

Food Waste Policies

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Issue

Describe national and state policies aimed at reducing food waste. Provide examples of additional food waste reduction policies used in Europe.

Food Waste in the U.S.

According to the National Conference of State Legislatures (NCSL), approximately 40% of food produced in the United States is wasted.

Food waste accounts for the largest share of municipal solid waste. Households generate the greatest percentage of food waste (43%), followed by businesses (39%), farms (16%), and manufacturers (2%).

Wasted food in the United States is estimated to cost \$218 billion annually, from the growth, handling, delivery, and disposal of uneaten food.

- Schultz, Jennifer. [NCSL LegisBrief: Fighting Food Waste](#), Vol. 25, No. 46 (Dec. 2017)

Summary

Food waste is generally any food that is grown and produced for human consumption but not eaten. The United States has a goal to reduce its food waste by 50% by 2030.

Several federal agencies coordinate efforts to educate the public and food supply chain participants about food waste. Federal law encourages federal agencies that contract for food service to have excess food donated to certain nonprofit organizations. There are also federal liability protection and tax incentives for businesses that donate unused food to nonprofits.

At least five states, including Connecticut, ban certain entities from disposing of food waste in the traditional waste stream. Some states have liability protections and tax incentives for donating food that go beyond those

provided by federal law. California law requires the state to encourage food producers and retailers to use standard labels to reduce customer confusion about food freshness and safety.

Several European countries have policies to address food waste that differ from, and may be in addition to, those currently in place in the United States. For example, France bans large grocery stores from disposing of unsold food that could be donated. In Italy, broadcasting media must provide public education on reducing food and other waste. Italian law also encourages the catering sector to reduce food waste by allowing customers to take leftovers home. Some cities in Italy have door-to-door food or organic waste collection several times per week. And, in 2016, Denmark implemented a subsidy program to support food waste reduction projects.

United States

National Food Waste Reduction Goal

The United States, through its Department of Agriculture (USDA) and Environmental Protection Agency (EPA), has a [goal](#) to reduce food waste by 50% by 2030. It aims to reach this goal through partnerships with entities such as governments, nonprofits, and academic and private organizations. EPA also developed a “Food Recovery Hierarchy” of the ways to recover excess food, with source reduction (i.e., reducing the amount of generated food) as the most preferred method and landfilling or incineration as the least preferred method (see next page).

In October 2018, the federal Food and Drug Administration, EPA, and USDA entered into a two-year [agreement](#) to increase and align the agencies’ efforts to educate (1) the public on the effect of reducing food waste and (2) supply chain participants on best practices to reduce food waste, including new uses for excess food.

USDA and EPA also have several programs to educate the public about food waste reduction and recognize businesses and organizations that commit to reducing waste. For example, the *U.S. Food Loss and Waste 2030 Champions* program recognizes businesses that commit to reducing food waste by 50% by 2030 and the *U.S. Food Waste Challenge* recognizes organizations that publicly pledge or disclose their food waste reduction actions.

Image 1: EPA Food Recovery Hierarchy



Source: EPA Food Recovery Hierarchy: <https://www.epa.gov/sustainable-management-food/food-recovery-hierarchy> (last accessed June 13, 2019).

Federal Agency Donation Policy

Under federal law, federal executive agencies and their contractors are encouraged to donate excess food. Specifically, the law requires all contracts of at least \$25,000 to provide, serve, or sell food at federal agencies or to lease or rent federal property for a private event with food to include a provision encouraging the donation of excess, apparently wholesome food (see *Donation Liability Protection*, below) to nonprofit organizations that help food-insecure people ([42 U.S.C. § 1792](#)).

Liability Protection

Federal law provides a national minimum standard for protecting food donors and nonprofit recipients from civil and criminal liability for injuries related to using donated food, unless there is gross negligence or intentional misconduct ([42 U.S.C. § 1791](#)).

Under the law, the protection (1) applies to donors, gleaners (i.e., harvesters), and the nonprofit organization recipients and (2) covers donating, gleaning, and receiving and distributing donations. Specifically, the requirements for protection are the following:

1. the food must be either “apparently wholesome food or apparently fit grocery products,” meaning that it must meet all federal, state, and local quality and labeling requirements,

even though it may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions;

2. donations must be made in good faith to a nonprofit organization; and
3. the nonprofit organization must distribute the food to needy individuals.

