

Prepared Food Recovery for Food Donors



Given concerns about the environmental impacts of food waste and the fact that food insecurity is an increasing problem, many people in the food service industry are looking to better understand when and how it is safe to donate food for human consumption that would otherwise be wasted. You may find that more foods can be donated than you originally thought. We hope this document will help you.

This guide provides Standard Operating Procedures (SOPs) for donating leftover prepared food. The goal of these SOPs is to create consistent standard operating procedures to remove confusion surrounding the varying interpretations for how to manage leftover prepared food, ultimately reducing food waste.

The food donor should coordinate with the food recovery organization regarding frequency of donations and processes required to donate food in addition to the SOPs outlined in this document. The following SOPs are particularly applicable for food donors:

- Packing and Transport
- Labeling
- Multiple Day Rescue Method

The table below outlines the guidelines for donated food based on who prepared the food, type of food, and other details.

Prepared Food Donation Guidelines

DONOR TYPE	FOOD PREPARATION	STORAGE	PACKAGING	
Can be Donated	<ul style="list-style-type: none"> • Permitted or licensed donor type only • Restaurant • Bakery • Educational Institution 	<ul style="list-style-type: none"> • Food in prep areas or coolers • Foods on a buffet that are temperature controlled and protected by sneeze guard 	<ul style="list-style-type: none"> • TCS* foods that have been held below 41°F • See SOPs for more details 	Commercially wrapped items with no damage to packaging
Cannot be Donated	Items prepared in individual's home, community group, or non-certified kitchen	Dishes put out on the buffet table for customer self-service	Food held under Time as a Public Health Control**	

*TCS foods refers to foods that require time/temperature control for safety

**Time as a Public Health Control is an approach used where foods normally kept under temperature control are not and uses time as the parameter instead. If these foods are held at room temperature, they must be discarded after 4 hours.

Why Not?

In home/non-certified kitchen: We have no way of confirming that this food was prepared in a way to reduce risk of foodborne illness

Customer self-service: This type of buffet service introduces the risk of contamination from people serving themselves

Time as a Public Health Control: Given the difficulty of monitoring time parameters with these types of food, these foods may not be donated

Food Safety Fact

Bacteria that can cause foodborne illness (pathogens) grow best in what is called the Temperature Danger Zone (between 41°F and 135°F). This is why we want to keep TCS foods outside of that range.

The pathogens *Clostridium botulinum* and *Listeria monocytogenes*, which can both cause serious illness and death, grow well in environments with reduced oxygen that occurs when a food is vacuum sealed.

Food Safety Fact

Because of the risk of *Listeria* growth, the food that was prepared first sets the timeline for how long a container of multiple batches can safely be served.

Packing and Transporting Food for Donation SOP

- Cooked, properly cooled time/temperature control required for safety (TCS) foods must be packaged and stored at 41°F or below to prevent the growth of pathogens and stored in food-grade containers and equipment. Coordinate with the food recovery organization as to the most appropriate food container for their operations.
- Store unused containers in the appropriate storage area, at least 6 inches off the ground, away from heat and sunlight, and covered to prevent contamination.
- Make sure that containers are unused, clean, and free from debris or contaminants before filling.
- Do not use any containers that are damaged or appear to have been already used or contaminated.
- For food that has already been cooled, fill containers in a cool environment to ensure that the temperature of the food stays below 41°F during filling. Check the temperature of the food in several places prior to filling containers to ensure that it is below 41°F. Keep food at 41°F or below at all times during filling. Foods may be frozen after packing but confirm with your food recovery partner that they have the capacity for storing frozen batches of food.
- For food that is being packaged from hot, fill containers/bags and make sure the food is cooled from 135°F to 70°F within 2 hours, and from 135°F to 41°F within 6 hours.
- Food may NOT be placed in a reduced oxygen environment, which includes vacuum sealing, cook-chill, and any other process that drives out oxygen. Food can be sealed in bags as long as a vacuum is NOT drawn.
- Fill containers in a clean area that is free from potential contamination, including contamination on filling surfaces and from debris in the air.
- Label container immediately (see Labeling Standard Operating Procedures).
- **Clean** and **sanitize** equipment after using.
- When transporting foods for donation, TCS foods must be kept below 41°F. It is recommended to keep a thermometer in several containers to track the temperature.
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Multiple Day Food Rescue Method SOP

- Cooked, properly cooled TCS foods must be packaged and stored at 41°F or below to prevent the growth of pathogens. A partially-filled container can be supplemented with additional correctly-cooled food at a later date. The date labeling of the multiple day food bag or container must follow the oldest food in the batch.
- Follow the same procedure for Packing Food for Donation SOP.

