



FOOD SAFETY AND SECURITY Policy Brief

Food Loss and Waste: Snapshot of Food Donation Laws and Other Incentives to Increase Food Security and Reduce Environmental Harm


Introduction

In the United States, around 30 to 40 percent of food produced is wasted, with 66 million tons of food waste generated in the retail, food service, and residential sectors and an additional 40 million tons generated in the food and beverage manufacturing and processing sectors.¹ The amount of food wasted correlates to a cost of nearly \$218 billion or 130 billion meals annually.²

Food loss and food waste occur when food intended for human consumption is discarded at any point in the supply chain, including after being purchased for household use. There is a distinction between food loss and food waste. Food loss refers to food discarded on a farm, processing center, or distribution facility.³ Food waste describes food fit for human consumption that is discarded at the retail, food service, or household consumption phase.⁴ Food loss and waste can occur for many reasons, with examples including spoilage in the production and supply chain phase, equipment malfunction in storage of food, culling of blemished produce, over-ordering leading to unsold food in the retail and restaurant space, and consumers contributing by buying or cooking more food than needed and discarding the excess.⁵

When looking at the waste generation among groups in the supply chain, households (43%) and businesses (39%) contribute by far the greatest amount to food waste, while farms (16%) and manufacturers (2%) make a smaller but still significant impact.⁶ The business group can be broken down to a makeup of grocery and distribution (18%), restaurants (18%), and the institutional and food service group (11%).⁷ These statistics illustrate that while increasing efficiencies in the food production stage of the supply chain in manufacturing or on the farm (18%) to reduce food loss is important, food waste in the retail and household consumption phase (82%) contributes to the bulk of the waste issue.⁸

There are many policy options to reduce food waste, including incentivizing food donation. Diverting edible food headed for a landfill onto dining room tables and homeless shelters across the country promises that double impact of reducing food insecurity and avoiding the negative environmental impact of excessive food production. Food donation as an avenue to reduce food loss and waste can target all groups--manufacturers, retailers, farmers, wholesalers, and consumers. This policy brief focuses on retailers and restaurants for which the issues of liability and costs deter food



donation. The brief has an accompanying [50-state survey](#) that analyzes the varying state laws that aim to address barriers to food donation. There are existing laws and many opportunities for expanded laws and policies to reduce or eliminate the liability and financial concerns. The first section of this brief covers (a) the detrimental impact of food insecurity on health and financial outcomes and (b) the environmental impact of food waste. The second section examines the federal mechanisms addressing barriers to food donation, covering (a) the Bill Emerson Good Samaritan Food Donation Act addressing liability concerns and (b) federal tax incentives addressing financial concerns. The third section covers the state mechanisms in place to encourage greater food donation and less food waste, with varying (a) state liability protections, (b) tax incentives, (c) organic waste requirements, and (c) other factors.

Food Waste, Food Insecurity, and the Avoidable Environmental Impact of Food Waste

Food Insecurity Leading to Worse Health and Financial Outcomes

Effective policy addressing food loss and waste reduction may also positively impact food insecurity. Access to food is an important social determinant of health, necessary to maintain a healthy and active lifestyle. Food insecurity, meaning limited or uncertain access to adequate food, is linked to negative health outcomes and disparities.⁹ Studies have found that adults who are food-insecure are at higher risk of conditions such as obesity and various chronic illnesses.¹⁰ Children who are food-insecure are similarly at risk for negative health outcomes such as obesity and are at higher risk for developmental problems and mental health issues. The detrimental effect that food insecurity has on health outcomes leads to financial burdens on food-insecure households. One study showed that diabetics with limited access to food were at a greater risk for hypoglycemic episodes that required emergency department visits.¹¹ The higher rates of chronic conditions among those who are food insecure lead to higher healthcare costs and utilization, with the average healthcare costs reported to be \$1,834 higher for food-insecure adults compared to food-secure adults.¹² In 2022, at least 44.2 million people in the U.S. were reported to be living in food insecure households, including 7.3 million children.¹³ When averaging the higher overall healthcare costs for food-insecure households, the estimate of the financial burden created by food insecurity is around \$52.6 billion.¹⁴ In recognition of these statistics, the recovery and redistribution of surplus food and reduction of food waste to feed those food insecure families remains a pressing health equity issue.