Protection may extend to cases where food does not conform to the quality and labeling requirements, but only if the donor informs the organization receiving the food of the nonconformity and the organization agrees to recondition the food to become fully compliant.

Tax Incentives

Food donations by businesses may qualify for two types of federal tax deductions.

The first type, which applies to ordinary inventory donations generally, allows businesses to deduct from their taxable income the value of their inventory (including food inventory) that they donate to qualified organizations. The deduction is equal to their basis in the contributed property (i.e., the cost it incurred for the inventory), up to a certain percentage of their net income for the year, which depends on the form of the business making the donation (e.g., C-corporation, S-corporation, sole proprietorship).

The second type of deduction (i.e., the enhanced deduction) applies to businesses that make certain qualifying food donations. In order to qualify for the enhanced deduction, which is greater than the basis of the donated food, the donation must meet the conditions listed below.

1. The business's contribution must be of "apparently wholesome food" (see *Liability Protection*, above).
2. The food must satisfy any applicable federal Food, Drug and Cosmetic Act requirements on the date it is transferred and for the previous 180 days (e.g., not be adulterated or misbranded).
3. The receiving nonprofit organization must (a) use the food to care for the ill, the needy, or infants; (b) use the food in a manner related to its tax-exempt charitable purposes or function; (c) not transfer the food for money, other property, or services; and (d) provide the business with a written statement that it will comply with these requirements. The organization may not be a private nonoperating foundation.

If these conditions are met, the business may deduct from its taxable income its basis for the donated food plus half of the profit it would have realized if the food had been sold at its fair market value. The deduction for a single donation is capped at twice the business's basis in the donated food, and the aggregate deduction is capped at a certain percentage of the business's

taxable income, which depends on the form of the business involved. Businesses may carry forward donations that exceed the percentage cap for up to five years ([26 U.S.C. § 170\(e\)\(3\)](#)).

State-Level Policies

Food Waste Bans

According to NCSL, as of December 2017, five states had laws or regulations to ban food waste from the traditional waste stream: California, Connecticut, Massachusetts, Rhode Island, and Vermont. As shown in Table 1, these laws generally require large generators of organic material or waste to have the material or waste recycled. Vermont requires, beginning July 1, 2020, generators of any amount of food waste, including businesses and residents, to recycle the material if they are near an organics management facility.

Table 1: States with Food Waste Bans

<i>State</i>	<i>Ban Scope</i>	<i>General Requirements</i>
California (Cal. Pub. Res. Code § 42649.8 et seq.)	<ul style="list-style-type: none"> businesses nonprofit organizations public entities exempts entities in rural jurisdictions 	<ul style="list-style-type: none"> phased-in, over four years, a requirement for certain generators of organic waste to have it recycled (“organic waste” includes food waste) by 1/1/19, generators of at least four cubic yards of commercial solid waste weekly had to recycle their organic waste by 1/1/20, if organic waste disposal has not reduced by 50% from the 2014 level, generators of at least two cubic yards of commercial waste must have its organic waste recycled, unless the state decides otherwise
Connecticut (Conn. Gen. Stat. § 22a-226e)	<ul style="list-style-type: none"> commercial food wholesalers or distributors industrial food manufacturers or processors supermarkets resorts or conference centers 	<p>For generators located within 20 miles from an authorized source-separated organic material composting facility:</p> <ul style="list-style-type: none"> as of 1/1/14, generators of at least 104 tons of source-separated organic material annually must have the material recycled beginning 1/1/20, generators of at least 52 tons of the material must have them recycled
Massachusetts (310 Mass. Code Regs. 19.003 et seq.)	<ul style="list-style-type: none"> businesses and institutions (but not residential haulers) 	<ul style="list-style-type: none"> as of 10/1/14, generators of at least one ton of organic waste weekly (i.e., 52 tons annually) must have the waste composted, converted, recycled, or reused
Rhode Island (R.I. Gen. Laws §§ 23-18.9-7 &	<ul style="list-style-type: none"> commercial food wholesalers or distributors industrial food manufacturers or 	<p>For generators located within 15 miles from an authorized composting or anaerobic digestion facility:</p>

