

# **FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Non-Profit Organizations December 2020**

This guideline provides information to meat and poultry establishments who are interested in donating products to non-profit organizations.

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## **Preface**

This is a first version of the ***FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Non-Profit Organizations***. This guideline represents FSIS's current thinking on these topics and should be considered usable as of its issuance.

This document is not regulatory. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way.

## **Purpose**

This guideline contains information to assist meat and poultry establishments and non-profit organizations that donate and receive donated products comply with the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), and FSIS regulations in 9 CFR Chapter III. This guideline includes information on:

- Products eligible for donation;
- Products ineligible for donation;
- Shipping donated products;
- Labeling donated products;
- Donating products produced under inspection exemptions;
- Donation recipient types;
- Donating State-inspected products;
- Donating "expired" products;
- Relabeling at non-profit organizations; and
- Retail exemption at non-profit organizations.

## **Reason for Issuing the Guideline**

FSIS developed this guideline to assist establishments and non-profit organizations that donate and receive donated meat and poultry products by addressing common food donation questions. FSIS has received several questions from meat and poultry establishments and non-profit organizations on this subject and has decided to address the major concerns associated with donation in this guideline. This guideline will be useful because it addresses issues that have been presented to FSIS related to food donation (e.g., products eligible for donation, labeling donated products, and donating products produced under exemption). This guideline will provide information that will help reduce food loss and waste and help battle food insecurity.

## How to Effectively Use the Guideline

This guideline is organized to provide users with the current science and recommendations for topics related to the donation of meat and poultry products to non-profit organizations. This guidance document includes recommendations for meat and poultry producers and non-profit organizations on how to donate and receive donated products in compliance with the FMIA, PPIA, and FSIS regulations in 9 CFR Chapter III.

To use this guideline, FSIS recommends that readers use the navigation headings to move efficiently through the document sections of interest. Hyperlinks, where provided, will quickly take you to the correct place in the document electronically and are also provided to other complementary documents.

## How to Comment on the Guideline

FSIS is seeking public comment on this guideline as part of its efforts to continuously assess and improve the effectiveness of policy documents. All interested persons may submit comments regarding any aspect of this document, including but not limited to content, readability, applicability, and accessibility. The comment period will be 60 days from publication of the *Federal Register* Notice and, as appropriate, the Agency may update this guideline in response to comments. Although FSIS may make changes to the guideline in response to comments, this document reflects current thinking, and FSIS encourages establishments producing products discussed in this document to review it and begin using it.

Comments may be submitted by either of the following methods:

- Federal eRulemaking Portal Online submission at [regulations.gov](http://www.regulations.gov). This website provides a way to type short comments directly into the comment field on the webpage or attach a file to submit lengthier comments. Follow the online instructions at that site to submit comments.
- Mail, including CD-ROMs, etc.: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250-3700.

All items submitted by mail or electronic mail must include the Agency name, FSIS, and document title: **FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Non-Profit Organizations**. Comments received will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

## Questions Regarding Topics in this Guideline

If after reading this guideline you still have questions, FSIS recommends that users search the publicly posted Questions & Answers (Q&As) in the [askFSIS](#) database or submit questions through [askFSIS](#). Documenting these questions helps FSIS improve and refine present and future versions of the guideline and associated issuances.

When submitting a question, use the **Submit a Question** tab, and enter the following information in the fields identified below as prescribed:

Subject Field: **FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Non-Profit Organizations**  
Question Field: Your question with as much detail as possible.  
Product Field: Select **General Inspection Policy**.  
Category Field: Select **Donated Product** from the drop-down menu.  
Policy Arena: Select **Domestic (U.S.) Only** from the drop-down menu.

When all fields are complete, press **Continue**.

