date of audit of records by USDA as provided herein, whichever is the later.

§ 80.13 Offset and assignment.

(a) Except as provided in paragraph (b) of this section, below, any payment or portion thereof due any person shall be allowed without regard to questions of title under state law, and without regard to any claim or lien against the crop or proceeds thereof in favor of the owner or any other creditor, except for statutory liens belonging to agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 3 shall be applicable to such payments.

(b) Assignments. Assignments will be done in accordance with Form FSA–117.

§ 80.14 Appeals.

Appeals under this part will be in accordance with 7 CFR part 780.

Dated: May 28, 1997.

Lon Hatamiya,

Administrator.

[FR Doc. 97–14273 Filed 5–29–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

7 CFR Parts 272 and 275

[Amdt. No. 366]

RIN 0584–AB75

Food Stamp Program: Quality Control Provisions of the Mickey Leland Childhood Hunger Relief Act

AGENCY: Food and Consumer Service, USDA.

ACTION: Final rule.

SUMMARY: On June 23, 1995 the Department of Agriculture published proposed changes to Food Stamp Program regulations based on section 13951 of the Mickey Leland Childhood Hunger Relief Act. This final rule addresses significant comments received in response to the regulatory changes proposed in the rule published June 23, 1995, and finalizes regulatory changes to the quality control system of the Food Stamp Program in the following areas: timeframes for completion of all review activity, exclusion of variances resulting from the application of new regulations, the tolerance level for excessive error rates, the calculation of liability amounts, interest charges on liability amounts, good cause relief from liabilities, and the authority of the Administrative Law Judges to determine good cause. These changes will enhance the efficiency and equity of the quality control system.

DATES: *Effective Dates:* Section 13971 of the Mickey Leland Childhood Hunger Relief Act sets effective dates for the various provisions of the Leland Act addressed in this rule. The amendment to 7 CFR 275.12(d)(2)(vii) was effective October 1, 1992. The amendments to 7 CFR 275.23(e)(4), and newly designated (e)(5), (e)(7), (e)(9), and (e)(10)(i) were effective October 1, 1991. The amendments to 7 CFR 272.1(g), 275.3(c) (Introductory text), 275.3(c)(1)(iii), 275.11(g), 275.23(d)(1)(iii), 275.23(e)(1), and newly designated 275.23(e)(8)(i)(D), 275.23(e)(8)(ii), 275.23(e)(8)(iii)(A), 275.23(e)(8)(iii)(B), and 275.23(e)(11)(iii) are effective July 2, 1997. The provisions of § 275.3(c)(4) will become effective after approval by OMB.

Implementation Dates: With the exception of the provisions contained in 7 CFR 275.3(c)(4) [Arbitration], 275.23(e)(5) [State agencies' liabilities for payment error-Fiscal Year 1992 and beyond], and newly designated 275.23(e)(7) [Good Cause], and 275.23(e)(9) [Timeframes], all provisions of this rule shall be implemented July 2, 1997. The provisions contained in §§ 275.3(c)(4), 275.23(e)(5), and newly designated 275.23(e)(7), and 275.23(e)(9) shall be implemented after approval of the provisions of §§ 275.3(c)(4) and newly designated 275.23(e)(7) by OMB under the Paperwork Reduction Act of 1995.

OMB Submissions: The provisions contained in 7 CFR 275.3(c)(4), and newly designated 275.23(e)(7) shall be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1995. FCS will publish a notice in the **Federal Register** announcing the effective and implementation dates, which will be dates occurring after the publication date of that notice. FCS can not issue billing letters for the review periods of Fiscal Years 1992 and beyond until such time as these provisions have been implemented by the publication of the notice.

FOR FURTHER INFORMATION CONTACT: John H. Knaus, Chief, Quality Control Branch, Program Accountability Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 904, Alexandria, Virginia 22302, (703) 305–2472.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR 3015, Subpart V and related notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This action 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 implementation. This rule is not intended to have retroactive effect unless so specified in the ''Implementation'' section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-QC liabilities) or Part 283 (for rules related to QC liabilities); (3) for program retailers wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Sec. 601 through 612). William E. Ludwig, Administrator of the Food and Consumer Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies that administer the Food Stamp Program.

Paperwork Reduction Act

This final rule contains information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The reporting and recordkeeping burden associated with the Food Stamp

Program Quality Control System is approved under OMB No. 0584–0303. The burden for the Quality Control System is estimated to average 10.4 hours per response. There are 53 respondents. This is an increase of 5246 hours from the previously approved burden.

The Quality Control System contains procedures for resolving differences in review findings between State agencies and FCS. This is referred to as the arbitration process. Section 7 CFR 275.3(c) of this rule modifies the current arbitration process. We believe that the modifications made by this rule to the arbitration process do not represent an increase in burden from current practice.

The Quality Control System contains procedures which provide relief for State agencies from all or a part of a quality control liability when a State agency can demonstrate that a part or all of an excessive error rate was due to an unusual event which had an uncontrollable impact on the State agency's payment error rate. Section 7 CFR 275.23(e)(7) of this rule modifies the current good cause process. We believe that the modifications made by this rule to the good cause process do not represent an increase in burden from current practice.

FCS will solicit comment on these information collections through a separate notice published in the **Federal Register.**

Background

On June 23, 1995 (60 FR 32615) the Department of Agriculture (the ''Department'') proposed regulations to amend the food stamp quality control (''QC'') system, based on mandatory changes contained in section 13951 of the Mickey Leland Childhood Hunger Relief Act (the ''Leland Act''), Chapter 3, Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), which revised sections 13(a)(1), 14(a), and 16(c) of the Food Stamp Act of 1977, as amended (the ''Act''). A full explanation of the rationale and purpose of these regulatory changes was provided in the preamble of the proposed rulemaking. The Department received comment letters from thirty-four organizations concerning the proposed rule. The preamble of this final rule deals with significant issues raised by commenters and the changes made as a result of comments. It is recommended that the reader reference the proposed rulemaking, as well as this final rulemaking for a more complete understanding of the regulatory changes that the Department is implementing.

