

## DONATED PRODUCTS QUESTIONS AND ANSWERS

1. **Question:** What type of product can be donated?

**Answer:** Any meat, poultry, or egg product that is safe, wholesome, and capable of use as human food can be donated. In addition, products that are misbranded or economically adulterated but are otherwise safe, wholesome, and capable of use as human food can also be donated. The Meat and Poultry Products Inspection Acts permit the donation of products to non-profit organizations (e.g., food banks, charitable institutions, child welfare facilities) (see section 403(a)(5)(A) of Federal Meat Inspection Act (FMIA) and section 20(a)(5)(A) of the Poultry Products Inspection Act (PPIA)).

2. **Question:** What are some types of organizations that may receive donated products?

**Answer:** Products can be donated to charitable institutions, food banks, and government-supported facilities, such as correctional facilities, child welfare facilities, homes for senior populations, institutions for the physically or mentally ill, or similar qualifying institutions.

3. **Question:** Can an establishment donate product that is found to be adulterated to non-profit organizations as a means of disposing of the product?

**Answer:** No, except when the product is found to be economically adulterated under section 1(m)(8) of the FMIA or section 4(g)(8) of the PPIA (see Question that follows), an establishment cannot dispose of product found to be adulterated by donating it to non-profit organizations. Product found to be adulterated must, as set out in 9 CFR 318.2. have all official inspection legends and markings removed and be condemned and disposed of in accordance with 9 CFR 314 and 381.95.

4. **Question:** What are “economically adulterated” products? Can they be donated to non-profit organizations?

**Answer:** “Economically adulterated” products, to paraphrase the FMIA and PPIA, are products from which any valuable constituent in whole or in part has been omitted or removed, or in which any less valuable substance has been substituted. Products into which any substance is added, mixed, or which are packed, in a way that misrepresents their weight or bulk, or that makes them appear to be of greater value, are also considered to be economically adulterated. These products may be donated for use by non-profit organizations provided the establishment donating them fully discloses to the recipient the nature of the economic

adulteration, provides a complete listing of the ingredients that are actually in the product, submits and secures approval of the temporary label from FSIS' Labeling and Consumer Protection Staff, and transfers the product to the recipient under controlled circumstances.

5. **Question:** From where does the authority come to allow establishments to donate misbranded products to non-profit organizations in lieu of other dispositions?

**Answer:** Section 403(a)(5)(A) of the FMIA states:

*“An article that is condemned under paragraph (1) may as the court may direct, after entry of the decree, be distributed without charge to non-profit, private entities or to federal, state, or local government entities engaged in the distribution of food without charge to individuals, if such article- (i) has been inspected under this Act and found to be wholesome and not to be adulterated within the meaning of the paragraphs (1) through (7) and (9) of section 1 (m) and a determination is made at the time of the entry of the decree that such article is wholesome and not so adulterated; and (ii) is plainly marked “Not for Sale” on such article or its container.”*

There is parallel language in the PPIA.

The above quoted section of the FMIA speaks directly to the disposition of products detained in commerce. However, the Agency has also deemed that it is appropriate to allow the donation to non-profit organizations, products found at establishments to be misbranded or mislabeled when the establishments decide that donation is the best means of product disposition.

6. **Question:** Can an establishment donate product that is found to be misbranded or mislabeled in some way to non-profit entities such as food banks, or soup kitchens?

**Answer:** Yes, if an establishment produces product that is found to be misbranded or mislabeled in some way, it may dispose of it by donating it to a non-profit organization, provided it has been found wholesome and not to be adulterated (except if economically adulterated) within the meanings of either the FMIA or PPIA. In addition, the products' immediate containers must be plainly marked “Not for Sale.” *Such labeling and supporting documentation must be submitted to the Labeling and Consumer Protection Staff for a temporary approval.*

7. **Question:** Can a retail store donate meat or poultry products processed at retail to a non-profit organization for service in meals to needy consumers?

**Answer:** Yes, retail stores can donate meat or poultry products to non-profit organizations' food service operations, provided the products are wholesome and not adulterated.

8. **Question:** Can non-profit organizations charge a fee to consumers for the meals served that they produce with meat or poultry processed at retail and donated by retail stores?

