

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*.