Validation of State Agency Error Rates—§ 275.3(c)

Nineteen organizations provided comments on the proposed regulatory change to § 275.3(c) regarding the requirement that Food and Consumer Service (''FCS'') Regional Offices assist State agencies in completing active case reviews that State agencies were unable to complete due to refusal on the part of a household to cooperate with the State agency QC reviewer. Seventeen of the commenters supported the proposed change making Federal assistance in completing these cases optional. FCS Regional Offices would only assist a State agency in attempting to complete a refusal-to-cooperate case at the request of the State agency. One commenter opposed the proposal, stating that FCS should either assist 100% of the time, or not at all. The commenter's concern was the potential for bias which could be introduced into the quality control system by allowing State agencies to pick which cases FCS would assist the State agency in completing. One commenter was neither in favor of, nor opposed to the proposal. This commenter requested clarification that FCS would continue to review cases that are dropped for refusal-to-cooperate to determine whether the case was appropriately dropped. The commenter was concerned that some states might use an unsupervised system of drops in a way that biases the sample. The Department has considered the comments and decided to adopt the provision as proposed. FCS Regional Offices will continue the current practice of reviewing all cases disposed of by State agencies as Not Subject to Review, or Not Completed (including those disposed of as Not Completed due to refusal by the household to cooperate with a State agency reviewer) in order to insure the validity of the disposition. It is felt that the continued monitoring of ''drop'' cases will prevent the possibility of any bias in the QC system. Only upon the specific request of the State agency will FCS attempt to gain the cooperation of such households.

Arbitration—§ 275.3(c)(4)

All thirty-four organizations submitting comments provided remarks on the proposed regulatory change to § 275.3(c)(4) regarding the system for arbitrating differences between State agency and Federal findings and/or disposition in quality control reviews. All the commenters were opposed to some aspect of the proposed changes to the system. Under current procedures, a State agency which disagrees with the FCS review findings for an individual case has a maximum of 28 calendar days after receipt of the Federal findings to request reevaluation of the Federal findings by a Regional arbitrator. The Regional arbitrator has 30 days from the date of such a request to determine the correctness of the Federal findings or to notify the State agency of the status of the arbitration case. A State agency which disagrees with a Regional arbitrator's review findings for an individual case has a maximum of 28 calendar days after receipt of the Regional arbitrator's decision to request a reevaluation of the Regional arbitrator's decision by a National arbitrator. The National arbitrator has no established time limit for rendering decisions on the correctness of the Regional arbitrator's findings. Section 13951 of the Leland Act amends the Food Stamp Act by specifying that ''not later than 180 days after the end of the fiscal year [March 29th, or March 28th in leap years], the case review and all arbitrations of State-Federal difference cases shall be completed.'' The Department concluded that the deadlines mandated by the Leland Act for the completion of arbitration for a fiscal year could not be achieved without a restructuring of the arbitration system.

The Department proposed to replace the two-tier arbitration process with a one-tier arbitration system which would require State agencies to submit requests for arbitration to their appropriate FCS Regional offices within 10 days of receipt of the Federal QC findings for a case. The FCS Regional office QC staff would be permitted to submit to the arbitrator(s) a response to the State agency's request either agreeing with the State agency or explaining why the State agency's position was incorrect. The arbitrator(s) would be allowed a maximum of 35 calendar days from the date a request is received to render a decision regarding the accuracy of the Federal QC findings and disposition in a case.

Thirteen commenters specifically indicated that they opposed a one-tier system. Four commenters supported a one-tier system, although all suggested some modification to the one-tier system that was proposed. Six commenters indicated that a one-tier system should be at the national level. One commenter indicated a preference for one-tier at the Regional Office level. Ten commenters proposed an arbitration system similar to the AFDC Program with informal resolution at the regional level and formal arbitration by a panel at the national level. The Department has considered these comments and decided that it must

adopt a one-tier system, with certain modifications as discussed in the following paragraphs. The Department has determined that the deadlines mandated by section 13951 of the Leland Act do not provide sufficient time for a two-tier system of arbitration, or an arbitration panel. In regards to the matter of whether arbitration will be conducted at the Regional Office or National Office level, the Department has decided to leave the language in the final regulatory change adaptable enough to allow for one-tier arbitration at either the Regional or National level. Recognizing that the arbitrator(s) will have a very short time frame in which to render accurate decisions (as detailed in the following paragraphs), the Department has determined that the arbitration system must be structured with the maximum possible flexibility so that it can respond to fluctuations in the number of arbitration requests.

Thirty-three commenters expressed serious concern that 10 days was insufficient to prepare a case for arbitration. Nineteen commenters offered various suggestions for reducing the amount of time the arbitrator(s) would have to render a decision, in favor of more time for the State agency to submit its request. The Department has considered these comments and has modified the final rules. Instead of the 10 days contained in the proposed rule, State agencies shall have 20 days from the date of receipt of the Federal quality control findings to submit requests for arbitration to their appropriate FCS Regional office. Instead of the 35 days contained in the proposed rule, the arbitrator(s) shall have 20 days to render a decision. Of the 15 day reduction in the time allotted for the arbitrator(s) to render a decision, 10 of those days have been allotted to the State agencies as additional time to submit an arbitration request, and 5 of those days have been allotted as additional time for State agencies to conduct reviews and transmit findings to the National Computer Center's (NCC) Integrated Quality Control System (IQCS) (for details of this change see the paragraph entitled ''*Quality Control Review Reports—§ 275.21*''). The Department has determined that the increased time frame for the State agencies to request arbitration would ensure the continued accuracy of the arbitration process by providing more time to gather facts and material pertinent to a case. In addition, the increased time frame for the State agencies to request arbitration would allow the continuation of the current practice of informal resolution of differences through discussions between State agency and FCS Regional office QC staffs. The informal resolution process offers an alternative to the more time and resource intensive arbitration process.

