or efficient. The Department also proposes to modify the regulation at 7 CFR 273.7(c)(6)(xii), as redesignated, to require State agencies to describe in their E&T State plans how they met this requirement to consult, and to include a description of any outcomes from this consultation. The Department also proposes to modify the regulation at 7 CFR 273.7(c)(6)(xii), as redesignated, to require State agencies to document in their E&T State plan the

extent to which their E&T programs are coordinated with activities carried out under title I of WIOA. The Department would like to clarify that, despite these new requirements for consultation with State workforce development boards and for documenting in E&T State plans the extent to which State agencies have coordinated with activities carried out under title I of WIOA, State agencies would not need approval from the State workforce development board to implement their E&T program. The State SNAP agency would remain responsible for implementing and operating the State's E&T program.

The Department encourages State agencies to take full advantage of the workforce development expertise that already exists in their States to inform their E&T programs. Generally, E&T programs must be delivered through statewide workforce development systems—a broad network of service providers which may include: Government and the public sector; community-based organizations and nonprofits; employers and industry; occupational training providers; and post-secondary institutions, such as community colleges. State agencies should work with their Departments of Labor, State and local workforce development boards, and American Job Centers, as well as tribal workforce development programs, to obtain comprehensive labor market information when designing their E&T programs, and to capitalize on existing workforce development infrastructure and resources to ensure E&T participants have access to appropriate E&T services necessary to move them into good jobs and toward economic self-sufficiency. The Department encourages State agencies to design programs that are responsive to the needs of employers. Local Departments of Labor or American Jobs Centers may have existing relationships with local employers through which they have generated important information about the local labor market and employer training needs. State agencies should leverage the insights gained through these existing relationships as they build their own E&T programs. Nevertheless, the Department would again emphasize that, while State agencies may utilize the workforce development expertise of other agencies or organizations, it ultimately remains the responsibility of the State agency to ensure that E&T programs meet all SNAP requirements and operate in compliance with SNAP law and regulations.

#### **Supervised Job Search**

Current regulations at 7 CFR 273.7(e)(1)(i) establish job search as an allowable E&T component. In addition, current regulations at 7 CFR 273.7(e)(1) specify that “job search or job search training, when offered as components of an E&T program, are not qualifying activities relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs.” However, the current provision goes on to state that “job search or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components.” The Act replaced the E&T job search component with supervised job search in section 6(d)(4)(B)(i)(I) of the FNA, and defined supervised job search as an E&T component that occurs at State-approved locations at which the activities of participants shall be directly supervised, and the timing and activities of participants tracked in accordance with guidelines issued by the State agency. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that, if they offer job search as part of SNAP E&T, that job search must be supervised, in compliance with the new statutory requirements in FY 2020. Likewise, here the Department proposes to codify the new supervised job search component at current 7 CFR 273.7(e)(1)(i), now being redesignated as 7 CFR 273.7(e)(2)(i). In addition, the Department proposes to make edits to current 7 CFR 273.7(e)(1), at redesignated 7 CFR 273.7(e)(2), to specify that job search, including supervised job search, when offered as components of an E&T program, are not in and of themselves “qualifying activities relating to the participation requirements necessary to fulfill the ABAWD work requirement under § 273.24.”

However, job search, including supervised job search, are acceptable activities when offered as part of other E&T program components and those activities comprise less than half of the total required time spent in the components. The Department also proposes changes related to supervised job search in the section on ABAWD work programs at 7 CFR 273.24(a)(1)(iii), which are discussed in the section titled *Work Programs for Fulfilling the ABAWD Work Requirement* later in this preamble.

As noted above, the Department proposes to update the job search component to supervised job search in

current 7 CFR 273.7(e)(1)(i), at redesignated 7 CFR 273.7(e)(2)(i). In accordance with the Act, the Department proposes to define supervised job search as an E&T component that occurs at State-approved locations at which the activities of participants shall be directly supervised, and the timing and activities of participants tracked, in accordance with guidelines issued by the State agency. The requirements encourage the development of environments and engagement strategies that ensure the time an E&T participant spends looking for a job is productive and more likely to lead to improved employment outcomes.

The Department also believes that supervised job search should not create unnecessary impediments that would hinder an E&T participant's ability to move toward self-sufficiency. The Department recognizes that meeting this expectation may require additional State agency resources, particularly with regard to directly supervising E&T participants and tracking their timing and activities. For instance, State agencies may need to identify new environments or tools to provide supervised job search and invest in staff to actively engage E&T participants to help them find meaningful work. In this proposed rule the Department has chosen to include the regulatory text as written in the statute and seek comments about how to further define what constitutes "supervised" and "State-approved location." The Department in particular seeks comments on how to define supervision for the purposes of this provision, including whether supervision shall be provided in-person, and whether a "State-approved location" shall be a set geographic point, or whether State agencies may be able to meet this requirement in a virtual or telephonic environment.

In addition, the Department seeks comments on the various modes or approaches for providing supervised job search, including how State agencies and E&T providers would administer such programs in a physical location and how they might provide these services for E&T participants, such as those in rural areas, who may have challenges fulfilling their requirement on-site. Commenters are also asked to describe how other programs have implemented similar supervised job search programs and how SNAP E&T could align with those other programs within the bounds of the statutory changes made by the 2018 Farm Bill. The Department is only seeking comments on those various potential

modes and approaches and does not intend to presuppose how supervision or State-approved location may be defined in the final rule.

The Department seeks comments especially from State agencies and E&T providers on the ways in which this provision can best be implemented by State agencies choosing to provide supervised job search as a tool to move E&T participants toward improved employment outcomes. Particular questions include:

- *State-approved locations:* What types of locations would State agencies consider as State-approved locations (e.g., in a specific type of facility such as local SNAP office, an American Job Center, or the office of an E&T provider; an interactive website; or through an application on a mobile phone)? What criteria would State agencies consider when determining State-approved locations (e.g., ease of access for E&T participants; ability of the State agency to provide oversight of activities; cost to the State agency)? How would these different approaches affect the ability of E&T participants to access supervised job search activities and State agency administrative burden?

- *Directly supervise participants:* How might State agencies directly supervise E&T participants participating in supervised job search? What types of activities would State agencies include as part of this supervision (e.g., guiding E&T participants to increase the success of their job search; ensuring that E&T participants spend an appropriate number of hours searching for jobs to fulfill their work requirement, as applicable; or connecting E&T participants with other resources to improve their ability to gain employment)? What modes would State agencies consider to deliver this supervision (e.g., in-person, text messages, chat rooms, or phone calls)? How would these different potential approaches affect the ability of E&T participants to access supervised job search activities and State agency administrative burden? How might different approaches impact E&T outcomes and move participants toward self-sufficiency through work?

- *Tracking timing and activities of participants:* How might State agencies track the timing and activities of E&T participants in supervised job search? What would the State agency track (e.g., number of job applications submitted to employers; number of hours spent searching for a job; or number of log-ins to a State-approved website)? What modes might State agencies consider to track the timing and activities of participants (e.g., in-person contacts;

emails, phone calls, or text messages; or electronic sign-ins through State-approved websites or web-based applications)? How would these different potential approaches affect the ability of E&T participants to access supervised job search activities and State agency administrative burden?

In addition, the Department seeks comments describing current job search programs operated as part of E&T programs or other workforce development programs that are directly supervised and where the timing and activities of participants are tracked by the State agency or providers. How are State agencies or providers providing this direct supervision and tracking the timing and activities of E&T participants? Do these programs require that the activities and supervision take place at a State-approved location? If so, how is location defined? What lessons learned can State agencies or their providers share to assist the Department in ensuring State agencies create supervised job search components that are accessible to E&T participants, particularly those in rural areas or who might otherwise have challenges accessing a physical location, that employ evidence-based strategies to move participants towards improved employment outcomes, and that effectively maximize all available State E&T resources?

The Department recognizes that job search, supervised or otherwise, can be an important activity for E&T participants seeking employment or looking for a new job where they can apply the skills gained through E&T. The Joint Explanatory Statement of the Committee of Conference, issued with the Act, reinforced that view by stating that "unsupervised job search" may be a "subsidiary component" for the purposes of meeting a work requirement, so long as it is less than half of the requirement.<sup>1</sup> As a result, the Department proposes in 7 CFR 273.7(e)(1)(i), redesignated as 7 CFR 273.7(e)(2)(i), that job search not meeting the definition of supervised job search (*i.e.*, that does not meet all three of the following conditions: Takes place at a State-approved location, is directly supervised, and the timing and activities of participants are tracked) can be a subsidiary activity of another E&T component as long as it makes up less than half of the total required time spent in that component. For E&T participants subject to the mandatory E&T requirement, this proposed rule would

<sup>1</sup> Conf. Rept. 115–1072, p. 617, <https://www.congress.gov/115/crpt/hrpt1072/CRPT-115hrpt1072.pdf>.

allow them to meet their mandatory E&T requirement through participation in an E&T component in which less than 50 percent of the time in the component is spent in job search, supervised or otherwise, or job search training. This would enable E&T participants who are engaged in such an E&T component to begin looking for a position while they are still in training and to have those hours count toward meeting their work requirement. The Department anticipates this flexibility would maximize the potential of E&T participants to build upon potential job connections gained while in the E&T component and increase the speed with which E&T participants can move into employment, while providing them sufficient time to transition from SNAP to self-sufficiency.

The Department proposes to make conforming changes throughout 7 CFR 273.7(e)(1)(i), now redesignated as 7 CFR 273.7(e)(2)(i), to change references from “job search” to “supervised job search.”

The Department also proposes to modify regulations at 7 CFR 273.7(e)(1), now redesignated as 7 CFR 273.7(e)(2), to specify that supervised job search and job search training programs provided through an E&T program cannot alone count as qualifying activities relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs. However, the current regulations at 7 CFR 273.7(e)(1) allow job search and job search training to count as qualifying activities when offered as a part of other E&T components, as long as those job search and job search training activities comprise less than half the total required time spent in the components. As stated previously, the Joint Explanatory Statement of the Committee of Conference states that “unsupervised job search” may be a “subsidiary component” for the purposes of meeting a work requirement, so long as it comprises less than half of the requirement. As a result, the Department proposes that job search, whether it meets the definition of supervised job search or not, when offered as part of other E&T components, should continue to serve as an allowable way for ABAWDs to fulfill their work requirement, so long as the job search activities comprise less than half the total required time spent in the components. This change does not reflect a change from existing policy; rather, it is only intended to include supervised job search as a type of job search.

Current regulations at 7 CFR 273.7(c)(6)(i) require State agencies to

submit an E&T State Plan that provides details on the E&T components the State agency plans to provide, including cost information. The Act required State agencies to issue guidelines explaining how they intend to implement supervised job search programs. As a result, the Department proposes to modify regulations at 7 CFR 273.7(c)(6)(i) to specify that a State agency planning to offer supervised job search must include a summary of the guidelines established for supervised job search in its annual E&T State plan. At a minimum, the guidelines would need to specify: The locations of the State-approved sites; how they were selected as State-approved locations; and how the supervised job search component meets the statutory requirements to directly supervise the activities of participants and track the timing and activities of participants.

Lastly, the Department proposes to make an update to the statutory citation in 7 CFR 273.7(e)(1), now redesignated as 7 CFR 273.7(e)(2), to indicate that the section in the FNA referring to work programs for ABAWDs is currently located in section 6(o)(1)(C). A similar change to update the statutory citation is made in 7 CFR 273.7(e)(1)(i), now redesignated as 7 CFR 273.7(e)(2)(i).

#### **Employability Assessments**

Current regulations at § 273.7(e)(1)(ii) permit the use of job skills assessments as part of a job search training component in a State’s E&T program. The Act replaced job skills assessments in section 6(d)(4)(B)(i)(II) of the FNA with “employability assessments.” The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that they must implement employability assessments in compliance with the new statutory requirements for FY 2020. The Department now proposes to incorporate this change into the regulations by modifying 7 CFR 273.7(e)(1)(ii), now redesignated as 7 CFR 273.7(e)(2)(ii), to remove the reference to job skills assessments and replace it with employability assessments.

The Department notes that employability assessments are more comprehensive and provide a more in-depth assessment than job skills assessments. Employability assessments should help determine an individual’s readiness for employment, which includes assessing a set of cross-cutting skills such as, applied academic, interpersonal, critical thinking, and communication skills, as well as barriers to work. Job skills assessments determine whether an individual has

the skills appropriate for a specific job and may be one piece of an employability assessment. The information collected through employability assessments should be used, together with ongoing case management, to improve and individualize services to E&T participants, including matching them to appropriate components and identifying appropriate participant reimbursements that are reasonable and necessary for participation in an E&T component.

#### **Removal of Job Finding Clubs**

Current regulations at 7 CFR 273.7(e)(1)(ii) include job finding clubs as an allowable activity under the job search training component. The Act modified the job search training component in section 6(d)(4)(B)(i)(II) of the FNA to remove job finding clubs from the list of activities that can be included in a job search training program. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that they must not include job finding clubs in their FY 2020 E&T programs. The Department now proposes to modify the regulation at 7 CFR 273.7(e)(1)(ii), now redesignated as 7 CFR 273.7(e)(2)(ii), to remove job finding clubs as an activity under the job search training component. The proposed regulation would state that a job search training program “may consist of employability assessments, training in techniques to increase employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program.”

The Department would like to clarify that State agencies have broad flexibility in the design of their job search training component and the specific activities that may be included in such a component. While job finding clubs are specifically eliminated as an allowable activity, other activities that increase the employability of participants are still permitted, such as State facilitated peer-to-peer learning opportunities or offering job search trainings in a group format, if the State agency determines such activities will expand the job search capabilities or employability of E&T participants.

#### **Job Retention**

Current regulations at 7 CFR 273.7(e)(1)(viii) allow job retention services as an allowable E&T component. These regulations explain

that State agencies offering this component must provide no more than 90 days of job retention services. The Act modified the job retention E&T component in section 6(d)(4)(B)(i)(VII) of the FNA to require that State agencies choosing to provide job retention services must offer a minimum of 30 days of services, but did not modify the existing 90 day statutory maximum for the receipt of job retention services. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that any job retention services must be implemented in compliance with the new statutory requirements in FY 2020. The Department now proposes to modify the current regulations at 7 CFR 273.7(e)(2)(viii), as redesignated, to add a 30-day minimum for the receipt of job retention services. The proposed regulation would state that job retention services must be provided for a minimum of 30 days and no more than 90 days.

For State agencies choosing to offer job retention services, providing at least 30 days of services ensures participants are supported during a period of time when they are most vulnerable. When individuals begin employment, they may need to make many adjustments in their lives, such as arranging day care, using new modes of transportation, or navigating the new work culture. Providing job retention services for these first few weeks would help facilitate the transition to employment and improve their long-term attachment to work. However, the Department understands that, for many reasons, it may be difficult for State agencies to maintain job retention services for a full 30 days due to circumstances outside of their control. For instance, a State agency may plan to provide 90 days of job retention services to a participant, but the participant becomes unreachable after 14 days, making the continued provision of job retention services unachievable.

Given the importance of providing job retention services during the first few weeks of a new job, and the change in the statutory requirements, the Department proposes that State agencies offering this E&T component must make a good faith effort to provide job retention services for a minimum of 30 days to all job retention program participants. The Department proposes that this good faith effort should include, at a minimum, communicating the 30 day minimum to all job retention participants at enrollment in job retention services, and creating a case management plan for each job retention program participant that extends at least

30 days (and no more than 90 days). If a State agency demonstrates a good faith effort to provide job retention services for at least 30 days to a participant, the Department proposes that the activities supporting the good faith effort would satisfy the 30-day minimum requirement.

#### **E&T Pilot Activities**

The Act provided the Secretary with discretion to allow programs and activities from the E&T pilots authorized under the Agricultural Act of 2014 (Pub. L. 113–79) (2014 Farm Bill) as regular E&T components in section 6(d)(4)(B)(i)(VIII). The Act specified that this determination must be based on the results from the independent evaluation of the 2014 Farm Bill E&T pilots showing which programs and activities have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. As a result, the Department proposes adding similar language to the regulations in a new paragraph at 7 CFR 273.7(e)(2)(ix) to create a new E&T component category. The Department would note that the independent evaluation of the 2014 Farm Bill E&T pilots is not yet completed; as a result, the Department is not yet able to specifically identify new E&T components from the 2014 Farm Bill E&T pilots.

#### **Subsidized Employment and Apprenticeships**

Current regulations at 7 CFR 273.7(e)(1)(iv) describe a work experience program as a program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. The Act added subsidized employment and apprenticeship in section 6(d)(4)(B)(i)(IV) of the FNA as examples of allowable activities under a program designed to improve the employability of individuals through actual work experience or training (*i.e.*, a work experience program). The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that they may offer apprenticeships in FY 2020. The Department now proposes to modify the regulation at 7 CFR 273.7(e)(1)(iv), now redesignated as 7 CFR 273.7(e)(2)(iv), to convey the types of activities allowable as part of a SNAP E&T work experience component. The Department also proposes amending 7

CFR 273.7(d)(1)(ii)(A) to allow E&T funds to be used to subsidize the wages of E&T participants.

To implement the changes made by the Act, the Department proposes several changes to the regulations at 7 CFR 273.7(e)(1)(iv), now redesignated as 7 CFR 273.7(e)(2)(iv). The changes would better align the definition of a work experience program and activities with other Federal workforce development programs, and would delineate work experience programs into two sets of activities—work activities and work-based learning. First, the Department proposes incorporating the Department of Labor's definition of work experience under WIOA into the E&T definition of work experience. Department of Labor regulations at 20 CFR 680.180 define work experience as a planned, structured learning experience that takes place in a workplace for a limited period of time. Second, the Department proposes to delineate the two sets of work experience program activities noted above: Work activity and work-based learning. In defining a work activity, the Department proposes to incorporate part of the definition of a work experience program from the Temporary Assistance for Needy Families (TANF) program (see 45 CFR 261.2), as the Department considers this part of the TANF definition of work experience to be comparable to a work activity in E&T. According to this new E&T definition, a work activity that is performed in exchange for SNAP benefits would provide the individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment. The purpose is to improve the employability of those who cannot find unsubsidized full-time employment. The Department's goal in adopting these definitions is to align E&T programs with programs offered through other partners, so as to streamline service delivery across programs, better facilitating State agencies' delivery of their E&T programs through their statewide workforce development systems to the greatest extent possible.

