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Department of
the Environment

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FOOD DONATION

The Maryland Department of the Environment recognizes that food that would otherwise be wasted, that is wholesome surplus foods, can and should be recovered and diverted as food for people. This guidance document is intended to provide direction on how surplus edible, nutritious and culturally appropriate foods can be made available for all people.

Food Residuals Diversion Law and Regulation

The Natural Resources Defense Council (NRDC) estimates that up to 40% of food in the United States goes uneaten, and excess edible food ends up being thrown out in landfills by restaurants, grocery stores, and institutional food service providers every day. This represents a lost opportunity for the 1 in 3 Marylanders facing food insecurity. Donating uneaten, wholesome food to local food relief organizations can help serve those in need and reduce the amount of waste produced by your business.

Maryland's Food Residual Diversion law and regulation encourages entities to divert edible food to food recovery programs to the maximum extent practicable. It is recommended to review Feeding America's "Online Marketplace and Retail Food Safety Guidelines" to ensure what food materials are acceptable, how it should be handled and agency donation information prior to reaching out to a local food bank or food rescue organization.

"Maximum extent practicable" means the degree to which the maximum amount of edible food can be donated for human consumption without jeopardizing human health and the environment, by implementing best management practices and taking into account cost-effectiveness and feasibility.

Liability Protection: The federal Bill Emerson Good Samaritan Food Donation Act offers a person liability protection when donating apparently wholesome food in good faith and at no cost to a nonprofit organization for distribution to needy people, except in incidences of gross negligence and/or intentional misconduct. This law was revised in 2022 to include donations of apparently fit grocery products or wholesome food. One-pagers describing Bill Emerson Law and other Federal legislation addressing food recovery

- USDA
- Harvard Law **newly revised in 2023**
- ReFED Rethink Food Waste
- Library of Congress - Food Recovery

Donation Protection Law

BILL EMERSON GOOD SAMARITAN FOOD DONATION ACT

Passed 1996 - Encourage donation of food and grocery products to non-profit organizations for distribution to individuals in need. This law:

- Protects donor from liability when donating to a non-profit organization;
- Protects donor from civil and criminal liability should the product donated in good faith later cause harm to the recipient;
- Standardizes donor liability exposure. Donor or donor legal counsel do not need to investigate liability laws in 50 states; and
- Sets a floor of "gross negligence" or intentional misconduct for persons who donate grocery products. According to the new law, gross negligence is defined as "voluntary and conscious conduct by a person with knowledge (at the time of conduct) that the conduct likely to be harmful to the health or well-being of another person."

Revised 2022 - Updated liability protections to include donations of an apparently fit grocery product or apparently wholesome food

- For which the recipient is charged a good Samaritan reduced price that is no greater than the cost of handling, administering, harvesting, processing, packaging, transporting, and distributing the food or product; or
- That is donated directly to a needy individual at zero cost by a retail grocer, wholesaler, agricultural producer, agricultural processor, agricultural distributor, restaurant, caterer, school food authority, or institution of higher education.

Finding Food Relief Organization Partners

Food banks, food recovery programs and food policy councils work to end hunger through partnerships with local organizations across the state. It is important to get familiar and develop relationships with local recovery organizations early in your program development. There are many groups across the state that accept and distribute food to those in need. Prior to contacting your local relief organization, ensure you review the information provided so that those organizations know you're doing the correct thing with excess food. Contact other businesses in your area that already have established programs to learn of local resources and pathways to achieve positive results. There are also resources online for locating food relief organizations. Different web platforms and apps can provide innovative solutions, connecting donors with the organizations that need food donations the most. These digital tools are available to build connections and move food through existing channels in a cost-effective manner.

Communication is Key

Remember to share your donation program standard operating procedures with your food relief partners so everyone agrees. Open communication establishes trust, saves time, and eliminates confusion. Consider having a written agreement with partners that clearly establishes handling, storage, transportation, and acceptance procedures.

Which Food Relief Organization Type Is Right for Me?

Food banks, pantries, and soup kitchens do not all operate the same way. Some organizations do not accept prepared foods but may assist with finding another organization within their region or network to partner with. Different organizations may also serve different types of clients and have varying capabilities to pick up donated food or provide other logistical services. You may need to partner with more than one organization to donate your surplus, wholesome food effectively (e.g., one that can receive shelf-stable packaged food weekly and another that can accept and pick up your prepared meals twice a week).

Donation Organization Locators

Use the links below to find a food bank, food pantry, meal center, and programs near you. This list may be updated online at MDE's dedicated webpage for Food Residual Diversion.

- Food Banks
  - Maryland Food Bank
  - Capital Area Food Bank
  - Anne Arundel County Food Bank
- Pantries, Meal Centers, and Programs
  - Maryland Food Pantries
  - Ample Harvest
  - Southern Maryland Food Bank & Outreach Services
  - Teens for Food Justice
  - United Way 211
- Food Rescue Organizations
  - Anne Arundel County Food Council
  - Prince George's Food Equity Council
  - Montgomery County Food Council
  - Food Rescue Baltimore
  - Baltimore Food Policy Initiative
  - Frederick County Food Council - Community Fare
  - Western MD Food Council (serving Garrett, Allegany and Washington counties)
  - Baltimore County Food Shuttle (Turner Station)
  - Food & Friends
  - Food Rescue Locator
  - Food Recovery Network
- Food Rescue Organization Locators
  - ReFED's Innovator Database
  - Sustainable America's Food Rescue Locator