Ten commenters recommended putting into the regulations specific time frames for completion of Federal reviews. Four commenters recommended that FCS be required to return case records to the State agencies at the time that Federal findings are transmitted, or that the time frames for requesting arbitration not start until such time as the case record is received by the State agency. The FCS–315, Federal Quality Control Validation Review Handbook, contains specific time frames for FCS reviewers to complete the review of sub-sampled cases. In addition, the Handbook contains specific instructions that State agencies records are to be returned to the State agency no later than the time that Federal case findings are issued to the State agency. The Department has determined that inclusion in the regulations of the time frames for completion of the Federal reviews, and instructions on returning State agency records, are unnecessary.

Three commenters recommended that State agencies be given the opportunity to refute any submittal made by the FCS Regional Office to the arbitrator(s). One commenter recommended that FCS Regional Offices be prohibited from submitting any additional material or response to the State agency's arbitration request. The Department has determined that because of the shortened time frames for rendering the arbitration decision, the arbitrator(s) will not be able to consider any additional materials, submitted by the State agency following the arbitration request. The State agency should ensure that arbitration requests sufficiently explain and support the position of the State agency without the need for additional submissions or rebuttals. Further, the Department has determined that the accuracy of the arbitration system would be impaired if the FCS Regional Office was prohibited from submitting material to the arbitrator(s) which set forth the Federal position in the case under review. For these reasons, the Department has retained the provisions in the proposed rule that State agencies will not be allowed to submit additional material after the arbitration request, and that the FCS Regional Offices will be allowed to submit material explaining the Federal position.

The Department proposed to limit requests for arbitration to those cases where the State agency's findings or disposition, as transmitted to the NCC's IQCS, differed from the Federal findings or disposition transmitted to NCC. These cases are commonly referred to as ''disagree cases''. Under the proposal State agencies would not be permitted to arbitrate cases where the State agency's and Federal findings or disposition were the same (''agree'' cases). Fourteen commenters expressed concern with the proposal to exclude arbitration of agree cases. Primarily the commenters argued in favor of being able to arbitrate agree cases in the interest of maximum accuracy for the QC system. The argument was that new information may become available after the completion of both the State agency and Federal reviews which indicates that the earlier review findings were in error. Given that the arbitrator(s) will be facing a greatly shortened time frame for rendering arbitration decisions, the Department has determined that the potential workload of ''agree'' cases, in addition to the ''disagree'' cases, would adversely impact the accuracy and timeliness of the arbitration process, and impair the quality control system's ability to meet the deadlines mandated by section 13951 of the Leland Act. The Department has determined that State agencies may provide the Federal quality control reviewer with any new information which becomes available regarding the circumstances in a case up until the time that the Federal findings are transmitted to the State agency. In addition, during the 20 day period following the receipt of Federal review findings (the period in which a State agency may prepare an arbitration request on ''disagree'' cases) a State agency may request informal resolution of any ''agree'' cases. If the FCS Regional Office QC staff concede through informal resolution that the Federal findings should be changed, the case will be retransmitted to the State agency (this time as a ''disagree'' case) which would be eligible for arbitration. Following the 20 day period for informal resolution, FCS Regional Offices would not be permitted to reconsider or change the Federal findings of any ''agree'' case.

To maximize the efficiency of the arbitration system, the Department proposed that State agencies be required to submit specific documents to ensure that their arbitration requests were complete. Five commenters supported the proposal for a checklist. Sixteen commenters opposed the requirement for a specific checklist for arbitration. Many of the commenters indicated that the state agencies are in a better position to determine what information must be

submitted in order to support State findings in arbitration. The commenters considered the checklist to be burdensome in light of the reduced time frame for submittal of arbitration requests. The Department is dropping the proposal to require State agencies to submit a specific checklist of documents as a part of each arbitration request. It should be noted that guidelines and recommendations for the submittal of arbitration requests are contained in the FCS–310, The Food Stamp Program Quality Control Review Handbook. As indicated in the proposed rule, if a State agency submits an incomplete request for arbitration the arbitrator(s) will render a decision based on the available information. The shortened time frames for rendering the arbitration decision will not allow for the request (by the arbitrator(s)) or submission (by the State agency) of any additional materials following the arbitration request. The arbitrator(s) will make an independent judgment of the request, based upon the information the State agency and Regional office have provided.

The Department proposed that arbitration be limited to those cases where the State agency's findings and disposition were transmitted to the NCC's IQCS in a timely manner. The Department maintained that State agency reviews which were not completed and transmitted into the IQCS in a timely manner impaired the QC system's ability to meet the deadlines mandated by the Leland Act for the completion of all case review and arbitration activity. Twenty-six commenters opposed the proposal to restrict arbitration to cases which have been timely submitted to IQCS. In general, the commenters argued in favor of being able to arbitrate these cases in the interest of maximum accuracy for the QC system. The commenters indicated that the cases most likely to be in need of arbitration are the cases which take longer to complete (due to uncooperative households, the need for follow-up investigations or field work, or the need for intricate policy analysis) and are more likely to be submitted to IQCS late. Based upon these comments, the Department has modified the original proposal. State agencies may continue to request arbitration of cases transmitted late to the IQCS. However, the number of days that a State agency has to submit such a request will be reduced by the number of days that the State agency was late transmitting the case to the IQCS. As an example: If a State agency does not submit the review findings of a case until the 100th day after the end of the sample month for the case (5 days late), then the State agency would have 15 days from the date of receipt of the Federal findings (the standard 20 days provided for by this rule minus the 5 days that the case was submitted late in the IQCS) to request arbitration. The Department has determined that this alternative responds to the concerns raised by the commenters, and ensures that the quality control system's ability to meet the deadlines mandated by the Leland Act are met. The Department has also determined that because of the withdrawal of the proposal to limit arbitration to cases which have been timely submitted to IQCS, there is no longer any need to exempt certain cases from the restriction, as was considered in the proposed rule (cases in which household members had refused to cooperate with the quality control reviewer was the class of such cases identified in the proposed rule).

