Form FNS–248, Status of Sample Selection and Completion or other format specified by FNS. This report shall be submitted to FNS so that it is received no later than 105 days after the end of the sample month. Each report shall reflect sampling and review activity for a given sample month.

(d) *Annual results.* The State agency shall annually report the results of all quality control reviews during the review period. For this report, the State agency shall submit the edited results of all QC reviews on the Form FNS–247, Statistical Summary of Sample Distribution or other format specified by FNS. This report shall be submitted to FNS so that it is received no later than 105 days from the end of the annual review period. Every case selected in the active or negative sample must be accounted for and reported to FNS, including cases not subject to review, not completed, and completed.

(e) *Demonstration projects/SSA processing.* The State agency shall identify the monthly status of active and negative demonstration project/SSA processed cases (i.e., those cases described in § 275.11(g)) on the Form FNS–248, described in paragraph (c) of this section. In addition, the State agency shall identify the annual results of such cases on the Form FNS–247, described in paragraph (d) of this section.

[Amdt. 260, 49 FR 6310, Feb. 17, 1984, as amended by Amdt. 262, 49 FR 50598, Dec. 31, 1984; Amdt. 266, 52 FR 3410, Feb. 4, 1987]

§ 275.22 Administrative procedure.

Reports on program performance are intended to provide the State an opportunity to determine compliance with program requirements, identify and resolve emerging problems, and assess the effectiveness of actions that have been taken to correct existing problems. States' reports enable FNS to assess the nationwide status of eligibility and basis of issuance determinations, to ensure State compliance with Federal requirements, to assist States in improving and strengthening their programs, and to develop Federal policies. Reports must be submitted in duplicate to the appropriate FNS Regional Office according to the time frames established in §§ 275.20, 275.21, and 275.22 of this part.

[Amdt. 160, 45 FR 15911, Mar. 11, 1980. Redesignated at 52 FR 3410, Feb. 4, 1987]

Subpart G—Program Performance

§ 275.23 Determination of State agency program performance.

(a) FNS shall determine the efficiency and effectiveness of a State's administration of the Food Stamp Program by measuring:

(1) State compliance with the standards contained in the Food Stamp Act, regulations, and the State Plan of Operation; and

(2) State efforts to improve program operations through corrective action.

(b) This determination shall be made based on:

(1) Reports submitted to FNS by the State;

(2) FNS reviews of State agency operations;

(3) State performance reporting systems and corrective action efforts; and

(4) Other available information such as Federal audits and investigations, civil rights reviews, administrative cost data, complaints, and any pending litigation.

(c) *State agency error rates.* FNS shall estimate each State agency's error rates based on the results of quality control review reports submitted in accordance with the requirements outlined in § 275.21. The State agency's active case error, payment error, underissuance error, and negative case error rates shall be estimated as follows:

(1) *Active case error rate.* The active case error rate shall include the proportion of active sample cases which were reported as ineligible or as receiving an incorrect allotment (as described in § 275.12(e)) based upon certification policy as set forth in part 273.

(2) *Payment error rate.* (i) For fiscal years prior to Fiscal Year 1986, the payment error rate shall include the value of the allotments overissued, including overissuances to ineligible cases, for those cases included in the active error rate.

(ii) For Fiscal Year 1986 and subsequent fiscal years, the payment error rate shall include the value of the allotments overissued, including those to ineligible cases, and the value of allotments underissued for those cases included in the active error rate.

(3) *Underissuance error rate.* Prior to Fiscal Year 1986, the underissuance error rate shall include the value of the allotments reported as underissued for those cases included in the active case error rate.

(4) *Negative case error rate.* The negative case error rate shall be the proportion of negative sample cases which were reported as having been eligible at the time of denial, suspension or termination (as described in § 275.13(c)) based upon certification policy as set forth in part 273.

(5) *Demonstration projects/SSA processing.* The reported results of reviews of active and negative demonstration project/SSA processed cases, as described in § 275.11(g), shall be excluded from the estimate of the active case error rate, payment error rate, underissuance error rate, and negative case error rate.