Third, the Department proposes to use the definition of work-based learning included in Perkins V (Pub. L. 115–224). Perkins V defines the term “work-based learning” as “sustained interactions with industry or community professionals in real workplace settings, to the extent practicable, or simulated environments at an educational institution that foster in-depth, firsthand engagement with the tasks required in a given career field, that are aligned to curriculum and instruction” (20 U.S.C.

2302). Among other activities, work-based learning includes apprenticeships and subsidized employment, which were specifically added by the Act, and may also include instruction in a classroom setting. Work-based learning emphasizes employer engagement, includes specific training objectives, and is expected to lead to regular employment. Because most SNAP participants cannot afford to leave the labor market while they increase their skills, paid work-based learning can be a useful strategy to help them gain skills while also meeting their immediate need to earn income. Ideally, work-based learning should lead to the attainment of industry-recognized certificates or credentials, and should be explicitly linked to increased earnings. Examples of work-based learning models include, but are not limited to, internships, apprenticeships, pre-apprenticeships, customized training, transitional jobs, incumbent worker training, and on-the-job training. While paid work based learning can be useful, as noted, work based learning can include both subsidized and unsubsidized employment models. The Department also proposes to make a conforming change to existing 7 CFR 273.7(d)(1)(ii)(A) to strike language that E&T funds cannot be used to subsidize the wages of participants, since subsidized employment is an allowable E&T work experience program activity.

Work-based learning is a workforce development best practice, and work-based learning programs are increasingly available through States' statewide workforce development systems. The Department strongly encourages State agencies interested in incorporating work-based learning activities into their E&T programs to work with their State Departments of Labor, American Job Centers, Perkins Career and Technical Education (CTE) providers, and other stakeholders, such as community colleges and community-based organizations, to capitalize on existing work-based learning infrastructure and services. State agencies choosing to include work-based learning as part of their E&T programs should ensure that the activities are implemented in a manner that is consistent with applicable Federal requirements and regulations.

When designing work-based learning activities as part of an E&T program, State agencies should be cognizant of the fact that section 5(d) of the FNA requires that, for the purposes of determining eligibility, household income must include all income from any source, including subsidized wages earned through E&T, that is not

otherwise excluded in the FNA or any other Federal statute. FNS is not aware of any existing laws that would allow income from subsidized employment to be excluded when determining eligibility for SNAP. The State agency should consider and, as a best practice, advise participants of whether earnings from a work-based learning activity under an E&T program could potentially decrease the amount of SNAP benefits they receive or make their household ineligible for SNAP, and by extension, E&T, depending on their circumstances.

The Department would note that, in accordance with section 6(d)(4)(B)(i)(IV)(aa) and (bb) of the FNA and 7 CFR 273.7(e)(1)(iv)(A) and (B), redesignated as 7 CFR 273.7(e)(2)(iv)(B)(1) and (2), a work experience component must be consistent with the Fair Labor Standards Act (FLSA), should not replace an existing employee or position, and should provide participants with the same benefits and opportunities as anyone else doing a substantially similar job.

#### WIOA Programs

Current regulations at 7 CFR 273.7(e)(1)(v) describe the following E&T component: "a project, program or experiment such as a supported work program, or a WIA [Workforce Investment Act] or State or local program aimed at accomplishing the purpose of the E&T program." While the Act did not address this provision, the Department would like to use this rule-making opportunity to clarify in the regulations the relationship between WIA (the predecessor to WIOA), or State or local programs, and the E&T program. The Department notes that "WIA or State or local program" has never been listed as a separate component in the FNA, but that the Department originally included "WIA or State or local program" as a separate component in the regulations to signal that these programs can be included in a State's E&T program. With the changes made by the Act to include subsidized employment and apprenticeships as allowable activities in E&T programs, all activities operated under WIOA are now allowable within other E&T components. Similarly, any services offered by the State agency or through State or local programs can be included in one of the other E&T components. The Department has found that listing "WIOA or State or local program" as its own separate component category in the regulations implies that State agencies should not use the other more descriptive component categories when they report on WIOA, or State or local

programs in their E&T programs. The Department has provided guidance to State agencies about using other more descriptive E&T component categories, but is now proposing to codify this as a regulatory requirement by removing the reference to WIA. Therefore, the Department proposes to strike "or a WIA or State or local program" from the regulatory language at 7 CFR 273.7(e)(2)(v), as now redesignated. It is important to note that, in proposing this change, the Department is not intending to convey that programs operated under WIOA would be unallowable as E&T activities, in fact, all would be allowable and coordination would be encouraged.

#### Case Management

Current regulations at 7 CFR 273.7(c)(4) establish the requirement that each State agency must design and operate an E&T program that must consist of one or more E&T components as described in 7 CFR 273.7(e)(1). The Act modified the definition of an E&T program in section 6(d)(4)(B)(i) of the FNA to require that each State E&T program must also provide case management services, such as comprehensive intake assessments, individualized service plans, progress monitoring, or coordination with service providers, in addition to at least one E&T component. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that they must offer case management to all E&T participants in FY 2020. The Department now proposes to modify the regulation at 7 CFR 273.7(c)(4) to add that State agencies must offer case management services as part of their E&T programs. The Department also proposes to modify the regulations at 7 CFR 273.7(e) to add a new paragraph (e)(1), stating that case management services are a required part of all State E&T programs, and to provide examples from the Act of case management services. In addition, the Department proposes various changes to the definitions in 7 CFR 271.2 to reflect the inclusion of case management services in the E&T program.

The Department believes that, in order to best move SNAP participants toward self-sufficiency, State agencies should connect E&T participants to programs and activities that best meet their employment needs, while supporting participants as they overcome challenges to E&T program completion and employment success. The provision of case management services is an opportunity for State agencies to increase their accountability to E&T participants by expanding their use of tools and resources to ensure all

E&T participants are successfully supported as they move through an E&T program. The Department recognizes that State agencies may have many approaches to offering case management, depending on resources and the structure of the E&T program in the State. State agencies may also adopt different modes for the delivery of these services (e.g., virtual, over the telephone, in-person, or hybrid approaches) and may employ different staffing arrangements for case managers (e.g., State agency staff, community-based organizations, or contractors). No matter the approach, the Department encourages State agencies to provide case management services that ensure individuals are assessed and placed in appropriate activities, and are provided the individualized and on-going guidance and support they need in order to be successful. The Department also encourages State agencies to provide case management services that are aligned with best practices in workforce development and human services.

While the Department proposes that State agencies have flexibility in the types of case management services offered, the provision of case management services should generally be consistent with the examples provided in the Act, and the State agency should be able to demonstrate how the case management service is supporting an individual to successfully participate in E&T. As stated in the Joint Explanatory Statement (Conf. Rept. 115–1072, p. 617), the requirement for case management services is not intended to be an impediment to the State agency nor to the E&T participant. As a result, the Department is proposing regulatory language at 7 CFR 273.7(e)(1), stating that the provision of case management services must not be an impediment to the participant's successful participation in E&T. Similarly, the Department stands ready to offer technical assistance to State agencies to assist in developing case management services that align with State agency priorities, resources, the needs of local participants, and best practices, while meeting the Act's requirement to provide these services to all E&T participants.

In accordance with the Act, the Department also proposes that State agencies must provide all E&T participants with case management services, along with at least one E&T component. The Department proposes that the type and frequency of case management services provided to E&T participants may vary by E&T participant, depending on the needs of

the E&T participant, and resources of the State agency, and the entities providing case management services (e.g., State Agency office, community-based organizations, contractor, etc.) within the State. As a best practice, the Department notes that case management should be an ongoing activity that must enhance the participant's ability to participate and complete the E&T component to which they are assigned. Case management should not be limited to initial intake activities and should occur as the E&T participant progresses through the E&T program. As such, case management should be tailored to the needs of the individual, and be adaptable to the individual's changing support requirements.

Since case management services are now a required part of all E&T programs, and because Congress requested in the Joint Explanatory Statement to include case management in E&T State plans (Conf. Rept. 115–1072, p. 617), the Department proposes to also require State agencies to include a description of the case management services they intend to offer as part of their E&T State plan. The Department proposes in new 7 CFR 273.7(c)(6)(ii) that State agencies include information about case management operations, including a description of their case management services and models, the cost for providing the services, how participants will be referred to case management, how the participant's case will be managed, who will provide services, and how the service providers will coordinate with E&T providers, the State agency, and other community resources, as appropriate.

As a result of the requirement that all E&T participants receive case management services, the Department also proposes adding or updating several definitions related to E&T. First, the Department proposes to update the definition of an *Employment and Training (E&T) program* to indicate that E&T programs must consist of case management and at least one E&T component. Second, the Department proposes to revise the definition of an *Employment and Training (E&T) mandatory participant* to update the statutory citation and to indicate these individuals are required to participate in E&T. Third, the Department proposes a definition of *Employment and Training (E&T) voluntary participant* as a SNAP applicant or recipient who volunteers to participate in an Employment and Training (E&T) program. Fourth, the Department proposes to add the definition of an *Employment and Training (E&T) participant* as an individual that meets

the definition of either a mandatory or voluntary E&T participant. Fifth, the Department proposes to revise the definition of an *Employment and Training (E&T) component* to update the statutory citation contained within the definition. And sixth, the Department proposes to delete the definition of *Placed in an employment and training program* as this terminology no longer applies to the current structure of E&T programs.

To reconcile the new structure of E&T programs, to include both case management and one or more E&T components, and to incorporate the new E&T definitions within the current regulations, the Department proposes the following regulatory changes. Title 7 CFR 273.7(c)(2) would be simplified to indicate that when the State agency screens an individual and determines it appropriate to require the individual to participate in an E&T program, the State agency must refer that individual to the E&T program, newly defined as consisting of case management and at least one E&T component. This referral process may vary from State to State and from participant to participant, but in all cases, the E&T participant must receive both case management services and at least one E&T component, and the State agency must determine how a participant progresses through these required elements of an E&T program. For example, the State agency could choose to first refer individuals required to participate in E&T to case management services, rather than refer them directly to an E&T component. The case manager would then determine the most appropriate E&T component for the E&T participant and make the referral to that component. In another example, the State agency could refer the individual directly to an E&T component, and the provider of that component would provide the case management services. In other situations, the State agency could refer the individual initially to both case management services and an E&T component provided by separate entities.

The new proposed regulatory text would also more clearly make a distinction between when the State agency determines an individual is required to participate in E&T (i.e., the determination) and when an individual is referred to E&T (i.e., the referral). While these two steps may often occur closely in time, the Department would like to clarify that it is at the point the State agency determines an individual is required to participate in E&T that an individual becomes a mandatory E&T participant. It is the State agency's

responsibility to ensure all mandatory E&T participants are referred to the E&T program in a timely manner and that there is an appropriate and available opening in the E&T program. If there is not an appropriate or available opening in the E&T program for a mandatory participant, the Department proposes that the State agency must determine that a mandatory participant has good cause for failure to participate in an E&T program and not sanction the participant, as discussed later in this preamble in the section titled *State agency accountability for participation in an E&T Program and good cause*.

The Department also proposes changes to 7 CFR 273.7(e)(4), as redesignated, to indicate that, when a State agency determines the maximum amount of time an E&T participant may spend in an E&T program, the calculation must include time spent in case management in addition to time spent in E&T components and workfare. Other conforming changes include changes to 7 CFR 273.7(d)(4)(v) and (f)(6).

#### Referral of Individuals

Section 4005 of the Act added a new requirement for State agencies regarding any E&T participant, not otherwise exempted from the work requirement, who is determined by the operator of an E&T component to be ill-suited to participate in that E&T program component. For individuals determined to be ill-suited, the Act required the State agency to do the following: (1) Refer the individual to an appropriate E&T component; (2) refer the individual to an appropriate workforce partnership, if available; (3) re-assess the individual's physical and mental fitness; or (4) to the maximum extent practicable, coordinate with other Federal, State, or local workforce or assistance programs to identify work opportunities or assistance for the individual. During this time, the State agency shall ensure that an individual undergoing and complying with the process above shall not be found to have refused without good cause to participate in an E&T program. This new requirement was added at new section 6(d)(4)(O) of the FNA. The Department proposes to codify this new requirement in a new paragraph at 7 CFR 273.7(c)(18). The Department believes that this new provision was intended by Congress to increase the accountability of State agencies for their E&T programs, particularly when State agencies require participation in E&T. While State agencies are already required to develop State criteria to determine who should be required to participate in E&T, State

agencies often do not apply sufficient due diligence to ensure the SNAP participants who are referred to the E&T program have the capacity to benefit from that training, and that the particular component to which they are referred matches the SNAP participant's needs and skill level. Unfortunately, in these situations, SNAP participants referred to an E&T program may fail to benefit from the program, and ultimately could be disqualified for failure to participate. This new provision strives to strengthen State accountability for their E&T programs by requiring State agencies take additional steps to ensure SNAP participants subject to this provision receive the targeted help they need to move toward self-sufficiency. The Department proposes several new processes to implement the provision, as discussed below.

Consistent with section 4005 of the Act, the proposed regulation in new 7 CFR 273.7(c)(18)(i) would provide the authority to the E&T provider to determine if an individual referred to or participating in an E&T component is ill-suited for that E&T component. For the purposes of this provision, an E&T provider is understood as the provider of an E&T component. While some E&T providers may provide other E&T services like case management, only E&T providers that offer at least one E&T component would have the authority to determine if an individual is ill-suited to participate in that component. The proposed regulation would also require the State agency to ensure E&T providers are informed of their authority to determine what constitutes being ill-suited for a particular E&T component. The Department believes that the authority for determining if an individual is ill-suited for a particular E&T component should rest primarily with the E&T provider of that component as they generally set the criteria for who they serve in their E&T program and are in the most appropriate position to determine if a particular individual will be successful, given the requirements of the program. However, the State agency still has the responsibility to properly screen individuals for participation in an E&T program and refer individuals to an appropriate component. The State agency would also be responsible for overseeing the E&T provider and ensuring that the ill-suited determinations that are made are reasonable and nondiscriminatory. The Department proposes that E&T providers have the authority to determine if an individual is ill-suited

for an E&T component from the time the individual is referred by the State agency until the individual completes the component.

When a determination of ill-suited has been made, the proposed rule in new 7 CFR 273.7(c)(18)(i)(A) would require the E&T provider to notify the State agency as soon as possible. The State agency would be expected to establish procedures, including system enhancements, with their E&T providers to ensure this notification occurs promptly, so that the State agency can notify the individual and determine appropriate next steps for the individual with an ill-suited determination (*i.e.*, re-screening the individual for physical and mental fitness; referring the individual to a different E&T component or to a workforce partnership; or identifying other work opportunities or assistance). The State agency may also proactively contact E&T providers for information about any ill-suited determinations that have occurred or may have occurred, but about which notification has not yet been provided by the E&T provider to the State agency.

The Department also proposes that, when the E&T provider notifies the State agency of an ill-suited determination for an individual, the E&T provider also include the reason for the ill-suited determination. Providing the reason would assist the State agency in determining the most appropriate next step for such an individual. If an E&T provider fails to notify the State agency of an ill-suited determination and/or does not provide the reason, and the State agency learns in another way of the ill-suited determination, perhaps from the SNAP participant or a case manager, the State agency should follow-up with the E&T provider to obtain this information. If the State agency is unable to obtain the reason for the ill-suited determination from the E&T provider, the State agency must continue to act on the ill-suited determination as described later in this section and proposed for 7 CFR 273.7(c)(18)(i) and (ii).

While the authority to determine if an individual is ill-suited for a particular E&T component would rest with the E&T provider, State agencies could engage in a discussion with E&T providers about the factors that constitute ill-suited determinations for a particular E&T component. As a best practice, State agencies should be consistently working with their E&T providers to understand the characteristics of individuals who would be most successful in their programs so that, to the maximum extent practicable, the State agency



could make appropriate referrals and reduce the number of individuals who are referred to E&T components for which they are ill-suited. In particular, this information could be used by the State agency when screening individuals to determine if it is appropriate to refer them to an E&T program and, if it is appropriate, the information could be used to assist the State agency, including case managers, in referring individuals to the specific E&T component where they would most likely be successful. State agencies might consider incorporating information they glean from E&T providers about factors that are most likely to signal success in an E&T component into more specific State agency criteria to be used when determining if an individual should be required to participate in E&T. The Department stresses that it is the responsibility of the State agency to do a thorough screening of individuals to determine if the individual is exempt from the general work requirement or if it is appropriate to refer them to an E&T program or particular E&T component. It is not the E&T provider's responsibility to determine if an individual is exempt from the general work requirements or meets State criteria for referral to an E&T program or specific component. However, the Department would also like to note that nothing precludes the E&T provider from communicating with the State agency to aid the State agency in its determination of whether an individual is exempt from the general work requirements.

Once the State agency receives a notification from the E&T provider that an individual has been determined ill-suited for an E&T component, proposed 7 CFR 273.7(c)(18)(i)(A) would require the State agency to send as soon as possible a Notice of E&T Participation Change (NETPC) to the household member. The NETPC should inform the individual of the ill-suited determination. If the individual with the ill-suited determination is an ABAWD, the NETPC should also explain that, regardless of the ill-suited determination, the ABAWD would begin to accrue countable months toward their 3-month participation time limit as of the date of the notice unless the ABAWD fulfills the work requirement in accordance with 7 CFR 273.24. Lastly, the NETPC should provide contact information for the E&T program. The Department seeks comments regarding if and how the Department should more specifically regulate the timing of this notice, and

any additional information the Department should include in the final regulations regarding information printed in the NETPC. The Department also seeks comments on any additional language the Department should include in the final rule addressing required actions the State agency would be expected to take following the notice being sent, including if the final rule should specify when the State agency would be expected to take one of the four actions described below (e.g., within 30 days, at the next recertification, etc.), and how to ensure an individual with an ill-suited determination is moved into a more suitable activity as soon as reasonably possible.