Quality Control Review Reports—§ 275.21

Thirty organizations provided comments on the proposed regulatory change to § 275.21 regarding the timeframes for State agencies to dispose of and report the findings of cases selected for QC review. Under current procedures a State agency has 75 calendar days from the end of a sample month to dispose of 90 percent of the cases selected for review in that month; 100 percent of the cases must be disposed of within 95 days of the end of the sample month. The Department proposed to modify the deadline for State agencies to dispose of QC cases and transmit review findings to NCC's IQCS, by requiring that 100 percent of the cases selected for review be disposed of within 90 calendar days of the end of the sample month for which the cases were selected for review. The Department also proposed conforming changes to regulations at 7 CFR 273.2(d)(2) and 7 CFR 273.2(f)(1)(ix). These sections of the regulations specify that food stamp households which refuse to cooperate with a quality control reviewer shall be determined ineligible to participate in the Food Stamp Program until 95 days after the end of the annual QC review period, or until the household cooperates with the QC reviewer (whichever is earlier). The Department proposed to change the period of household ineligibility from 95 to 90 days after the end of the annual review period, in order to correspond to the proposed change to the State agencies timeframes for the disposition of QC reviews. Twenty-five of the thirty organizations providing comments on the proposal to reduce the timeframes for State agencies to dispose of and report the findings of cases selected for QC review were opposed to the proposal. The remaining five commenters recognized that changes were necessary to meet legislatively mandated timeframes, but expressed strong concern about the proposed reduction in time. Six commenters remarked on the fact that the proposed deadlines were moving away from conformity with the AFDC program, and that this caused particular difficulties when reviews were conducted jointly between the Food Stamp and AFDC programs. Fifteen commenters recommended that the timeframe for the arbitrator to render a decision be reduced, or that the federal re-reviewers be put under a strict timeframe for the completion of the federal reviews. Fourteen commenters indicated that the proposed timeframe would negatively impact on review accuracy. Twelve commenters specifically indicated that due to staffing and resource limitations it would be extremely difficult to meet the shortened deadlines. Nine commenters recommended that the 90 day deadline be made to apply only to the last month of the review period. Based upon these comments, the Department has decided to withdraw the proposal to reduce the timeframe for State agencies to dispose of and report the findings of cases selected for QC review. The current procedures, under which a State agency has 75 calendar days from the end of a sample month to dispose of 90 percent of the cases selected for review in that month, and 95 days to dispose of 100 percent of the cases will be retained. Strict adherence to the current 75/95 day deadlines and modification of the proposals regarding the arbitration system (see the paragraph entitled *''Arbitration—§ 275.3(c)(4)''* for details) will allow FCS and the State agencies to meet the deadlines mandated by the Leland Act without shortening the timeframe for disposing of QC reviews.

Variances Excluded From Error Analysis—§ 275.12(d)(2)

Eighteen organizations provided comments on the proposed regulatory change to § 275.12(d)(2) regarding the exclusion of any errors resulting from the application of new regulations promulgated under the Act during the first 120 days from the required implementation date. Seventeen commenters approved of the proposed change. One commenter offered remarks that were neither in favor of, nor opposed to the proposal. Two commenters recommended that the time frame be extended to 180 days. The

Department has considered this recommendation and determined that it cannot be adopted. The Food Stamp Act, as modified by the Leland Act, specifies: ''The following errors may be measured for management purposes but shall not be included in the payment error rate: (A) Any errors resulting in the application of new regulations promulgated under this Act during the first 120 days from the required implementation date for such regulations'' [7 U.S.C. 2025(c)(3)]. The Department has determined that the Act mandates a 120 day variance exclusion period, and therefore, a 180 day variance exclusion period cannot be considered.

Five commenters supported the proposal, but the comments clearly indicated that the writers thought that the 120 day variance exclusion period was to provide relief while a State agency implemented a new regulation. The Department wishes to clarify that the 120 day variance exclusion can only apply to State agencies which have implemented a new regulation. The Department has concluded that an error cannot result from the application of a new regulation (as specified in the Act) if a State agency has not implemented the new regulation. The current regulatory provision at 7 CFR 275.12(d)(2)(vii)(B) which specifies: ''A State agency shall not exclude variances which occur prior to the States implementation'' has been retained. As an example: If a State agency does not implement a new regulation until 100 days after the required implementation date then the State agency would have only a 20 day variance exclusion period (the 120 day exclusion period minus the 100 days that the new regulation had not been implemented), starting with the day the new regulation is actually implemented. The Department has determined that the provision regarding a 120 variance exclusion period for the application of a new regulations must be adopted as proposed.

State Agencies' Liabilities for Payment Error—Fiscal Year 1986 and Beyond—§ 275.23(e)(4)

Fifteen organizations provided comments on the proposed regulatory change to § 275.23(e)(4) regarding the new system of payment error rate goals and liabilities. The payment error rate tolerance level, beginning in Fiscal Year 1992 and applying to Fiscal Year 1992 and all subsequent fiscal years, is the national performance measure for the fiscal year. The national performance measure continues to be defined as the sum of the products of each State agency's payment error rate 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 for that fiscal year at the time the State agency is notified of its payment error rate. A State agency which exceeds this tolerance level is now subject to a liability equivalent to the total value of the allotments issued in the fiscal year by the State agency, multiplied by a factor which is 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. This figure is then multiplied by 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. Fourteen of the commenters approved of the proposed change. The remarks of one commenter were unclear, and FCS was unable to determine if this commenter was in favor of or opposed to the proposed provision. The Department has considered the comments and determined that the provision must be adopted as proposed. These changes have been mandated by Section 13951 of the Leland Act.

Good Cause—§ 275.23(e)(6)

Eighteen organizations provided comments on the proposed regulatory change to § 275.23(e)(6) regarding relief from all or a part of a quality control liability as established under § 275.23(e)(4) when a State agency can demonstrate that a part or all of an excessive error rate was due to an unusual event which had an uncontrollable impact on the State agency's payment error rate. Three commenters were in favor of the proposed provisions concerning good cause and three others offered remarks which were neither in favor of, nor opposed to the proposed provisions. Twelve of the commenters were opposed to some aspect of the proposed provisions.

