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 with the provisions of the Act, the regulations issued pursuant to the Act, and the FNS-approved State Plan of Operation. A determination by FNS that a State agency has failed to comply with any of these provisions may result in FNS seeking injunctive relief to compel compliance and/or a suspension or disallowance of the Federal share of the State agency's administrative funds. FNS has the discretion to determine in each instance of noncompliance, whether to seek injunctive relief or to suspend or disallow administrative funds. FNS may seek injunctive relief *and* suspend or disallow funds simultaneously or in sequence.

(b) *Rights.* State agencies may appeal all claims brought against them by FNS and shall be afforded an administrative review by a designee of the Secretary as provided in § 276.7. State agencies may seek judicial review of any final administrative determination made by the Secretary's designee, as provided in § 276.7(j).

[54 FR 7016, Feb. 15, 1989]

§ 276.2 State agency liabilities.

(a) *General provisions.* Notwithstanding any other provision of this subchapter, State agencies shall be responsible to FNS for any financial losses involved in the acceptance, storage and issuance of coupons. All coupon issuance shall be documented, and the State agency shall make available to the Department all primary documentation (or secondary, if the primary has been inadvertently destroyed) when required to do so. State agencies shall pay to FNS, upon demand, the amount of any such losses.

(b) *Coupon shortages, losses, unauthorized issuances, overissuances and undocumented issuances.* (1) State agencies shall be strictly liable for:

(i) Coupon shortages and losses that occur any time after coupons have been accepted by receiving points within the State and that occur during storage or the movement of coupons between bulk storage point issuers and claims collection points within the State;

(ii) Losses resulting from authorization documents lost in transit from a manufacturer to the State agency and untransacted authorization documents lost in transit from an issuer to the State agency; and

(iii) The value of coupons overissued and coupons issued without authorization, except for those duplicate issuances in the correct amount that are the result of replacement issuances made in accordance with § 274.6. Overissuances and unauthorized issuances for which State agencies are liable include, but are not limited to: Single unmatched issuances, duplicates made that are not in accordance with § 274.6, and transacted authorization documents that are altered, counterfeit, from out-of-State or expired (including those unsigned by the designated household member and/or not date stamped by the issuer).

(2) Coupon shortages and/or losses for which State agencies shall be held strictly liable include, but are not limited to, the following:

(i) Thefts;

(ii) Embezzlements;

(iii) Cashier errors (e.g., errors by the personnel of issuance offices in the counting of coupon books);

(iv) Coupons lost in natural disasters if a State agency cannot provide reasonable evidence that the coupons were destroyed and not redeemed;

(v) Issuances which cannot be supported by the required documentation;

(vi) Issuances made to households not currently certified;

(vii) Issuance loss during an official investigation, unless the investigation was reported *directly* to FNS prior to the loss; and

(viii) Unexplained causes.

(3) State agencies shall submit written reports on significant losses unless those losses were investigated by the Office of the Inspector General, USDA.

(4) A State agency shall be held strictly liable for mail issuance losses that are in excess of the tolerance level that corresponds to the preselected reporting unit. Each State agency shall select one of the three following units annually and report the selection as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii). Where reporting units issue less than $300,000 in mail issuance in a quarter, the State agency shall be liable for all losses in excess of $1,500 for the quarter.

(i) If a State agency elects to report and have liabilities based on an existing county or project area level of mail issuance, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of five-tenths (.5) percent of the dollar value of each reporting unit's quarterly mail issuance. This level shall be used if the State agency does not designate one of the three levels herein by May 15, 1989, and by August 15 in years thereafter.

(ii) If a State agency elects to report and have liabilities based on an existing administrative level higher than the county or project area provided in paragraph (b)(4)(i) of this section, but lower than the Statewide level of mail issuance provided in paragraph (b)(4)(iii) of this section, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of thirty-five hundreths (.35) percent per quarter of the dollar value of each reporting unit's quarterly mail issuance. State agencies shall not create new administrative units for the sole purpose of reporting mail issuance losses.

(iii) If a State agency elects to report and have liabilities based on a State level of mail issuance, then the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of thirty hundreths (.30) percent per quarter of the dollar value of each State agency's total quarterly mail issuance.

(iv) FNS reserves the right to make all determinations on reporting requirements and on administrative divisions within the State for the purpose of determining and assessing liability for mail issuance losses. FNS also reserves the right to revise such determinations as necessary. Revisions will be communicated to State agencies by FNS. The liability assessment will be based on the revised reporting requirement for the next full fiscal quarter.