In accordance with the Act, the proposed rule would also require the State agency, in proposed 7 CFR 273.7(c)(18)(i)(B), to take the most appropriate of the following four actions for an individual who has been determined ill-suited and is not exempt from the general work requirement: (1) Refer the individual to an appropriate E&T program component; (2) refer the individual to an appropriate workforce partnership, if available; (3) reassess the physical and mental fitness of the individual; or (4) coordinate, to the maximum extent practicable, with other Federal, State, and local workforce or assistance programs to identify work opportunities or assistance for the individual. Additional information about each of these actions is provided below. The Department also notes that decisions about the most appropriate of the four actions to take for an individual with an ill-suited determination is an eligibility function; however, eligibility staff making this decision may consult with E&T case managers and E&T providers to gather important E&T case information about the individual with an ill-suited determination to inform their decision.

A State agency may choose to refer the just determined ill-suited individual to a more appropriate E&T program component. However, before a State agency refers an individual to an appropriate E&T program component, the proposed rule at 7 CFR 273.7(c)(18)(i)(B)(1) would require the State agency to screen the individual in accordance with the existing regulation at 7 CFR 273.7(c)(2) to determine if the individual meets State agency criteria for participation in the E&T program. The requirement applies even when individuals were previously screened, as their circumstances may have changed. If appropriate, the State agency should then refer the individual to an E&T program component, and case

management according to the State's E&T procedures. If the individual does not meet State agency criteria for participation in the E&T program, the individual should not be required to participate in the E&T program. The Department also recognizes that there may be circumstances where an individual seemingly meets State agency criteria for participation in E&T, but identification of other work opportunities or assistance (i.e., the fourth available action under this provision) or informing the individual about voluntary participation in a workforce partnership (i.e., the second available action under this provision) would be more appropriate for the individual. In this situation, the Department would encourage State agencies to consider exempting the individual from E&T, as permitted by section 6(d)(4)(D) of the FNA and 7 CFR 273.7(e)(2) (redesignated as § 273.7(e)(3)), identifying other work opportunities or assistance, or informing the individuals about voluntary workforce partnerships. The Department proposes these clarifications to ensure that an individual who has already been found ill-suited for one E&T component is not cycled through additional E&T components that may also not provide the appropriate foundation to move the individual toward self-sufficiency. The Department also believes this approach would allow the State agency to best match limited E&T resources with participants of suitable backgrounds and career interests, and reduce the confusion that multiple unsuccessful E&T referrals can create for individuals with significant barriers to employment.

If the State agency has one or more workforce partnerships available in the State, the State agency could choose to refer an individual, if appropriate, to a workforce partnership. As proposed, 7 CFR 273.7(c)(18)(i)(B)(2) explains how the State agency would need to ensure the workforce partnership meets the requirements in proposed 7 CFR 273.7(n), and that the referral be conducted in accordance with these requirements. In particular, and in accordance with the Act, the proposed regulation at 7 CFR 273.7(n)(9) states that no individual can be required to participate in a workforce partnership. Pursuant to these requirements, the Department proposes that before an individual is referred to a workforce partnership, the State agency would first need to provide information to assist the individual in making an informed decision about participation in the workforce partnership. If the individual determines he or she would like to

participate, the State agency would make the referral to the workforce partnership. If the individual determines he or she would not like to participate in the workforce partnership, then the State agency would need to consider one of the other three actions available in this section. Lastly, the Department proposes in 7 CFR 273.7(n)(6) that individuals subject to mandatory E&T requirements, who choose to participate in a workforce partnership, would need to be considered by the State agency to be fulfilling the mandatory E&T requirement.

The third action available to the State agency when deciding next steps for an individual who has been found ill-suited would be to reassess the physical and mental fitness of the individual, as proposed in 7 CFR 273.7(c)(18)(i)(B)(3). The Department proposes that this reassessment could be part of a broader reassessment of any exemptions from the general work requirement in existing regulations at 7 CFR 273.7(b). If an individual is not found physically or mentally fit, the individual should be exempted from the general work requirement. If the individual is found mentally and physically fit, and the State agency determines the individual is not otherwise exempt from the general work requirements, the State agency would be expected to consider one of the other available actions in this provision that would most likely lead to increased self-sufficiency for the individual.

The fourth action available to the State agency would be to coordinate with other Federal, State, or local workforce or assistance programs to identify work opportunities or assistance for the individual, as proposed in 7 CFR 273.7(c)(18)(i)(B)(4). The Department proposes that the State agency have broad discretion in identifying other workforce or assistance programs that would provide the most appropriate services to the individual to move them toward self-sufficiency, including tribal workforce or assistance programs, with the qualification that these other programs are not included in the E&T State plan. Likewise, since the other work opportunities or assistance programs identified in 7 CFR 273.7(c)(18)(i)(B)(4) are not SNAP E&T programs, the State agency cannot require an individual to participate in programs under 7 CFR 273.7(c)(18)(i)(B)(4) as a way to fulfill their mandatory E&T participation requirement, nor would participation in such a program fulfill the individual E&T requirement. If the State agency determines it is appropriate to require

an individual to participate in SNAP E&T, the State agency should refer the individual to an E&T program in accordance with 7 CFR

273.7(c)(18)(i)(B)(1) or, at the option of the individual, to a workforce partnership in accordance with 7 CFR 273.7(c)(18)(i)(B)(2). As stated

previously, the State agency should strongly consider whether it would be appropriate to require an individual to participate in a new E&T component, if that individual has already been found ill-suited for a previous E&T component. Exempting the individual from E&T and identifying well-targeted programs under 7 CFR

273.7(c)(18)(i)(B)(4) could better prepare an individual to overcome barriers to training and employment in some circumstances than referral to another E&T component. In addition, while the Department proposes that State agencies have broad discretion in identifying other work opportunities or assistance programs, there would need to be a connection between these other programs and the workforce needs and interests of the individual.

The Act also requires that individuals undergoing and complying with the ill-suited process shall not be found to have refused without good cause to participate in an E&T program. As such, the Department proposes in new 7 CFR 273.7(c)(18)(ii) that, from the time an E&T provider determines an individual is ill-suited for an E&T component until after the State agency takes one of the four actions in 7 CFR 273.7(c)(18)(i)(B), the individual would not be found to have refused without good cause to participate in an E&T program. In other words, the individual cannot be disqualified for failure to comply with mandatory E&T from the time the individual is determined to be ill-suited until after the State agency takes one of the four actions in 7 CFR

273.7(c)(18)(i)(B) and the individual subsequently refuses or fails to comply without good cause. On the other hand, regardless of the process described above, from the time an E&T provider makes an ill-suited determination, an ABAWD would continue to accrue countable months toward their 3-month participation time limit unless the ABAWD fulfills the work requirement in accordance with 7 CFR 273.24.

The Department is also proposing revisions to other paragraphs in 7 CFR 273.7 to conform with the requirements of the ill-suited process described in proposed 7 CFR 273.7(c)(18)(i) and (ii). The Department proposes to add language to existing 7 CFR 273.7(c)(3) and (e) to indicate that mandatory E&T participants who are determined ill-

sued shall not be found to have refused without good cause to comply with a mandatory E&T program from the time an E&T provider determines an individual is ill-suited for an E&T component until after the State agency takes one of the four actions in 7 CFR 273.7(c)(18)(i)(B).

At several points in this section, the Department has proposed how the ill-suited determination and subsequent State actions specifically affect mandatory E&T participants. The Department notes that all the regulatory measures discussed in this section also apply to voluntary E&T participants who are not exempt from the general work requirements, unless otherwise specified. For example, the Department would require State agencies to work with their E&T providers to ensure E&T providers notify the State agency when voluntary E&T participants are determined ill-suited for an E&T component, and that the State agency would send voluntary E&T participants a NETPC in accordance with the proposed regulations and take the most appropriate action among the four available State options. As a reminder, voluntary E&T participants are not subject to disqualification for refusal or failure to participate in E&T, in accordance with current 7 CFR 273.7(e)(4)(ii), redesignated as 7 CFR 273.7(e)(5)(ii).

#### **State Agency Accountability for Participation in an E&T Program and Good Cause**

The Act introduced several new provisions that emphasize State agencies' responsibilities to build E&T programs that are well-targeted to E&T participants' needs and support E&T participants as they engage with those programs. Two of those provisions in particular—referral of individuals with an ill-suited determination and the requirement to provide case management—highlight the State agency's responsibility to provide ongoing services and support to all SNAP recipients in E&T, and to ensure that those recipients are matched to services for which they are well-suited. While it has long been the State agency's responsibility to appropriately screen individuals for work exemptions and exemptions from mandatory E&T, to determine if it is appropriate to refer them to an E&T program, and to provide a real opportunity for mandatory E&T participants to meet their E&T requirement, changes made to E&T by the Act strengthen these requirements and State agency accountability.

To be clear, the Department does not believe the new authority of E&T

providers to determine if an individual is ill-suited for their E&T component, as provided for by the Act, and the addition of case management as a required service for all E&T participants absolves the State agency from doing a thorough initial screening to ensure it is appropriate to require an individual to participate in an E&T program. Existing statutory and regulatory language clearly indicate that the State agency has primary responsibility for the design and operation of their E&T program, which may include agreements with one or more E&T providers who may provide case management, E&T components, or other activities as outlined in the E&T State plan. While State agencies may choose the method of delivery that best meets their operational needs, the Department emphasizes the State agency retains responsibility for their E&T program. For example, if the State agency were to require an individual to participate in an E&T program when in fact it was not appropriate to do so, the State agency has the responsibility to take the appropriate action when the State agency later learns the individual was ill-suited for an E&T component or the individual should not have been required to participate in E&T because they meet an exemption from mandatory E&T. In fact, the State agency could obtain new information at several points in the process after the State agency makes the determination to require an individual to participate in E&T, but before or shortly after the individual actually engages with an E&T component. For example, a State agency may determine an individual is a mandatory E&T participant and refer that individual to an E&T case manager (e.g., a State agency staff, a community based organization, or a contractor) who conducts an intake and assessment to determine which E&T component is an appropriate fit for the individual. If during this process, it is discovered that the participant in fact meets a criterion for exemption from the mandatory E&T program, the Department proposes the E&T case manager must inform State agency eligibility staff and, if the State agency determines the participant does in fact meet an exemption, the individual would then be exempted from mandatory E&T by the State agency. The Department proposes in 7 CFR 273.7(e)(1), as redesignated, to add the requirement that E&T case managers must inform the appropriate staff within the State agency regarding possible mandatory E&T exemptions for a mandatory E&T participant receiving their case management services. The

State agency would then determine if an exemption in fact exists, and exempt the individual from mandatory E&T, if appropriate. Similarly, if an E&T provider of an E&T component determines an individual is ill-suited for the E&T component, the State agency must determine the appropriate next step for the individual, as discussed in the previous section of the Preamble and in proposed 7 CFR 273.7(c)(18)(i).

The Department also believes that it is the State agency's responsibility to build an E&T program that can accommodate all mandatory E&T participants. In situations where there is not an appropriate and available opening for a mandatory E&T participant in the E&T program, the Department does not believe that the mandatory E&T participant should be disqualified for failing to comply with the E&T requirement, as the lack of an appropriate and available opening in an E&T program is beyond the E&T participant's control. As a result, the Department proposes adding to the definition of good cause to encompass such circumstances, so that the individual will not be disqualified for refusal or failure to comply with the mandatory E&T requirement. The Department proposes that the period of good cause would extend until the State agency identifies an appropriate and available opening in the E&T program, and the State agency informs the SNAP participant of such an opening. Ideally, if there is not an appropriate and available opening in the E&T program, the State agency should exempt the individual from mandatory E&T under the discretion provided to State agencies in 7 CFR 273.7(e)(2), redesignated as 7 CFR 273.7(e)(3). However, in the absence of such a State agency exemption, if an individual is required to participate in E&T and there is no appropriate and available opening in an E&T program for the mandatory E&T participant, the Department now further proposes that the State agency must determine that the failure to participate in E&T was with good cause. In situations where it is the E&T case manager who is unable to identify an appropriate and available opening in an E&T component, the Department proposes that the E&T case manager must provide this information to the appropriate State agency staff with the authority to make the determination regarding good cause. Alternatively, at this point, the State agency could determine that it is no longer appropriate to require participation, and exempt the individual from participation in E&T.

To codify this new criteria for good cause, the Department proposes to add new § 273.7(i)(4) to define good cause to include circumstances where the State agency determines that there is no appropriate and available opening in the E&T program to accommodate a mandatory E&T participant. In addition, the Department proposes in 7 CFR 273.7(c)(2) that, if there is not an appropriate and available opening in an E&T program for a mandatory participant, the State agency must determine the participant has good cause for failure to comply with the mandatory E&T requirement in accordance with 7 CFR 273.7(i)(4). The Department also proposes in 7 CFR 273.7(e)(1), as redesignated, that case managers must inform the appropriate staff in the State agency if they are unable to identify an appropriate and available E&T component for a mandatory E&T participant. The Department would provide oversight, under existing authority, including management evaluations and review of E&T State plans, to determine if State agencies with mandatory E&T programs are operating programs with an appropriate and sufficient number of openings, and would provide ongoing technical assistance to State agencies to assist those facing challenges in appropriately serving all mandatory participants through effective E&T programs.

The Department notes that this proposed new form of good cause would only apply to mandatory E&T participants, and would not provide all ABAWDs with good cause for failure to fulfill the ABAWD work requirement in 7 CFR 273.24. As provided in *Supplemental Nutrition Assistance Program—ABAWD Time Limit Policy and Program Access* published on November 19, 2015,<sup>2</sup> when good cause is provided for failure to comply with mandatory SNAP E&T (7 CFR 273.7(a)(ii)) or State-assigned workfare (7 CFR 273.7(a)(iii)) under good cause for the general work requirement at 7 CFR 273.7(i), the State agency must also provide good cause under 7 CFR 273.24(b)(2) for the ABAWD work requirement. However, while this longstanding policy provided a way to provide good cause for ABAWDs who were assigned to a mandatory E&T program or State-assigned workfare to meet their ABAWD work requirement, it has not provided a way to provide good cause for ABAWDs participating in

<sup>2</sup> <https://fns-prod.azureedge.net/sites/default/files/resource-files/ABAWD-Time-Limit-Policy-and-Program-Access-Memo-Nov2015.pdf>.

other work programs or other types of workfare programs.

Therefore, the Department proposes taking this opportunity to codify two changes to the good cause regulation at 7 CFR 273.24(b)(2). First, as determined by the State agency, if an ABAWD is participating in work, a work program, or workfare, and would have fulfilled the ABAWD work requirement in 7 CFR 273.24, but missed some hours for good cause, the individual shall be considered to have fulfilled the ABAWD work requirement if the absence from work, the work program, or workfare is temporary and the individual retains his or her job, training or workfare slot. This proposed change codifies longstanding policy allowing State agencies to provide good cause to ABAWDs who failed to meet their ABAWD work requirement through mandatory E&T or State-assigned workfare. In addition, the proposed change allows State agencies to provide good cause to ABAWDs participating in other work programs or other types of workfare programs. The Department is proposing this change so that State agencies can apply fair and consistent treatment to ABAWDs who have good cause, regardless of how the ABAWD chooses to meet the ABAWD work requirement. Second, if an individual is determined to have good cause for failure or refusal to comply with mandatory E&T under 7 CFR 273.7(i), the State agency would be required to provide good cause for failure to meet the ABAWD work requirement without having to make a separate good cause determination. However, the Department would also specify that an ABAWD who is provided good cause under the proposed 7 CFR 273.7(i)(4) for failure to participate in mandatory E&T, due to the lack of an appropriate and available opening in SNAP E&T, would not be provided good cause for failure to fulfill the ABAWD work requirement. There are many ways to fulfill the ABAWD work requirement other than through SNAP E&T. The lack of an appropriate or available opening in a SNAP E&T program would not prevent the ABAWD from fulfilling the ABAWD work requirement in another way.

The Department has also noted a discrepancy in the process for establishing good cause and issuing a notice of adverse action between current 7 CFR 273.7(c)(3) and (f)(1)(i). Current language at 7 CFR 273.7(c)(3) does not include the requirement for a State agency to first establish that non-compliance with the SNAP work requirement was without good cause before sending the notice of adverse action. On the other hand, the

requirement to first establish good cause is present in current 7 CFR 273.7(f)(1)(i). The Department believes the paragraphs should be consistent with one another and is taking this opportunity to propose revising the language in 7 CFR 273.7(c)(3) to clarify that before a State agency issues a notice of adverse action to an individual or a household, if appropriate, for non-compliance with SNAP work requirements, the State agency must determine that the non-compliance was without good cause. This proposed clarification would provide consistent instruction to State agencies regarding the necessity of establishing that non-compliance was without good cause before issuing a notice of adverse action.

#### **Improving Accountability in State Agency Quarterly Reports**

Current regulations at 7 CFR 273.7(c)(9), (10), and (11) require State agencies to submit quarterly E&T Program Activity Reports. Title 7 CFR 273.7(c)(11) specifies that the fourth quarter report provide a list of all the E&T components offered during the fiscal year, as well as the number of ABAWDs and non-ABAWDs who began participation in each. The report must also provide the number of ABAWDs and non-ABAWDs who participated in the E&T program during the fiscal year. The Department is committed to ensuring that State agencies are providing mandatory E&T participants with real opportunities to gain skills and appropriate services that help them be successful. Therefore, the Department proposes adding additional reporting elements to this fourth quarter report: the unduplicated number of SNAP participants required to participate in an E&T program during the fiscal year and, of those, the number who actually begin to participate in an E&T program. An E&T participant begins to participate in an E&T program when the participant commences at least one part of an E&T program, including an orientation, assessment, case management, or a component. The Department proposes to codify this new requirement by inserting a new paragraph at 7 CFR 273.7(c)(11)(iii).