The Department proposed to transfer the authority to determine good cause, and grant waivers of liabilities, from FCS to the Departmental Administrative Law Judges (''ALJs''). This transfer of authority was mandated by section 13951 of the Leland Act. Ten commenters were in favor of this transfer of authority. There were no commenters who opposed it. Therefore the provision pertaining to the transfer of authority to determine good cause and grant liability waivers from FCS to the ALJs is adopted in final form as it was proposed.

Section 13951 of the Leland Act provides good cause consideration for the following unusual events: (A) A natural disaster or civil disorder that adversely affects Food Stamp Program operations; (B) a strike by employees of a State agency who are necessary for the determination of eligibility and processing of case changes under the Food Stamp Program; (C) a significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload; (D) a change in the Food Stamp Program or other Federal or State program that has a substantial adverse impact on the management of the Food Stamp Program of a State; and (E) a significant circumstance beyond the control of the State agency. The Department proposed to codify into the regulations the unusual events specified in the Leland Act which qualify for consideration under good cause relief. Eight commenters specifically recommended the addition of new computer systems as an unusual event which would qualify a State agency for good cause relief. While the Department appreciates the difficulties that State agencies may encounter in implementing new computer systems, the Department is unable to adopt these comments. The statutory criteria for determining good cause (criterion E of the Leland Act specifies that it must be ''a significant circumstance beyond the control of the State agency'') precludes the Department from considering a new computer system as a circumstance which could qualify a State agency for good cause relief.

Current regulations at § 275.23(e)(6)(i) describe the criteria and methodology under which FCS will grant good cause waivers. While FCS will no longer be making the final determination in good cause appeals, FCS retains the authority to establish guidelines under which good cause is evaluated. The Department proposed that current criteria and methodology, with certain modifications, would continue to serve as guidelines for States, FCS, and the ALJs to assess and evaluate good cause in conjunction with the appeals process. As under current regulations, it was proposed that an alternate methodology would continue to be used for certain events when a State agency provided insufficient information to demonstrate that the unusual event had an uncontrollable impact on the error rate. The Department proposed an alternate methodology that would take into account both the duration of the unusual event and the magnitude or

intensity of the unusual event. The proposed alternate methodologies were also modified to include specific procedures for calculating waiver amounts to ensure equity and consistency in these determinations. It is recommended that the reader reference the proposed rulemaking for a more complete understanding of the alternative methodologies that the Department proposed.

Five commenters specifically objected to the inclusion of the ''sliding scale'' in the alternative formula for determining the amount of relief for which a State agency would qualify in the event of unusual caseload growth. Suggested alternatives were elimination of the ''sliding scale'' from the formula, or elimination of the formula (meaning a State agency would qualify for total relief of any liability claim if it could demonstrate caseload growth of 15%). The Department has not adopted these comments. The Department must emphasize that the formula in which the ''sliding scale'' appears is only an *alternative* methodology for demonstrating the extent to which excessive error rates can be attributed to caseload growth. If a State agency demonstrates (as determined by the ALJ), through other means or data, the impact that these events have had on their payment error rate, then the formula containing the sliding scale need not be applied.

Three commenters specifically objected to the fact that the alternative formula disregarded caseload growth in the second half (April through September) of a fiscal year in determining whether a State agency qualified for good cause relief. Suggested alternatives included altering the formula to include caseload growth in the second half of the fiscal year, and elimination of the formula altogether. The Department has decided to modify the final rules by including up to a possible nine months of a fiscal year in the formula. Step 2 of the formula has been modified to provide for the consideration of any twelve consecutive month period falling in the 15 month interval between April of the previous fiscal year, and June of the liability fiscal year. This will allow caseload growth in as many as nine months (October through June) of the current fiscal year to be included in the calculations for good cause relief. The Department continues to believe that caseload growth in the last three months of a fiscal year would rarely have a significant impact on the error rate for that year. In addition, the Department again must emphasize that the formula is only an *alternative* methodology for demonstrating the extent to which excessive error rates can be attributed to caseload growth.

Two commenters specifically objected to the fact that the alternative formula disregarded caseload growth at any geographic level below that of the State as a whole. One commenter emphasized that some geographic areas (counties, districts, regions, etc.) within the larger states issue more benefits and serve more recipients than an entire smaller state. A suggested alternative was the modification of the formula or evaluation criteria to provide good cause relief if a State agency can demonstrate excessive caseload growth at a lower (project area) geographic level. The Department has considered these comments, but decided not to adopt them. The Department must again emphasize that the formula is only an *alternative* methodology for demonstrating the extent to which excessive error rates can be attributed to caseload growth. If a State agency demonstrates (as determined by the ALJ), through other means or data, the impact that caseload growth has had on their payment error rate, then the formula evaluating only statewide growth need not be applied. It was the Department's expectation, as expressed in the preamble of the proposed rule, that with modern automated systems for data analysis, State agencies would have little difficulty in demonstrating the impact on the payment error rate from geographic subdivisions within the state, when that impact is significant.

FCS Timeframes—§ 275.23(e)(8)

Four organizations provided comments on the proposed regulatory change to § 275.23(e)(8) regarding the provision of Section 13951 of the Leland Act that specifies that: ''Not later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed. Not later than 30 days thereafter, the Secretary shall determine final error rates, the national average payment error rate, and the amounts of payment claimed against State agencies; and notify State agencies of the payment claims.'' All four of the commenters were opposed to the proposed time frames. It was the opinion of the commenters that the time frames specified in the Leland Act were a mistake, and they urged the Department to work with Congress towards passing new legislation which would return the deadline for the announcement of error rates to June 30th in the year following the end of the quality control review period. One commenter has recommended that the Department delay implementation of these changes until legislation can be adopted to repeal the Leland Act provision that requires this regulatory change. The Department understands the commenters concerns, but until the provisions are amended the provision must be adopted as proposed. This change was mandated by Section 13951 of the Leland Act, and the Department cannot delay implementing the provisions of the law.

