

Subpart 26.4 - Food Donations to Nonprofit Organizations

Parent topic: [Part 26 - Other Socioeconomic Programs](#)

26.400 Scope of subpart.

This section implements the Federal Food Donation Act of 2008 (42 U.S.C 1792).

26.401 Definitions.

As used in this subpart-

Apparently wholesome food means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food *may* not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions, in accordance with (b)(2) of the Bill Emerson Good Samaritan Food Donation Act ([42 U.S.C. 1791\(b\)](#)).

Excess food means food that-

- (1) Is not required to meet the needs of the *executive agencies*; and
- (2) Would otherwise be discarded.

Food-insecure means inconsistent access to sufficient, safe, and nutritious food.

Nonprofit organization means any organization that is-

- (1) Described in section 501(c) of the Internal Revenue Code of 1986; and
- (2) Exempt from tax under section 501(a) of that Code.

26.402 Policy.

The Government encourages *executive agencies* and their contractors, to the maximum extent practicable and safe, to donate excess *apparently wholesome food* to *nonprofit organizations* that provide assistance to *food-insecure* people in the *United States*.

26.403 Procedures.

(a) In accordance with the Federal Food Donation Act of 2008 an *executive agency shall* comply with the following:

- (1) *Encourage donations*. In the applicable contracts stated at section [26.404](#), encourage

contractors, to the maximum extent practicable and safe, to donate apparently wholesome *excess food* to *nonprofit organizations* that provide assistance to *food-insecure* people in the *United States*.

(2) *Costs*.

(i) In any case in which a contractor enters into a contract with an *executive agency* under which *apparently wholesome food* is donated to *food-insecure* people in the *United States*, the head of the *executive agency* shall not assume responsibility for the costs and logistics of collecting, transporting, maintaining the safety of, or distributing excess, *apparently wholesome food* to *food-insecure* people in the *United States* under this Act.

(ii) The Government will not reimburse any costs incurred by the contractor against this contract or any other contract for the donation of Federal *excess foods*. Any costs incurred for Federal *excess food* donations are not considered allowable public relations costs in accordance with 31.205-1(f)(8).

(3) *Liability*. An *executive agency* (including an *executive agency* that enters into a contract with a contractor) and any contractor making donations pursuant to this Act shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791).

26.404 Contract clause.

Insert the clause at 52.226-6, Promoting *Excess Food* Donation to *Nonprofit Organizations*, in *solicitations* and contracts greater than \$35,000 for the provision, service, or sale of food in the *United States*.