It is critical to track and label the date that food was originally cooked so that the food recovery organization can serve it when it is still safe. Even if they are refrigerated at 41 degrees or lower, prepared foods that are held for longer than 7 days have a higher risk of *Listeria* growth .

Labeling SOP

- All TCS foods must be properly labeled.
- Only approved labels should be used to label food packages. Food recovery organizations should be consulted as to any other requirements for labels.
- Labels must be able to adhere securely to the food package after filling and be able to be written on clearly with permanent no-smudge ink.

Label Information

Labels must contain the following information:

Label Examples

Tuffy's Chicken Salad

White meat chicken salad on croissant
Contains: egg, wheat

Wolfpack Deli 919 Wolf's Den Way Raleigh, NC 27695

Prepared on: 11/1/2023

Consume or discard by: 11/7/2023

Shipped on: 11/2/2023 at 10:00 am

Raleigh Food Recovery 111 Food Bank Ln. Raleigh, NC 27607

Keep refrigerated at 41°F or below
If container has been damaged do not eat contents

Mrs. Wolf's Beef Stew

Beef in gravy with potatoes, carrots and peas
Contains: soy

Wolfpack Deli 919 Wolf's Den Way Raleigh, NC 27695

Prepared on: 07/11/2023

Frozen on: 07/3/2023

Thawed on: 11/4/2023

Consume or discard by: 11/7/2023

Shipped on: 11/5/2023 at 10:00 am

Raleigh Food Recovery 111 Food Bank Ln. Raleigh, NC 27607

Reheat in pot on stove until internal temperature is 165°F as measured by a food thermometer. Stir contents before temping.

Keep refrigerated at 41°F or below
If container has been damaged do not eat contents

Write or print enough labels with the required information to place on each filled container using no-smudge permanent ink. Re-print or re-write any labels that are incorrect or difficult to read. Use pre-printed templates when possible.

Part 1: Food Source Information

- Food service provider or restaurant and location
- Food description
- **Allergen** ingredients (if applicable) and food allergen notice
- Original cook date and time
- Number of days between original cook date and freezing date (if applicable)

Part 2: Information for Safe Use

- Reminder that food must be kept refrigerated
- Days left for safe consumption when refrigerated (dependent on when food is donated)
- Consume or discard by date (dependent on when food is donated)
- Cooking/reheating instructions
- Warning statement: If container has been damaged do not eat contents

Part 3: Receiving Information

(to be completed for food recovery organization)

- Ship date and time out of the freezer (if applicable)
- Transport agency or food bank name
- Receiving/Serving organization name

These SOP's were created by the NCLFC Food Waste Reduction Working Group.



Unserviced Prepared Food Recovery in North Carolina: Regulatory Framework & Liability

Regulatory Framework

North Carolina counties must adhere to the state's Public Health Laws, which aim to promote the highest level of health for the people. These laws encompass food and food establishments.

Food establishments in North Carolina are regulated at the county level under state laws NC GS 130A - 248 and 15A NCAC 18A .2600, known as the "Rules Governing the Protection and Sanitation of Food Establishments."¹ These rules are administered by the North Carolina Department of Health and Human Services (DHHS), specifically the Environmental Health Section Food Protection and Facilities Branch. The North Carolina Food Code is the reference document for these rules, adapted from the 2017 FDA Food Code and updated in 2021.² The DHHS Food Protection Program develops the standards that County Health Departments enforce.

