

**Conference for Food Protection
2018 Issue Form**

Issue: 2018 I-024

Council Recommendation:	<input type="checkbox"/> Accepted as Submitted	<input type="checkbox"/> Accepted as Amended	<input type="checkbox"/> No Action
Delegate Action:	<input type="checkbox"/> Accepted	<input type="checkbox"/> Rejected	<input type="checkbox"/>

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Issue History:

This is a brand new issue.

Title:

Amend Food Code - Food Safety Regulations for Food Donations

Issue you would like the Conference to consider:

Information about how food safety standards and regulations should apply to food donation practices by the retail industry is largely absent from the 2013 Food Code. As a result, this information is largely missing from state laws and regulations as well. In the absence of such regulations or guidance, potential donors often do not know what steps they must take to donate food safely. Further, sanitarians and health inspectors may be uncertain about the standards that apply to food donations by food establishments. This confusion may discourage suitable donors from donating food, or may impede the safety of food that does get donated. The Conference for Food Protection's "*Comprehensive Resource for Food Recovery Programs*" contains useful guidance on this subject, but this document lacks the widespread awareness and impact of the Food Code. Adding language to the Food Code that specifically addresses food safety for food donation would have a greater impact in encouraging safer donation practices and eliminating confusion about the applicability of existing standards to these practices.

Public Health Significance:

Food insecurity in the U.S. is a significant public health issue. Approximately 42 million Americans, including 13 million children, are food insecure, meaning that at some point during the year they lack access to a sufficient amount of food to lead an active, healthy lifestyle. At the same time, 40 percent of food in the U.S. goes to waste, and it has been estimated that recovering and redistributing just 30 percent of our nation's surplus food would provide enough food to feed all food insecure Americans their total diet.

As awareness of the problems of food waste and food insecurity has grown in recent years, more food establishments have expressed interest in donating their wholesome surplus food. However, these businesses face challenges navigating confusing or nonexistent food safety regulations for food donations. In the face of this confusion, potential donors often err on the side of caution and choose not to donate food. This confusion also extends to

health inspectors, who may discourage establishments from making food donations rather than educate them on how to donate safely. This prevents perfectly safe, wholesome food from being donated to food banks and other food recovery organizations working to reduce food insecurity.

In addition to empowering potential donors to donate food safely, adding language about food safety for food donation to the Food Code would benefit inspectors and agencies responsible for food safety, as it would clarify safe donation procedures. State agencies recognize a need to create such standards but are largely hindered by time and resource constraints. States often adopt and modify requirements already in the Food Code, rather than create additional regulations or guidance. If the 2013 Food Code were amended to include standards for food safety for food donations, states would likely incorporate these standards into their laws and regulations. This would create clarity and consistency for inspectors, donors, and organizations receiving donations, and ensure that as more food establishments are donating food, they are doing so safely.

Chapter 3 of the 2013 FDA Food Code includes standards for the handling, storage, and labeling of food. These topics are equally relevant to donated food as they are to food that is served and sold directly to an establishment's customers.

Our recommended solution proposes incorporating a new section, 3.9, in the next edition of the FDA Food Code, in order to clarify that food donation is a lawful practice for a food establishment. This section should outline conditions under which food establishments may not donate food, such as where food is adulterated, contaminated, or not from an approved source. To ensure that the food establishment has thought about the safety of the food to be donated, the section should require that food establishments that plan to donate have written procedures in place that outline how foods designated for donation are identified and how the establishment will ensure that only food suitable for human consumption is donated; how foods intended for donation will be stored prior to pick up or delivery; how the food will be handled during transport, if the food establishment is the one that will transport the food; and how parties to which food is being donated are made aware of the type of food being donated and any precautions that must be taken to protect the food during transport and distribution.

Our recommended solution also proposes that this new section, 3.9, include language about the specific food safety standards that should apply to food donations. The attached content document, entitled "*Example Food Safety for Food Donation Language*," provides an example of language that could be incorporated to address this topic. This document presents the language as a new Part 3.9 in Chapter 3; however, the language is meant to be flexible and could be revised, reorganized, and/or incorporated elsewhere in the Food Code.

The proposed language was created by reviewing and integrating information from a number of sources, including the 2013 FDA Food Code, the Conference for Food Protection's Comprehensive Resource for Food Recovery Programs, the Texas Food Establishment Rules (25 Tex. Admin. Code § 228.83, pg. 84-85), the Vermont Guidance for Food Donation, and the Wyoming Food Donation Policy. These state regulations and guidance documents can be found attached as supporting attachments. The language seeks to address the food safety concepts that are most relevant to food donation by food establishments, based on conversations with and anecdotes from food donors, food recovery organizations, and state and local regulators.

Recommended Solution: The Conference recommends...:

that a letter be sent to the FDA requesting that the most current edition of the Food Code be amended to add a new Part 3.9 Donation of Foods based on the attached content document, entitled "*Example Food Safety for Food Donation Language*" (language to add is underlined).

The Conference recommends that Part 3.9 clarify that food donation is a lawful practice for a food establishment. The Conference also recommends that amended Food Code language in this section provide information about safety standards that apply to food donations, including but not limited to:

1. Donation of previously served food: Clarify the categories of food that can be donated after being served, and under what conditions. For example, foods that have been put out for consumer self-service, but have not been served to individual consumers, can be donated if proper safeguards are in place to protect against contamination.
2. Time/Temperature control for safety foods: Explain the procedures that apply to the donation of time/temperature control for safety foods, including the temperatures at which these foods must be held, transported, and delivered (if transported and delivered by a food establishment).
3. Labeling of donated foods: Clarify that donated packaged and prepared foods must be labeled consistent with federal law and with the Food Code, subject to certain exceptions. For example, donated packaged foods must be labeled consistent with federal law except that nutrition labeling is not required. The section should clarify the requirements for donated prepared foods, which should be required to bear a label with information such as the names of the donor and recipient organization, a description of the food, date of donation, and a general allergen disclaimer.
4. Donation of foods past the labeled date: Clarify the categories of food that can be donated past the manufacturer's labeled date, such as a best by or use by date. For example, ready-to-eat time/temperature control for safety foods should not be donated past the labeled date unless they have been frozen prior to the date. In contrast, foods that are not ready-to-eat time/temperature control for safety foods may be donated past the manufacturer's date.

Submitter Information 1:

Name: Emily Broad Leib
Organization: Harvard Law School Food Law and Policy Clinic
Address: 122 Boylston Street
City/State/Zip: Jamaica Plain, MA 02130
Telephone: 617-390-2590
E-mail: ebroad@law.harvard.edu

Submitter Information 2:

Name: Katie Sandson
Organization: Harvard Law School Food Law and Policy Clinic
Address: 122 Boylston Street

City/State/Zip: Jamaica Plain, MA 02130
Telephone: 617-390-2556
E-mail: ksandson@law.harvard.edu

Content Documents:

- "Example Food Safety for Food Donation Language"

Supporting Attachments:

- "Food Safety Regulations and Guidance for Food Donations: A 50-State Survey"
- "Supporting Attachments Available Online"

It is the policy of the Conference for Food Protection to not accept Issues that would endorse a brand name or a commercial proprietary process.