(d) *Federal enhanced funding.* (1) Before making enhanced funding available to a State agency, as described in § 277.4(b), FNS will:

(i) Validate the State agency's estimated payment error rate, underissuance error rate, and negative case error rate, as provided for in § 275.3(c);

(ii) Ensure that the sampling techniques used by the State agency are FNS-approved procedures, as established in § 275.11; and

(iii) Validate the State agency's quality control completion rate to ensure that all of the minimum required sample cases, of both active and negative quality control samples, have been completed. This completion standard is applied separately to the active and negative case samples, and the State agency's estimated payment and underissuance error rates will be adjusted separately, if necessary, to account for those required cases not completed, in accordance with the procedures described in paragraph (e)(8)(iii) of this section for adjustment of the payment error rate.

(2) After validation and any necessary adjustment of estimated error rates:

(i) A State agency with a combined payment error rate and underissuance error rate of less than five percent for an annual review period for Fiscal Year 1983 through Fiscal Year 1985, or a payment error rate of less than five percent for an annual review period for Fiscal Year 1986 through Fiscal Year 1988, shall be eligible for a 60 percent Federally funded share of administrative costs, provided that the State agency's negative case error rate for that period is less than the national weighted mean negative case error rate for the prior fiscal year;

(ii) Beginning with Fiscal Year 1989, a State agency with a payment error rate less than or equal to 5.90 percent and with a negative case error rate less than the national weighted mean negative case rate for the prior fiscal year will have its Federally funded share of administrative costs increased by one percentage point to a maximum of 60 percent for each full one-tenth of a percentage point by which the payment error rate is less than six percent.

(3) State agencies entitled to enhanced funding shall receive the additional funding on a retroactive basis only for the review period in which their error rates are less than the levels described in paragraph (d)(2) of this section.

(e) *State agencies' liabilities for payment error rates.* (1) At the end of each fiscal year, each State agency's payment error rate over the entire fiscal year will be computed, as described in paragraph (e)(8) of this section, and evaluated to determine whether the payment error rate goals established in the following paragraphs have been met.

(2) *Establishment of payment error rate goals—Fiscal Year 1983 through Fiscal Year 1985.* (i) Each State agency's payment error rate goal for Fiscal Year 1983 shall be nine percent. Each State agency's payment error rate goal for Fiscal Year 1984 shall be seven percent. Each State agency's payment error rate goal for Fiscal Year 1985 shall be five percent. State agencies' payment error rates for any fiscal year shall be

derived from the review period corresponding to the fiscal year.

(ii) If a State agency fails to achieve a nine percent payment error rate in Fiscal Year 1983 but reduces its payment error rate for Fiscal Year 1983 by 33.3 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate. If a State agency fails to achieve a seven percent payment error rate in Fiscal Year 1984, but reduces its payment error rate for Fiscal Year 1984 by 66.7 percent (or more) of the difference between its payment error rate during the period of October 1980 through March 1981 and a five percent payment error rate, the State agency shall bear no fiscal liability for its payment error rate.

(iii) State agencies' payment error rates shall be rounded to the nearest one hundredth of a percent with .005 and above being rounded up to the next highest one-hundredth and .004 and below being rounded to the next lowest one-hundredth.

(3) *State agencies failing to achieve payment error rate goals—Fiscal Year 1983 through Fiscal Year 1985.* Each State agency which fails to achieve its payment error rate goal during a fiscal year shall be liable as specified in the following paragraphs.

(i) For every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds the goal for a fiscal year, FNS shall reduce the money it pays for the State agency's Food Stamp Program administrative costs by five percent for that fiscal year; provided that for every percentage point, or fraction thereof, by which a State agency's payment error rate exceeds its goal by more than three percentage points, FNS shall reduce the Federally funded share of Food Stamp Program administrative costs by ten percent for the applicable fiscal year. Thus, if a State agency's reported error rate in Fiscal Year 1983 is 10.5 percent, its Federal administrative funding could be reduced by ten percent. A 13.1 percent error rate, or 4.1 percentage points above the goal, would result in a reduction of 5 percent for each of the three first points, 10 percent for the fourth point and another 10 percent for the fraction above 4 percentage points. This would amount to a 35 percent reduction in Federal administrative funds unless the provisions of paragraph (e)(3)(ii) are applicable to the State agency's circumstances.