Interest Charges—§ 275.23(e)(9)

Five organizations provided comments on the proposed regulatory change to § 275.23(e)(9) regarding the interest charges on any unpaid portion of a liability claim. Section 13951 of the Leland Act amends the Food Stamp Act by providing that interest will accrue from the date of the decision on an administrative appeal of the claim, or from the day one year after the date the bill for the claim was received by the State agency, whichever is earlier. Four of the commenters disapproved of the proposed change. One commenter offered remarks that were neither in favor of nor opposed to the proposed provision. The Department has considered the comments and determined that the provision must be adopted as proposed. This change was mandated by Section 13951 of the Leland Act.

Miscellaneous Technical Corrections

No comments were received regarding the Department's proposal to effect technical corrections to various regulatory references appearing in part 275 of the regulations. In a number of paragraphs in part 275 other paragraphs or sections of the regulations are cited as a reference for the reader. Over the years many of these references have become inaccurate due to revisions and renumbering of various sections of the regulations. The Department has decided to adopt all of the technical reference changes as proposed.

Implementation

Effective Dates: Section 13971 of the Mickey Leland Childhood Hunger Relief Act sets effective dates for the various provisions of the Leland Act addressed in this rule. The amendment to 7 CFR 275.12(d)(2)(vii) was effective October 1, 1992. The amendments to 7 CFR 275.23(e)(4), and newly designated (e)(5), (e)(7), (e)(9), and (e)(10)(i) were effective October 1, 1991. The amendments to 7 CFR 272.1(g), 275.3(c) (Introductory text), 275.3(c)(1)(iii), 275.11(g), 275.23(d)(1)(iii), 275.23(e)(1), and newly designated 275.23(e)(8)(i)(D), 275.23(e)(8)(ii), 275.23(e)(8)(iii)(A),

275.23(e)(8)(iii)(B), and 275.23(e)(11)(iii) are effective July 2, 1997. The provisions of 275.3(c)(4) will become effective after approval by OMB.

Implementation Dates: With the exception of the provisions contained in 7 CFR 275.3(c)(4) [Arbitration], 275.23(e)(5) [State agencies' liabilities for payment error-Fiscal Year 1992 and beyond], and newly designated 275.23(e)(7) [Good Cause], and 275.23(e)(9) [Timeframes], all provisions of this rule shall be implemented July 2, 1997. The provisions contained in 275.3(c)(4), 275.23(e)(5), and newly designated 275.23(e)(7), and 275.23(e)(9) shall be implemented after approval of the provisions of 275.3(c)(4) and newly designated 275.23(e)(7) by OMB under the Paperwork Reduction Act of 1995.

OMB Submissions: The provisions contained in 7 CFR 275.3(c)(4), and newly designated 275.23(e)(7) shall be submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1995. FCS will publish a notice in the **Federal Register** announcing the effective and implementation dates, which will be dates occurring after the publication date of that notice. FCS can not issue billing letters for the review periods of Fiscal Years 1992 and beyond until such time as these provisions have been implemented by the publication of the notice.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting, and recordkeeping requirements.

For the reasons set out in the preamble, parts 272 and 275 of chapter II of title 7 Code of Federal Regulation are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 272.1, a new paragraph (g)(153) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(153) *Amendment No. 366.* (i) With the exception of the changes to § 275.3(c)(4) [Arbitration], § 275.23(e)(5) [State agencies' liabilities for payment error-Fiscal Year 1992 and beyond], § 275.23(e)(7)[Good Cause], and § 275.23(e)(9) [timeframes], all quality control changes that are made by Amendment No. 366 shall be implemented July 2, 1997.

(ii) The quality control changes to § 275.3(c)(4) [Arbitration], § 275.23(e)(5) [State agencies' liabilities for payment error-Fiscal Year 1992 and beyond], § 275.23(e)(7) [Good Cause], and § 275.23(e)(9) [Timeframes], shall be implemented after approval of the provisions at § 275.3(c)(4) [Arbitration], and § 275.23(e)(7) [Good Cause] by the Office of Management and Budget under the Paperwork Reduction Act of 1995. FCS will publish a notice in the Federal Register announcing the implementation date. It shall be a date occurring after the publication date of the notice.

PART 275—PERFORMANCE REPORTING SYSTEM

3. The authority citation for part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

4. In § 275.3:

a. the last sentence of the introductory text of paragraph (c) is amended by removing the reference to ''275.23(e)(6)'' and adding in its place a reference to ''275.23(e)(8)'';

b. paragraph (c)(1)(iii) is revised;

c. paragraph (c)(4) is revised.

The revisions read as follows:

§ 275.3 Federal monitoring.

* * * * *

(c) *Validation of State Agency Error Rates.* * * *

(1) *Payment error rate.* * * *

(iii) Upon the request of a State agency, the appropriate FCS Regional Office will assist the State agency in completing active cases reported as not completed due to household refusal to cooperate.

* * * * *

(4) *Arbitration.* (i) Whenever the State agency disagrees with the FCS regional office concerning individual QC case findings and the appropriateness of actions taken to dispose of an individual case, the State agency may request that the dispute be arbitrated on a case-by-case basis by an FCS Arbitrator, subject to the following limitations.

(A) The State agency may only request arbitration when the State agency's and FCS regional office's findings or disposition of an individual QC case disagree.

(B) The arbitration review shall be limited to the point(s) within the Federal findings or disposition that the State agency disputes. However, if the arbitrator in the course of the review discovers a mathematical error in the computational sheet, the arbitration shall correct the error while calculating the allotment.

(ii) The FCS Arbitrator(s) shall be an individual or individuals who are not directly involved in the validation effort.

(iii) With the exception of the restrictions contained in paragraph (c)(4)(iii), for an arbitration request to be considered, it must be received by the appropriate FCS regional office within 20 calendar days of the date of receipt by the State agency of the regional office case findings. In the event the last day of this time period falls on a Saturday, Sunday, or Federal or State holiday, the period shall run to the end of the next work day. The State agency shall be restricted in its eligibility to request arbitration of an individual case if that case was not disposed of and the findings reported in accordance with the timeframes specified in § 275.21(b)(2). For each day late that a case was disposed of and the findings reported, the State agency shall have one less day to request arbitration of the case.