State	Ban Scope	General Requirements
23-18.9-17)	processors <ul style="list-style-type: none"> • supermarkets or restaurants • resorts, conference centers, banquet halls, casinos • prisons, military facilities, hospitals • corporations • religious institutions • higher educational or research institution 	<ul style="list-style-type: none"> • as of 1/1/16, generators of at least 104 tons of organic waste material annually must have the material recycled • as of 1/1/18, generators of at least 52 tons of organic waste material annually must have it recycled
Vermont (Vt. Stat. Ann. tit. 10 § 6605k)	<ul style="list-style-type: none"> • persons (i.e., individuals, businesses, municipalities, the state, federal agencies, other legal or commercial entities) 	<ul style="list-style-type: none"> • phased-in, over seven years, a requirement for generators of food residuals to have it recycled <p>For generators who are located within 20 miles of a certified organics management facility:</p> <ul style="list-style-type: none"> • as of 7/1/17, generators of more than 18 tons of food residuals annually must have it recycled • beginning 7/1/20, generators of any amount of food residuals must have it recycled

Source: NCSL Legisbrief, [Fighting Food Waste](#), December 2017.

Donation Liability Protection

States may provide liability protection for donations that extend beyond those provided in federal law (see above). Four ways of doing so include covering donations:

1. to nonprofit organizations that charge the food recipients for the food, such as to cover the cost of handling and distributing the food;
2. directly provided to the food recipients;
3. that do not fully comply with labeling requirements; and
4. of past-date foods.

According to the Harvard Law Food Law and Policy Clinic report, [Don't Waste, Donate: Enhancing Food Donations through Federal Policy \(March, 2017\)](#), at least 14 states, including Connecticut, have liability protections that apply even when the end recipient pays for the donated food (see Appendix A, page 29). The fees may be “nominal” ([Connecticut](#)); “significantly less” than the food’s value ([Arizona](#)); based on the recipient’s ability to pay or only requiring a “shared maintenance

contribution” ([Oregon](#)); or cover the cost of handling, administering, and distributing the food ([New Hampshire](#)). Three of the 14 states provide protection from only civil liability ([Arizona](#), [Massachusetts](#), and [Michigan](#)).

At least seven states ([Arizona](#), [Louisiana](#), [Minnesota](#), [Nevada](#), [New Hampshire](#), [New Mexico](#), and [Vermont](#)) provide liability protection for food donations made directly to a person, instead of only to nonprofit organizations that then distribute food to individuals which federal law protects. New Hampshire, New Mexico, and Vermont shield against both civil and criminal liability. Louisiana’s liability protection applies only to wild game donations.

Federal law’s liability protection for food donations requires that the donated food meet local, state, and federal labeling standards. This often requires donated food to have, among other things, the food’s name, net weight or quantity, and an ingredient list. [California](#) and [Oregon](#), however, provide liability protection regardless of compliance with labeling or packaging requirements, as long as the food meets related safety requirements. And [California](#) and [Massachusetts](#) extend protection to donations of past-date foods (i.e., foods that have not been sold or used by their “sell by” or “best by” date) which is not explicitly covered under the federal law.

Tax Incentives

At least nine states provide tax incentives that are in addition to the federal tax incentives, or benefit farms or businesses that are unable to use federal tax benefits. Also, because Connecticut bases its corporation income tax on federal income calculations that may include federal tax deductions, those deductions are already incorporated in state corporation income tax calculations.

Table 2 lists the nine states with tax incentives for food donations, including the amount of the deduction or credit and the eligible food, donors, and recipients.

Table 2: State Tax Incentives for Food Donations

<i>State</i>	<i>Benefit Type</i>	<i>Benefit Amount</i>	<i>Eligible Donors</i>	<i>Eligible Food</i>	<i>Eligible Recipients</i>
Arizona (Ariz. Rev. Stat. Ann. §§ 42-5074 & 43-1025)	deduction	gross sales proceeds or gross income from donated food	restaurants	prepared food, drink, or condiment	nonprofits that regularly serve free meals to the needy
		greater of full wholesale market price or most recent sale price of	taxpayer in the business of farming or processing agricultural crops	agricultural crops	nonprofits in the state whose use of the crop is related to their