(ii) If a State agency fails to reach its payment error rate goal but reduces its error rate as explained in paragraph (e)(2)(ii) for a given fiscal year it will bear no liability for its error rates. If, however, a State agency fails to reach the established goal and fails to meet the reduction percentage for Fiscal Year 1983 and/or 1984, its Federally funded share of program administrative costs shall be reduced by five percent for every percentage point, or fraction thereof, (with a 10 percent reduction applied for every percentage point or fraction above 3 percentage points) by which its error rate exceeds the payment error rate it would have achieved had it met the 33.3 or 66.7 percent reduction percentage for the applicable fiscal year. Thus, if a State agency's payment error rate during the October through March 1981 period was 13 percent and its error rate for Fiscal Year 1983 is 11 percent, it will have failed to achieve a 33.3 percent reduction $(13-(13-5)(33.3)=10.34$ percent), i.e., the rate the State agency would have achieved had it met the reduction percentage) and incurred a liability equal to five percent of its Federal administrative funding. If the State agency's payment error rate increased to 13 percent in Fiscal Year 1984, it will have missed a 66.7 percent reduction by 5.34 percentage points $(13-(13-5)(66.7)=7.66$ percent) and incurred a liability equal to 45 percent of its Federal administrative funding. In the latter example, the 45 percent funding reduction results from a 15 percent reduction for the first three percentage points and 30 percent for the additional 2.34 percentage points by which the State agency exceeded a 7.66 percent error rate.

(iii) If a State agency is found liable for an excessive payment error rate, the amount of liability will be calculated by: (A) Multiplying the percent the Federal share is to be reduced by the base Federal reimbursement rate of

50 percent; (B) subtracting the product of (A) from 50 percent; and (C) multiplying the result of (B) by the State agency's costs covered under the base Federal reimbursement rate for the fiscal year in which the State agency incurred the liability. For example, if the total administrative costs (State and Federal) in a State agency are $4,000,000 for the fiscal year, and the State agency's Federal funding is to be reduced by 25 percent, the State agency would be reimbursed at a rate of 37.5 percent (i.e., 50 percent minus 25 percent times 50 percent) or $1,500,000. The State agency's liability would be $500,000 or 12.5 percent of its administative costs.

(iv) A State's federally funded share of administrative costs shall not be reduced by an amount that exceeds the difference between its payment error rate goal (or what its error rate would have been had it met the reduction criteria of paragraph (ii) above) and its actual error rates expressed as a percentage of its total issuance during the fiscal year. Therefore, if the State agency in the above example issued $10,000,000 in food stamps in the fiscal year and exceeded its goal by four percentage points (as demonstrated by a 25 percent reduction in Federal funding), the State agency's liability would be capped at $400,000 ((.04)(10,000,000)), even though the calculation based upon administrative funds would result in a liability of $500,000.

(4) *State agencies' liabilities for payment error—Fiscal Year 1986 through Fiscal Year 1991.* 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 1986 through Fiscal Year 1991, FNS shall announce a national performance measure within nine months following the end of each fiscal year that is 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 at the time the State agency is initially notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change. This national performance measure is used to establish a payment-error tolerance level. The payment-error tolerance level for any fiscal year shall be one percentage point added to the lowest national performance measure ever announced up to and including such fiscal year.

(ii) For any fiscal year in which a State agency's payment error rate exceeds the payment-error tolerance level, the State agency shall pay or have its share of administrative costs reduced by an amount equal to the difference between its payment error rate less such tolerance level as a quantity, multiplied by the total value of the allotments issued in the fiscal year by that State agency.

(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, FNS 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.

(6) *Relationship to warning process and negligence.* (i) States' liability for payment error rates as determined above are not subject to the warning process of §276.4(d).

(ii) FNS shall not determine negligence (as described in §276.3) based on the overall payment error rate for issuances to ineligible households and overissuances to eligible households in a State or political subdivision thereof. FNS may only establish a claim under §276.3 for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined under §276.3), with specific certification requirements. Thus, FNS will not use the results of States' QC reviews to determine negligence.