(iv) When the State agency requests arbitration, it shall submit all required documentation to the appropriate FCS regional office addressed to the attention of the FCS Arbitrator. The FCS regional office QC staff may submit an explanation of the Federal position regarding a case to the FCS Arbitrator.

(A) A complete request is one that contains all information necessary for the arbitrator to render an accurate, timely decision.

(B) If the State agency's request is not complete the arbitrator shall make a decision based solely on the available documents.

(v) The FCS Arbitrator shall have 20 calendar days from the date of receipt of a State agency's request for arbitration to review the case and make a decision.

* * * * *

§ 275.11 [Amended]

5. In § 275.11:

a. the third sentence of paragraph (g) is amended by removing the reference to ''275.25(e)(6)'' and adding in its place a reference to ''275.23(e)(8)'';

b. the fourth sentence of paragraph (g) is amended by removing the reference to ''275.25(c)'' and adding in its place a reference to ''275.23(c)''.

6. In § 275.12:

a. the introductory text of paragraph (d)(2)(vii) is revised;

b. paragraph (d)(2)(vii)(A) is revised;

c. paragraph (d)(2)(vii)(D) is revised.

The revisions read as follows:

§ 275.12 Review of active cases.

* * * * *

(d) *Variance identification.* * * *

(2) *Variance excluded from error analysis.* * * *

(vii) Subject to the limitations provided in paragraphs (d)(2)(vii)(A) through (d)(2)(vii)(F) of this section any variance resulting from application of a new Program regulation or implementing memorandum (if one is sent to advise State agencies of a change in Federal law, in lieu of regulations during the first 120 days from the required implementation date.

(A) When a regulation allows a State agency an option to implement prior to the required implementation date, the date on which the State agency chooses to implement may, at the option of the State, be considered to be the required implementation date for purposes of this provision. The exclusion period would be adjusted to begin with this date and end on the 120th day that follows. States choosing to implement prior to the required implementation date must notify the appropriate FCS Regional Office, in writing, prior to implementation that they wish the 120 day variance exclusion to commence with actual implementation. Absent such notification, the exclusionary period will commence with the required implementation date.

* * * * *

(D) Regardless of when the State agency actually implemented the regulation, the variance exclusion period shall end on the 120th day following the required implementation date, including the required implementation date defined in paragraph (d)(2)(vii)(A) of this section.

* * * * *

7. In § 275.23:

a. the last sentence of paragraph (d)(1)(iii) is amended by removing the reference to ''(e)(6)(iii)'' and adding in its place a reference to ''(e)(8)(iii)'';

b. paragraph (e)(1) is amended by removing the reference to ''paragraph (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. 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.

* * * * *

(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.

* * * * *

(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 five unusual events described below are considered to have a potential for disputing 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.

(*1*) 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 and evaluate good cause 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 civil disorder: Geographical impact of the disaster; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the disaster and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period.

(*3*) If a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the waiver amount shall be evaluated using the following formula and methodology which measures both the duration and intensity of the event: Duration will be measured by the number of months the event had an adverse impact on program operations. Intensity will be a proportional measurement of the issuances for the counties affected to the State's total issuance. This ratio will be determined using issuance figures for the first full month immediately preceding the disaster. This figure will not include issuances made to households participating under disaster certification authorized by FCS and already excluded from the error rate calculations under § 275.12(g)(2)(vi). ''Counties affected'' will include counties where the disaster/civil disorder occurred, and any other county that the State agency can demonstrate had program operations adversely impacted due to the event (such as a county that diverted significant numbers of food stamp certification or administrative staff). The amount of the waiver of liability will be determined using the following linear equation: $Ia/Ib \times [M/12 \text{ or } Mp/18] \times L$, where Ia is the issuance for the first full month immediately preceding the unusual event for the county affected; Ib is the State's total issuance for the first full month immediately preceding the unusual event; M/12 is the number of months in the subject fiscal year that the unusual event had an adverse impact on program operations; Mp/18 is the number of months in the last half (April through September) of the prior fiscal year that the unusual event had an adverse impact on program operations; L is the total amount of the liability for the fiscal year. Mathematically this formula could result in a waiver of more than 100% of the liability, however, no more than 100% of a State's liability will be waived for any one fiscal year. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year will not be considered.

(B) Strikes by State agency staff necessary to determine Food Stamp Program eligibility and process case changes.

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

(*i*) Which workers (i.e. eligibility workers, clerks, data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(*ii*) The date(s) and nature of the strike (i.e., the issues surrounding the strike);

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

(*iv*) The geographic extent of the strike (i.e. the county or counties where the strike 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 strike on program administration and errors;

(*vii*) 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 strike 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 shall 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 the strike: Geographical impact of the strike; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the strike and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. For example, the amount of the waiver might be reduced for a strike that was limited to a small area of the State. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program upon the degree to which the error rate exceeded the national performance measure.

(*3*) If a State agency has provided insufficient information to determine a

waiver amount for the uncontrollable effects of a strike using factual analysis, a waiver amount shall be evaluated by using the formula described in paragraph (e)(7)(i)(A) of this section. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of strikes that ended prior to the second half of the prior fiscal year will not be considered.

(C) A significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload. Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control.

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

(*i*) The amount of growth (both actual and percentage);

(*ii*) The time the growth occurred (what month(s)/year);

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

(*iv*) The geographic extent of the caseload growth (i.e. Statewide or in which particular counties);

(*v*) The impact of caseload growth;

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

(*vii*) The percentage of the payment error rate that resulted from the caseload growth and how this figure was derived; and

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

(*2*) The following criteria and methodology shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of unusual caseload growth: Geographical impact of the caseload growth; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the caseload growth and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded the national performance measure in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, the effects of caseload growth that ended prior to the second half of the prior fiscal year will not be considered.