(v) For the purpose of this section, ''mail issuance'' means all original coupon issuances distributed through the mail. ''Mail loss'' means all replacements of mail issuances except for replacements of returned mail issuances.

(vi) The State agency's liability shall be computed using data from Form FNS–259, Food Stamp Mail Issuance Report, or alternative reporting document accepted in advance by FNS and the State agency, which is submitted for the quarter for the particular reporting unit agreed to by FNS and the State agency, as provided in §§ 272.2(a)(2) and 272.2(d)(1)(iii).

(5) State agencies shall be held strictly liable for the following overissuances:

(i) The value of overissued coupons issued as a result of a State agency's failure to comply with a directive issued by FNS in accordance with the provisions of § 271.7, to reduce, suspend or cancel allotments;

(ii) The value of coupons overissued by the State agency as a result of a court order or settlement agreement of a court suit which was not reported to FNS in accordance with the provisions of § 272.4(e); and

(iii) The value of coupons overissued as a result of a State agency entering into an out-of-court settlement of a court suit, the terms of which violate Federal laws or regulations.

(6) Coupon shortages and losses shall be determined from the Form FNS–250, Food Coupon Accountability Report and its supporting documents and from

the Form FNS–46, Issuance System Reconciliation Report. Losses of Federal moneys resulting from overissuances shall be determined from sources such as audits, Performance Reporting System Reviews, Federal reviews, investigations and explanatory reports prepared by the State agency.

(7) State agencies shall be held strictly liable for overissuances resulting from Electronic Benefit Transfer system errors and unauthorized account activities. Such overissuances shall include but not be limited to: Overissuances to household accounts that are accessed and used by households, replacement benefits to a household's account due to unauthorized use of the benefits in a household's account, benefits drawn from an EBT account after the household has reported that the EBT card is lost or stolen to the State or its agent, overdraft situations due to the use of manual back-up procedures approved by the State agency, overcredits to a retailer account and transfer of funds to an illegitimate account.

(c) *Cash Losses.* State agencies are liable to FNS for cash losses when money collected by State agencies from recipient claims has been lost, stolen or otherwise not remitted to FNS in accordance with the provision of § 273.18(l). The amount of such losses shall be determined from the sources outlined in paragraph (6) of this section.

(d) *State agency payment to FNS.* State agencies shall be billed for the exact amount of losses specified in this section. If a State agency fails to pay the billing, FNS shall offset the amount of loss from the State agency's Letter of Credit in accordance with § 277.16(c).

[54 FR 7016, Feb. 15, 1989, as amended at 54 FR 51351, Dec. 15, 1989; 57 FR 11259, Apr. 1, 1992; 57 FR 44791, Sept. 29, 1992; Amdt. 342, 59 FR 2733, Jan. 19, 1994; Amdt. 388, 65 FR 64589, Oct. 30, 2000; 75 FR 78154, Dec. 15, 2010]

§ 276.3 Negligence or fraud.

(a) *General.* If FNS determines that there has been negligence or fraud on the part of the State agency in the certification of applicant households, the State agency shall, upon demand, pay to FNS a sum equal to the amount of coupons issued as a result of such negligence or fraud.

(b) *Negligence provisions.* (1) FNS may determine that a State agency has been negligent in the certification of applicant households if a State agency disregards SNAP requirements contained in the Food and Nutrition Act of 2008, the regulations issued pursuant to the Act, the FNS-approved State Plan of Operation and a loss of Federal funds results or a State agency implements procedures which deviate from SNAP requirements contained in the Food and Nutrition Act of 2008, the SNAP regulations, the FNS-approved State Plan of Operation without first obtaining FNS approval, and the implementation of the procedures results in a loss of Federal funds.

(2) In computing amounts of losses of Federal funds due to negligence, FNS may use actual, documented amounts or amounts which have been determined through the use of statistically valid projections. When a statistically valid projection is used, the methodology will include a 95 percent, one-sided confidence level.

(3) FNS will base its determinations of negligence on information drawn from any of a number of sources. These information sources include, but are not limited to, State and Federal Performance Reporting reviews, State and Federal audits and investigations, State corrective action plans and any required reports.

(4) Failure by the State agency to remit payment upon demand, within the specified time period, may result in FNS recovering the lost funds through offsets to the State agency's Letter of Credit, in accordance with § 277.16(c).

(c) *Fraud provisions.* For purposes of this subsection, the term fraud shall mean the wrongful acquisition or issuance of food coupons by the State agency or its officers, employees or agents, including issuance agents, through false representation or concealment of material facts. State agencies shall be liable to FNS for the amount of loss of Federal funds as a result of fraud. Failure by the State agency to remit payment on demand