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(vi) Any funds that the State agency's reports do not document as spent as specified in the investment plan may be withdrawn by the Department from the reduction in QC liability. Before the reduction is withdrawn, the State agency will be provided an opportunity to provide the missing documentation.

(vii) If the reduction in QC liability is withdrawn, the Department shall charge interest on the funds not spent according to the plan, in accordance with section 602 of the Hunger Prevention Act of 1988, which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

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.