

# 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 \$30,000 for the provision, service, or sale of food in the *United States*.