



Policies and Procedures of IRS Code 170(e)(3)

Agency Agreement Appendix I

IRS Code 170(e)(3) defines the tax deduction that donors are eligible to receive if the donation is used according to the regulations, defines the organizations eligible to receive those donations and defines allowable uses of those donations.

First and foremost these policies are designed to protect our partner agencies and ensure they are in compliance with federal Internal Revenue Service regulations relating to the use of donated products. This includes food received from the Care and Share Food Bank, Direct Retail Programs and/or any other program where an agency obtains food via a Care and Share Food Bank relationship.

These policies, required by Feeding America, also help us assure our donors that donated products are truly being used in the manner they intended. Care and Share Food Bank carefully monitors agencies and is very serious about preventing misuse of donated products.

INSTRUCTIONS:

Note: A copy of this form must be on file at Care and Share Food Bank and at each partner agency location. Additionally, these policies must be shared and understood by staff, volunteers and Board members and be posted in an area visible to staff and volunteers.

**Page 4 is the IRS Code 170(e)(3) Log that serves as an example of documenting the use of donated products, as required for Tasting and Testing under the heading In-House Use of Donated Products.*

I. IN-HOUSE USE OF DONATED PRODUCTS

a. Operational Use of Non-Food Products

Partner agencies **will not** use any Food Bank products in the operations, upkeep or support of its food distribution programs.

b. Volunteer Use of Donated Products

Partner agencies **will not** use any Food Bank products for onsite volunteer or staff consumption.

c. Meeting Use

Partner agencies **will not** use any Food Bank products for business meetings such as Board of Directors meetings, committee meetings, agency meetings and other functions where agency related business is conducted.

d. Use by Staff or Volunteers:

Donated product may not lawfully be used to compensate staff and/or volunteers. Partner agencies that wish to provide Food Bank products to staff and/or volunteers in need **must** use the same criteria that are used to determine eligibility of any client.

e. Tasting and Testing

Partner agencies may permit staff/volunteers to consume or prepare onsite donated goods to:

- Become more familiar with them (to be in a better position to advise agencies/clients as their uses)
- Discover new ways in which they can be used (to be in a better position to advise agencies/clients)
- Test their fitness for consumption (as they near or pass code date, for example).

In the above instances, uses of donated product must, by law, be “incidental to the primary use in the care of the ill, needy or infants” and may not lawfully constitute “pay” and/or compensation to any staff and/or volunteers. In other words, donated products are intended for the care of the ill, needy or infants and any incidental use should be limited and related to the primary purpose of your program.

The partner agency’s Board, staff and volunteers should be made aware of these policies and procedures in addition to the potential for abuse and the importance of periodic review of control procedures.

f. Fundraising Events

Donated products **will not** be used for the purpose of fundraising either as prepared food (such as spaghetti dinners or bake sales) or as “prizes”.

II. DISPOSAL OR DISTRIBUTION OF UNUSABLE FOOD DONATIONS

Partner agencies will make all reasonable efforts to distribute donated product in accordance with IRS Code 170 (e)(3) before it becomes unfit for human consumption. Product that cannot be distributed for human consumption is by definition no longer subject to IRS Code 170 (e)(3) regulations.

III. CLIENT ELIGIBILITY

a. Guidelines

Partner agencies will develop and observe policies and procedures that reasonably assure primary service is being provided to eligible persons. Client eligibility is subject to the non-discrimination clause as stated in the Agency Agreement. The Food Bank strongly recommends that eligibility be determined by self-professed need only. Care and Share Food Bank discourages partner agencies from requiring and storing sensitive client information (i.e. social security numbers, driver's license numbers, etc).

b. Labor Disputes / Forced Furloughs

Partner agencies that wish to provide Food Bank products to persons rendered needy by labor disputes, temporary reduction of wages or forced furloughs **must** use the same criteria for determining eligibility of any client.

c. Purchased Product Client Distribution Programs and Donated Product

Due to the absolute necessity in assuring compliance with the IRS Code 170(e)(3), Care and Share Food Bank **does not** recommend selling purchased products to clients. IRS Code 170(e)(3) strictly prohibits donated products from being sold, exchanged or bartered and stipulates that donated product may only be given to qualified individuals. The distribution of donated product with the selling of purchased product may be easily misinterpreted as donated products being sold and/or given to those who do not qualify to receive the product.

IV. AGENCY ELIGIBILITY

a. Agencies Distributing to Other Agencies

Partner agencies, regardless of how they receive the donated product (i.e. directly from the Food Bank, through the store donation pick-up program, excess mobile pantry product, etc.) will only distribute donated products to eligible clients. Partner agencies **will not** distribute donated products to other Food Bank partner agencies, non-Food Bank partner agencies, organizations or business entities.

b. Primary vs. Incidental Use/Self Evident Need

Partner agencies operating onsite meal programs where ineligible (non-needy) persons may consume the product **will** establish policies and procedures to ensure that the primary purpose of the program is service to the "ill, needy or infants", as defined by IRS Code 170(e)(3).

c. Religious Evangelizing

The primary purpose of distributing donated products to eligible individuals will be carried out without regard to religious preference. Any and all religious activity must be separate and distinct from food distribution and cannot be discriminatory, oppressive or taxing to the client. Religious activities are allowed but **must not** take place before eligibility is determined and **must not** be a requirement to receive food assistance.

d. Voluntary Contributions

Due to the absolute necessity in assuring compliance with the IRS Code 170(e)(3), partner agencies **will not** utilize contribution canisters, envelopes or similar means of solicitation in the vicinity of food distribution areas to encourage clients to contribute to the program.