## **FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Non-Profit Organizations**

### **Background**

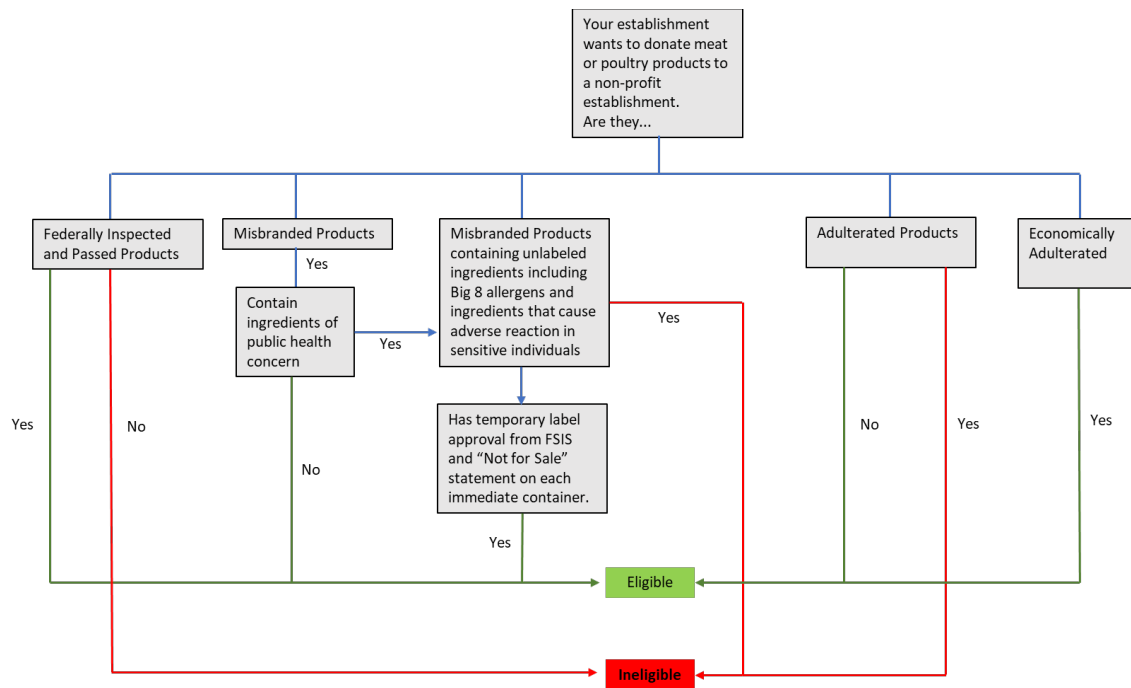
In the United States, food waste is estimated as constituting between 30-40 percent of the food supply. This figure, based on estimates from USDA's Economic Research Service of a 31 percent food loss at the retail and consumer levels, corresponds to approximately 133 billion pounds and \$161 billion worth of food in 2010. Wasted food is the single largest category of material placed in municipal landfills and represents nourishment that could have helped feed families in need. Additionally, water, energy, and labor used to produce wasted food could have been employed for other purposes. Effectively reducing food waste will require cooperation among federal, state, tribal and local governments, faith-based institutions, environmental organizations, communities, and the entire supply chain.

In October 2018, the U.S. Department of Agriculture (USDA), the U.S. Environmental Protection Agency (EPA), and the U.S. Food and Drug Administration (FDA) launched the Winning on Reducing Food Waste Initiative in a [formal agreement](#). As part of the initiative, the agencies affirmed their shared commitment to work towards the national goal of reducing food loss and waste by 50 percent by 2030. The agencies agreed to coordinate food loss and waste actions such as education and outreach, research, community investments, voluntary programs, public-private partnerships, tool development, technical assistance, event participation, and policy discussion on the impacts and importance of reducing food loss and waste. While there have been significant actions taken and commitments made through public-private partnerships to date, there is still much work to be done. See USDA's [Winning on Reducing Food Waste page](#) for more information on USDA's commitment to this cause.

Meat and poultry businesses can be a critical component of reducing food loss and waste. FSIS encourages establishments to donate meat and poultry products to non-profit organizations, when possible, to reduce food loss and waste.

## Donation Flowchart

This table represents the most common questions establishments face when deciding to donate meat or poultry products. More detailed information about each of these questions and answers is included in the following pages.



## Guidance for Donating Establishments

- **Products Eligible for Donation**

- **Federally Inspected and Passed Products**

Meat and poultry establishments may always donate federally-inspected meat and poultry products that are safe, wholesome, and not misbranded to non-profit organizations, such as charitable institutions, food banks, and government-supported facilities (e.g., correctional facilities, child welfare facilities, homes for senior populations, institutions for the physically or mentally ill, or similar qualifying institutions) (see [21 U.S.C. 673\(a\)\(5\)\(A\)](#) and [21 U.S.C. 467b\(a\)\(5\)\(A\)](#)).

- **Misbranded and Economically Adulterated Products**

Historically, safe and wholesome misbranded or economically adulterated meat and poultry products (further defined below) could be donated to non-profit organizations only after receiving temporary label approval from FSIS and marking each immediate container with a “Not for Sale” statement. However, in order to facilitate the donation of edible human food to non-profit organizations, FSIS has streamlined the donation procedures for certain misbranded and economically adulterated meat or poultry products. FSIS now allows official establishments to forego the temporary label

approval and the marking of each immediate container with the “Not for Sale” statement for some products, if the FSIS inspection program personnel can verify that the Bill of Lading accompanying the products contains:

1. The quantity of the donated products;
2. A description of the donated products;
3. The reason products are diverted for donation (e.g., incorrect net weight); and
4. A statement that the products are “Not for Sale.”

If the products are misbranded because they contain unlabeled **ingredients of public health concern**, the official establishment will have to take additional steps before donating. FSIS requires a **temporary label approval** from FSIS’s Labeling and Program Delivery Staff (LPDS) ([9 CFR 412.1\(f\)\(1\)](#)), a “**Not For Sale**” statement on each immediate container of these products, along with identification of the ingredients. Ingredients of public health concern include the eight most common (“The Big 8”) food allergens. “The Big 8” allergens are: wheat, Crustacean shellfish (i.e., shrimp, crab, lobster), eggs, fish, peanuts, milk, tree nuts, and soybeans. Ingredients of public health concern also include ingredients that may cause food intolerance, such as sulfur-based preservatives (sulfites), lactose, Yellow 5 (tartrazine), gluten, and monosodium glutamate (MSG). The adverse reactions to these substances are caused by the ingredient itself or its chemical composition.

Products are economically adulterated when any valuable constituent in whole or in part has been omitted or removed, when any less valuable substance has been substituted, when any substance is added or mixed, or when packaging misrepresents the weight or bulk making them appear to be of greater value ([21 U.S.C. 601\(m\)\(8\)](#) or [21 U.S.C. 453\(g\)\(8\)](#)). In most cases of economic adulteration, a substance is added or intentionally substituted for the purpose of increasing the apparent value of the product. For example, a poultry carcass with added water that exceeds the maximum percentage of water that may be retained under 9 CFR part 441 would be economically adulterated, because the added water increases the product’s net weight and makes it appear to be of greater value.

FSIS personnel will follow the instructions found in [FSIS Directive 7020.1 Verifying Donation of Misbranding and Economically Adulterated Meat and Poultry Products to Non-Profit Organizations](#) or [FSIS Directive 8410.1 Detention and Seizure](#) when verifying donations of misbranded or economically-adulterated meat and poultry products to non-profit organizations.

#### **- Products Intended for Export**

Meat and poultry producers may be permitted to donate certain products intended for export to domestic non-profit organizations if the products are safe and wholesome. FSIS requires a **temporary label approval** ([9 CFR 412.1\(f\)\(1\)](#)) for donated products originally intended for export unless the label bears no deviations from domestic requirements other than being labeled “For Export Only.” If any language on the products’ labeling is not translated into English, the translation will need to accompany



the application for temporary approval in order to provide LPDS with adequate information.

### **- Sample Products**

Meat and poultry producers may donate sample products to non-profit organizations. **Sample products** are products that are made available for pre-market consumer testing, are available to the general public, and are not for sale. Because sample products are produced for general public consumption, they must be produced and labeled in accordance with the meat and poultry products inspection regulations. More information about sample products can be found in [FSIS Directive 7000.2 Experimental and Sample Products Policy](#).

### **• Products Ineligible for Donation**

Below are two ineligible product types that industry frequently requests information on donating. Additional products that are ineligible for donation are discussed in other sections of this guideline.

### **- Adulterated Products**

An official establishment cannot dispose of adulterated products by donating them to a non-profit organization, except when products are found to only be economically adulterated (21 U.S.C. 601(m)(8) or 21 U.S.C. 453(g)(8)), as discussed above. Unwholesome, adulterated products may not be donated to non-profit organizations (21 U.S.C. 601(m)(3) or 21 U.S.C. 453(g)(3)).

### **- Experimental Products**

Official establishments are not eligible to donate experimental products to non-profit organizations. **Experimental products** are new or existing products that introduce a new formulation or flavor. They are limited to research and development under the control of the producing official establishment. Because experimental products are not inspected, they may not enter commerce. More about experimental products can be found in [FSIS Directive 7000.2 Experimental and Sample Products Policy](#).

### **• Shipping Donated Products**

The donating establishment, the shipping firm, and the receiving non-profit organization all have a responsibility to maintain human food in an unadulterated state. More information on keeping products safe during transport can be found in the [FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products](#).

- **Labeling Donated Products**

- **Incorrect Standards of Identity**

An establishment can donate products that do not meet the standard of identity listed on the label (e.g., beef stew formulated with less than 25% beef) without having to contact LPDS, but the reason the product doesn't meet the standard of identity must be mentioned in the bill of lading.

- **Statement of Limited Use/ Distribution**

An official establishment can donate products bearing a statement of limited use (e.g., "for further processing," "for institutional use only") to a non-profit organization. A statement of limited distribution (i.e., "Not for Sale" or "For Charity Only") is not required on unadulterated, **properly** labeled meat or poultry products that are being donated to non-profit organizations. However, FSIS recommends adding a statement of limited distribution to the products' labeling to avoid further distribution of products by non-profit organizations. Such a statement may be generically-approved and added to the products per [9 CFR part 412](#). This statement can be applied to the immediate containers, shipping container, or the bill of lading accompanying the donated products to the non-profit organization.

The statement "Not for Sale" is required on the labeling of economically-adulterated or misbranded products that have been **detained** by FSIS and disposed of by donation to non-profit organizations, per [21 U.S.C. 673 \(a\)\(5\)\(A\)\(ii\)](#) and [21 U.S.C. 467\(a\)\(5\)\(A\)\(iii\)](#).

- **Donating Products Produced Under Inspection Exemptions**

- **Can I Donate Meat Products Slaughtered and/or Processed under an Exemption to Federal Inspection (see 9 CFR 303.1)?**

<b>Exemption Type</b>	<b>Eligible to Donate?</b>
Personal Use	No
Custom Slaughter and Custom Processing	No
Retail Store	Yes
Restaurant	Yes
Caterer	Yes
Restaurant Central Kitchen	Yes

Further explanation of each meat inspection exemption type and its eligibility to be donated is found in the [FSIS Guideline for Determining Whether a Livestock Slaughter or Processing Firm is Exempt from the Inspection Requirements of the Federal Meat Inspection Act](#).

**- Can I Donate Poultry Products Slaughtered and/or Processed under an Exemption to Federal Inspection (See 9 CFR 381.10)?**

Exemption Type	Eligible to Donate?
Personal Use	No
Custom Slaughter/Processing	No
Producer/Grower 1,000 Bird Limit	Yes, intrastate
Producer/Grower 20,000 Bird Limit	Yes, intrastate
Producer/Grower or Other Person (PGOP)	Yes, intrastate
Small Enterprise	Yes, intrastate
Retail Dealer	Yes
Retail Store	Yes

Further explanation of each poultry inspection exemption type and its eligibility to be donated is found in the [Guidance for Determining Whether a Poultry Slaughter or Processing Operation is Exempt from Inspection Requirements of the Poultry Products Inspection Act](#). The guideline does not address exemption requirements where state laws may be different from those in the Poultry Products Inspection Act (PPIA) and FSIS/USDA regulations. States may have additional requirements and regulations, beyond FSIS's requirements, for donating products produced under the Producer/Grower, PGOP, and Small Enterprise exemptions.

**• Donation Recipients**

**- Donation to Schools for Human Consumption**

An establishment can donate meat and poultry products to a school if the final products are fully labeled and wholesome.

**- Non-Profit Fundraiser**

An establishment can donate products to a non-profit fundraiser to be sold if the products are inspected and passed by FSIS.

- **Donating State-Inspected Products**

Under the [Cooperative Interstate Shipment](#) (CIS) program, certain state-inspected establishments can operate the same as federally-inspected facilities. Under specific conditions, these establishments can ship their products in interstate and international commerce. Therefore, products produced under the CIS program are eligible for donation. If a state-inspected establishment has not produced the product under the CIS program, it is limited to donating product within its own state borders according to state laws.

- **Donating “Expired” Products**

Producers can donate products past the “best if used by” or “sell by” date. Manufacturers provide dating to help consumers and retailers decide when food is of best quality. Except for infant formula, product dates are not an indicator of products’ safety and are not required by Federal law. The quality of perishable products may deteriorate after the date passes, but the products should still be wholesome if not exhibiting signs of spoilage. Spoiled foods will develop an off odor, flavor or texture due to naturally occurring spoilage bacteria, making the food not wholesome. If a food has developed such spoilage characteristics, it should not be eaten. FSIS recommends that food banks, other charitable organizations, and consumers evaluate the quality of the products before their distribution and consumption to determine if there are noticeable changes in wholesomeness. More information on product dating can be found on [FSIS’s Food Product Dating page](#).

## **Guidance for Organizations Receiving Donated Products**

- **Relabeling (ID Services)**

Non-profit organizations that repackage products need to ensure that the products they receive and distribute are properly labeled. This is especially important with raw products that may appear to be fully cooked (e.g., raw, breaded poultry products) because some consumers might not know how to properly handle and cook the product. Ensuring proper labeling can prevent inadequate cooking by consumers, reducing the risk of foodborne illness.

A non-profit organization, such as a food bank, can receive federally inspected and passed products in bulk, break bulk, repackage, label, and distribute them to customers in need under the retail exemption to federal inspection (see [9 CFR 303.1\(d\)](#) and [381.10\(d\)](#)). If the non-profit organization receives state-inspected products, they may be distributed within the state only. The non-profit organization must ensure that the repackaged products meet all FSIS labeling requirements that apply at retail: the name of the product, the name and address of the manufacturer, packer or distributor of the product (which can be the food bank), a list of ingredients if the product is made from two or more ingredients, a special handling statements (like Keep Refrigerated) if

product is perishable, nutrition information (unless an exemption applies, such as that the product will not be sold) and safe-handling instructions (if not ready-to-eat) (see 9 CFR 317.2 and 381 Subpart N). In accordance with [9 CFR 303.1\(f\)](#) and [9 CFR 381.10\(a\)\(1\)](#), the adulteration and misbranding provisions of the FMIA and PPIA apply to articles that are exempted from inspection. For a check list of required label features, please visit [FSIS's "Label Submission Checklist" page](#), and for more information on labeling requirements, please visit [FSIS's Basics of Labeling page](#). Product exempt from FSIS inspection must not bear the FSIS inspection legend.

- **Retail Exemption- Preparation of Meat and Poultry Products at Non-Profit Organizations**

As mentioned above, non-profit organizations are eligible to prepare meat and poultry products under the retail exemption. Retail exempt products may be donated as retailers are required to use federally or state-inspected source materials when preparing any meat or poultry products under the retail exemption found in [9 CFR 303.1\(d\)](#) and [9 CFR 381.10\(d\)](#). Retailers are subject to the licensing requirements of state or local (county, city) authorities, while producing products under the retail exemption, without FSIS inspection. The adulteration and misbranding provisions of the FMIA and PPIA apply to products which are exempted from inspection.





<http://askfsis.custhelp.com/>

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