

December 15, 2016

**POSITION STATEMENT:** Donated Food

**PURSUANT TO:** N.C.G.S. 130A-248; 15A NCAC 18A .2600

**SOURCE:** Cindy R. Callahan, REHS  
Head, Food Protection and Facilities Branch

**QUESTIONS / ISSUE:** What food items may be donated?  
What rules must food establishments follow when donating food?

**DISCUSSION/RATIONALE:**

Guidance has been requested regarding the donation of food. To control food waste and provide community outreach, many food establishments donate their excess food to Food Distribution Organizations (FDO) that are exempt from regulations. Other food establishments do not currently donate food, but are being asked to donate their excess food by FDOs. In addition, food establishments have asked if food that is Reduced Oxygen Packaged (ROP) can be donated.

Guidance has also been requested from the Department of Public Instruction personnel regarding “sharing tables” or other types of collection containers or equipment being placed in schools for collecting food to be donated. The “sharing tables” provide a place to share or donate only non-potentially hazardous (time/temperature control for safety (TCS)) food items in accordance with the Rules.

**RESPONSE / INTERPRETATION**

The primary goal of food recovery programs is to collect safe and wholesome food donated from commercial sources to meet the nutritional needs of the hungry.

Food intended to be donated is considered regulated food while under the control of the permit holder and shall meet all requirements set forth in the Rules Governing the Food Protection and Sanitation of Food Establishments and the North Carolina Food Code Manual (Code).

Section 3-306.14 Returned Food and Re-Service of Food states:

(A) Except as specified in ¶ (B) of this section, after being served or sold and in the possession of a CONSUMER, FOOD that is unused or returned by the CONSUMER may not be offered as FOOD for human consumption.

(B) Except as specified under ¶ 3-801.11(G), a container of FOOD that is not POTENTIALLY HAZARDOUS (TIME/TEMPERATURE CONTROL FOR SAFETY FOOD) may be RE-SERVED from one CONSUMER to another if:

(1) The FOOD is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

(2) The FOOD, such as crackers, salt, or pepper, is in an unopened original PACKAGE and is maintained in sound condition.

Therefore, the following apply:

- Only unserved food can be donated;
- TCS and unpackaged non-TCS food that has been served cannot be donated;
- Only packaged non-TCS, whole fruit or food meeting the requirements in 3-306.14(B) (1) & (2) can be donated; and
- “Served” food is food that has come into contact with the customer or is transferred from direct supervision and oversight by employees of the food establishment. For example, food transported to a classroom or other location has been “served” and has left the control of the permitted food establishment. This food cannot be returned to the food establishment to be donated.

If unserved food is donated, the food must meet all the requirements in the Code. Donated food prepared in food establishments is the same as regulated food that is sold to the public by the food establishment.

In regards to ROP food, Section 3-502.12, Subparagraph (D)(2)(a) prohibits food establishments from distributing or selling food that has been packaged using cook-chill or sous vide processes at the food establishment. Further, food processed using cook-chill or sous vide must be prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity. Therefore, ROP food prepared by the food establishment using a cook-chill or sous vide process cannot be donated as an ROP product. The ROP products may be removed from the package prior to donation. By removing the ROP food, it is no longer considered ROP and may be donated if all time and temperature controls, including shelf life, have been followed.

Food provided on “sharing tables” or other types of collection containers or equipment must meet the requirements specified in Section 3.306.14 as previously stated. It is the responsibility of the person in charge to monitor sharing tables and ensure that food items placed on sharing tables for re-service meet the requirements in the Code.

Because donated food may be separated in the food establishment, the following guidance is recommended:

- Food intended for donation should be stored in a designated area;
- Develop Standard Operating Procedures for food intended for donation;
- Advise the food establishment to be proactive and choose a suitable FDO; and
- Advise the food establishment to develop an agreement between the permit holder and the FDO regarding terms of the food donation.

Please contact your Regional Specialist if you have any questions.

**REFERENCES:**

N.C.G.S. 130A-248

Rules Governing the Food Protection and Sanitation of Food Establishments (15A NCAC 18A .2600)  
North Carolina Food Code Manual

Conference for Food Protection Comprehensive Guidance for Food Recovery Programs

<http://www.foodprotect.org/media/guide/comprehensive-resource-for-food-recovery-2016-version.pdf>

<http://www.usda.gov/oce/foodwaste/resources/donations.htm>

*NOTE: Position statements are policy documents to clarify how to interpret or enforce a law or rule. They are not enforceable on their own, but are intended to promote uniform interpretation and enforcement of the underlying law or rule.*