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283 of this chapter. While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of §276.3 of this chapter for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable for dollar loss under both the QC liability system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

(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 FNS 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.

(8) *Determination of payment error rates.* As specified in § 275.3(c), FNS will validate each State agency's estimated payment error rate through rereviewing the State agency's active

case sample and ensuring that its sampling, estimation, and data management procedures are correct.

(i) Once the Federal case reviews have been completed and all differences with the State agency have been identified, FNS shall calculate regressed error rates using the following linear regression equations.

(A) $y_1'=y_1+b_1(X_1-x_1)$, where y_1' is the average value of allotments overissued to eligible and ineligible households; y_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to the Federal finding, b_1 is the estimate of the regression coefficient regressing the Federal findings of allotments overissued to eligible and ineligible households on the corresponding State agency findings, x_1 is the average value of allotments overissued to eligible and ineligible households in the rereview sample according to State agency findings, and X_1 is the average value of allotments overissued to eligible and ineligible households in the full quality control sample according to State agency's findings. In stratified sample designs Y_1, X_1, and x_1 are weighted averages and b_1 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(B) $y_2'=y_2+b_2(X_2-x_2)$, where y_2' is the average value of allotments underissued to households included in the active error rate, y_2 is the average value of allotments underissued to participating households in the rereview sample according to the Federal finding, b_2 is the estimate of the regression coefficient regressing the Federal findings of allotments underissued to participating households on the corresponding State agency findings, x_2 is the average value of allotments underissued to participating households in the rereview sample according to State agency findings, and X_2 is the average value of allotments underissued to participating households in the full quality control sample according to the State agency's findings. In stratified sample designs y_2, X_2, and x_2 are weighted averages and b_1 is a combined regression coefficient in which stratum weights sum to 1.0 and are proportional to the estimated stratum caseloads subject to review.

(C) The regressed error rates are given by $r_1'=y_1'/u$, yielding the regressed overpayment error rate, and $r_2'=y_2'/u$, yielding the regressed underpayment error rate, where u is the average value of allotments issued to participating households in the State agency sample.

(D) After application of the adjustment provisions of paragraph (e)(8)(iii) of this section, the adjusted regressed payment error rate shall be calculated to yield the State agency's payment error rate for use in the reduced and enhanced funding determinations described in paragraphs (d) and (e) of this section. Prior to Fiscal Year 1986, the adjusted regressed payment error rate is given by r_1''. For Fiscal Year 1986 and after, the adjusted regressed payment error rate is given by $r_1''+r_2''$.

(ii) If FNS determines that a State agency has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State agency's payment error rate based upon a correction to that aspect of the State agency's QC system which is deficient. If FNS cannot accurately correct the State agency's deficiency, FNS will assign the State agency a payment error rate based upon the best information available. After consultation with the State agency, this assigned payment error rate will then be used in the above described liability determination and in determinations for enhanced funding under paragraph (d) of this section. State agencies shall have the right to appeal assignment of an error rate in this situation in accordance with the procedures of part 283.

(iii) Should a State agency fail to complete 98 percent of its required sample size, FNS shall adjust the State agency's regressed error rates using the following equations:

(A) $r_1''=r_1'+2(1-C)S_1$, where r_1'' is the adjusted regressed overpayment error rate, r_1' is the regressed overpayment error rate computed from the formula in paragraph (e)(8)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_1 is the standard error of the State agency sample overpayment error rate. If a State agency completes all of its required sample size, then $r_1''=r_1'$.

(B) $r_2''=r_2'+2(1-C)S_2$, where r_2'' is the adjusted regressed underpayment error rate, r_2' is the regressed underpayment error rate computed from the formula in paragraph (e)(8)(i)(C) of this section, C is the State agency's rate of completion of its required sample size expressed as a decimal value, and S_2 is the standard error of the State agency sample underpayment error rate. If a State agency completes all of its required sample size, then $r_2''=r_2'$.

