Food Waste Policy:
Using Systems Change to Stop Squandering One of our Greatest Resources

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ABOUT FLPC

Provide **legal and policy advice** to nonprofits, government agencies, entrepreneurs, and other organizations on a range of food policy questions.

Educate students about the role of law and policy in the food system.
Our Work

Keeping Food Out of the Landfill:
Policy Ideas for States and Localities

Food Waste Reduction and Recovery

Why Does It Matter?

Food Waste Reduction
Food Recovery
Food Banks and Repair Programs
Food Donation: Lab and Food Safety
Preventing Waste at Home
Preventing Waste at School
Purchasing Food at School

Legal Fact Sheets:
- Connecticut Food Donation: Legal and Liability Issues
- Commercial Food Donation: Tax Incentives for Businesses
- Connecticut Food Donation: Federal Food Scraps in Animals

Why Does It Matter?
The single largest component of solid waste sent to incinerators and landfills is food waste. According to the EPA, just 3.9% was diverted from landfills in the United States in 2019.
1.3 Billion Tons of Food Loss/Waste Globally

Unlike consumer driven waste in the developed world, over 90% of all wastage in developing Asia and Africa occurs during production, postharvest, processing, and distribution.

Food waste: food that is discarded by consumers
Food loss: food intended for human consumption that is wasted during production, postharvest, processing, and distribution

Source: (1) FAO “Global Food Losses and Food Waste,” 2011; Dalberg analysis
U.S. Food Waste

- Eaten 60%
- Not Eaten 40%

~21% of U.S. water use

4% of U.S. oil

~18% of cropland

~15% of U.S. methane

Land use
Pesticide use
GHG emissions
Intergov’l Panel on Climate Change (Aug. 2019)

FINDING: Reducing food waste by 50% would generate net emissions reductions in the range of 20 to 30% of total food-sourced GHGs.

Climate Change and Land

An IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems.
Addressing Food Waste: Triple-Bottom Line Opportunity

People:
- Recovering just 30% of wasted food could feed all food insecure Americans

Planet:
- 20% reduction could save 1.6 trillion gallons of water and avoid 18 million tons of GHGs annually

Profit:
- 20% reduction could generate 15,000 new jobs and $1.9 billion in annual business profit
WHAT DO YOU THINK ARE CAUSES OF FOOD WASTE?
WHAT ARE SOME SOLUTIONS?
What is the role for policy?

- Regulation
- Labeling
- Tax
- Liability
- Spending
- Education and awareness
- Technical assistance
- Reporting requirements

EPA Food Recovery Hierarchy
FLPC Role in Policy Development

- Answer client legal/policy questions
- Generate public reports and resources
- Test policy ideas with stakeholders
- Policy implementation

FLPC Clinic student testifying for DC Council
Problems with the System

*Dating Game*, FLPC and NRDC (2013)

84% of consumers at least occasionally discard food close to or past the date on its package

**Consumer Perceptions of Date Labels**, FLPC, National Consumers League, Johns Hopkins (2016)
Voluntary Date Label Standard

• FMI/GMA voluntary standard for the U.S. (Feb 2017); Consumer Goods Forum (international) (July 2017)
  – “BEST If Used By” for quality
  – “USE By” for discard

• But
  – Not universal – some may use labels incorrectly
  – In over half of the states, state laws prevent compliance with the standard

• Working on national legislation to turn this into policy
Food Date Labeling Act (Introduced July 2019)

Elements

• 1) Standard labels – optional, but if a label is used it must be one of the following:
  – “BEST IF USED by” for quality
  – “USE by” for discard

• 2) Bans states from prohibiting sale or donation of foods past quality date

• 3) Requires FDA/USDA consumer education
Tax Incentives & Barriers

Incentives

• Federal tax deduction
  – (1) General Deduction
  – (2) Enhanced Deduction [almost 2x as much value as general deduction]

• Impact of federal tax deduction
  – When enhanced deduction expanded in 2005, donation increased by 137% the next year

• 12 states have state tax incentives

But, incentives may serve as a barrier – because certain types of nonprofits are not eligible → stifles innovation
Liability Protection

- Federal Law:
  - Bill Emerson Good Samaritan Act (42 U.S.C. 1791) protects donors, nonprofits, volunteers, gleaners from civil and criminal liability unless they act with gross negligence or intentional misconduct.
    - Food must be donated to a **nonprofit in good faith**
    - Food must meet all federal/state/local **quality and labeling requirements** (or be reconditioned to meet them)
    - Donated food must be distributed to **needy individuals**
    - Needy individuals receiving the food **must not pay for it**
  - States also have protections; some go above federal
Liability Protection - Issues

• Confusing terminology, for example, Emerson Act protects donors, etc. if they donate an “apparently fit grocery product”

  “...a grocery product that meets all quality and labeling standards . . . even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.”

• Other issues – keeping up with innovation
  – Doesn’t protect direct donations to needy individuals
  – Doesn’t protect donations if the end recipient pays
Food Safety: Regulatory Landscape

- Many anecdotes about lack of information or risk averse health inspectors posing barriers to donation
- Language in the FDA Food Code winds up in state codes (all 50 states have adopted some version)
- FDA Food Code does not include any language or guidance on food safety for donations

→ So, what do states do?
Food Safety for Donations: 50-state survey

- FLPC surveyed all states
- **12 States** have laws or regulations
  - Vary widely, generally narrow
  - Only TX is comprehensive
- **14 States** have guidance
  - Vary widely in scope

Verified regulation

Verified guidance or education campaigns
Survey Results: Model Language

Do you think model language would be / would have been helpful in creating food safety guidance for food donations?

- Yes: 78%
- Maybe: 19%
- No: 3%

Would you like to see model requirements specific to food safety for food donation practices included in the FDA food code?

- Yes: 46%
- Maybe: 38%
- No: 16%
Donation/Diversion Requirements

• 6 states and 10 cities in the U.S.
  • Eg) Massachusetts prohibits businesses from sending > than 1 ton of food to the landfill per week
• France:
  • Requires grocery stores over 400m² to donate extra food; requires them to create contracts with charitable organizations to redistribute food
Recent U.S. Proposed/Passed Laws

- S.1680/H.R.3444 – Food Recovery Act of 2017
- H.R.952 Food Donation Act of 2017 and S.2787 Food Donation Act of 2018
- S.2824 Farm to Food Bank Act (2018)
- H.R.4425 Food and Farm Act (2017)
- S.2337/H.R.3981 Food Date Labeling Act of 2019
- H.R.2/S.3042 – Agriculture Improvement Act of 2018 (Farm Bill)
- Winning at Reducing Food Waste month & national strategy (Apr 2019)
- National Food Waste 50% Reduction Goal (Sept 2015)
Progress? Proposed State Legislation

Number of bills introduced

0 - 6
Trending Issues in State Legislation

Trending Issues in Introduced State Legislature

- Blue: bills passed legislature
- Red: bills failed
- Yellow: bills in progress
- Green: bills signed

Bar chart showing the number of bills in each category for introduced legislation:
- Date Labeling
- Tax Incentives
- Liability
- Animal Feed
- Waste Bans
- Waste reduction
- School Food
- Awareness/Edu
- Other

Values: 0, 5, 10, 15, 20
Status of State Legislation

- **Passed Legislation**: 2.9%
- **Failed**: 4.3%
- **Signed**: 21.4%
- **In Progress**: 71.4%
New Project: Global Food Donation Policy Atlas