**Answer:** Yes, non-profit organizations may use meat or poultry products processed at retail stores to produce and serve meals and charge for those meals. However, such transactions are subject to limitations in accordance with the FMIA and PPIA. When a non-profit organization's food service operation charges for meals served, it is in essence operating as a restaurant. Restaurants are defined in 9 CFR 303.1 as establishments where:

(1) Product is prepared only for sale or service in meals or entrees directly to individual consumers at such establishment;

(2) Only federal or state inspected product or product prepared at a retail store exempted from inspection under 9 CFR 303.1(d)(2)(iii) is used in the preparation of the meals;

(3) No sale of product is made in excess of normal retail quantities; and

(4) The preparation of product is limited to traditional and usual operations conducted at restaurants.

The donation to non-profits of meat and poultry products processed at retail stores for sale for a nominal fee at soup kitchens and the like is by regulation a sale for resale. The transaction is considered in the same way as a sale by a retailer to a restaurant for normal sales is. 9 CFR 303.1(d)(2)(iii) requires that at least 75 percent of the dollar value of total sales of a retail store be to household consumers, and that the total dollar amount not exceed the dollar limitation set by FSIS each year. Therefore, in order to maintain its exemption from inspection, a retail store that donates products to a non-profit that will prepare meals for sale from the products (even for a nominal fee) must ensure that its "sales," including the value of the donated meat and poultry, do not exceed the limits set out by regulation or be subject to inspection.

9. **Question:** Can a non-profit organization charge a fee to consumers for the meals served that it produced with meat or poultry donated by retail stores or other businesses, if the products bear a mark of inspection?

**Answer:** Yes, if the donated meat or poultry products have been produced under state or federal inspection, they may be used by non-profit food service organizations in the preparation of meals for which the organization charges a fee provided the products are wholesome and not adulterated. However, products produced under a given state inspection program may only move in commerce within that state or be donated for use within that state.

10. **Question:** Can custom exempt product be donated?

**Answer:** No, custom exempt product may only go back to the individual for which the product is being slaughtered or processed.

11. **Question:** Can experimental products be donated?

**Answer:** No, experimental products are not permitted to be donated since they are not inspected and do not bear the mark of inspection.

12. **Question:** Can sample products be donated?

**Answer:** Yes, sample products are made for general public consumption and are to be produced and labeled in accordance with the meat and poultry products inspection regulations.

### **Labeling Questions and Answers on Donated Products**

13. **Question:** What are the labeling requirements for product donated by an establishment to a charitable organization if the product is misbranded or economically adulterated?

**Answer:** Products must bear a statement of limited use, such as "For Charity - Not For Sale," stamped on shipping containers and individual packages within shipping containers. Such labeling is required to ensure that the products leaving the Federal establishment are accurately and truthfully labeled according to Federal meat and poultry regulations.

14. **Question:** Why does misbranded or economically adulterated product have to bear a "not for sale" statement?

**Answer:** There are two reasons. First, as a matter of law, it is required by the statute. Second, the product must bear the statement of limited use, "Not-for-Sale", to prevent economically adulterated and misbranded product from entering commerce.

15. **Question:** Does the statement “not for sale” always have to be on donated products?

**Answer:** Products that have been inspected and passed can be freely donated and do not require the statement “not for sale.” However, if the product is economically adulterated or misbranded, it must bear the statement “not for sale.”

16. **Question:** How can product that is “economically adulterated” due to ingredients in the product be donated?

**Answer:** Products that are “economically adulterated” because of the addition of an inferior ingredient, or the substitution or omission of a valuable ingredient are eligible for donation provided they are marked with a statement of limited use.

17. **Question:** Can a product bearing a label that does not comply with Federal regulations, but is otherwise wholesome, be donated?

**Answer:** Yes, provided the company submits the label for temporary label approval and is granted an approval per 9 CFR 317.4 or 381.132. Additionally, the immediate container and the outside container should bear a statement of limited use that conveys the product is not for sale; e.g., "For Charity - Not For Sale".

18. **Question:** Why is the donation option for misbranded products something of a normal practice rather than re-labeling?

**Answer:** Establishments often elect to donate meat and poultry products when their products are misbranded, do not meet establishment quality specifications, or are otherwise ineligible to be offered for sale or distribution in commerce. Additionally, product in commerce found to be misbranded but otherwise wholesome, not adulterated, and capable of use as human food may be donated to non-profit organizations as a means of resolving detention actions. This option offers an alternative to companies who would rather use their resources for gaining profit while using a business deduction as a tax write-off for the donated misbranded product.