#### **Workforce Partnerships**

The Act established workforce partnerships as a new way for SNAP participants to gain high-quality, work-related skills, training, work, or experience that will increase the ability of the participants to obtain regular employment. The Act added workforce partnerships to the list of work programs through which an ABAWD may fulfill the ABAWD work

requirement, and the partnerships may also be used by mandatory E&T participants to meet their E&T requirement. The Act added workforce partnerships to several sections of the FNA including sections 6(d)(4)(B)(ii), 6(d)(4)(E), 6(d)(4)(H), and new paragraph 6(d)(4)(N). The Department proposes adding the description and requirements for workforce partnerships to new 7 CFR 273.7(n). In addition, the Department proposes including two additional State agency responsibilities associated with workforce partnerships. First, the proposed rule would require State agencies to re-screen any individual for the requirement to participate in mandatory E&T when the State agency learns the individual is no longer participating in a workforce partnership. Second, the proposed rule would require State agencies to provide sufficient information to household members subject to the general work requirements of 7 CFR 273.7 and ABAWD work requirements of 7 CFR 273.24 about workforce partnerships, so that individuals may make an informed decision about participation. In this preamble section, the Department highlights several significant aspects of workforce partnerships, as required by the Act, and provides further explanation for the proposed additional State agency responsibilities.

In accordance with the Act, the proposed regulation in new 7 CFR 273.7(n)(1) states that workforce partnerships mean programs operated by a private employer, an organization representing private employers, a non-profit organization providing services related to workforce development, or an entity identified as an eligible provider of training services under section 122(d) of WIOA. New 7 CFR 273.7(n)(2) proposes that workforce partnerships may be multi-State programs. All workforce partnerships must be in compliance with the Fair Labor Standards Act, as proposed in new 7 CFR 273.7(n)(3). Workforce partnerships would need to be certified, either by the Secretary or by the State agency to the Secretary, to ensure they meet specific certification criteria outlined in the Act and in proposed 7 CFR 273.7(n)(4). In certifying a workforce partnership, the Secretary or the State agency would require that the workforce partnership report sufficient information to describe the services or activities that would provide participants with at least 20 hours a week (which may be averaged monthly to equal 80 hours a month) of training, work, or experience, and how those services or activities would directly enhance the employability or

job readiness of the participant. This latter requirement would be codified in new 7 CFR 273.7(n)(5).

The Department proposes to describe the application of workforce partnerships to E&T programs in new 7 CFR 273.7(n)(6). This includes proposing in new 7 CFR 273.7(n)(6)(i) the requirement from the Act that no funding authorized by the FNA can be used for workforce partnerships. The Department also proposes to codify the requirement from the Act in new 7 CFR 273.7(n)(6)(ii) that, if a State agency requires an individual to participate in an E&T program (also referred to as mandatory E&T), the State agency must consider an individual participating in a workforce partnership to be in compliance with the E&T requirement. In other words, the State agency is prohibited from disqualifying an individual for non-compliance with the requirement to participate in an E&T program if the individual is participating in a workforce partnership. In addition, if the State agency learns while screening the individual for the requirement to participate in E&T that the individual is already participating a workforce partnership, and the State agency determines the individual meets the criteria to be required to participate in E&T, the State agency would need to consider the individual to already be in compliance with the requirement to participate in E&T. The State agency would not be able to impose an additional E&T requirement on the individual.

The Department also proposes to add a clarification in new 7 CFR 273.7(n)(6)(ii) that, if an individual who has been fulfilling the mandatory E&T requirement by participating in a workforce partnership no longer participates in a workforce partnership, the State agency would have to re-screen the individual to determine if the individual qualifies for an exemption from the work requirement and from mandatory E&T. If the individual were to not meet an exemption from mandatory E&T, the State agency would then identify an appropriate E&T component. This new paragraph also proposes that, if an individual who has been fulfilling the mandatory E&T requirement by participating in a workforce partnership no longer participates in a workforce partnership, the State agency must not consider the individual to have failed to comply with mandatory E&T without going through the steps above. The Department believes this clarification is necessary to resolve certain policy questions arising from the interaction of workforce

partnerships with the mandatory E&T requirement.

Workforce partnerships are not part of a State's E&T program and are not an E&T component. The Act located workforce partnerships in section 6(d)(4)(B)(ii) of the FNA, outside the definition of an E&T program in section 6(d)(4)(B)(i), and strictly limits the reporting requirements that can be imposed on workforce partnerships. However, the Act stated that State agencies must consider an individual's participation in a workforce partnership to be fulfilling the State agency requirement for that individual to participate in an E&T program. So while an individual may fulfill their mandatory E&T requirement through participation in a workforce partnership, a workforce partnership is not by definition an E&T program. The Act also stated that an individual cannot be required by the State agency to participate in a workforce partnership. On the other hand, an individual may choose to participate in a workforce partnership as a way fulfill their mandatory E&T requirement. The Act did not address what happens to an individual who no longer participates in a workforce partnership, but continues to receive SNAP benefits. In these cases, the Department proposes that the State agency screen the individual to determine whether the individual is subject to the general work requirement and mandatory E&T. Screening is necessary as the individual's circumstances and abilities may have changed since the initial screening. In other words, when the State agency learns an individual is no longer participating in a workforce partnership, the State agency would need to determine if the individual remains subject to the general work requirements at 7 CFR 273.7(b) and, if the individual were to remain subject to the general work requirements, the State agency would need to then screen the work registrant to determine whether or not they meet the State's criteria for the requirement to participate in E&T, in accordance with 7 CFR 273.7(c)(2). If, after this re-screening, the State agency were to determine that it is appropriate to require the individual to participate in mandatory E&T, the State agency would need to refer the individual to the E&T program or, if the individual chooses, to another workforce partnership. The Department proposes to add this additional State agency responsibility to screen individuals who are no longer participating in a workforce partnership in new 7 CFR 273.7(n)(6)(ii).

Other significant parts of the proposed regulations pertaining to workforce partnerships, as required by the Act, include the codification at 7 CFR 273.7(n)(7) that State agencies may use workforce partnerships to supplement, not supplant, the E&T programs of the State agency. Also, the proposed regulation at 7 CFR 273.7(n)(8) states that workforce partnerships are included in the definition of a work program in 7 CFR 273.24(a)(3) for the purposes of fulfilling the ABAWD work requirement.

Proposed regulations at 7 CFR 273.7(n)(9) codify the constraint from the Act that the State agency shall not require any member of a household participating in SNAP to participate in a workforce partnership. That is, once again, participating in a workforce partnership could only be at the participant's option. New regulations at 7 CFR 273.7(n)(10) would reflect the requirement from the Act that the State agency provide, not less frequently than at certification and recertification, a list of workforce partnerships to household members subject to the work requirement. Since household members must have a choice about participation in a workforce partnership, the Department proposes an additional State agency responsibility in 7 CFR 273.7(n)(10) that the workforce partnership list also provide sufficient information to the household members about the available workforce partnerships so that the SNAP participant can make an informed decision about voluntary participation in a particular workforce partnership. This additional information should include, if available, contact information for the workforce partnership, the types of activities the participant would be engaged in through the workforce partnership, the screening criteria used by the workforce partnership to select individuals, the location of the workforce partnership, work schedules, any special skills required to participate, and wage and benefit information (if applicable). To maximize the ability of household members to review the above information, the Department proposes that all information in the workforce partnership list must be provided in writing, either electronically or in paper form.

The Department also proposes to codify in new 7 CFR 273.7(n)(11) the requirement from the Act that a workforce partnership shall not replace the employment and training of an individual not participating in a workforce partnership. The Department interprets this to mean that an

individual in a workforce partnership shall not be provided any work that has the effect of replacing the employment or training of an individual not participating in a workforce partnership. The Department also proposes codifying in 7 CFR 272.7(n)(12) the requirement from the Act that none of the SNAP work requirements—general work requirements, including mandatory E&T, and the ABAWD time limit and work requirement—affect the criteria or screening process for selecting participants by a workforce partnership. That is, a workforce partnership may screen individuals for participation in a workforce partnership independently of the criteria used by the State agency to determine who is subject to SNAP work requirements.

Lastly, new 7 CFR 273.7(n)(13) would codify the limited responsibilities of workforce partnerships to report to the Department or State agencies. The reporting requirements of workforce partnerships are limited to: Upon notification that an individual is a SNAP recipient, notifying the State agency that the individual is participating in a workforce partnership; identifying individuals who completed or are no longer participating in a workforce partnership; identifying changes in the workforce partnership that result in it no longer meeting the criteria for State certification; and providing sufficient information, on request by the State agency, for the State agency to verify that the participant is fulfilling any applicable work requirement. State agencies operating a workforce partnership may report to the Department, at State agency option, relevant data to reflect the number of program participants served by the workforce partnership and, of those, how many were mandatory work registrants. This State agency option would be codified at new 7 CFR 273.7(c)(17)(x).

#### **Minimum Allocation of 100 Percent Funds**

Current regulations at 7 CFR 273.7(d)(1)(i)(C) provide that no State agency will receive less than \$50,000 in Federal E&T grant funds and set forth the methodology to ensure an equitable allocation among the State agencies. The Act increased this baseline of Federal E&T funds to \$100,000 in section 16(h)(1)(D) of the FNA. The Department implemented this provision in FY 2019. The Department now proposes to modify 7 CFR 273.7(d)(1)(i)(C) to reflect the change in the baseline.

#### **Prioritized Reallocation of Employment and Training Federal Grant Funds**

Current regulations at 7 CFR 273.7(d)(1)(i)(D) provide the process for the Department to reallocate unobligated and unexpended Federal E&T funds to other State agencies requesting additional E&T funds. The Act introduced priorities for the reallocation of these funds in section 16(h)(1)(C)(iv) of the FNA. Those priorities are: At least 50 percent shall be reallocated to requesting State agencies that were awarded grants to operate E&T pilots under the Agricultural Act of 2014 (Pub. L. 113–79) (also known as the 2014 Farm Bill), to conduct those E&T programs and activities from the pilots that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance; at least 30 percent should be available to State agencies requesting funds for E&T programs and activities authorized under section 6(d)(4)(B)(i) of the FNA that are targeted to individuals with high barriers to employment and that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance; and the remaining funds to other State agencies requesting additional funds for E&T programs and activities that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Department implemented this provision in FY 2020 for the reallocation of FY 2019 funds. The Department proposes to add new 7 CFR 273.7(d)(1)(iii) to specify this priority for reallocation of funds, by enumerating the priorities and the process for reallocating funds. Additionally, the Department proposes to add new 7 CFR 273.7(c)(6)(xviii) to specify that State agencies requesting additional funds would need to submit those requests when their E&T State Plan is submitted for the upcoming Federal fiscal year.

As noted, the Act established three categories of priorities for reallocating funds. The Department proposes to remove current § 273.7(d)(1)(i)(D) that addresses the current reallocation process and add a new paragraph at § 273.7(d)(1)(iii) that would set forth these priorities and the process for reallocation.

As noted, the Act required that not less than 50 percent of all unobligated funds are to be reallocated to requesting State agencies that were awarded grants to operate SNAP E&T pilots under the Agricultural Act of 2014 (Pub. L. 113–79), to conduct E&T programs and activities authorized under the pilots that the Secretary determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(A). Additionally, the Act specified that the Secretary shall base the determination of demonstrable impact on the project results from the independent evaluations of the pilots or, if the project results from the independent evaluation are not yet available, then the determination may be based on the interim reports to Congress or other information relating to performance of the programs and activities. Until the project results from the independent evaluations of the pilots are available, the Department will use information from the interim reports, as well as other information deemed appropriate, to make its determinations.

For the not less than 30 percent of unobligated funds that shall be reallocated to State agencies requesting funds to implement or continue E&T programs and activities under section 6(d)(4)(B)(i) of the FNA that are targeted toward highly-barriered populations, the Act specified that the funds be used for E&T programs and activities that the Secretary determines have the most demonstrable impact on the ability of the participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Act specified that this 30 percent reallocation may include programs and activities targeted to: Individuals 50 years or older; formerly incarcerated individuals; individuals participating in a substance abuse treatment program; homeless individuals; people with disabilities seeking to enter the workforce; other individuals with substantial barriers to employment; or households facing multi-generational poverty, to support employment and workforce participation through an integrated and family-focused approach in providing supportive services. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(B) and proposes that, if a State agency chooses to provide services to veterans having one of the condition above under this

provision, it indicate this intention in their request for 30 percent reallocated funds.

The Act also specified that any State agency that receives reallocated funds under the 50 percent reallocation provision may also be considered for reallocated funds under the 30 percent reallocation provision. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(C).

As noted earlier, the Act specified that any remaining unobligated funds not reallocated under the 50 percent reallocation provision, or the 30 percent reallocation provision, be reallocated to State agencies requesting such funds to use for E&T programs and activities that the Secretary determines have the most demonstrable impact on the ability of the participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(D).

Existing provisions in section 16(h)(1) of the FNA make 100 percent E&T grant funding available for 24 months in order for the Department to obligate and reallocate funding to States. Further, the FNA requires the Department to reallocate unobligated and unexpended funds from one Federal fiscal year to another Federal fiscal year in a timeframe that would allow State agencies receiving additional funds at least 270 days to expend those reallocated funds. In light of these existing requirements, the Department proposes in new 7 CFR 273.7(d)(1)(iii)(E) the process for reallocating funds to allow State agencies the statutorily required amount of time to expend the reallocated funds. As proposed, State agencies requesting reallocated funds would submit those requests as part of their E&T State plan due by August 15th each year. To clearly articulate this expectation, the Department also proposes to add new 7 CFR 273.7(c)(6)(xviii) to instruct State agencies to incorporate any requests for additional 100 percent funds that may become available into their E&T State Plan. As a best practice, the Department has always encouraged State agencies to consider during the development of their annual E&T State Plan their need for additional funds. This change to the regulations would formalize this best practice. In addition, a new paragraph at 7 CFR 273.7(c)(6)(xviii) would make explicit that, while requests for additional funds are included with the annual E&T State Plan, the request for additional funds must be prepared in a separate budget and narrative from the general budget for the upcoming fiscal

year. Approval or denial of the request for additional funds would occur separately from the E&T State Plan approval or denial.

The Department further proposes in new 7 CFR 273.7(d)(1)(iii)(E) that the Department, through the expenditure reporting process, would determine the total amount of funds available for reallocation, in accordance with the prioritized reallocation provisions, after State agencies have submitted fourth quarter expenditure reports. When making determinations about which State agencies would receive reallocated funds within the three categories of prioritized reallocated funds, the Department proposes to consider various factors. These factors would include, but are not limited to: The size of the request relative to the level of the State agency's E&T spending in prior years; the specificity of the State agency's plan for spending the reallocated funds; and the quality of the program and scope of impact for the State's E&T program. The Department would reallocate in a timeframe that allows State agencies at least 270 days to expend the reallocated funds.

Lastly, the Department proposes to reallocate any unobligated funds remaining after the reallocation process specified in new 7 CFR 273.7(d)(1)(iii)(E) to State agencies requesting additional funds for E&T programs and activities that the Secretary determines have the most demonstrable impact. When making these reallocations, the Department would consider factors including, but not limited to: the size of the request relative to the level of the State agency's E&T spending in prior years; the specificity of the State agency's plan for spending the reallocated funds; and the quality of the program and scope of impact for the State's E&T program. The Department proposes to codify this requirement in new 7 CFR 273.7(d)(1)(iii)(F).

#### **Advisement of Employment and Training Opportunities**

The Act added a requirement at section 11(w) of the FNA that State agencies advise SNAP household members subject to the requirements of section 6(d) of the FNA (the general work requirements) of available employment and training opportunities at the time of recertification if these individuals are members of households that contain at least one adult, with no elderly or disabled individuals, and with no earned income at their last certification or required report. There is no such current requirement in the regulations. The Department instructed

State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that this provision was considered self-implementing upon enactment. The Department now proposes to codify this requirement in a proposed paragraph at 7 CFR 273.14(b)(5). As a minimum standard for meeting this requirement, the Department proposes that State agencies provide the household a list of available employment and training services for household members subject to the general work requirements either electronically (*e.g.*, on a website or in an email) or in printed form. The Department would like to clarify that employment and training services are not limited to SNAP E&T. Rather, State agencies should also provide information about the availability of opportunities through the American Job Centers or local community-based organizations. This is particularly important in areas that do not operate SNAP E&T programs. The Department encourages States to consult with their Departments of Labor when developing information about available employment and training services. In meeting this requirement, State agencies should consider how to best target lists of employment and training opportunities to increase access to work opportunities for SNAP participants, including creating tailored lists for certain regions or municipalities, or for SNAP participants with particular career interests or barriers to employment.

#### **Work Programs for Fulfilling the ABAWD Work Requirement**

Current regulations at 7 CFR 273.24(a)(3) define the types of work programs in which ABAWDs may participate to meet the 20 hour per week ABAWD work requirement and thereby remain eligible beyond the 3 months in 36-month time limit. The Act added the following types of programs to that definition in section 6(o)(1) of the FNA: An employment and training program for veterans operated by the Department of Labor or the Department of Veterans Affairs, as approved by the Secretary; and workforce partnerships. The Department instructed State agencies in the March 6, 2019, Informational Memorandum on Farm Bill E&T that this provision was considered self-implementing upon enactment. The Department now proposes to add these programs to the existing paragraph at 7 CFR 273.24(a)(3). As noted earlier, the Act also changed section 6(o)(1)(C) of the FNA by replacing the term "job search program" with "supervised job search program." For the purposes of

ABAWD work requirements, the Department proposes to implement this change by revising 7 CFR 273.24(a)(3)(iii).

In accordance with the Act, the Department proposes to add employment and training programs for veterans operated by the Department of Labor or the Department of Veterans Affairs, as approved by the Secretary, and workforce partnerships, as defined in proposed in 7 CFR 273.7(n), to the definition of work programs in the existing paragraph at 7 CFR 273.24(a)(3). The Department proposes to consider any employment and training program of the Department of Labor or the Department of Veterans Affairs that serves veterans as approved by the Secretary, provided all other requirements in 7 CFR 273.24 are met. The Department also proposes to make conforming changes to the last sentences of paragraphs 7 CFR 273.7(e)(2)(i) and (ii), as redesignated, to add employment and training programs for veterans operated by the Department of Labor or the Department of Veterans Affairs to the list of work programs for which supervised job search and job search training programs may count for the purposes of fulfilling the ABAWD work requirement.