DHHS accredits county health departments and provides oversight to ensure state laws and rules compliance. County health departments have delegated authority with state-level oversight. In some counties, the health department may operate as part of a human services agency with additional responsibilities, such as social services and aging.³

While each county has the flexibility to interpret rules and guidance within the state framework to enforce standards that protect public health, DHHS advises the counties on interpretations of the standards. County health departments are encouraged to refrain from implementing regulations based on their own interpretations. Nevertheless, local interpretation may vary. DHHS strives to standardize the implementation of rules and guidance across the state by organizing regular meetings to disseminate up-to-date information and foster consistent interpretation.

In December 2016, DHHS issued a position statement on donated food, serving as a starting point and recognizing the need to develop standard operating procedures (SOPs) to inform prepared food recovery.⁴

Unserviced Prepared and Ready-to-Eat Food Recovery

Unserviced prepared and ready-to-eat foods refer to prepared foods that have not passed into the hands of a consumer.

Ready-to-eat foods that have been prepared and are in an unpackaged form that have not passed into the hands of a consumer have the potential to be donated. Foods that have passed into the possession of a consumer may only be donated if they are non-TCS foods in the unopened, original package or whole fruit/nuts/vegetables." (Refer to the definition of TCS (Time Temperature Control for Safety) foods in 1-201.10)

Under the NC Food Code, leftover unserviced prepared and ready-to-eat foods can be donated, provided that the donor institution follows the standard operating procedures for recovery outlined in this toolkit. These donations fall under the protection of the Emerson Act.

¹ 130a/gs_130a-248, 15A NCAC 18A .2600,

² NC Food Code

³ NC Gen Statute § 130A-34.

⁴ DHHS Position Statement on Donated Food 12.14.16

Unserved Prepared Food Recovery in North Carolina: Regulatory Framework & Liability

State and Federal Liability Protections for Donors of Prepared and Served Food

Both federal and North Carolina laws provide liability protections for establishments and individuals who donate food. The Bill Emerson Good Samaritan Food Donation Act safeguards these donors from liability unless they act with gross negligence or intentional misconduct.⁵

However, it is essential to note that the Emerson Act only protects food donations that comply with both state and local food safety standards.⁶ The Act explicitly states, "Nothing in this section shall be construed to supersede State or local health regulations."⁷ Interestingly, a document issued by the North Carolina Department of Environmental Quality indicates that, based on the legislative history of the Emerson Act, the act guarantees liability protection for donors of donated food even past its use-by date.⁸ However, this interpretation represents the agency's view and does not offer guidance on differentiating between food safety rules and other types of rules.

Furthermore, President Biden signed an amendment in 2022 to the Emerson Act called the Food Donation Improvement Act (FDIA).⁹ This amendment expanded the liability protections for donating food and grocery products and updated the 2022 Food Code.¹⁰ The new code extends the liability protections to include:

1. Donations of apparently fit grocery products or apparently wholesome food, with the recipient being charged a good Samaritan reduced price that does not exceed the cost of handling, administering, and distributing the food or produce.
2. Food donated directly to a needy individual by a retail grocer, wholesaler, agricultural producer, restaurant, caterer, school food authority, or institution of higher education.
3. Donations of excess food that may have passed a "best by" date but are still safe for consumption.

Additionally, North Carolina has a similar law that protects food donors. N.C.G.S. 99B-10(a) shields establishments and individuals who donate food to non-profit organizations as long as they do not engage in conduct that constitutes gross negligence, recklessness, or intentional malfeasance.¹¹ The same law also provides protection for the entities that serve the food.¹²

Note: It is essential to consult with legal experts or relevant authorities for specific guidance and clarification regarding implementing these regulations in your locality.

⁵ 42 U.S.C. § 1791(c)(3) (2018).

⁶ 42 U.S.C. § 1791(f) (2018).

⁷ Id.

⁸ N.C. Dep't of Environmental Quality, Harvard Food Law and Policy Clinic, Legal Fact Sheet for N.C. Food Donation: Liability Protections (2017).

⁹ Food Donation Improvement Act (FDIA)

¹⁰ 2022 Food Code

¹¹ N.C. Gen. Stat. § 99B-10(a) (2019).

¹² N.C. Gen. Stat. § 99B-10(b) (2019).