(*3*) If the State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of caseload growth using factual analysis, the waiver amount shall be evaluated using the following five-step calculation:

(*i*) Step 1, determine the average number of households certified to participate statewide in the Food Stamp Program for the base period consisting of the twelve consecutive months ending with March of the prior fiscal year;

(*ii*) Step 2, determine the percentage of increase in caseload growth from the base period (Step 1) using the average number of households certified to participate statewide in the Food Stamp Program for any twelve consecutive months in the period beginning with April of the prior fiscal year and ending with June of the current fiscal year;

(*iii*) Step 3, determine the percentage the error rate for the subject fiscal year, as calculated under paragraph (e)(5)(i) of this section, exceeds the national performance measure determined in accordance with paragraph (e)(5)(i) of this section;

(*iv*) Step 4, divide the percentage of caseload growth increase arrived at in step 2 by the percentage the error rate for the subject fiscal year exceeds the national performance measure as determined in step 3; and

(*v*) Step 5, multiply the quotient arrived at in step 4 by the liability amount for the current fiscal year to determine the amount of waiver of liability.

(*4*) Under this methodology, caseload growth of less than 15% and/or occurring in the last three months of the subject fiscal year will not be considered. Mathematically this formula could result in a waiver of more than 100% of the liability however, no more than 100% of a State's liability will be waived for any one fiscal year.

(D) A change in the Food Stamp Program or other Federal or State program that has a substantial adverse impact on the management of the Food Stamp Program of a State. Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by § 275.12(d)(2)(vii) will be considered to the extent the program change is not common to all States.

(*1*) When submitting a request for good cause relief based on unusual changes in the Food Stamp or other Federal or State programs, the State agency shall provide the following information:

(*i*) The type of change(s) that occurred;

(*ii*) When the change(s) occurred;

(*iii*) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

(*iv*) Reason(s) the State agency was unable to adequately handle the change(s);

(*v*) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*vi*) The percentage of the payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

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

(*2*) The following criteria will be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of unusual changes in the Food Stamp Program or other Federal and State programs; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the unusual changes in the Food Stamp Program or other Federal and State programs and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administrative of the program based upon the degree to which the error rate exceeded the national performance measure.

(E) A significant circumstance beyond the control of the State agency. Requests for relief from errors caused by the uncontrollable effect of the significant circumstance other than those specifically set forth in paragraphs (e)(7)(i)(A) through (e)(7)(i)(D) of this section will be considered to the extent that the circumstance is not common to all States, such as a fire in a certification office.

(*1*) When submitting a request for good cause relief based on significant

circumstances, the State agency shall provide the following information:

(*i*) The significant circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(*ii*) Why the State agency had no control over the significant circumstances;

(*iii*) How the significant circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(*iv*) Where the significant circumstances existed (i.e. Statewide or in particular counties);

(*v*) When the significant circumstances existed (provide specific dates whenever possible);

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

(*vii*) Identification and explanation of the uncontrollable 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 was caused by the significant circumstances 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 shall be used to assess and evaluate good cause in conjunction with the appeals process, and to determine that portion of the error rate/liability attributable to the uncontrollable effects of a significant circumstance beyond the control of the State agency, other than those set forth in paragraph (e)(7)(i)(E) of this section: Geographical impact of the significant circumstances; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the significant circumstances and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. As appropriate, the waiver amount will be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeded the national performance measure.

(ii) *Adjustments.* When good cause is found under the criteria in paragraphs (e)(7)(i)(A) through (e)(7)(i)(E) of this section, the waiver amount may be adjusted to reflect States' otherwise effective administration of the program based upon the degree to which the error rate exceeds the national performance measure.

(iii) *Evidence.* When submitting a request to the ALJ for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (e)(7) of this section so as to fully explain how a particular significant circumstance(s) uncontrollable affected its payment error rate.

(iv) *Finality.* The initial decision of the ALJ concerning good cause shall constitute the final determination for purposes of judicial review without further proceedings as established under the provisions of § 283.17 and $283.20 of this chapter.

* * * * *

(9) *FCS Timeframes.* FCS shall determine, and announce the national average payment error rate for fiscal year within 30 days following the completion of the case review process and all arbitrations of State agency-Federal difference cases for that fiscal year, and at the same time FCS shall notify all State agencies of their individual payment error rates and payment error rate liabilities, if any. The case review process and the arbitration of all difference cases shall be completed not later than 180 days after the end of fiscal year. FCS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the end of the fiscal year reporting period in which the claim arose unless an administrative appeal relating to the claim is pending.

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Dated: May 20, 1997.

Mary Ann Keeffe,

Acting Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 97–13946 Filed 5–30–97; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 330, 340, 351, and 372

[Docket No. 97–004–1]

Revision of Authority Citations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations to correct authority citations in four parts of title 7 of the Code of Federal Regulations. These authority citations show the location in the Code of Federal Regulations of the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs and from the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Animal and Plant Health Inspection Service.

EFFECTIVE DATE: June 2, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Holmes, Regulatory Coordination Specialist, Regulatory Analysis and Development, PPD, APHIS, 4700 River Road Unit 118, Riverdale, MD 20737–1238, (301) 734–8682; or e-mail: kholmes@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

A final rule effective and published in the **Federal Register** on November 8, 1995 (60 FR 56392–56465) revised the delegations of authority from the Secretary of Agriculture and general officers of the Department due to a reorganization of the Department. This document amends the authority citations in three parts of title 7 of the Code of Federal Regulations to reflect the changes made by that final rule.

This document also updates the authority citation for 7 CFR part 351 to include the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Marketing and Regulatory Programs and from the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Animal and Plant Health Inspection Service (APHIS) and from the Administrator, APHIS, to the Deputy Administrator for Plant Protection and Quarantine, APHIS.

Accordingly, title 7 chapter III, is amended as follows:

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

1. The authority citation for 7 CFR part 330 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd-150ff, 161, 162, 164a, 450, and 2260; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, and 4332; 7 CFR 2.22, 2.80, and 371.2(c).

PART 340—INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING WHICH ARE PLANT PESTS OR WHICH THERE IS REASON TO BELIEVE ARE PLANT PESTS

2. The authority citation for 7 CFR part 340 is revised to read as follows: