



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 305

RIN 0970-AC95

Modifications to Performance Standards During Natural Disasters and Other Calamities

AGENCY: Office of Child Support Services (OCSS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS or the Department).

ACTION: Final rule.

SUMMARY: OCSS issues this final rule to provide temporary relief to states from certain child support program performance requirements and penalties during natural disasters and other calamities which have a negative impact on state child support program operations. The rule allows OCSS to modify performance measure requirements when natural disasters and other calamities affect, or are expected to affect, the state child support program's ability to achieve performance standards for paternity establishment, support order establishment, and current collections. The rule enables states to avoid the imposition of penalties due to adverse data reliability audit findings during, and after, natural disasters and other calamities, including pandemics and declared public health emergencies.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tricia John, Policy Specialist, Division of Policy and Training, OCSS, telephone (202) 260-7143. Email inquiries to ocss.dpt@acf.hhs.gov. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This rule is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act. The authority to modify the paternity establishment percentage (PEP) performance measure and data reliability audit requirements is based on section 452(g)(3)(A) of the Act (42 U.S.C. 652(g)(3)(A)), which provides the Secretary with discretionary authority to modify the PEP and program audit requirements taking into account additional variables as identified by the Secretary that affect the ability of a state to meet the PEP and audit requirements. The authority to modify, waive or suspend the support order establishment and current collections performance measures is based on section 409(a)(8)(A)(i)(I) of the Act (42 U.S.C. 609(a)(8)(A)(i)(I)), which provides the Secretary with discretion regarding the establishment of other state child support program performance measures.

Background

The purpose of this rule is to authorize the Secretary to provide targeted and time-limited relief to states from certain performance penalties when natural disasters and other calamities impact state child support program operations, preventing the state from achieving the required program performance measures.

This rule allows OCSS to modify the requirements for states to meet the following performance standards: the PEP performance standard of 90 percent under 45 CFR 305.40(a)(1), the support order establishment standard of 40 percent under 45 CFR 305.40(a)(2), and the current collections performance standard of 35 percent under 45 CFR 305.40(a)(3). This rule sets forth the process by which states may request, and

OCSS may adjust these performance standards to a lower level to avoid imposing financial penalties on states and modify the requirements to avoid the imposition of penalties due to adverse data reliability audit findings. The rule permits time-limited modification of performance requirements during, and subsequent to, natural disasters and other calamities. We note that the rule only addresses modifications to penalty performance measures and levels under 45 CFR 305.40; it does not change the requirements related to incentive payments under section 458 of the Act and 45 CFR part 305.

The need for OCSS to establish a process for states to request relief from penalties during natural disasters and calamities became apparent during the COVID-19 pandemic. During the COVID-19 pandemic, states experienced significant workload burdens and service backlogs due to disruptions to state child support program operations and court closures. State child support program operations were affected in a variety of ways, including being unable to obtain voluntary acknowledgments through in-hospital programs or to access genetic testing due to child support office closures, court closures, staffing shortages, or when clinical laboratory resources were diverted for pandemic-related testing. In response, OCSS added 45 CFR 305.61(e) to provide time-limited relief specific to the impact of COVID-19, to modify the Paternity Establishment Percentage for Federal Fiscal Years (FFY) 2020, 2021, and 2022.

Since the start of the pandemic in early 2020, states have appealed for relief from program requirements in order to support their operations during the crisis. OCSS was able to provide certain flexibilities for administrative requirements under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) (*See* OCSS's Dear Colleague Letter 20-04: Flexibilities for State and Tribal Child Support Agencies

during COVID-19 Pandemic¹). However, these flexibilities did not extend to relief for financial penalties related to performance or adverse data reliability audit findings. States are concerned that performance-related financial penalties resulting from a natural disaster or other calamity, and which are imposed in the form of a reduction to state TANF grants, place an undue burden on state budgets and threaten funding that supports the very families who are most in need of public assistance during a time of crisis.

State Child Support Program Performance Requirements

Under title IV-D of the Act, states are required to achieve performance levels in paternity establishment, support order establishment, and current collections. Failure to achieve required performance levels may lead to penalties assessed as a percentage reduction of the state's Temporary Assistance for Needy Families (TANF) grant in accordance with section 409(a)(8) of the Act (42 U.S.C. 609(a)(8)).

The PEP, support order establishment, and current collections performance measures, which are part of the overall performance, audit, penalties, and incentives for the child support program, are established under 452(g) of the Act and 45 CFR 305.40. Section 452(a)(4)(C)(i) of the Act requires the Secretary to determine whether state-reported data used to determine the performance levels are complete and reliable. Additionally, section 409(a)(8)(A) of the Act and 45 CFR 305.61(a)(1) include the assessment of a financial penalty if there is a failure to achieve the required level of performance or an audit determines that the data are incomplete or unreliable.

The required levels of performance for the PEP, support order establishment, and current collections performance measures are set out in 45 CFR 305.40:

- The PEP performance level must be at least 90 percent or an improvement of 2 to 6 percentage points over the previous year's level of performance, below

¹ <https://www.acf.hhs.gov/css/policy-guidance/flexibilities-state-and-tribal-child-support-agencies-during-covid-19-pandemic>

which a state will incur a penalty.

- The support order establishment performance level must be at least 40 percent, below which a state will be penalized unless an increase of 5 percent over the previous year is achieved.
- The current collections performance level must be at least 35 percent, below which a state will be penalized unless an increase of 5 percent over the previous year is achieved.

Section 409(a)(8)(A)(ii) of the Act and 45 CFR 305.61(a)(2) impose automatic corrective action for the subsequent fiscal year. A state also must submit complete and reliable data used in the performance measure calculations, which will be audited according to 45 CFR 305.60.

If a state fails to meet the annual performance measure standards, or to show improvement in the subsequent year, the amount of the initial penalty will be equal to one to two percent of the adjusted State Family Assistance Grant for the state's TANF program in accordance with 45 CFR 305.61(c) and (d). A penalty will also be imposed if the state fails to submit complete and reliable performance measure data and there is an adverse data reliability audit finding for a performance measure in the subsequent year. The penalty will continue to be assessed in accordance with section 409(a)(8)(B) of the Act and 45 CFR 305.61 until the state is determined to have submitted complete and reliable data and achieved the required performance measure standards. In accordance with 45 CFR 262.1(e)(1), the state must expend additional state funds equal to the amount of the penalty (which will not count toward the maintenance-of- effort requirement under TANF) the year after the TANF grant penalty is assessed.

Summary Description of the Regulatory Changes

The notice of proposed rulemaking (NPRM) was published in the *Federal Register* on July 13, 2023 (88 FR 44760 through 44764). The comment period ended

September 11, 2023. In the NPRM, we proposed to add a new provision to Part 305, “Program Performance Measures, Standards, Financial Incentives and Penalties,” to explain when OCSS may exercise its authority to provide short-term relief from certain performance requirements related to the PEP, support order establishment, and current collections performance standards when states are unable to meet those requirements due to the impact of natural disasters or other calamities on state child support program operations. Specifically, we proposed adding a new paragraph (f) to § 305.61, “Penalty for failure to meet IV-D requirements,” to explain when OCSS may exercise its authority, during and subsequent to natural disasters and other calamities, to temporarily modify the performance requirements for states to meet the PEP standard of 90 percent under 45 CFR 305.40(a)(1), the support order establishment standard of 40 percent under 45 CFR 305.40(a)(2), and the current collections standard of 35 percent under 45 CFR 305.40(a)(3), to a lower level to avoid imposing a financial penalty on states. In addition, we proposed that OCSS may set aside adverse data reliability audit findings under section 452(g) of the Act during the same time period.

Response to Comments

OCSS received 16 sets of comments to the July 2023 NPRM from states, organizations, and other interested entities and individuals, which were posted on www.regulations.gov. OCSS reviewed and analyzed the comments and considered them in finalizing the rule. All comments received in response to this rulemaking were supportive of the proposed relief as outlined in the NPRM. We received several comments to the NPRM that included additional suggestions and recommendations, and we respond to those comments below.

Comment 1: Several commenters requested clarification around data reliability audit findings in relation to this proposed regulation. Some commenters had concerns regarding whether requests for relief from adverse data reliability audit findings related to

the three performance measures that are the subject of this rule should coincide or be submitted subsequent to the request for relief from one or more performance requirements. One commenter requested clarification regarding the process for requesting relief from adverse data reliability audit findings and whether such relief can be sought without a prior or concurrent request for modification of performance requirements.

A commenter requested clarification regarding the types of adverse data reliability audit findings that could be set aside under the new rule. A commenter observed that the rule does not address the arrears or cost-effectiveness performance measures and, while acknowledging that failure to meet these performance measures does not result in penalties, such performance could still be implicated in data reliability audit findings.

A commenter requested clarification on whether substandard performance occurring prior to an approved performance modification period would carry over to the post performance modification period. One commenter asked for clarification on whether a state would still need to do a data reliability audit if data reliability errors were found, or if states could instead plan on doing the Data Reliability Review/ data reliability audit on a state's regular schedule.

Response 1: Data reliability audits for the period(s) which performance requirement modifications are requested will continue to occur after a request is made under section 305.61(f). A state may submit a request to set aside adverse data reliability audit findings to avoid the imposition of a financial penalty subsequent to or concurrent with a request to modify performance requirements. A state can request relief from adverse data reliability audit findings without a request to modify performance requirements.

Relief from adverse data reliability audit findings to avoid the imposition of a financial penalty only applies to data related to the PEP, order establishment, and current collections performance measures, and only during those periods for which the state

seeks and OCSS grants relief, as provided for under this rule. As such, the performance measures of arrearage collections and cost-effectiveness, which are not penalty performance measures under 45 CFR 305.40, are outside the scope of this rulemaking. States should make every effort to demonstrate how, and for what periods, the natural disaster or other calamity directly results in a reduction in performance. If the state expects a continued reduction in performance due to the natural disaster or calamity for subsequent Federal fiscal years, the state should submit a subsequent request for a reduction in the affected performance measures for each fiscal year.

The process to determine what type of audit a state will receive has not changed. States that could have been exempt from a data reliability audit will go back into the annual audit pool for the next audit cycle if, during the current audit cycle, they either fail to meet a performance standard, fail to report reliable data, or achieve marginal performance on any line evaluated for data reliability.

Comment 2: A number of commenters requested more information around timeframes to make the request for relief and timeframes for OCSS to respond to their request for relief. One commenter observed that there did not seem to be a timeframe attached to when an initial application for relief should be submitted and recommended that the rule include language similar to the requirement for submitting subsequent requests (“as soon as the adverse effect of the natural disaster or other calamity giving rise to the request is known to the state”). Another commenter stated that the requirement to submit a subsequent request as soon as the adverse effect is known should be clarified or deleted, and that a requirement of timeliness is overly strict and could allow for a denial based on an untimely request.

Another commenter recommended adding a clarification regarding whether a state can make the same request multiple years in a row.

Five commenters requested that the rule include a timeframe for OCSS to respond to state applications for relief, two of them recommending a period of 30 days.

One commenter recommended the creation of a standardized request form to apply for relief. The commenter also suggested that such a form should include instructions on what specific or support information is needed.

Response 2: During times of natural disasters and other calamities, states will need flexibility in determining the impacts to their programs and adequate time and resources to gather the necessary data to substantiate the state's request for relief. Therefore, the regulation does not impose a specific timeframe for initial application or subsequent requests.

Similarly, we believe states should have the maximum flexibility to submit a request for relief in the form that the state determines is most reasonable. Each state's circumstances will differ in the type of disaster or calamity and impacts to performance. Creating a standardized form would reduce that flexibility for states. Additionally, states may request relief by following the procedures specified in paragraphs (f)(4), (5) and (6), and OCSS will provide timely communication regarding the state's request.

We have contemplated that a state could request relief on a fiscal year by fiscal year basis, following the same process outlined in the rule. As we have previously stated, a natural disaster or other calamity includes state chief executive officer-declared states of emergency, pandemics, events designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) and declared public health emergencies under section 319 of the Public Health Service Act (42 U.S.C. 247d). Therefore, the state must demonstrate, based on available data, that such natural disaster or other calamity has directly resulted in a reduction in performance or is expected to result in a reduction in performance in subsequent fiscal years.

We agree with comments indicating that a timeframe for OCSS to respond to state applications for relief should be included in the rule. We have revised the final rule to include a 30-calendar day response time.

Comment 3: Some commenters requested the inclusion of language addressing equity and enforcement flexibility. One commenter asked OCSS to consider the adverse consequences of imposing financial penalties on states during emergent situations and urged the incorporation of language that recognizes the need for flexibility and prioritizes equity, to enable agencies to allocate resources where they are most needed. Another commenter requested clarification about whether child support programs could activate enforcement flexibility during natural disasters or other calamities, based on public need, even if the state knows that implementing this flexibility will reduce performance measures.

Response 3: We recognize natural disasters and other calamities may affect state child support program operations in a variety of ways and that states may need flexibility during emergent situations. As detailed in the rule, OCSS expects that a request to modify a state's performance requirements will include state-specific information describing the circumstances and justification for the requested relief, as well as the impact of the natural disaster or other calamity on the state's ability to comply with the standards. We also recognize that natural disasters and other calamities may not necessarily require relief from performance requirements. The current child support performance, audit, penalties, and incentives system is designed to drive performance. States that experience individual challenges that impact performance, whether these challenges are within or outside the states' immediate control, are motivated to recover from setbacks and strive to achieve performance goals, as states have over the last two decades.

Comment 4: A few commenters asked for clarification about local, regional, and national emergencies, and whether joint requests could be made by more than one state in a particular affected region.

One commenter stated that although the information required to apply for relief is state-specific, there are national and global emergencies that impact all states and territories and that other emergencies may impact specific regions of the country. This commenter asked us to consider the option for states to submit a joint request for relief when more than one state is affected by a disaster.

Two commenters asked for clarification on how the rule would apply if a disaster only impacted one part of a state.

Response 4: While we understand that disasters can affect more than one state in certain regions, the rule is structured in a way that each state needs to provide information specific to that state to demonstrate that the disaster has directly impacted the state's ability to meet performance requirements or is expected to result in a reduction in performance. This is especially true with the data requirements, and each state, even within a region, may be impacted differently with respect to performance. It is not feasible for states to submit joint applications for relief, due to the unique impacts of an emergency on each state and the state-specific data required to substantiate the request for relief.

For those states where a natural disaster or other calamity is only impacting a part of the state, the state may apply for relief from performance requirements.

Comment 5: Several commenters suggested that OCSS provide the opportunity for an appeal if a state is denied the request to modify their performance requirements. An additional suggestion was that 45 CFR 301.14 could be used for this purpose.

Response 5: Adequate process already exists as part of the overall performance evaluation for a state to provide information and request consideration of special

circumstances, so an administrative appeal before the Departmental Appeals Board of a denial of a state's request to modify its performance requirements is unnecessary. Under the existing process, if a state fails to meet their performance requirements, the state will be provided one year as their corrective action year as outlined under 45 CFR 305.61. During the corrective action year, OCSS will issue a warning letter to advise of the potential for a penalty if no improvement is made the following fiscal year, as outlined under 45 CFR 305.40, 305.61(a)(2) and 305.66. After the corrective action year, if a penalty is assessed, and the state is subject to the penalty, the state has the option to file an appeal with the Departmental Appeals Board, in accordance with 45 CFR 262.7.

The Departmental Appeals Board has limited jurisdiction under 45 CFR part 16, and for mandatory grants generally only penalties and disallowances are appealable. 45 CFR part 16, Appendix A. Its jurisdiction would not naturally extend to a denial of a state's request to modify its performance requirements.

Comment 6: A few states have requested that OCSS also include the option to provide IV-D agencies with an exception from the impact of increased Federal Medical Assistance Percentages rates on state-retained collections. Additionally, one other state agrees with the proposed rule, but requested that OCSS place limitations on the relief so that a state could not use this flexibility to gain an unfair advantage with respect to performance incentives. Another state suggested that OCSS allow data sharing among programs during times of national disasters and other calamities.

Response 6: These suggestions are beyond the scope of this rulemaking and would require legislative changes. OCSS does not have legislative authority. OCSS disagrees that placing additional limitations on the relief is necessary because the rule requires, in 45 CFR 305.61(f)(5), that the requesting state demonstrate to the satisfaction of the Secretary that the natural disaster or other calamity has directly resulted in a reduction in

performance or is expected to result in a reduction in performance, based on data provided by the state.

Comment 7: One state commented that OCSS should require states to submit a disaster plan as part of their request for relief.

Response 7: While we appreciate the intent behind this comment, OCSS disagrees that states should be required to provide disaster plans as a part of the request for relief. We believe states should have the maximum flexibility to submit a request for relief in the form that the state determines is most reasonable. Each state's circumstances will differ in the type of disaster or calamity and possible impacts to performance.

Comment 8: One commenter suggested revisions to two subsections of the regulatory language. First, the commenter suggested rewording subsection (f)(4)(ii) and removing the term "impracticability of compliance" as the term is inherently imprecise and does not help to establish whether a natural disaster or other calamity may have an impact on a state's ability to comply with the performance requirements. Second, the commenter suggested replacing the term "will not" with the term "may not" in subsection (5)(i) as it is overly strict to require states to demonstrate that they "*will not meet one or more existing performance requirements*, such that a performance penalty would apply."

Response 8: We agree with the suggested changes to these subsections and have revised the final rule to reflect that language. We made these changes to clarify ambiguous language and to remove overly restrictive conditions on requests for relief.

Comment 9: One commenter suggested providing consideration for those instances where a state is unable to produce preliminary data due to the natural disaster or other calamity. Another commenter requested the option for states to request an extension to the submission of annual and quarterly reports when disasters occur toward the end of a reporting period.

Response 9: The final rule authorizes OCSS to determine the modified performance requirements based on the preliminary data provided by the state under 45 CFR 305.32(f), and as such, the preliminary data are necessary for the state to demonstrate that the natural disaster or other calamity has directly resulted in a reduction in performance or is expected to result in a reduction in performance. This final rule also allows OCSS to set aside adverse data reliability audit findings under section 452(g) for the same time period as the time period for which a modification of performance requirements is sought.

While we appreciate that a state's ability to meet reporting requirements may also be impacted by a natural disaster or other calamity, modifications to reporting deadlines are outside the scope of this rulemaking. During such events, additional flexibilities may be available to states beyond those available under title IV-D.

Paperwork Reduction Act

No new information collection requirements would be imposed by this regulation.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule meets the standards of Executive Order 13563 because it creates a short-term public benefit, at minimal cost to the Federal Government, by not imposing penalties against a state's TANF grant, during a time when public assistance funds are critically needed.

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and

Budget (OMB) will review all significant rules. OIRA has determined that this final rule is significant and was accordingly reviewed by OMB.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires Federal agencies to determine, to the extent feasible, a rule’s impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The Secretary certifies that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on state governments. State governments are not considered small entities under the RFA.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). That threshold level is currently approximately \$177 million. This rule does not impose any mandates on state, local, or tribal governments, or the private sector, that will exceed this threshold in any year.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency’s determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. OCSS believes it is not necessary to prepare a family policymaking assessment (*see* Pub. L. 105-277) because this regulation does not impose requirements on states or families and thus will not have any impact on family well-being.

Congressional Review Act

This final rule is not a major rule as defined in 5 U.S.C. 804(2).

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order 13132.

Jeff Hild, Acting Assistant Secretary of the Administration for Children and Families approved this document on February 1, 2024.

List of Subjects in 45 CFR Part 305

Child support, program performance measures, standards, financial incentives, and penalties.

Dated: February 26, 2024.

Xavier Becerra,
Secretary,
Department of Health and Human Services.

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 305 as set forth below:

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658a, and 1302.

2. Amend § 305.61 by adding a new paragraph (f) to read as follows:

§ 305.61 Penalty for failure to meet IV-D requirements.

* * * * *

(f) During, and subsequent to, natural disasters and other calamities (e.g., state chief executive officer-declared states of emergency, pandemics, events designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), and declared public health emergencies under section 319 of the Public Health Service Act, 42 U.S.C. 247d), the Secretary may temporarily modify the performance measure requirements for a state to meet the paternity establishment percentage standard of 90 percent under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), the support order establishment standard of 40 percent under 45 CFR 305.40(a)(2), and the current collections standard of 35 percent under 45 CFR 305.40(a)(3), to lower levels to avoid imposing financial performance penalties on states, and may set aside adverse data reliability audit findings under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.61(a)(1)(ii) during the same time period. For Federal fiscal years subsequent to September 30, 2022, the performance requirements for paternity establishment under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), for support order establishment under 45 CFR 305.40(a)(2), and for current collections under 45 CFR 305.40(a)(3)— may be modified by the Secretary to a lower level under the conditions described in this section.

(1) If a state experiences a natural disaster or other calamity (e.g., state chief Executive officer-declared states of emergency, pandemics, events designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), and declared public health emergencies under section 319 of the Public Health Service Act, 42 U.S.C. 247d), the state’s chief executive officer (or his or her designee) may submit to the Secretary a request to modify one or more of the

performance requirements specified under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), under 45 CFR 305.40(a)(2), or under 45 CFR 305.40(a)(3).

(2) The state may also ask the Secretary to set aside adverse data reliability audit findings under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.61(a)(1)(ii) for the same time period as the time period for which a modification of performance requirements is sought.

(3) The request for a modification to the performance requirements must be submitted in accordance with the procedures specified in paragraphs (f)(4), (5) and (6) of this section. Any request other than one submitted with the initial application must be submitted as soon as the adverse effect of the natural disaster or other calamity giving rise to the request is known to the state.

(4) A request for a modification of one or more of the performance requirements must include the following:

(i) A narrative statement describing the circumstances and justification for the request to modify the state's performance requirement;

(ii) Information substantiating the impact of the natural disaster or other calamity on the state's ability to comply with the standards, including a description of the specific conditions caused by the natural disaster or other calamity that have, or may have, a significant impact on the state's ability to comply, and preliminary data provided by the state, as required under 45 CFR 305.32(f), showing reduced performance;

(iii) Information on the expected duration of the conditions that make compliance impracticable; and

(iv) Any other documentation or other information that the Secretary may require to make this determination.

(5) The state must demonstrate to the satisfaction of the Secretary that the natural disaster or other calamity has directly resulted in a reduction in performance or is

expected to result in a reduction in performance, based on data provided by the state. In its request for a temporary modification to one or more performance requirements, the state must be able to demonstrate that it:

- (i) Has not, or may not meet one or more existing performance requirements, such that a performance penalty would apply;

- (ii) Has submitted preliminary data supporting this statement; and

- (iii) Has provided all required information requested by the Secretary.

(6) The Secretary shall provide written communication of the decision to modify or decline to modify the performance standards, and the period for which any modified standards shall apply, within 30-calendar days after receipt of appropriate written communication from the chief executive officer.

- (i) If approved, a temporary modification in a performance requirement will expire on the last day of the Federal fiscal year for which it was approved.

- (ii) Adverse findings of data reliability audits of the state's performance data under 45 CFR 305.60 as reported during the period in which the performance requirement modification is approved will not result in a financial penalty pursuant to the state's request as specified in paragraph (f)(2) of this section.

- (iii) Unless the state receives a written approval of its performance requirement modification request, the performance requirements under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), under 45 CFR 305.40(a)(2), and under 45 CFR 305.40(a)(3) remain in effect.

- (iv) If the request for a performance requirement modification is denied, the denial is not subject to administrative appeal.