§ 252.6 Miscellaneous provisions.

(a) Improper distribution or loss of or damage to donated food. If a processor improperly distributes or uses any donated food, or causes loss of or damage to a donated food through its failure to provide proper storage, care, or handling, FNS shall require the processor to pay to the Department the value of the donated food as determined by the Department.

(b) Disposition of damaged or out-of-condition food. Donated food which is found to be damaged or out-of-condition and is declared unfit for human consumption by Federal, State, or local health officials, or by any other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. This instruction shall direct that unfit donated food be sold in a manner prescribed by the Department with the net proceeds thereof remitted to the Department. Upon a finding by the Department that donated food is unfit for human consumption at the time of delivery to a recipient agency and when the Department or appropriate health officials require that such donated food be destroyed, the processor shall pay for any expenses incurred in connection with such donated food as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition donated food.

(c) FNS sales verification. FNS may conduct a verification of processor reported sales utilizing a statistically valid sampling technique. If, as a result of this verification, FNS determines that the value of the donated food has not been passed on to recipient agencies or if end products have been improperly distributed, FNS may assert a claim against the processor. This claim may include a projection of the verification sample to the total NCP sales reported by the processor.

(d) Sanctions. Any processor or recipient agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto, may, at the discretion of the Department, be disqualified from further participation in the NCP Program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes.

(e) Embezzlement, misuse, theft, or obtaining by fraud of commodities and commodity related funds, assets, or property in child nutrition programs. Whoever embezzles, willfully misapplies, steals, or obtains by fraud commodities donated for use in the NCP Program, or any funds, assets, or property deriving
from such donations, or whoever receives, conceals, or retains such commodities, funds, assets, or property for his own use or gain, knowing such commodities, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended, or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph "funds, assets, or property" include, but are not limited to, commodities which have been processed into different end products as provided for by this part, and the containers in which commodities have been received from the Department.

§ 253.2 Definitions.

Disabled member means a member of a household who:

1. Receives supplemental security income benefits under title XVI of the Social Security Act or disability or blindness payments under titles I, II, X, XIV, or XVI of the Social Security Act;

2. Receives federally- or State-administered supplemental benefits under section 1616(a) of the Social Security Act provided that the eligibility to receive the benefits is based upon the disability or blindness criteria used under title XVI of the Social Security Act;

3. Receives federally- or State-administered supplemental benefits under section 212(a) of Public Law 93–66;

4. Receives disability retirement benefits from a governmental agency because of a disability considered permanent under section 221(i) of the Social Security Act;

5. Is a veteran with a service-connected or non-service-connected disability rated by the Veteran’s Administration (VA) as total or paid as total by the VA under title 38 of the United States Code;

6. Is a veteran considered by the VA to be in need of regular aid and attendance or permanently housebound under title 38 of the United States Code;

7. Is a surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound or a surviving child of a veteran and considered by the VA to be permanently incapable of self-support under title 38 of the United States Code;

8. Is a surviving spouse or surviving child of a veteran and considered by the VA to be entitled to compensation