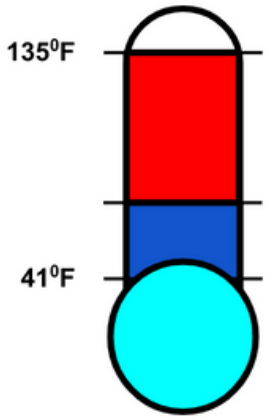
Any listing of businesses or programs above does not constitute a complete directory of all vendors that provide food recovery services in Maryland, nor does it offer an endorsement by the Department. To be added to the list, please send an email to LMA.WDD@maryland.gov

How to Donate Food Safely

When setting up a food donation program, you must discuss what can be donated and the logistics of the process with the food relief organization, and establish procedures that protect the safety of donated foods. In general, businesses can donate packaged, shelf-stable, perishable, non-perishable, and prepared foods that have not been served. This includes raw or properly cooked, processed, and prepared edible foods as long as they have not been served. Foods may not be donated if they are not suitable for use in your establishment because they have been improperly prepared.

The Maryland Department of Health's Office of Food Protection mission is to assure the safety of food in Maryland. See COMAR 10.15.03 to review the Maryland Regulations associated with Food Service Facilities.

Donating Prepared Foods: Donating prepared or other similar highly perishable foods can be done safely. (Examples of foods in this category include milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, cooked potato, and cooked rice.) Review the food safety regulations pertaining to your establishment (*see COMAR 10.15.03.06), but in general, the following temperature requirements must be met:



COMAR 10.15.03.06
Food Protection During Storage, Service and Transport

HOT FOOD Must be kept at 135⁰F or above*

COLD FOOD must be kept at 41⁰F or below*

Keep hot food hot (above 135°F) until the decision is made to donate. Food received out of temperature (above 41°F for cold food and below 135°F for hot foods) must not be accepted for donation.

Food Labeling for Prepared Foods (Food Prepared by the Donating Organization)

Label the packaging with the food name, the date it was prepared, and a recommended seven day (7-day) discard date. Prepared food that has been refrigerated for seven days or more should not be donated. Foods that are frozen, thawed, and then refrozen should not be donated. Food that will be donated can be frozen prior to donation to "stop the clock" and prevent the growth of bacteria. Label the packaging with the date it was frozen. Store foods in a designated area (including inside a refrigerator or freezer) identified with signage of a refrigerator or freezer while waiting for pickup.

Best Practices for Donating Prepared Foods

Communicating with your partner food relief organization is key to safely and efficiently donate prepared foods. Some tips:

- Some organizations, such as food pantries that only offer shelf-stable food items or food banks that move food at greater quantities, may not accept prepared foods. Look for an organization like a shelter, soup kitchen, or other service agency that serves hot meals in your area and ask if they accept prepared foods.
- It may be helpful to indicate the approximate number of servings in containers of prepared foods like pasta, soup, etc., that aren't stored in individual serving size containers.

However, please note that many organizations prefer prepared foods to be donated in individually sealed packaging. Communicate with your partner organization to determine how to proceed.

- Some organizations may only accept a minimum number of servings per food item. Identify which partner organizations in your area are best suited to receiving large, medium, and small amounts of prepared food to make the donation process more efficient.

Temperature Control: If refrigerated transport is not available, the food items should be labeled "Process Immediately" and must not be out of temperature controls for more than two (2) hours.

Served Food

Food that has been served (offered without protection from the consumer, such as on a plate or display where the consumer has uncontrolled access to the food) may NOT be donated. (Note: Foods on protected buffet lines (i.e., sneezeguards installed, proper utensils available, temperature-controlled, etc.) are not considered served and can be donated.) Be sure to adhere to all time and temperature requirements.

NOTE: If food is unable to meet these time and temperature requirements, or is contaminated at any time, it must be recycled as food residuals.

Labeling, Storing and Transporting Food for Donation
Food for donation must be stored following existing federal and Maryland food safety regulations.

Best Practices

- Store food for donation separately;
- Label each container of food for donation clearly with description of the item, date and time it was saved, and name of receiving entity
  - List any allergens;
  - For prepared and potentially hazardous foods, keep a log to show that proper time and temperature have been maintained;
  - If transporting food to more than one receiving entity, keep the donations separate for ease of handling and delivery;
  - Use insulated containers as appropriate to transport cold or frozen foods and maintain proper temperatures
  - Keep hot foods hot and cold foods cold, and keep them separated while transporting;
  - Use tightly sealed containers to prevent leakage and cross contamination; and
  - Develop concise Standard Operating Procedures (SOP) and train staff on your donation program
  - Display signage and create step-by-step instructions.

Digital Tools
Below are a list of innovative applications designed to help prevent food waste and to recover surplus food for those in need. Click the links below to learn more.

- National Tool
  - EPA Excess Food Opportunities Map
- Donation Matching Tools - Working to solve the logistical challenges of food donation, the tools below are designed to connect generators of surplus food with agencies who can provide it to those in need.
  - Chow Match
  - Copia
  - Food Cowboy
  - Food Rescue US - locations in Maryland
  - Meal Connect
  - Spoiler Alert
  - Why Hunger
  - Food Rescue Hero
  - Other
    - Community Fridge - providing 24/7 access of cold storage for fresh foods
      - Freedge - Community Fridge - nationwide mapping
      - SMADC Community Fridge - La Plata
      - Feed the Fridge - DC metro area
      - Baltimore Community Fridge
      - Frederick Community Fridge