(9) *FNS Timeframes.* FNS shall determine and announce the national average payment error rate for the 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 FNS 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 the fiscal year. FNS shall initiate collection action on each claim for such liabilities before the end of the fiscal year following the reporting period in which the claim arose unless an administrative appeal relating to the claim is pending. Such appeals include requests for good cause waivers and administrative and judicial appeals pursuant to Section 14 of the Food Stamp Act. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c) of this chapter, FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability. FNS is not bound by the timeframes referenced in this subparagraph in cases where a State fails to submit QC data expeditiously to FNS and FNS determines that, as a result, it is unable to calculate a State's payment error rate and payment error rate liability within the prescribed timeframe.

(10) *Interest charges.* (i) To the extent that a State agency does not pay a claim established under § 275.23(e)(5) within 30 days from the date on which the bill for collection (after a determination on any request for a waiver for good cause) is received by the State agency, the State agency shall be liable for interest on any unpaid portion of such claim accruing from the date on which the bill for collection was received by the State agency. This situation applies unless the State agency appeals the claim under part 283 of the regulations. If the State agency agrees to pay the claim through reduction in Federal financial participation for administrative costs, this agreement shall be considered to be paying the claim. If the State agency appeals such claim (in whole or in part), the interest on any unpaid portion of the claim shall accrue from the date of the decision on the administrative appeal, or from a date that is one year after the date the bill is received, whichever is earlier, until the date the unpaid portion of the payment is received.

(ii) If the State agency pays such claim (in whole or in part) and the claim is subsequently overturned through administrative or judicial appeal, any amounts paid by the State agency above what is actually due shall be promptly returned with interest, accruing from the date the payment was received until the date the payment is returned.

(iii) Any interest assessed under this paragraph shall be computed at a rate determined by the Secretary based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rates during the period such interest accrues. The bond equivalent is the discount rate (i.e., the price the bond is actually sold for as opposed to its face value) determined by the weekly auction (i.e., the difference between the discount rate and face value) converted to an annualized figure. The Secretary shall use the investment rate (i.e., the rate for 365 days) compounded in simple interest for the period for which the claim is not paid. Interest billings shall be made quarterly with the initial billing accruing from the date the interest is first due. Because the discount rate for Treasury bills is issued weekly, the interest rate for State agency claims shall be averaged for the appropriate weeks.

(11) *Suspension and waiver of liabilities for investments in program management activities.* In connection with the settlement of all or a portion of a QC liability for FY 1986 and subsequent QC review periods, the Department may suspend and subsequently waive all or part of a State agency's payment error rate liability claim based on the State agency's offsetting investment in program management activities intended to reduce errors measured by the QC system. A State agency may submit a request to the Department for review of planned investments in program management activities intended to reduce error rates as part of a proposed settlement of all or a portion of a QC liability at any time during the QC liability claim process.

(i) The State agency's investment plan activity or activities must meet the following conditions to be accepted by the Department:

(A) The activity or activities must be directly related to error reduction in the ongoing program, with specific objectives regarding the amount of error reduction, and type of errors that will be reduced. The costs of demonstration, research, or evaluation projects under sections 17 (a) through (c) of the Act will not be accepted. The State agency may direct the investment plan to a specific project area or implement the plan on a statewide basis. In addition, the Department will allow an investment plan to be tested in a limited area, as a pilot project, if the Department determines it to be appropriate. A request by the State agency for a waiver of existing rules will not be acceptable as a component of the investment plan. The State agency must submit any waiver request through the normal channels for approval and receive approval of the request prior to including the waiver in the investment plan. Waivers that have been approved for the State agency's use in the ongoing operation of the program may continue to be used.

(B) The program management activity must represent a new or increased expenditure. The proposed activity must also represent an addition to the minimum program administration required by law for State agency administration including corrective action. Therefore, basic training of eligibility workers or a continuing corrective action from a Corrective Action Plan shall not be acceptable. The State agency may include a previous initiative in its plan; however, the State agency would have to demonstrate that the initiative is entirely funded by State money, represents an increase in spending and there are no remaining Federal funds earmarked for the activity.

(C) Investment activities must be funded in full by the State agency, without any matching Federal funds until the entire investment amount agreed to is spent. Amounts spent in excess of the settlement amount included in the plan may be subject to Federal matching funds.