The Department also proposes to modify regulations at 7 CFR 273.24(a)(3)(iii) that “a supervised job search program” is a type of program that shall not count as an employment and training program for purposes of fulfilling the ABAWD work requirement. However, consistent with current regulations, the Department proposes that employment and training programs for ABAWDs under 7 CFR 273.24(a)(3)(iii) may include job search, supervised job search, or job search training activities as subsidiary activities in the program for the purposes of fulfilling the ABAWD work requirement so long as they make-up less than half of the work requirement. For example, an ABAWD can fulfill the ABAWD work requirement by participating in an employment and training program for 20 hours a week, or an average of 80 hours monthly. Over the month, less than half of these hours can include job search, supervised job search, or job search training activities. The Department believes that job search activities that are offered as part of an employment and training program can be effective at helping individuals transition from the program into paid employment. The Joint Explanatory Statement of the Committee of Conference issued with the Act reinforced that belief by stating that “unsupervised job search” may be a

“subsidiary component” for the purposes of meeting a work requirement, so long as it is less than half of the requirement (Conf. Rept. 115–1072, p. 617). Additionally, the Department proposes to modify the paragraph to refer to job search, supervised job search, and job search training as “subsidiary activities” rather than “subsidiary components” for the purposes of fulfilling the ABAWD work requirement. This change will more closely align with the terminology used elsewhere in the regulations where “activities” are used to describe smaller or subsidiary pieces of an employment and training program that make up the larger “component.”

The Department also proposes to make technical corrections to 7 CFR 273.24(a)(3)(i) to update the name of the referenced legislation from the Workforce Investment Act (Pub. L. 105–220), to its new name the Workforce Innovation and Opportunity Act (Pub. L. 113–128). The Department also proposes to add the reference to “title 1” of this law, as this reference was omitted in an earlier drafting of the regulation.

#### **Discretionary Exemptions for ABAWDs Subject to the Time Limit**

Current regulations at 7 CFR 273.24(g) establish that each State agency shall be allotted exemptions equal to an estimated 15 percent of “covered individuals,” which are the ABAWDs who are subject to the ABAWD time limit in the State in the fiscal year. States can use the 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. States have discretion whether to use these exemptions and, as a result, some States use their available exemptions and others do not. Each Federal fiscal year, the Department estimates the number of exemptions that each State agency shall be allotted. The Act changed the number of exemptions allocated to State agencies each Federal fiscal year from 15 percent to 12 percent of the “covered individuals” in the State. Therefore, the Department proposes to make the change from 15 percent to 12 percent in the regulations, and also change the name of these exemptions from “15 percent exemptions” to “discretionary exemptions.” This will align the regulations with the requirements of the Act and with current operations, as these changes took effect for Fiscal Year 2020. Specifically, the Department

proposes changes to the introductory 7 CFR 273.24(g) to change the title from “15 percent exemptions” to “Discretionary exemptions” in order to indicate the discretion that States have in terms of whether and how to use these exemptions as compared to the nondiscretionary, absolute exceptions from the time limit listed at 7 CFR 273.24(c). The remaining proposed changes would simply replace the number “15” with the number “12” in 7 CFR 273.24(g)(1) and (3).

#### **Informing SNAP Participants About Their Work Requirements**

The Department notes that many of the changes made by section 4005 of the Act emphasized State agency responsibility to assist SNAP participants in finding and retaining employment. The Department believes that foundational to this increased accountability for both the State agency and SNAP participants is improved communication between the State agency and SNAP participants regarding the nature of any work requirement that SNAP households may be subject to, consequences for not complying with work requirements, and how to find more information. Existing regulations at 7 CFR 273.7(c)(1) regarding the general work requirement require the State agency to both explain the general work requirement to work registrants, and provide a written statement to work registrants at the time of work registration regarding the general work requirements and the consequences of failing to comply. In addition, existing regulations at 7 CFR 273.7(c)(2) require the State agency to provide a written or oral explanation of the mandatory E&T requirement to individuals in mandatory E&T. And, with regard to the separate work requirement and time limit for ABAWDs, though the regulations do not explicitly require State agencies to inform ABAWDs of those requirements at certification, the Department has issued formal guidance<sup>3</sup> clarifying that State agencies must inform ABAWDs as part of the explanation of the household’s rights and responsibilities, as generally required by 7 CFR 272.5(b)(1) and 273.2(a)(1). To summarize, State requirements to inform SNAP participants about their work requirements are fragmented and could be streamlined. The Department also notes that a single individual may be

<sup>3</sup> See FNS, “State Agency Readiness to Apply the ABAWD Time Limit and Serve ABAWDs,” issued December 4, 2019 (<https://fns-prod.azureedge.net/sites/default/files/media/file/StateAgencyReadinessToApplytheABAWDTIMELimitandServeABAWDs.pdf>).



subject to multiple work requirements, which may be confusing for the household to decipher to ensure compliance, especially if these requirements are communicated to the individual at different times via different mediums. For instance, an ABAWD may be subject to mandatory E&T. Each of these work requirements may require different actions on the part of the SNAP participant to maintain eligibility, and each carry different, separate penalties for failure to comply.

In order to streamline and improve communication between the State agency and the household, and to improve the household's customer service experience, the Department proposes to consolidate the State requirement to inform individuals of their applicable work requirements (*i.e.*, the general work requirement, the mandatory E&T requirement, and the ABAWD work requirement). This consolidation would take two forms: A single written statement and a comprehensive oral explanation of all the work requirements that would pertain to individuals in a particular household. The consolidated requirement would merge two existing requirements to inform individuals about their work requirements (*i.e.*, the general work requirement and mandatory E&T) with a new more clearly delineated requirement to inform ABAWDs regarding their ABAWD work requirement and time limit at new 7 CFR 273.7(5)(a). The consolidated requirement to inform households of all applicable work requirements for individuals within the household would be added at new 7 CFR 273.7(c)(1)(ii). The new consolidated written statement must include all pertinent information related to each of the applicable work requirements for individuals in the household, including: An explanation of each applicable work requirement; exemptions from each applicable work requirement; the rights and responsibilities of each applicable work requirement for individuals subject to the work requirements; what is required to maintain eligibility under each applicable work requirement; pertinent dates by which an individual must take any actions to remain in compliance with each of the applicable work requirements; the consequences for failure to comply with each applicable work requirement; and any other information the State agency believes would assist the household members with compliance. If the individual is subject to mandatory E&T, the written statement must also explain the individual's right to receive participant

reimbursements for allowable expenses related to participation in E&T, up to any applicable State cap, and the responsibility of the State agency to exempt the individual from the requirement to participate in E&T if the individual's allowable expenses exceed what the State agency will reimburse, as provided in 7 CFR 273.7(d)(4).

#### **Voluntary E&T Participation Time Limits**

Section 4108 of the Food, Conservation and Energy Act of 2008 (FCEA) modified section 6(d)(4) of the FNA to permit individuals voluntarily participating in an E&T program to participate beyond the maximum number of hours calculated as their benefit divided by the minimum wage. The FCEA also allowed the total amount of time spent each month by an individual voluntarily participating in an E&T work program, combined with hours worked in a workfare program and hours worked for compensation, to exceed 120 hours. The Department is proposing to revise 7 CFR 273.7(e)(5)(iii) from the final rule, *Supplemental Nutrition Assistance Program (SNAP): Eligibility, Certification, and Employment and Training Provisions of the Food, Conservation and Energy Act of 2008*, published on January 6, 2017 (RIN 0584-AD87) (82 FR 2010), to correct a technical drafting error and to more accurately reflect the statutory language. The final rule only added language that voluntary E&T participants are not subject to the 120-hour monthly cap for participation. The final rule did not add that voluntary E&T participants are not subject to the hourly monthly maximum calculated as their benefit divided by the minimum wage, as was required by the changes made to the FNA by the FCEA. In order to meet the requirements laid out by the FCEA, the Department's proposed language would strike the current sentences in 7 CFR 273.7(e)(5)(iii), and replace them with language stating voluntary E&T participants are not subject to any of the limits in redesignated 7 CFR 273.7(e)(4). The changes proposed in this rulemaking would align the regulations with the statutory provision allowing voluntary participants to participate in E&T activities for more than the maximum number of hours calculated as their benefit divided by the minimum wage and for more than 120 hours in a month, as provided for in section 6(d)(4)(F)(iii) of the FNA.

#### **SNAP E&T Eligibility**

The Department is aware that the process to regularly verify SNAP

eligibility for E&T participants is time-consuming, resource intensive, and can be a barrier to the growth of E&T programs. While some E&T participants' eligibility status may change over time, many E&T providers are adept at braiding funding from a variety of sources in order to provide a seamless continuation of services. However, this can be a complicated process. The Department is interested in better understanding ways States and other E&T stakeholders have streamlined and simplified the process of verifying E&T participants' eligibility for SNAP. The Department is particularly interested in how States are able to provide a seamless continuation of services to individuals whose eligibility status has changed. Therefore, the Department seeks comments on the experience of E&T stakeholders in verification of E&T participants' eligibility. The Department also asks for recommendations on how to reduce the burden on State agencies and E&T providers in order to better support individuals as they progress through training. In particular, the Department is interested in comments on the following questions:

- *The current process:* What processes are currently in place to verify SNAP eligibility for E&T participants? What processes, policies, or technical solutions has the State agency implemented to streamline or make the process of verifying eligibility more efficient? What happens to active E&T participants who are found no longer eligible for SNAP? Are they able to continue receiving services using other funding sources?

- *Concerns with the current process:* Has the process to verify eligibility for SNAP been an impediment to the growth of an E&T program? What are other concerns with the current process? What is working well with the current process?

- *Recommendations:* What would commenters recommend to reduce barriers associated with verifying eligibility? What policies or agreements might better support providers to serve enrolled E&T participants if the participants are no longer eligible for SNAP and what might the supporting arguments be for such policies or agreements? What systems or technical solutions would help streamline the process?

#### **Procedural Matters**

##### **Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of

reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

The table below presents the expected costs of the rule changes. Derivation of these costs, and the overall impact on Federal and State spending, are summarized in the discussion that follows.

TABLE 1— EXPECTED COSTS OF RULE CHANGES  
[In millions of dollars]

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total
<i>Impacts on Federal Transfers (nominal dollars):</i>						
Increased 100% E&T grant funding**	13	13	13	13	13	65
<i>Impacts on Federal (50%) and State (50%) Administrative Costs (nominal dollars):</i>						
Administrative costs/burden—case management+	30.4	30.4	30.4	30.4	30.4	151.8
Administrative costs/burden—additional notices+	1.6	1.5	1.5	1.5	1.5	7.6
Administrative costs/burden—reporting of additional measures+	(*)	(*)	(*)	(*)	(*)	(*)
<b>Total</b>	<b>32.0</b>	<b>31.9</b>	<b>31.9</b>	<b>31.9</b>	<b>31.9</b>	<b>159.4</b>
<i>Impacts on Burden of Participating Households (Costs in nominal dollars):</i>						
Household Burden—case management	4.6	4.6	4.6	4.6	4.6	23.0
Household Burden—Notification or E&T Participation Change	(*)	(*)	(*)	(*)	(*)	(*)
Household Burden—List of E&T Services	0.8	0.8	0.8	0.8	0.8	4.0
Household Burden—ABAWD Notification	0.3	0.3	0.3	0.3	0.3	1.5
<b>Total</b>	<b>5.7</b>	<b>5.7</b>	<b>5.7</b>	<b>5.7</b>	<b>5.7</b>	<b>28.5</b>

\*\* The 2018 Farm Bill included an additional \$13 million per year in 100 percent grant funding for E&T.  
+ A portion of these costs are expected to be covered using existing 100 percent grant funding.

*Regulatory Impact Analysis:* A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100 million or more in any one year). The Department does not anticipate that this proposed rule will have economic impacts of \$100 million or more in any one year, and therefore, it does not meet the definition of “economically significant” under Executive Order 12866. An analysis assessing the costs and benefits of this rule is presented below.

As explained above, this proposed rule codifies the 2018 Farm Bill changes related to E&T program operations, the ABAWD work requirement, and the allocation and reallocation of 100 percent grant funds. Those changes and their expected costs and benefits are summarized briefly below:

*Changes to SNAP E&T Programs, Components, and Activities*

Pursuant to the 2018 Farm Bill, the proposed rule makes several changes to E&T components and allowable activities, including:

- Replacing job search with supervised job search as an E&T component (although unsupervised job search would remain an allowable activity within an E&T component, subject to certain limitations);
- eliminating job finding clubs as an allowable activity;
- replacing job skills assessments with employability assessments;
- adding apprenticeships and subsidized employment as allowable activities;
- requiring a 30-day minimum for receipt of job retention services; and
- allowing activities from the 2014 Farm Bill E&T pilots to become allowable E&T components, if those activities had a demonstrable impact on the ability of participants to find and

retain employment that leads to increased income and reduced reliance on public assistance.

The proposed rule would also implement the 2018 Farm Bill provision that requires all E&T programs to provide case management services to E&T participants, in addition to one or more E&T components. We expect the cost of the case management to be approximately \$30.4 million per year. Consistent with the estimates used for the Paperwork Reduction Act section of the proposed rule, we assume approximately 460,000 annual E&T participants who participate on average for 3.27 months. We further assume each participant receives just over 1 hour total of case management services (30 minutes for the initial case management meeting and 15 minutes for subsequent monthly meetings). In addition, we expect caseworkers to spend approximately 15 minutes per case recording case notes and otherwise documenting the case management

interactions (for a total of 1.32 hours per case). Using a fully-loaded hourly rate (including benefits and indirect costs) of approximately \$50<sup>4</sup> results in an annual cost of about \$30.4 million, shared equally. The Department believes that initially most States will use 100 percent grant funding, including the increased funding provided through the 2018 Farm Bill, to pay for the required case management services. In some

States this may mean States reallocate funds from other activities in order to provide sufficient case management.

The case management requirement will also increase burden on individual SNAP participants as they will be required to participate in monthly discussions with their case manager regarding their E&T participation and plans for self-sufficiency. While the Department expects most of the

conversations will be held by telephone, in some instances E&T participants may need to travel to meet their case manager in-person. Therefore, the average number of burden hours per participant is expected to be slightly larger to account for travel time (1.4 hours versus 1.32 hours).<sup>5</sup> The additional burden is expected to cost SNAP E&T participants approximately \$4.6 million annually.

TABLE 2—ANNUAL COST OF BURDEN ASSOCIATED WITH CASE MANAGEMENT SERVICES

	State agency burden	Household burden
E&T participants per year .....	460,000	460,000
Burden hours per participant .....	1.32	1.4
Hourly wage rate * .....	\$50.00	\$7.25
Total Annual Cost (Federal and State shares millions) .....	\$30.4	\$4.6

\* State Agency rate is a fully loaded rate. Household rate is equal to the Federal minimum wage. Totals may not sum due to rounding.

*Changes to Funding Allocation/ Reallocation*

The proposed rule would establish a funding formula for reallocated E&T funds, in accordance with statutory changes. It also would codify the increase to \$100,000 in the minimum allocation of 100 percent funds to State agencies. While these changes may affect the amount of funds received by individual States, the Department does not expect these changes to affect overall spending on SNAP E&T. Prior to the 2018 Farm Bill, three States (Virgin Islands, Wyoming and North Dakota) received less than the \$100,000 minimum allocation and now receive a larger grant. Over the past three years, less than \$10 million per year in 100 percent grant funds have been reallocated, and the amount available for reallocation has been declining.

*Changes Affecting Work Requirements*

Pursuant to the 2018 Farm Bill, the proposed rule would make a number of changes affecting SNAP work requirements (both the ABAWD requirement and mandatory E&T). The proposed rule would:

- Add workforce partnerships to the list of programs that may be used to meet SNAP work requirements;
- add employment and training programs for veterans operated by the Department of Labor or the Department of Veterans Affairs to the list of work

programs that may be used to meet the ABAWD work requirement;

- require State agencies to inform ABAWDs both orally and in writing of the ABAWD work requirement and time limit;
- codify the statutory change that reduces the number of ABAWD work exemptions from 15 percent to 12 percent and change their name to “discretionary exemptions;”
- require State agencies to provide good cause for noncompliance with E&T if a suitable component or opening in an E&T program is not available;
- require State agencies to re-direct individuals who are determined ill-suited for an E&T program to other more suitable activities; and
- require that, at recertification, all State agencies advise certain types of households subject to the general work requirement of employment and training opportunities.

Most of these provisions are not expected to have cost impacts. Most States do not use all of their available discretionary exemptions and currently have a large bank of unused exemptions.<sup>6</sup> Therefore, the reduction in available exemptions is unlikely to impact individual ABAWDs. Permitting individuals to fulfill the ABAWD work requirement or mandatory E&T through workforce partnerships, which are operated by private employers or non-profit groups, may result in additional ABAWDs meeting the work requirement

and retaining SNAP eligibility. However, such programs are not currently widespread. Given the lack of available data for such programs and the requirements for establishing a workforce partnership, the Department does not believe they will become commonplace and has, therefore, assumed there would be only negligible impacts of this change on the SNAP ABAWD population.

The requirement that State agencies inform ABAWDs both orally and in writing of the ABAWD work requirement and time limit is expected to result in additional burden for State agencies as this is a new requirement. However, having this information may mean that ABAWDs better understand the work requirement and how to meet it, and thus are better able to fulfill those requirements and retain SNAP eligibility. States agencies are already required to inform work registrants and mandatory E&T participants of their respective work requirements in existing regulations at 7 CFR 273.7(c) (OMB Control Number 0584-0064; Expiration date 7/31/2020). Similarly, the requirement that State agencies re-direct ill-suited individuals is expected to increase State agency burden as the State will need to generate a notice of E&T participation change that would be sent to the participant. Together, this additional burden is expected to cost approximately \$1.5 million annually, with costs divided equally between

<sup>4</sup> Assumes an average hourly rate of \$30.12 for a case worker, plus 30 percent for benefits and 20 percent for overhead, rounded to \$50. Based on May 2018 BLS Occupational and Wage Statistics for “Social Workers, All Other,” available at <https://www.bls.gov/oes/tables.htm>. Overhead is included because this is a new activity and will likely result in hiring of additional staff or contractors.

<sup>5</sup> For more information on the derivation of these estimates, please see the Paperwork Reduction Act section of this proposed rule.

<sup>6</sup> Typically States use far fewer exemptions in a fiscal year than they earn. For example, during Fiscal Year 2018, only one State used as many exemptions as they earned for Fiscal Year 2018 and two States used more than 80 percent of their

number of earned exemptions. As a result, most States have accumulated a bank of carryover exemptions (see FY 2019 Discretionary Exemptions with Carryover). Because of this carryover the reduction in earned exemptions would not have impacted the States’ ability to provide exemptions to individual ABAWDs.

State agencies and the Federal Government. The table below shows how these estimates were derived.

Government. The table below shows how these estimates were derived.

TABLE 3—STATE AGENCY COST OF BURDEN RELATED TO SENDING NEW REQUIRED NOTICES

	ABAWD written statement	Notice of E&T participation change
Occurrences per year <sup>4</sup> .....	2,029,000	46,000
Burden hours per occurrence <sup>7</sup> .....	.033	.033
Hourly wage rate <sup>8</sup> .....	\$22.34	\$22.34
Total Annual Cost (Federal and State shares, millions) .....	\$1.5	\$0.03

The Department also anticipates a small (\$0.02 million) one-time burden for State Agencies to develop the new ABAWD written statement, the notice of E&T Participation Change, and the list of employment and training services that will be provided to work registrant households at certification and

recertification. This assumes States spend on average 24 hours developing each new notice and an average wage of \$18.02 per hour (24 \* 18.02 \* 53 State Agencies = \$22,900).

Households will also face new burden associated with reviewing these documents when received. Households

with work registrants, who will receive a list of E&T services at certification and recertification, will also face additional burden associated with reading that list. Each activity is expected to result in a minimal amount of administrative burden, about \$1.1 million total over the three activities.

TABLE—HOUSEHOLD COST OF BURDEN RELATED TO READING NEW REQUIRED NOTICES

	ABAWD written statement	Notice of E&T participation change	List of employment and training services
Occurrences per year <sup>4</sup> .....	2,029,000	46,000	5,496,000
Burden hours per occurrence <sup>9</sup> .....	.02	.02	0.2
Hourly wage rate <sup>10</sup> .....	\$7.25	\$7.25	\$7.25
Total Annual Cost (Federal and State shares, millions) .....	\$0.3	( * )	\$0.8

\* Minimal—less than \$1 million.

While these changes are estimated to increase burden for State agencies, these changes are expected to provide important protections to individuals subject to the ABAWD time limit. The notice requirements will help ensure that these individuals are adequately informed of their responsibilities with respect to work requirements and of what steps they should take in order to comply with those requirements or if

they believe they should be exempt from those requirements.

*Changes to Reporting Requirements*

The proposed rule would also modify the required reporting elements in the quarterly E&T Program Activity Report provided by State agencies to include the number of SNAP participants who are required to participate in E&T and, of those, the number who begin

participation. Reporting on these additional elements is expected to increase reporting burden on 17 State agencies that currently operate mandatory E&T programs. The Department will add two reporting elements to form FNS-583, which State agencies must submit annually with the fourth quarter report. This additional burden is expected to be of minimal cost to State agencies.

TABLE 5—COST OF STATE AGENCY BURDEN, NEW REPORTING REQUIREMENTS

	State agency burden
State agencies .....	17
Reports per year (2 additional elements) .....	1

<sup>7</sup> Estimates of occurrences of ABAWD notifications are based on the expected number of SNAP ABAWD participants in FY 2021, adjusted to account for individuals expected to lose eligibility as a result of recently-finalized rules related to geographic waivers of the time limit. Estimates of notices of ill-suited determination assume 10 percent of E&T participants are found to be ill-suited for their assigned activity. For more information on these estimates, please see the Paperwork Reduction Act section of this proposed rule.

<sup>8</sup> Based on the Bureau of Labor Statistics May 2018 Occupational and Wage Statistics for “eligibility interviewers, government programs,” available at <https://www.bls.gov/oes/tables.htm>.

<sup>9</sup> Estimates of occurrences of ABAWD notifications are based on the expected number of SNAP ABAWD participants in FY 2021, adjusted to account for individuals expected to lose eligibility as a result of recently-finalized rules related to geographic waivers of the time limit. Estimates of notices of ill-suited determination assume 10 percent of E&T participants are found to be ill-

suited for their assigned activity. For more information on these estimates, please see the Paperwork Reduction Act section of this proposed rule.

<sup>10</sup> Based on the Bureau of Labor Statistics May 2018 Occupational and Wage Statistics for “eligibility interviewers, government programs,” available at <https://www.bls.gov/oes/tables.htm>.

<sup>11</sup> Based on the Bureau of Labor Statistics May 2018 Occupational and Wage Statistics for “Office and Administrative Support Workers, All other,” available at <https://www.bls.gov/oes/tables.htm>.

TABLE 5—COST OF STATE AGENCY BURDEN, NEW REPORTING REQUIREMENTS—Continued

	State agency burden
Hours per response .....	516.9
Hourly wage rate <sup>11</sup> .....	\$18.02
Total Annual Cost (Federal and State shares) .....	( * )

\* minimal—less than \$1 million.

Overall Impact on E&T Spending

In addition to the 100 percent grant funding provided by the Federal Government, most States spend their own funds on SNAP E&T services. This additional State E&T spending is matched by the Federal Government and referred to as 50–50 spending.

While the rule provisions are expected to result in some additional cost to State agencies (primarily related to case management and administrative burden), it is the Department’s belief that States will use the following strategies as they modify their E&T programs in accordance with the statutory and regulatory changes:

- In the first five years after implementation, the Department expects that most States will use 100 percent grant funding, including the increased funding provided through the 2018 Farm Bill, to pay for the required case management services.

- The Department anticipates that changes to allowable components and activities, which may result in a higher cost per E&T participant, will initially be managed by adjusting the number of participants served through various

components/activities rather than through investment of additional 50–50 matching funds by State Agencies. State Agencies’ budgets are often less flexible (for example, prohibitions on running a deficit or budgets that cover multiple years) and may not permit immediate increases in State E&T spending.

- Over the five year period covered by these estimates, the Department expects that some but not all States will increase their investment in 50–50 matching funds to cover both the costs of case management services and to permit greater participation in new allowable activities and components that may show more success in moving individuals toward greater self-sufficiency.

In total, we estimate that these provisions of the rule will increase spending on E&T by \$4 million in Fiscal Year (FY) 2020, and by \$52 million over the five FYs 2020–2024. Costs would be shared equally between the Federal Government and State agencies.

The estimates were derived as follows:

- Between FY 2016 and FY 2018, the Federal share of 50–50 spending

increased by about \$17 million, from \$171 million to \$188 million. Therefore, we assume that the Federal share of State 50–50 spending would have increased by about \$8 million per year.

- In response to the changes in allowable components and activities as well as the case management requirement, we assume that each year a small number of States increase their 50–50 spending beyond current projected spending. In FY 2020, we assume 4 States spend about 10 percent more, and by FY 2024 17 States have increased their spending by about 10 percent overall.

- The per-State increase in 50–50 spending is approximately \$0.5 million per State. The per-State increase is estimated as follows: A 10 percent increase in 50–50 spending equals \$20.5 million in FY 2020. There are 53 State agencies (including the District of Columbia, Guam, and the US Virgin Islands), 43 of which currently spend 50–50 funding on E&T services, therefore \$20.5 million is divided by 43 to calculate the average (\$20.5 million / 43 = \$0.49 million).

TABLE 6—EXPECTED INCREASE IN STATE 50–50 SPENDING OVER TIME

[Dollars in millions]

	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024	Total
Pre-Farm Bill projected 50–50 spending	205	213	221	229	237	.....
10% increase (amount per State) .....	.49	.49	.49	.49	.49	.....
Number of States increasing spending ...	4	6	8	12	17	.....
State agency Cost .....	2	3	4	7	9	26
Total, Federal + State .....	4	6	9	14	19	52

\* Totals may not sum due to rounding.

Benefits of Proposed Rule

The Department believes the statutory changes made by Section 4005 of the 2018 Farm Bill are intended to strengthen E&T programs and improve SNAP participants’ ability to gain and retain employment, thus reducing participant reliance on the social safety net. The changes contained in the proposed rule allow for more evidence-based activities, requiring more accountability on the part of both State agencies and E&T participants, while

also retaining State flexibility. The requirement to inform ABAWDs of their work requirement will help ensure that these individuals are adequately informed of their responsibilities with respect to work requirements and of what steps they should take in order to comply with those requirements, or if they believe they should be exempt from those requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, the Secretary certifies that this rule 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

changes required by the regulations are directed toward State agencies operating SNAP programs and SNAP E&T programs.

#### **Executive Order 13771**

This proposed rule is expected to be an E.O. 13771 regulatory action.

#### **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**

This Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance under Number 10.551 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.) FNS Regional offices are in contact with State agencies, who provide feedback on policies and procedures for the E&T program and overall SNAP policy.

#### **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 considered the impact of this rule on State and local

governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary 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 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 this proposed rule in accordance with USDA Regulation 4300–4, “Civil Rights Impact Analysis,” to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule’s intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in the Supplemental Nutrition Assistance Program.

#### **Executive Order 13175**

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments, or proposed legislation. Additionally, other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes also require consultation. FNS consulted with tribes on this issue at the USDA Farm Bill Implementation Consultation held on May 1, 2019 in Washington DC. The tribes had no comment. If further consultation is requested, the Office of Tribal Relations will work with FNS to ensure quality consultation is provided.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 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 contains 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 May 18, 2020.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Fax: 202–395–7285, or email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please also send a copy of your comments to Leigh Gantner, Supplemental Nutrition Assistance Program (SNAP), 1320 Braddock Place, Alexandria, VA 22314. For further information, or for copies of the information collection requirements, please contact Leigh Gantner at the address indicated above. 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:* Employment and Training Opportunities in the Supplemental Nutrition Assistance Program.

*OMB Number:* 0584–NEW.

*Form Number:* FNS 583.

*Expiration Date:* N/A.

*Type of Request:* New request.

*Abstract:* This proposed rule would implement changes made by Section 4005 of the Act to the E&T program to strengthen State and Federal accountability to move SNAP participants toward self-sufficiency. FNS is requesting a new OMB Control

Number for the requirements in this proposed rule. Some of the proposed changes will modify current regulations resulting in an increase in the reporting burden for State agencies. Other requirements are new and will result in new mandatory reporting burden requirements for State agencies, as well as individuals participating in E&T. First, the Act requires that State agencies provide individuals participating in E&T with case management services. Many State agencies already provide case management activities to SNAP E&T participants; however, State agencies are not currently reporting this activity to the Department and the Department is not currently collecting case management activities from these State agencies. This regulatory change to require that State agencies provide these services as part of their E&T programs and include them in their E&T State plans will help ensure that E&T participants receive the guidance and support needed to move toward self-sufficiency. Second, the Act establishes that individuals participating in an E&T component who are determined ill-suited by the E&T provider for that component, must be engaged by the State agency to assess their mental or physical fitness or to identify another type of training or assistance. The Department proposes at 7 CFR 273.7(c)(18)(i) that individuals who have been determined ill-suited be sent a Notice of Employment and Training Participation Change (NETPC) by the State agency informing them of this determination. This notice will constitute a new burden for State agencies and for SNAP participants who must read the notice. Third, to increase State accountability for moving SNAP participants toward self-sufficiency, the Department proposes at 7 CFR 273.7(c)(11) to add two additional data elements to the final quarterly E&T Program Activity Report (FNS 583 reports) (SNAP Employment and Training Program activity Report; OMB Control Number: 0584–0594; Expiration

Date: 09/30/2019; currently under renewal) to collect information on the number of SNAP participants who are required by the State agency to participate in an E&T program, and of those the number who actually begin to participate in an E&T program. Fourth, the Department proposes in new 7 CFR 273.24(b)(8) to add a State agency requirement to inform every ABAWD in writing about the ABAWD work requirement and time limit, thus creating a new burden to develop and provide this written statement, and to participants to read this statement. This proposed requirement to inform ABAWDs of their work requirement will be added to a proposed consolidate written statement that will consolidate the requirements to inform ABAWDs, work registrants, and mandatory E&T participants of their work requirements, as applicable. The requirements to inform work registrants and mandatory E&T participants of their work requirements are already covered by an existing burden (OMB Control number: 0584–0064; Expiration Date 7/31/2020; under renewal). And fifth, the Department proposes in new 7 CFR 273.14(b)(5) that, at a minimum, the State agency provide zero income households with no elderly or disabled members a list of available employment and training services for household members subject to the general work requirements either electronically (e.g., on a website or in an email) or in printed form. This requirements creates a new burden on State agencies to develop the list of opportunities and for participants to read the list. The Department notes that the proposed rule would also create a new requirement for State agencies to consult with their workforce development boards, and to explain in their E&T State plans the extent to which they will coordinate with title I of WIOA. Based on the existing regulatory requirement to work with their State workforce development systems, this information is already collected by the Department through the E&T State plans and is included in an

existing burden (OMB Control Number: 0584–0083; Expiration Date: 7/31/2020), as a result the new Farm Bill requirement is not expected to increase the existing burden.

The basic recordkeeping requirement for household case file documentation is part of OMB Control Number: 0584–0064; Expiration Date 07/31/2020. FNS will add additional burden to this collection to accommodate the increased burden resulting from providing case management to E&T participants. The recordkeeping burden for the FNS 583 is already sufficient as documented in OMB Control Number: 0584–0339; Expiration Date: 01/31/2021. FNS intends to merge this updated reporting burden estimates into 0584–0594 and 0584–0064, once the final rulemaking information collection request is approved. At that time, FNS will publish a separate notice in the **Federal Register** announcing OMB’s approval.

*Respondents:* There are 53 State agencies with 159 SNAP State agencies employees who will participate in this data collection.

*Estimated Number of Respondents:* 159.

*Estimated Number of Responses per Respondent:* 31,972.107.

*Estimated Total Annual Responses:* 5,083,565.

*Estimated Time per Response:* 0.1362451 hours.

*Estimated Total Annual Burden on Respondents:* 692,611 hours.

*Respondents:* 8,030,999 (Individuals) SNAP E&T participants.

*Estimated Number of Respondents:* 8,030,999.

*Estimated Number of Responses per Respondent:* 1.130.

*Estimated Total Annual Responses:* 9,075,199.

*Estimated Time per Response:* 0.0872938 hours.

*Estimated Total Annual Burden on Respondents:* 792,209.

The total burden for this rulemaking is 1,484,820 burden hours and 14,158,764 total annual responses.

Reg. section	Affected public	Respondent type	Description of activity	Estimated number of respondents	Estimated frequency of response	Total annual responses	Number of burden hours per response	Estimated total burden hours	Previous burden hours used	Differences due to program changes	Difference due to adjustment	Hourly waver rate*	Estimated cost to respondents
7 CFR 273.7(c)(1) ....	State Agencies ...	State Agency E&T Case Manager*	Provide Case Management Services.	53	28,381	1,504,193	0.326	490,367	0	0	0	\$30.12	\$14,769,852
7 CFR 273.7(c)(1) ....		State Agency E&T Case Manager*	Document Case Management Services.	53	28,381	1,504,193	0.08	120,335	0	0	0	30.12	3,624,503
7 CFR 273.7(c)(18)(i)		State Eligibility worker*	Generate notice of ill-suited determination.	53	868	46,004	0.0334	1,537	0	0	0	22.34	34,326
7 CFR 273.7(c)(11) ..		State Agency Administrative Staff*	Reporting FNS 583 data elements** (OMB Control Number 0584–0594).	53	4	212	98	20,776	21,889	0	1,113	\$18.02	\$374,384
7 CFR 273.7(c)(11) ..		State Agency Administrative Staff*	Reporting additional FNS 583 data elements.	17	1	17	516.9	8,788	0	8,788	0	18.02	158,360

Reg. section	Affected public	Respondent type	Description of activity	Estimated number of respondents	Estimated frequency of response	Total annual responses	Number of burden hours per response	Estimated total burden hours	Previous burden hours used	Differences due to program changes	Difference due to adjustment	Hourly wagger rate *	Estimated cost to respondents
7 CFR 273.7(a)(5) ...		State Eligibility worker *	Inform ABAWDs of the ABAWD work requirement and time limit in writing.	53	38,283	2,028,999	0.0334	67,769	0	0	0	22.34	1,513,950
7 CFR 273.7(a)(5) ...		State Agency Administrative Staff *	Develop ABAWD written statement.	53	1	53	24	1,272	0	0	0	18.02	22,921
Sub-Total State Agencies .....				159	95,915.00	5,083,459	0.135748	690,067					20,123,912
7 CFR 273.7(c)(1) ....	Individual & Household.	E&T Participants ....	Participate in Case Management.	460,000	3.27	1,504,200	0.426	640,789	0	0	0	7.25	4,645,720
7 CFR 273.7(c)(18)(i)	Individual & Household.	E&T Participants ....	Read notice of ill-suited determination.	46,000	1	46,000	0.02	920	0	0	0	7.25	6670
Sub-Total Individual/Households .....				506,000	4.27	1,550,200	0.413952	641,709					4,652,390
Grand Total Reporting Burden with both affected public and States .....				506,159	95,919.27	6,633,659	0.20076	1,331,776	21,858	8,788	1,113		24,776,302
7 CFR 273.7(c)(1) ....	State Agencies ...	State Agency E&T Case Manager *	Provide Case Management Services.	53	28,381	1,504,193	0.326	490,367	0	0	0	30.12	14,769,852
7 CFR 273.7(c)(1) ....		State Agency E&T Case Manager *	Document Case Management Services.	53	28,381	1,504,193	0.08	120,335	0	0	0	30.12	3,624,503
7 CFR 273.7(c)(18)(i)		State Agency Administrative Staff *	Develop Notice of Employment and Training Participation Change (NETPC).	53	1	53	24	1,272	0	0	0	18.02	22,921
7 CFR 273.7(c)(18)(i)		State Eligibility worker *	Generate Notice of Employment and Training Participation Change (NETPC).	53	868	46,004	0.0334	1,537	0	0	0	22.34	34,326
7 CFR 273.7(c)(11) ..		State Agency Administrative Staff *	Reporting FNS 583 data elements** (OMB Control Number 0584-0594).	53	4	212	98	20,776	21,889	0	1,113	18.02	374,384
7 CFR 273.7(c)(11) ..		State Agency Administrative Staff *	Reporting additional FNS 583 data elements.	17	1	17	516.9	8,788	0	8,788	0	18.02	158,360
7 CFR 273.7(a)(5) ...		State Agency Administrative Staff *	Develop ABAWD written statement of work requirements.	53	1	53	24	1,272	0	0	0	18.02	22,921
7 CFR 273.7(a)(5) ...		State Eligibility worker *	Inform ABAWDs of the ABAWD work requirement.	53	38,283	2,028,999	0.0334	67,769	0	0	0	22.34	1,513,950
7 CFR 273.14(b)(5)		State Agency Administrative Staff *	Develop list of Employment and Training Services.	53	1	53	24	1,272	0	0	0	18.02	22,921
Sub-Total State Agencies .....				159	31,972.107	5,083,565	0.136245	692,611					20,169,755
7 CFR 273.7(c)(1) ....	Individual & Household.	E&T Participants ....	Participate in Case Management.	460,000	3.27	1,504,200	0.426	640,789	0	0	0	7.25	4,645,720
7 CFR 273.7(c)(18)(i)		E&T Participants ....	Read Notice of Employment and Training Participation Change.	46,000	1	46,000	0.02	920	0	0	0	7.25	6,670
7 CFR 273.7(a)(5) ...		E&T Participants ....	Read written statement of work requirements.	2,028,999	1	2,028,999	0.02	40,580	0	0	0	7.25	294,205
7 CFR 273.14(b)(5)		E&T Participants ....	Read list of Employment and Training Services.	5,496,000	1	5,496,000	0.02	109,920	0	0	0	7.25	796,920
Sub-Total Individual/Households .....				8,030,999	1.13002118	9,075,199	0.087294	792,209					5,743,515
Grand Total Reporting Burden with both affected public and States .....				8,031,158	31,973.24	14,158,764	0.104869	1,484,820	21,858	8,788	1,113		25,913,270

\* Note: Each State Eligibility worker is counted once as all State Agency employees.  
 \*\* Note: FNS has not included the burden already approved for the current 583 reporting elements w/additional funds in the grand total. The current FNS 583 reporting elements are undergoing a separate revision with OMB control number: 0584-0594; Expiration Date: 9/30/19 (currently going through agency revisions); FNS is not seeking approval for these burden estimates in the request. All burden hours associated with the FNS 583 will be merged into 0584-0594 when OMB approves the information collection request (ICR) associated with the Final Rule.  
 \*\*\* Based on the Bureau of Labor Statistics May 2018 Occupational and Wage Statistics (<http://www.bls.gov/oes/current/>)—the salaries of the case managers are considered to be "Social Workers—other" (21-1029) functions valued at \$30.12 per staff hour. The salaries of the eligibility workers are considered to be "Eligibility Interviewers, government programs" (43-4061) functions valued at \$22.34. The salaries of Office and Administrative Support Workers, All other (43-9199) is \$18.02 per hour. The \$7.25 used to calculate a cost to applicants is the Federal minimum wage.

**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**

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs—social programs.

7 CFR Part 273

Administrative practice and procedures, Food stamps, Grant

programs—social programs, Penalties, Reporting and recordkeeping.

Accordingly, 7 CFR parts 271 and 273 are proposed to be amended as follows:

**PART 271 —GENERAL INFORMATION AND DEFINITIONS**

- 1. The authority citation for part 271 continues to read as follows:



Authority: 7 U.S.C. 2011–2036.

■ 2. In § 271.2:

- a. Remove the definitions of “Employment and training (E&T) component” and “Employment and training (E&T) mandatory participant” and add in their places the definitions “Employment and Training (E&T) component” and “Employment and Training (E&T) mandatory participant”, respectively;
- b. Add the definition of “Employment and Training (E&T) participant” in alphabetical order;
- c. Remove the definition of “Employment and training (E&T) program” and add in its place the definition of “Employment and Training (E&T) program”;
- d. Add the definition of “Employment and Training (E&T) voluntary participant” in alphabetical order; and
- e. Remove the definition of “Placed in an employment and training (E&T) program”.

The additions and revisions read as follows:

§ 271.2 Definitions.

\* \* \* \* \*

*Employment and Training (E&T) component* a work experience, work training, supervised job search, or other program described in section 6(d)(4)(B)(i) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4)(B)(i)) designed to help SNAP participants move promptly into unsubsidized employment.

*Employment and Training (E&T) mandatory participant* a supplemental nutrition assistance program applicant or participant who is required to work register under 7 U.S.C. 2015(d)(1) or (2) and who the State determines should not be exempted from participation in an employment and training program and is required to participate in E&T.

*Employment and Training (E&T) participant* means an individual who meets the definition of a mandatory or voluntary E&T participant.

*Employment and Training (E&T) program* means a program operated by each State agency consisting of case management and one or more E&T components.

*Employment and Training (E&T) voluntary participant* means a supplemental nutrition assistance program applicant or participant who volunteers to participate in an employment and training (E&T) program.

\* \* \* \* \*

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**

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

Authority: 7 U.S.C. 2011–2036.

■ 4. In § 273.7:

- a. Revise paragraphs (c)(1) through (3) and the first sentence of paragraph (c)(4);
- b. Amend paragraph (c)(5) by adding a sentence at the beginning of the paragraph;
- c. Amend paragraph (c)(6)(i) by adding two sentences after the second sentence;
- d. Redesignate paragraphs (c)(6)(ii) through (xvii) as paragraphs (c)(6)(iii) through (c)(6)(xviii), respectively, and add a new paragraph (c)(6)(ii);
- e. Amend newly redesignated paragraph (c)(6)(xi) by removing the word “components” and adding in its place the word “program”;
- f. Amend newly redesignated paragraph (c)(6)(xii) by adding four sentences after the second sentence;
- g. Add paragraph (c)(6)(xix);
- h. Amend paragraph (c)(9)(iv) by removing the words “15 percent exemption allowance” and adding in their place the words “discretionary exemptions”;
- i. Amend paragraph (c)(11)(i) by removing the word “and” at the end of the paragraph;
- j. Amend paragraph (c)(11)(ii) by removing the period at the end and adding in its place “; and”;
- k. Add paragraphs (c)(11)(iii), (c)(17)(x), and (c)(18);
- l. Amend paragraph (d)(1)(i)(C) by removing the number “\$50,000” in every place it appears and adding in its place the number “\$100,000”;
- m. Remove paragraph (d)(1)(i)(D);
- n. Amend paragraph (d)(1)(ii)(A) by removing the word “component” in every place it appears and adding in their place the word “program” and by removing the words “to subsidize the wages of participants, or”;
- o. Add paragraph (d)(1)(iii);
- p. Revise the first sentence of paragraph (d)(4)(v) and paragraph (e) introductory text;
- q. Redesignate paragraphs (e)(1) through (4) as paragraphs (e)(2) through (5) and add a new paragraph (e)(1);
- r. Amend newly redesignated paragraph (e)(2) introductory text by revising sentences seven and eight;
- s. Revise newly designated paragraphs (e)(2)(i), (ii), and (iv);
- t. Amend newly redesignated paragraph (e)(2)(v) by removing the words “, or a WIA or State or local program”;

- u. Amend newly redesignated paragraph (e)(2)(viii) by adding a sentence after the second sentence;
- v. Add paragraph (e)(2)(ix);
- w. Amend newly redesignated paragraph (e)(4)(i) by adding the words “case management or” after the words “the length of time a participant spends in”;
- x. Amend newly redesignated paragraph (e)(4)(ii) in the first sentence by removing the text “(e)(1)(iii) and (e)(1)(iv)” and adding in its place the text “(e)(2)(iii) and (iv)” and in the second sentence by removing the word “component” and adding in its place the word “program”;
- y. Amend newly redesignated paragraph (e)(5)(i) by removing the words “program components” and adding in its place the text “an E&T program”;
- z. Amend newly redesignated paragraph (e)(5)(ii) by removing the word “component” and adding in its place the word “program”;
- aa. Revise newly redesignated paragraph (e)(5)(iii);
- bb. Amend paragraph (f)(1) introductory text by removing the text “paragraphs (i)(2) and (i)(3)” and adding in its place “paragraphs (i)(2), (3), and (4)”;
- cc. Amend paragraph (f)(6) in the third sentence by adding the words “or service of the E&T program” after the words “relevant component” and in the fifth sentence by removing the word “component” and adding its place the word “program”;
- dd. Redesignate paragraph (i)(4) as paragraph (i)(5) and add a new paragraph (i)(4);
- ee. Remove the heading from newly redesignated paragraph (i)(5); and
- ff. Add paragraph (n).

The revisions and additions read as follows:

§ 273.7 Work provisions.

\* \* \* \* \*

(c) \* \* \*

(1) The State agency must register for work each household member not exempted by the provisions of paragraph (b)(1) of this section.

(i) As part of the work registration process, the State agency must orally explain to the individual the pertinent work requirements, the rights and responsibilities of work-registered household members, and the consequences of failure to comply. This explanation must also be provided when a previously exempt individual or new household member becomes a work registrant, and at recertification.

(ii) The State agency must also provide the information in paragraph

(c)(1)(i) of this section in a written statement to each individual in the household who is registered for work explaining the work requirements. If the individual is an able-bodied adult without dependents (ABAWD) in accordance with § 273.24(a), required to participate in E&T in accordance with paragraph (c)(2) of this section, or both, the written statement must also consolidate and explain these applicable work requirements. The consolidated written statement must include all pertinent information related to each of the applicable work requirements, including: An explanation of each applicable work requirement; exemptions from each applicable work requirement; the rights and responsibilities of each applicable work requirement for individuals subject to the work requirements; what is required to maintain eligibility under each applicable work requirement; pertinent dates by which an individual must take any actions to remain in compliance with each of the applicable work requirements; the consequences for failure to comply with each applicable work requirement; and any other information the State agency believes would assist the household members with compliance. If the individual is subject to mandatory E&T, the consolidated written statement must also explain the individual's right to receive participant reimbursements for allowable expenses related to participation in E&T, up to any applicable State cap, and the responsibility of the State agency to exempt the individual from the requirement to participate in E&T if the individual's allowable expenses exceed what the State agency will reimburse, as provided in paragraph (d)(4) of this section. In addition, as stated in paragraphs (c)(1)(i) and (c)(2) of this section, and § 273.24(a)(5), the State agency must provide a comprehensive oral explanation to the household of each applicable work requirement pertaining to individuals in the household. Both the consolidated written statement and the comprehensive oral explanation must be provided at certification, recertification, and when a previously exempt individual or new household member becomes subject to a work requirement.

(iii) The State agency must permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a)(1)(i) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to

the State agency or when the registration is otherwise annotated or recorded by the State agency.

(2) The State agency is responsible for screening each work registrant to determine whether or not it is appropriate, based on the State agency's criteria, to require the individual to participate in an E&T program. Upon making this determination, the State agency must inform the participant orally of the requirements of the program, what will constitute noncompliance, and the sanctions for noncompliance. The State agency must also provide this information to the participant in writing, as specified in paragraph (c)(1)(ii) of this section. The State agency is also responsible for referring mandatory E&T participants, as defined in paragraph (e) of this section and § 272.1, required to participate in E&T to the E&T program. The State agency may establish their own procedures for this referral, which may vary from participant to participant, but in all cases, the E&T participant must receive both case management services and at least one E&T component while participating in E&T. The State agency must determine the order the participant will receive the elements of an E&T program (e.g., case management followed by a component, case management embedded within a component, etc.) and explain what the participant must do next to access the E&T program. If there is not an appropriate and available opening in an E&T program, the State agency must determine the participant has good cause for failure to comply with the mandatory E&T requirement in accordance with paragraph (i)(4) of this section. The State agency may, with FNS approval, use intake and sanction systems that are compatible with its title IV–A work program. Such systems must be proposed and explained in the State agency's E&T State Plan.

(3) After learning of an individual's non-compliance with SNAP work requirements in paragraph (a) of this section, the State agency must issue a notice of adverse action to the individual, or to the household if appropriate, within 10 days of establishing that the noncompliance was without good cause. The notice of adverse action must meet the timeliness and adequacy requirements of § 273.13. If the individual complies before the end of the advance notice period, the State agency will cancel the adverse action. If the State agency offers a conciliation process as part of its E&T program, it must issue the notice of adverse action no later than the end of the conciliation period. Mandatory E&T

participants who have been determined ill-suited for participation in an E&T component in accordance with paragraph (c)(18)(i) of this section shall not be subject to disqualification for refusal without good cause to participate in a mandatory E&T program until after the State has taken one of the four actions in paragraph (c)(18)(i)(B) of this section, and the individual subsequently refuses to participate without good cause.

(4) The State agency must design and operate an E&T program that consists of case management services in accordance with paragraph (e)(1) of this section and at least one or more, or a combination of, employment and/or training components as described in paragraph (e)(2) of this section. \* \* \*

(5) The State agency must design its E&T program in consultation with the State workforce development board, or with private employers or employer organizations if the State agency determines the latter approach is more effective and efficient. \* \* \*

(6) \* \* \*

(i) \* \* \* If a State agency plans to offer supervised job search in accordance with paragraph (e)(2)(i) of this section, the State agency must also include in the E&T plan a summary of the State guidelines implementing supervised job search. This summary of the State guidelines, at a minimum, must describe: The State-approved locations for supervised job search and how they were selected; and how the supervised job search component meets the requirements to directly supervise the activities of participants and track the timing and activities of participants;

(ii) A description of the case management services and models, the cost for providing the services, how participants will be referred to case management, how the participant's case will be managed, who will provide services, and how the service providers will coordinate with E&T providers, the State agency, and other community resources, as appropriate;

\* \* \* \* \*

(xii) \* \* \* The State agency must document how it consulted with the State workforce development board. If the State agency consulted with private employers or employer organizations in lieu of the State workforce development board, it must document this consultation and explain the determination that doing so was more effective or efficient. The State agency must include in its E&T State plan a description of any outcomes from the consultation with the State workforce development board or private employers

or employer organizations. The State agency must also address in the E&T State plan the extent to which E&T activities will be carried out in coordination with the activities under title I of WIOA;

\* \* \* \* \*

(ix) Any State agency that will be requesting Federal funds that may become available for reallocation in accordance with paragraph (d)(1)(iii)(A), (B), or (D) of this section should include this request in the E&T State plan for the year the State agency would plan to use the reallocated funds. The request must include a separate budget and narrative explaining how the State agency intends to use the reallocated funds. FNS will review all State agency requests for reallocated funds and notify State agencies of the approval of any reallocated funds in accordance with regulations at paragraph (d)(1)(iii)(E) of this section. FNS' approval or denial of requests for reallocated funds will occur separately from the approval or denial of the rest of the E&T State plan.

\* \* \* \* \*

(11) \* \* \*

(iii) Number of SNAP participants required to participate in E&T by the State agency and of those the number who begin participation in an E&T program. An E&T participant begins to participate in an E&T program when the participant commences at least one part of an E&T program including an orientation, assessment, case management, or a component.

\* \* \* \* \*

(17) \* \* \*

(x) State agencies certifying workforce partnerships for operation in their State in accordance with paragraph (n) of this section may report relevant data to demonstrate the number of program participants served by the workforce partnership, and of those how many were mandatory E&T participants.

\* \* \* \* \*

(18)(i) The State agency must ensure E&T providers are informed of their authority to determine if an individual is ill-suited for a particular E&T component. For purposes of this paragraph (c)(18), an E&T provider is the provider of an E&T component. The E&T provider must notify the State agency of an ill-suited determination as soon as possible after the determination is made and inform the State agency of the reason for the ill-suited determination. If the State agency is unable to obtain the reason for the ill-suited determination from the E&T provider, the State agency must continue to act on the ill-suited determination in accordance with this

section. The E&T provider has the authority to determine if an individual is ill-suited for the E&T component from the time an individual is referred to an E&T component until completion of the component. When a State agency receives notification that an individual has been determined ill-suited, and the individual is not exempt from the work requirements as specified in paragraph (b) of this section, the State agency must:

(A) Send a Notice of E&T Participation Change (NETPC) to the household, as soon as possible. The notice must inform the household of the ill-suited determination. In the case of an ABAWD who has been determined ill-suited for an E&T component, the notice must notify the ABAWD that regardless of the ill-suited determination, the ABAWD will begin to accrue countable months toward their 3-month participation time limit as of the date of the notice unless the ABAWD fulfills the work requirements in accordance with § 273.24. The notice must also provide contact information for the State E&T program; and

(B) Take the most suitable action from among the following options:

(1) Refer the individual to an appropriate E&T program component in accordance with paragraph (e)(1) of this section. Before making this referral, the State agency must ensure the individual meets State agency criteria for the E&T program in accordance with paragraph (c)(2) of this section, and that it is appropriate to refer the individual to an E&T component, considering the suitability of the individual for any available E&T components. Any individual referred to an E&T component must also receive case management services in accordance with paragraph (e)(1) of this section;

(2) Refer the individual to an appropriate workforce partnership as defined in paragraph (n) of this section, if available. Before making this referral, the State agency must provide information about workforce partnerships to assist the individual in making an informed decision about whether to voluntarily participate in the workforce partnership, in accordance with paragraph (n)(10) of this section;

(3) Reassess the physical and mental fitness of the individual. If the individual is not found to be physically or mentally fit, the individual is exempt from the work requirements in paragraph (a) of this section. If the individual is found to be physically or mentally fit, and the State agency determines the individual is not otherwise exempt from the general work requirements in paragraph (a) of this

section, the State agency must consider if one of the other available actions in paragraph (c)(18)(i)(B) of this section would be appropriate for the individual; or

(4) Coordinate, to the maximum extent practicable, with other Federal, State, or local workforce or assistance programs to identify work opportunities or assistance for the individual.

