

(e)(6))" and adding in its place a reference to "paragraph (e)(8)";

c. the heading of paragraph (e)(4) is amended by removing the words "*Fiscal Year 1986 and Beyond*" and adding the words "*Fiscal Years 1986 through Fiscal Year 1991*" in their place;

d. the first sentence of paragraph (e)(4)(i) is amended by removing the words "For Fiscal Year 1986 and subsequent years" and adding the words "For Fiscal Year 1986 through Fiscal Year 1991" in their place;

e. paragraphs (e)(5), (e)(6), (e)(7), (e)(8), (e)(9), and (e)(10) are redesignated as paragraphs (e)(6), (e)(7), (e)(8), (e)(9), (e)(10), and (e)(11), respectively, and a new paragraph (e)(5) is added;

f. the newly redesignated paragraph (e)(7) is revised;

g. the first sentence of newly redesignated paragraph (e)(8)(i)(D) is amended by removing the reference to "paragraph (e)(7)(iii)" and adding in its place a reference to "paragraph (e)(8)(iii)";

h. the last sentence of newly redesignated paragraph (e)(8)(ii) is amended by removing the words "procedure of § 276.7" and adding the words "procedures of Part 283" in their place;

i. the first sentence of newly redesignated paragraph (e)(8)(iii)(A) is amended by removing the reference to "paragraph (e)(7)(i)(C)" and adding in its place a reference to "paragraph (e)(8)(i)(C)";

j. the first sentence of newly redesignated paragraph (e)(8)(iii)(B) is amended by removing the reference to "paragraph (e)(7)(i)(C)" and adding in its place a reference to "paragraph (e)(8)(i)(C)";

k. the first three sentences in newly redesignated paragraph (e)(9) are revised;

l. in newly redesignated paragraph (e)(10)(i) the first sentence is amended by removing the reference to "275.23(e)(4)" and adding in its place a reference to "275.23(e)(5)". The second sentence is amended by removing the reference to "276.7" and adding in its place a reference to "Part 283". The fourth sentence is amended by removing the words "2 years" and adding the words "one year" in their place.

m. the last sentence of newly redesignated paragraph (e)(11)(iii) is amended by removing the reference to "(e)(10)(vi)" and adding in its place a reference to "(e)(11)(vi)".

The revisions and additions read as follows:

§ 275.23 Determination of State agency program performance.

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(e) *State agencies' liabilities for payment error rates.* * * *

(5) *State agencies' liabilities for payment error—Fiscal Year 1992 and beyond.* Each State agency that fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For Fiscal Year 1992 and subsequent years, FCS shall announce a national performance measure within 30 days following the completion of the case review and the arbitration processes for the fiscal year. The national performance measure is the sum of the products of each State agency's payment error rates times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change.

(ii) For any fiscal year in which a State agency's payment error rate exceeds the national performance measure for the fiscal year, the State agency shall pay or have its share of administrative funding reduced by an amount equal to the product of:

(A) the value of all allotments issued by the State agency in the fiscal year; multiplied by

(B) the lesser of—

(1) the ratio of the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year, to the national performance measure for the fiscal year, or

(2) one; multiplied by

(C) the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year.

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(7) *Good cause—(i) Events.* When a State agency with otherwise effective administration exceeds the tolerance level for payment errors as described in this section, the State agency may seek relief from liability claims that would otherwise be levied under this section on the basis that the State agency had good cause for not achieving the payment error rate tolerance. State agencies desiring such relief must file an appeal with the Department's Administrative Law Judge (ALJ) in accordance with the procedures established under Part 283 of this chapter. The 5 unusual events described below are considered to have a potential for disrupting program operations and increasing error rates to an extent that relief from a resulting liability or

increased liability is appropriate. The occurrence of an event(s) does not automatically result in a determination of good cause for an error rate in excess of the national performance measure. The State agency must demonstrate that the event had an adverse and uncontrollable impact on program operations during the relevant period, and the event caused an uncontrollable increase in the error rate. Good cause relief will only be considered for that portion of the error rate/liability attributable to the unusual event. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that must be submitted to justify such requests for relief:

(A) Natural disasters such as those under the authority of the Stafford Act of 1988 (Pub. L. 100-707), which amended the Disaster Relief Act of 1974 (Pub. L. 93-288) or civil disorders that adversely affect program operations.

(I) When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(i) The nature of the disaster(s) (e.g. a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s) and evidence that the President has declared a disaster;

(ii) The date(s) of the occurrence;

(iii) The date(s) after the occurrence when program operations were affected;

(iv) The geographic extent of the occurrence (i.e. the county or counties where the disaster occurred);

(v) The proportion of the food stamp caseload whose management was affected;

(vi) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors;

(vii) The Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.).

(viii) The percentage of the payment error rate that resulted from the occurrence and how this figure was derived; and

(ix) The degree to which the payment error rate exceeded the national performance measure in the subject fiscal year.

(2) The following criteria and methodology will be used to assess, evaluate and respond to claims by the State agency for a good cause waiver of liability in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of a disaster or