(ii) The request shall include:

(A) A statement of the amount of money that is a quality control liability claim that is to be offset by investment in program improvements;

(B) A detailed description of the planned program management activity;

(C) Planned expenditures, including time schedule and anticipated cost breakdown;

(D) Anticipated impact of the activity, identifying the types of errors expected to be affected;

(E) Documentation that the funds would not replace expenditures already earmarked for an ongoing effort; and

(F) A statement that the expenditures are not simply a reallocation of resources.

(iii) The State's and the Department's agreement to settle all, part, or none of the QC liability claim under this paragraph is final and not subject to further appeal within the Department. An agreement to settle all or part of a State agency's QC liability claim will result in suspension of the claim for the specified amount, pending the State's satisfactory completion of the initiative or action taken by the Department under the provisions of paragraph (e)(11)(vi) of this section.

(iv) The State agency shall submit modifications to the plan to the Department for approval, prior to implementation. Expenditures made prior to approval by the Department may not be used in offsetting the liability.

(v) Each State agency which has all or part of a claim suspended under this provision shall submit periodic documented reports according to a schedule in its approved investment plan. At a minimum, these reports shall contain:

(A) A detailed description of the expenditure of funds, including the source of funds and the actual goods and services purchased or rented with the funds;

(B) A detailed description of the actual activity; and

(C) An explanation of the activity's effect on errors, including an explanation of any discrepancy between the planned effect and the actual effect.

(vi) Any funds that the State agency's reports do not document as spent as specified in the investment plan may be withdrawn by the Department from the reduction in QC liability. Before the reduction is withdrawn, the State agency will be provided an opportunity to provide the missing documentation.

(vii) If the reduction in QC liability is withdrawn, the Department shall charge interest on the funds not spent according to the plan, in accordance with section 602 of the Hunger Prevention Act of 1988, which amended section 13(a)(1) of the Food Stamp Act of 1977.

(viii) The Department's determination to withdraw a reduction in QC liability is not appealable within the Department.

[Amdt. 160, 45 FR 15912, Mar. 11, 1980, as amended by Amdt. 260, 49 FR 6311, Feb. 17, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984. Redesignated and amended at 52 FR 3410, Feb. 4, 1987; Amdt. 295, 52 FR 29659, Aug. 11, 1987; Amdt. 328, 56 FR 60052, Nov. 27, 1991; Amdt. 325, 57 FR 2828, Jan. 24, 1992; Amdt. 327, 57 FR 44486, Sept. 28, 1992; 57 FR 47163, Oct. 14, 1992; Amdt. 348, 59 FR 34561, July 6, 1994; ; Amdt. 366, 62 FR 29659, June 2, 1997; Amdt. 373, 64 FR 38297, July 16, 1999]

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

Sec.

AUTHORITY: 7 U.S.C. 2011–2036.

EDITORIAL NOTE: OMB control numbers relating to this part 276 are contained in §271.8.

§ 276.1 Responsibilities and rights.

(a) *Responsibilities.* (1) State agencies shall be responsible for establishing and maintaining secure control over coupons and cash for which the regulations designate them accountable. Except as otherwise provided in these regulations, any shortages or losses of coupons and cash shall strictly be a State agency liability and the State agency shall pay to FNS, upon demand, the amount of the lost or stolen coupons or cash, regardless of the circumstances.

(2) State agencies shall be responsible for preventing losses or shortages of Federal funds in the issuance of benefits to households participating in the Program. FNS shall strictly hold State agencies liable for all losses, thefts and unaccounted shortages that occur during issuance, unless otherwise specified. Issuance functions begin with the State agency's creation of a record-for-issuance to generate each month's issuances from the master issuance file. Shortages or losses which result from any functions that occur prior to the creation of the record-for-issuance are subject to either paragraph (a)(3) of this section or subpart C—Quality Control (QC) Reviews, of part 275—Performance Reporting System.

(3) State agencies shall be responsible for preventing losses of Federal funds in the certification of households for participation in the Program. If FNS makes a determination that there has been negligence or fraud on the part of a State agency in the certification of households for participation in the Program, FNS is authorized to bill the State agency for an amount equal to the amount of coupons issued as a result of the negligence or fraud.

(4) State agencies shall be responsible for efficiently and effectively administering the Program by complying