State	Benefit Type	Benefit Amount	Eligible Donors	Eligible Food	Eligible Recipients
		donated crops			tax-exempt status
California (Cal. Rev. & Tax Code §§ 17053.88.5. & 17053.12)	credit	15% of qualified value of the donated items	taxpayer responsible for planting, managing, and harvesting a crop; growing or raising an eligible donation; or harvesting, packing, or processing, an item	produce, meat, fish, eggs, dairy, certain nonperishable items	food banks in the state
		50% of transportation costs	taxpayer in the business of processing, distributing, or selling agricultural products	agricultural crops	nonprofits
Colorado (Colo. Rev. Stat. §§ 39-22-536 & 39-22-301)	credit	25% of wholesale market price or most recent sale price, up to \$5,000 annually	taxpayers	agricultural crops, livestock, eggs, dairy	nonprofit hunger-relief charities
		25% of wholesale market price or most recent sale price, up to \$1,000 annually	c-corporations	crops and livestock	charitable organizations that do not collect money, property, or services in exchange for product
Iowa (Iowa Code §§ 190B.101 to .106 & 422.33(30))	credit	15% of fair market value, up to \$5,000 annually	taxpayers producing a food commodity	apparently wholesome food	food banks and emergency feeding organizations
Missouri (Mo. Rev. Stat. § 135.647)	credit	50% of food or cash donation, up to \$2,500 annually	taxpayers	food or cash that is not expired	nonprofit food pantries, soup kitchens, and homeless shelters in the area where the donor resides
New York	credit	25% of fair market	taxpayer who is in the	crops, meat,	nonprofit food

State	Benefit Type	Benefit Amount	Eligible Donors	Eligible Food	Eligible Recipients
(N.Y. Tax Law § 210-B(52))		value, up to \$5,000 annually	farming business	eggs	banks or pantries or emergency food programs in the state
Oregon (Or. Rev. Stat. §§ 315.154 & 315.156)	credit	15% of wholesale market price	taxpayer or corporation that grows crops or livestock	crops and livestock	food bank or other charitable organization in the state that distributes food for free
South Carolina (S.C. Code Ann. § 12-6-3750)	credit	\$75 per carcass	licensed meat packer, butcher, or processing plant	deer	nonprofits that distribute food to the needy (no deer can be sold)
Virginia (VA Code Ann. § 58.1-439.12:12)	credit	30% of fair market value, up to \$5,000	anyone in the farming business	food crops	nonprofit food bank providing food to the needy (food can be sold to the needy or other nonprofits)

Principle Source: Harvard Food Law and Policy Clinic, [Keeping Food Out of the Landfill: Policy Ideas for States and Localities](#), p. 18-19, (October 2016).

Standardized Labeling

There is no federal requirement to standardize food date labels, other than for infant formula. This can result in consumer confusion about a product’s safety or freshness. Consequently, food may be discarded before it is necessary to do so.

To help address this issue, California law requires the state’s Department of Food and Agriculture to publish information encouraging the food manufacturers, processors, and retailers responsible for labeling food products to voluntarily use the following uniform terms on product labels: “BEST if Used by” or “BEST if Used or Frozen by” to indicate the product’s quality date and “USE by” or “USE by or Freeze by” to indicate the product’s safety date. It also requires the department to encourage food distributors and retailers to develop alternatives to “sell by” dates ([Cal. Food & Agric. Code § 82001](#)).

Other Policies in Select European Countries

Grocery Store Food Donation – France

France prohibits large grocery stores from disposing of unsold food that could be otherwise donated. Under the law, the retailers must partner with at least one food aid charity (e.g., nonprofit organizations or food banks). Violators of the law are subject to fines of 3,750 euros (i.e., approximately \$4,098 as of the date of this report) (Loi N. [2016-138](#)).

National Education Campaign – Italy

Italian law requires that public radio, television, and multimedia dedicate broadcasting hours to educating the public on reducing food, energy, and other waste. It also requires state officials to implement national information campaigns to (1) increase public and corporate awareness of the effects of food waste and (2) encourage food education in educational institutions. The law also specifically seeks to encourage the catering sector to reduce food waste by allowing customers to take away leftovers ([Legge N. 2016-166](#)).

Frequent Door-to-Door Collection – Italy

Some cities in Italy, such as Milan and Orvieto, have door-to-door food or organic waste collection.

In [Milan](#), the food waste is collected in biodegradable bags; households have biweekly collection and larger entities, such as schools or restaurants, receive daily collection. Organic waste collection in [Orvieto](#) occurs three times per week. The collection includes not only food waste, but also cut flowers, houseplant trimmings, potting soil, and used paper products (i.e., tissues, paper towels, and napkins).

Program Subsidies – Denmark

In 2016, the Danish government implemented a [subsidies program](#) to support projects aimed at reducing food waste at any part of the food chain (e.g., food production or household end use). The government committed at least five million Danish Krone (i.e., approximately \$731,918 as of the date of this report) to these projects.

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