

Guidance on Donation of Leftover Food in CNPs

Nutrition Services Division Management Bulletin

Purpose: Policy, Beneficial Information

To: Child Nutrition Program Sponsors

Number: CNP-02-2018

Attention: Child Nutrition Program Operators

Date: February 2018

Reference: Senate Bill 557; U.S. Department of Agriculture, Food and Nutrition Service, Policy Memos SP 11-2012, CACFP 05-2012, and SFSP 07-2012; SP 29-2009, SFSP 04-2009, and CACFP 07-2007; Richard B. Russell National School Lunch Act, Section 9; California *Health and Safety Code*, sections 113871, 113876, 114079, and 114432; California *Civil Code* Section 1714.25; California *Education Code* Section 49580; California Department of Education Management Bulletins 96-110 and CNP-03-2018

Supersedes: California Department of Education Management Bulletin USDA-CNP-04-2012

Subject: Guidance on the Donation of Leftover Food in Child Nutrition Programs

This management bulletin (MB) provides guidance from the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) regarding the donation of leftover food in Child Nutrition Programs (CNP), which includes the National School Lunch Program, School Breakfast Program, Child and Adult Care Food Program (CACFP), and the Summer Food Service Program (SFSP).

Overview

On November 18, 2011, the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55) amended the Richard B. Russell National School Lunch Act (NSLA) by adding paragraph (1), the Food Donation Program, at the end of Section 9. This amendment provides statutory authority for CNP schools and agencies to have food recovery and food donation policies.

The USDA has a longstanding food donation policy in all CNPs and the current amendment to the NSLA clarifies this policy through statute. The amendment does not require changes in the current food donation policies followed by California's CNPs.

The statute clarifies that any food prepared for CNPs that are not consumed may be donated to...“eligible local food banks or charitable organizations.” The amendment defines the terms “eligible local food banks or charitable organizations” to mean any food bank or charitable organization that is tax exempt under Section 501(c)(3) of the *Internal Revenue Code* of 1986 (Title 26, *United States Code*, Section 501[c][3]). It also extends protections against civil and criminal liability for persons or organizations when making food donations to the extent provided under the Bill Emerson Good Samaritan Food Donation Act found in the Child Nutrition Act, Section 22.

The USDA reminds CNP directors and staff that federal policy may be more permissive than state and local requirements; and all food donations must comply with state and local requirements. Guidance for state donation requirements have been revised to include updated information from Senate Bill 557 signed into law and effective January 1, 2018. Child nutrition staff should consult with their local health departments for local guidance on donating leftover food and establishing share tables.

Food and Nutrition Service Food Donation Policy

The FNS is committed to preventing hunger and responsible stewardship of federal dollars. This updated CNP policy aims to limit food waste and unnecessary costs. If a school, CACFP institution, or SFSP sponsor has leftover food on a frequent basis, menu planning and production practices should be adjusted to reduce leftovers.

The USDA recognizes that due to unforeseen circumstances, CNPs will occasionally have leftover food. CNPs should exhaust all alternatives permitted by program regulations and state and local health and sanitation codes before they discard food. Options include using leftovers in subsequent meal services, offering share tables (see below for restrictions), or transferring food to other sites. When it is not feasible to reuse leftovers, CNP staff may donate excess food to a nonprofit organization, such as a community food bank, homeless shelter, or other nonprofit charitable organization.

Important Food Donation Reminders

1. A local educational agency (LEA) may do both of the following to minimize waste and to reduce food insecurity:
 - Provide sharing tables where food service staff, pupils, and faculty may return appropriate food items consistent with California *Retail Food Code (CalCode)*, Section 114079, and make those food items available to pupils during the course of a regular school meal time. Please refer to MB CNP-03-2018.
 - Allow the food placed on the sharing tables that is not taken by a pupil during the course of a regular school meal time in accordance with the *CalCode*, Section 114079, subparagraph (A), to be donated to a food bank or any other nonprofit charitable organization.
2. Donations of food or food made available to pupils during the course of a regular school meal time may include prepackaged, nonpotentially hazardous food with the packaging still intact and in good condition, whole uncut produce that complies with the *CalCode*, Section 113992, before donation, unopened bags of sliced fruit, unopened containers of milk that are immediately stored in a cooling bin maintained at 41 degrees

Fahrenheit or below, and perishable prepackaged food (if it is placed in a proper temperature-controlled environment).

3. When an LEA makes food available to pupils during the course of a regular school meal time or donates food to a food bank or any other nonprofit charitable organization for distribution, the preparation, safety, and donation of food shall be consistent with *CalCode*, Section 113980.
4. Leftover food that is donated to a nonprofit charitable organization cannot be claimed for meal reimbursement.
5. CACFP day care home providers are not permitted to donate leftover foods.

Resources

The following resources offer CNPs additional guidance on the use of leftover foods:

- Your local health department
- California Department of Education (CDE) MB CNP-03-2018: The Use of Share Tables in CNPs Web page at <http://www.cde.ca.gov/ls/nu/sn/mbcnp032018.asp>
- CDE Plate Waste Prevention in Child Nutrition Programs Web page at <http://www.cde.ca.gov/ls/nu/sn/platewaste.asp>
- USDA FNS Policy Memorandums SP 11-2012, CACFP 05-2012, SFSP 07-2012, School Meals Policy Web page at <https://www.fns.usda.gov/school-meals/policy>
- *CalCode*, Section 113871 (potentially hazardous foods); Section 113876 (prepackaged food); Section 114079 (food donation, sharing tables, and LEA); sections 114432 and 114433 (donation of foods and protection from liability) California Department of Public Health Retail Food Program Web page at <https://www.cdph.ca.gov/Programs/CEH/DFDCS/Pages/FDBPrograms/FoodSafetyProgram/RetailFoodProgram.aspx>
- California *Civil Code* Section 1714.25 (donated food and protection from liability) California Legislation Information Web page at <http://leginfo.ca.gov/faces/codes.xhtml>
- The California Department of Resources Recycling and Recovery's Food Donation Web page at <http://www.calrecycle.ca.gov/reducewaste/schools/food/>

Contact Information

If you have any questions regarding this subject, please contact your School Nutrition Program (SNP), CACFP, or Summer Meals Unit (SMU) Specialist.

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SMU: Larry Frakes, OT, by phone at 916-322-8323 or by e-mail at lfrakes@cde.ca.gov.

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