(ii) From the time an E&T provider determines an individual is ill-suited for an E&T component until after the State agency takes one of the actions in paragraph (c)(18)(i)(B) of this section, the individual shall not be found to have refused without good cause to participate in mandatory E&T. From the time an E&T provider determines an ABAWD is ill-suited for an E&T component, the ABAWD will begin to accrue countable months toward their 3-month participation time limit unless the ABAWD fulfills the work requirement in accordance with § 273.24.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) *Additional allocations.* If a State agency will not obligate and expend all of the funds allocated to it for a fiscal year under paragraph (d)(1)(i) of this section, FNS will reallocate the unobligated, unexpended funds to other State agencies during the fiscal year or subsequent fiscal year. FNS will allocate carryover funding to meet some or all of the State agencies' requests, as it considers appropriate and equitable in accordance with the following process:

(A) Not less than 50 percent shall be reallocated to State agencies requesting funding to conduct employment and training programs and activities for which the State agency had previously received funding under the pilots authorized by the Agricultural Act of 2014 (Pub. L. 113-79) that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance.

(B) Not less than 30 percent shall be reallocated to State agencies requesting funding for E&T programs and activities under paragraph (e)(1) or (2) of this section that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance, including activities targeted to:

(1) Individuals 50 years of age or older;

(2) Formerly incarcerated individuals;

(3) Individuals participating in a substance abuse treatment program;

(4) Homeless individuals;

(5) People with disabilities seeking to enter the workforce;

(6) Other individuals with substantial barriers to employment, including disabled veterans; or

(7) Households facing multi-generational poverty, to support employment and workforce participation through an integrated and family-focused approach in providing supportive services.

(C) State agencies who receive reallocated funds under paragraph (d)(1)(iii)(A) of this section may also be considered to receive reallocated funds under paragraph (d)(1)(iii)(B) of this section.

(D) The remaining funds not accounted for with the reallocations specified in paragraph (d)(1)(iii)(A) or (B) of this section shall be reallocated to State agencies requesting such funds for E&T programs and activities under paragraph (e)(1) or (2) of this section that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance.

(E) State agencies requesting the reallocated funds specified in paragraph (d)(1)(iii)(A), (B), or (D) of this section shall make their request for those funds in their E&T State plans submitted for the upcoming fiscal year. FNS will determine the amount of reallocated funds each requesting State agency shall receive and provide the reallocated funds to those State agencies within a timeframe that allows each State agency to which funds are reallocated at least 270 days to expend the reallocated funds. When making the reallocations, FNS will also consider the size of the request relative to the level of the State agency's E&T spending in prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program.

(F) Unobligated, unexpended funds not reallocated in the process specified in paragraph (d)(1)(iii)(E) of this section, shall be reallocated to State agencies upon request for E&T programs and activities under paragraph (e)(1) or (2) of this section that FNS determines have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance. In making these reallocations FNS will also consider the size of the request relative to the level of the State agency's E&T spending in

prior years, the specificity of the State agency's plan for spending carryover funds, and the quality of program and scope of impact for the State's E&T program.

\* \* \* \* \*

(4) \* \* \*

(v) The State agency must inform all mandatory E&T participants that they may be exempted from E&T participation if their monthly expenses that are reasonably necessary and directly related to participation in the E&T program, including participation in case management services and E&T components, exceed the allowable reimbursement amount. \* \* \*

(e) *Employment and training programs.* Work registrants not otherwise exempted by the State agency are subject to the E&T program participation requirements imposed by the State agency. Such individuals are referred to in this section as E&T mandatory participants or mandatory E&T participants. Mandatory E&T participants who have been determined ill-suited for participation in an E&T component in accordance with paragraph (c)(18)(i) of this section shall not be subject to disqualification for refusal without good cause to participate in mandatory E&T during the time specified in paragraph (c)(18)(ii) of this section. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency will result in disqualification as specified in paragraph (f)(2) of this section.

(1) *Case management.* The State E&T program must provide case management services such as comprehensive intake assessments, individualized service plans, progress monitoring, or coordination with service providers which are provided to all E&T participants. The purpose of case management services shall be to guide the participant towards appropriate E&T components and activities based on the participant's needs and interests, support the participant through the E&T program, and to provide services that help the participant achieve program goals. The provision of case management services must not be an impediment to the participant's successful participation in E&T. In addition, if the case manager determines a mandatory E&T participant may meet an exemption from the requirement to participate in an E&T program, the case manager must inform the appropriate State agency staff. Also, if the case manager is unable to identify an appropriate and available opening in an

E&T component for a mandatory E&T participant, the case manager must inform the appropriate State agency staff.

(2) \* \* \* In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, supervised job search and job search training, when offered as components of an E&T program, are not qualifying activities relating to the participation requirements necessary to fulfill the ABAWD work requirement under § 273.24. However, job search, including supervised job search, or job search training activities, when offered as part of other E&T program components, are acceptable as long as those activities comprise less than half the total required time spent in the components. \* \* \*

(i) A supervised job search program. Supervised job search programs are those that occur at State-approved locations at which the activities of participants shall be directly supervised and the timing and activities of participants tracked in accordance with guidelines issued by the State agency and summarized in their E&T State plan in accordance with paragraph (c)(6)(i) of this section. Job search that does not meet the definition of supervised job search in the previous sentence is allowed as a subsidiary activity of another E&T component, so long as the job search activity comprises less than half of the total required time spent in the component. The State agency may require an individual to participate in supervised job search from the time an application is filed for an initial period established by the State agency. Following this initial period (which may extend beyond the date when eligibility is determined) the State agency may require an additional supervised job search period in any period of 12 consecutive months. The first such period of 12 consecutive months will begin at any time following the close of the initial period. The State agency may establish a supervised job search period that, in its estimation, will provide participants a reasonable opportunity to find suitable employment. The State agency should not, however, establish a continuous, year-round supervised job search requirement. If a reasonable period of supervised job search does not result in employment, placing the individual in a training or education component to improve job skills will likely be more productive. In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, a supervised job search program is not a qualifying E&T activity relating to the participation

requirements necessary to maintain SNAP eligibility for ABAWDs. However, a job search program, supervised or otherwise, when operated under title I of the Workforce Innovation and Opportunity Act (WIOA), under section 236 of the Trade Act, or a program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs, is considered a qualifying activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of employability assessments, training in techniques to increase employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Job search training activities are approvable if they directly enhance the employability of the participants. A direct link between the job search training activities and job-readiness must be established for a component to be approved. In accordance with section 6(o)(1)(C) of the Food and Nutrition Act of 2008 and § 273.24, a job search training program is not a qualifying activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs. However, such a program, when operated under title I of WIOA, under section 236 of the Trade Act, or a program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs, is considered a qualifying activity relating to the participation requirements necessary to maintain SNAP eligibility for ABAWDs.

\* \* \* \* \*

(iv) A work experience program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate and consistent with other laws such as the Fair Labor Standards Act. Work experience may be arranged within the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer

relationship, as defined by the Fair Labor Standards Act, exists.

(A) A work experience program may include:

(1) A work activity performed in exchange for SNAP benefits that provides an individual with an opportunity to acquire the general skills, knowledge, and work habits necessary to obtain employment. The purpose of work activity is to improve the employability of those who cannot find unsubsidized full-time employment.

(2) A work-based learning program, which, for the purposes of SNAP E&T, are sustained interactions with industry or community professionals in real world settings to the extent practicable, or simulated environments at an educational institution that foster in-depth, firsthand engagement with the tasks required in a given career field, that are aligned to curriculum and instruction. Work-based learning emphasizes employer engagement, includes specific training objectives, and leads to regular employment. Work-based learning can include internships, pre-apprenticeships, apprenticeships, customized training, transitional jobs, incumbent worker training, and on-the-job training as defined under WIOA. Work-based learning can include both subsidized and unsubsidized employment models.

(B) A work experience program must:

(1) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(2) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

\* \* \* \* \*

(viii) \* \* \* State agencies must make a good faith effort to provide job retention services for at least 30 days.

(ix) Programs and activities conducted under the pilots authorized by the Agricultural Act of 2014 (Pub. L. 113–79) that the Secretary determines, based on the results from the independent evaluations conducted for those pilots, have the most demonstrable impact on the ability of participants to find and retain employment that leads to increased household income and reduced reliance on public assistance.

\* \* \* \* \*

(5) \* \* \* (iii) Voluntary participants are not subject to the limitations specified in paragraph (e)(4) of this section.

\* \* \* \* \*

(i) \* \* \*

(4) Good cause includes the good cause provisions in paragraph (i)(2) of this section as well as circumstances where the State agency determines that there is not an appropriate and available opening within the E&T program to accommodate the mandatory participant. Good cause for circumstances where there is not an appropriate or available opening within the E&T program shall extend until the State agency identifies an appropriate and available E&T opening, and the State agency informs the SNAP participant. In addition, good cause for circumstances where there is not an appropriate and available opening within the E&T program shall only apply to the requirement to participate in E&T and shall not provide good cause to ABAWDs who fail to fulfill their ABAWD work requirements in accordance with § 273.24.

\* \* \* \* \*

(n) *Workforce partnerships.* Workforce partnerships must meet the following requirements:

(1) Workforce partnerships are programs operated by:

(i) A private employer, an organization representing private employers, or a nonprofit organization providing services relating to workforce development; or

(ii) An entity identified as an eligible provider of training services under section 122(d) of WIOA (29 U.S.C. 3152(d)).

(2) Workforce partnerships may include multi-State programs.

(3) Workforce partnerships must be in compliance with the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.*), as applicable.

(4) All workforce partnerships must be certified by the Secretary or by the State agency to the Secretary to indicate all of the elements in paragraphs (n)(4)(i) through (v) of this section. The workforce partnership must:

(i) Assist SNAP households in gaining high-quality, work-relevant skills, training, work, or experience that will increase the ability of the participants to obtain regular employment;

(ii) Provide participants with not less than 20 hours per week, averaged monthly of training, work, or experience; for the purposes of this paragraph (n)(4)(ii), 20 hours a week averaged monthly means 80 hours a month;

(iii) Not use any funds authorized to be appropriated under the Food and Nutrition Act of 2008;

(iv) Provide sufficient information to the State agency, on request, to determine whether members of SNAP

households who are subject to the work requirement in paragraph (a) of this section, the ABAWD work requirements in § 273.24, or both are fulfilling the work requirement through the workforce partnership; and

(v) Be willing to serve as a reference for participants who are members of SNAP households for future employment or work-related programs.

(5) In certifying that a workforce partnership meets the criteria in paragraphs (n)(4)(i) and (ii) of this section to be certified as a workforce partnership, the Secretary or the State agency shall require that the program submit to the Secretary or the State agency sufficient information that describes both:

(i) The services and activities of the program that would provide participants with not less than 20 hours per week of training, work, or experience; and

(ii) How the workforce partnership would provide services and activities described in paragraph (n)(5)(i) of this section that would directly enhance the employability or job readiness of the participant.

(6)(i) Workforce partnerships may not use any funds authorized to be appropriated by the Food and Nutrition Act of 2008.

(ii) If a member of a SNAP household is required to participate in an employment and training program in accordance with paragraph (a)(1)(ii) of this section, the State shall consider an individual participating in a workforce partnership certified in accordance with paragraph (n)(4) of this section to be in compliance with the employment and training requirements. The State agency cannot disqualify an individual for no longer participating in a workforce partnership. When a State agency learns that an individual is no longer participating in a workforce partnership, and the individual had been subject to mandatory E&T in accordance with paragraph (a)(1)(ii) of this section, the State agency must re-screen the individual to determine if the individual qualifies for an exemption from the work requirements in accordance with paragraph (b) of this section, and re-screen the individual to determine if the individual meets State criteria for referral to an E&T program or component in accordance with paragraph (c)(2) of this section. After this re-screening, if it is appropriate to require the individual to participate in an E&T program, the State agency may refer the individual to an E&T program or workforce partnership, as applicable.

(7) A state agency may use a workforce partnership to supplement,

not to supplant, the employment and training program of the State agency.

(8) Workforce partnerships certified in accordance with paragraph (n)(4) of this section are included in the definition of a work program under § 273.24(a)(3) for the purposes of fulfilling the ABAWD work requirement.

(9) The State agency shall not require any member of a household participating in SNAP to participate in a workforce partnership.

(10) A State agency shall maintain a list of workforce partnerships certified in accordance with paragraph (n)(4) of this section, and provide this list not less frequently than at certification and recertification to a household member subject to the work requirements in paragraph (a) of this section or § 273.24. The State agency must provide the list electronically or by other means. The list should include information that would assist the household member to make an informed decision about participating in a workforce partnership, including the following information, if available: Contact information for the workforce partnership, the types of activities the participant would be engaged in through the workforce partnership, screening criteria used by the workforce partnership to select individuals, the location of the workforce partnership, the work schedule or schedules, any special skills required to participate, and wage and benefit information, if applicable.

(11) Participation in a workforce partnership shall not replace the employment or training of an individual not participating in a workforce partnership.

(12) A workforce partnership may select individuals for participation in the workforce partnership who may or may not meet the criteria for the general work requirement at paragraph (a) of this section, including participation in E&T, or the ABAWD work requirement at § 273.24(a)(1).

(13) Workforce partnership reporting requirements to the State agency are limited to the following:

(i) On notification that an individual participating in the workforce partnership is receiving SNAP benefits, notifying the State agency that the individual is participating in a workforce partnership;

(ii) Identifying participants who have completed or are no longer participating in the workforce partnership;

(iii) Identifying changes to the workforce partnership that result in the workforce partnership no longer meeting the certification requirements in accordance with paragraph (n)(4) of this section; and

(iv) Providing sufficient information, on request by the State agency, for the State agency to verify that a participant is fulfilling the applicable work requirements in paragraph (a) of this section or § 273.24.

■ 5. In § 273.14, add paragraph (b)(5) to read as follows:

**§ 273.14 Recertification.**

\* \* \* \* \*

(b) \* \* \*

(5) *Advisement.* (i) At the time of recertification, the State agency shall advise household members subject to the work requirements of § 273.7(a) who reside in households meeting the criteria in paragraph (b)(5)(ii) of this section of available employment and training services. This shall include, at a minimum, providing a list of available employment and training services electronically or in printed form to the household.

(ii) The State agency requirement in paragraph (b)(5)(i) of this section only applies to households that meet all of the following criteria, as most recently reported by the household:

(A) Contain a household member subject to the work requirements of § 273.7(a);

(B) Contain at least one adult;

(C) Contain no elderly or disabled individuals; and

(D) Have no earned income.

\* \* \* \* \*

■ 6. In § 273.24:

■ a. Revise paragraph (a)(3)(i);

■ b. Amend paragraph (a)(3)(ii) by removing the word “or” at the end of the paragraph;

■ c. Revise paragraph (a)(3)(iii);

■ d. Add paragraphs (a)(3)(iv) and (v);

■ e. Revise paragraph (b)(2);

■ f. Add paragraph (b)(8);

■ g. Amend paragraph (g) heading by removing the text “15 percent” and adding in its place the word “Discretionary”;

■ h. Amend paragraph (g)(1) by removing the text “15 percent exemption” and adding in its place the words “discretionary exemptions”;

■ i. Amend paragraph (g)(3) by removing the number “15” and adding in its place the number “12”.

The revisions and additions read as follows:

**§ 273.24 Time limit for able-bodied adults.**

(a) \* \* \*

(3) \* \* \*

(i) A program under title I of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128);

\* \* \* \* \*

(iii) An employment and training program operated or supervised by a

State or political subdivision of a State agency that meets standards approved by the Chief Executive Office, including a SNAP E&T program under § 273.7(e) excluding any job search, supervised job search, or job search training program. However, a program under this paragraph (a)(3)(iii) may contain job search, supervised job search, or job search training as subsidiary activities as long as such activity is less than half the requirement. Participation in job search, supervised job search, or job search training as subsidiary activities that make up less than half the requirement count for purposes of fulfilling the work requirement under § 273.35(a)(1)(ii);

(iv) A program of employment and training for veterans operated by the Department of Labor or the Department of Veterans Affairs. For the purpose of this paragraph (a)(3)(iv), any employment and training program of the Department of Labor or Veterans Affairs that serves veterans shall be an approved work program; or

(v) A workforce partnership under § 273.7(n).

\* \* \* \* \*

(b) \* \* \*  
(2) *Good cause.* As determined by the State agency, if an individual would have fulfilled the work requirement as defined in paragraph (a)(1) of this section, but missed some hours for good cause, the individual shall be considered to have fulfilled the work requirement if the absence from work, the work program, or the workfare program is temporary and the individual retains his or her job, training or workfare slot. Good cause shall include circumstances beyond the individual’s control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, or the unavailability of transportation. In addition, if the State agency grants an individual good cause under § 273.7(i) for failure or refusal to meet the mandatory E&T requirement in § 273.7, that good cause determination

confers good cause under this paragraph (b)(2), except in the case of § 273.7(i)(4), without the need for a separate good cause determination under this paragraph (b)(2). Good cause granted under § 273.7(i)(4) only provides good cause to ABAWDs for failure or refusal to participate in a mandatory SNAP E&T program, and does not confer good cause for failure to fulfill the work requirement as defined in paragraph (a)(1) of this section.

\* \* \* \* \*

(8) *Advisement.* The State agency shall inform all ABAWDs of the ABAWD work requirement and time limit both in writing and orally in accordance with § 273.7(c)(1)(ii).

\* \* \* \* \*

Dated: March 3, 2020.

**Sonny Perdue,**

*Secretary of Agriculture, United States Department of Agriculture.*

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