Food Waste Contributing to Environmental Degradation

Addressing food loss and waste reduction is also important in tackling the negative externalities produced through the creation of food and food-related waste. The production of food, whether consumed or wasted, contributes to the pressure on natural resources such as fresh water and land and can create invisible costs that might not be obvious. Examples include greenhouse gas emissions from cattle production, air pollution from farm machinery and vehicles, and water pollution from agricultural chemical and nutrient runoff. The creation of food-related waste also contributes to several environmental impacts. Food constitutes the most common material found in landfills representing 24 percent of municipal solid waste and generating 61 percent of the methane produced by such facilities.¹⁵ The greenhouse gas emissions from the production, distribution, and disposal of food that is currently wasted are equivalent to the amount 60-coal fired power plants produce annually. And processing that wasted food uses the same amount of energy and water as approximately 50 million households each year.¹⁶ The efficient production, distribution, and consumption of food is therefore crucial in reducing the costs associated with food and food-related waste creation.

Federal Protections and Incentives for Food Donation

Food waste and food insecurity are of national concern. This section discusses federal measures to incentivize and protect food donation to reduce food waste.



Bill Emerson Good Samaritan Food Donation Act

A 2016 survey on various sectors, from manufacturers to retailers and restaurants, identified liability concerns as among the biggest issues serving as a barrier to food donation.¹⁷ Businesses with excess edible food are wary of donating the food for fear that an unknown problem with the food will create liability for the business. The guarantee of legal immunity from any potential issues that might arise from donated food is crucial in alleviating liability concerns that can serve as roadblock for donation. Such a guarantee is only meaningful if the legal protections are clear; confusion and hesitancy on who can donate to whom and what items can be donated is a significant barrier to food donation.


The federal Bill Emerson Good Samaritan Food Donation Act aims to minimize the liability risk for businesses and individuals to incentivize food donation. The Emerson Act was originally passed in 1996 and provides federal civil and criminal liability protection for those defined as “persons” or “gleaners” who donate in good faith “apparently wholesome food” to nonprofit organizations, with nonprofit organizations also receiving the same liability protection.¹⁸ Liability protection does not extend to gross negligence or intentional misconduct, meaning donations made with the knowledge that consuming the food is likely to cause harm.¹⁹ The Emerson Act establishes a floor for liability protection for food donation, protecting against state law claims through preemption. The Emerson Act establishes the baseline such that states cannot have less liability protection but allows states to enact more protective immunity measures for food donors or covered activities.

Under the Emerson Act, “apparently wholesome food” includes all food and grocery products meeting quality and labeling standards set by federal, state, and local laws and regulation even if the food itself may not be marketable because of its appearance, age, freshness, grade, size, surplus, or other conditions. The term “gleaner” under the Emerson Act is defined as a person who harvests for free distribution to the people who are food insecure or to donate to a nonprofit organization aiming to distribute to the that population. The Emerson Act defines food as any raw, cooked, processed, or prepared edible substance intended for human consumption. The definition of “person” under Emerson Act extensively covers retailers, grocers, wholesalers, hotels, motels, manufacturers, restaurants, caters, farmers, and nonprofit food distributors or hospitals. In 2023, President Biden signed the Food Donation Improvement Act,²⁰ which amended the Emerson Act and extended liability protection, granting protections for “qualified direct donors” to donate straight to people who are food insecure instead of through a nonprofit intermediary and also granting protections for nonprofits that provide food both for free and at a “Good Samaritan Reduced Price” so long as the price is no greater than the cost of handling and distributing the food.

Federal Tax Incentives

While liability protections remove barriers to food donation, tax incentives provide an affirmative incentive for food donation. Tax deductions and credits help to incentivize greater donor participation by offsetting costs in the time, labor, transportation, and storage of donated food.²¹ The technical and operational costs involved in the donation of food, such as refrigeration or the logistics of transportation, serve as a major barrier to food donation alongside liability concerns.²² Food producers often waste food because of a lack of storage capacity or insufficient capacity for transportation systems to connect donatable food with the end consumer.²³ Retailers have noted similar issues, with one supermarket reporting that they did not donate more leftover food as a result of a lack of storage space.

Financial incentives in the form of tax deductions or credits can encourage businesses to donate food by addressing and alleviating the costs associated with food donation.²⁴ Federal law provides enhanced tax deductions to businesses for fit and wholesome food donated to qualified nonprofit organizations, with businesses being able to deduct the lesser of either twice the base value of the donated food or the base value of the donated food plus half of the full fair market value for the donated food.²⁵ To obtain the enhanced tax deduction, businesses must fulfill three requirements: 1) donated food is to qualified nonprofit organizations that use the food for the ill, infants, and people who are food insecure; 2) donation is exclusively used for authorized charitable purposes; and 3) the recipient organization does not use or transfer food for



money, property, or services.²⁶ Businesses can still claim a general tax deduction if the donation does not meet the requirements for an enhanced tax deduction. Additionally, the Protecting Americans from Tax Hikes (PATH) Act, passed in 2015, expanded tax incentives for businesses, making permanent and extending enhanced tax deductions for food donations applicable for all businesses including C-corporations, S-corporations, limited liability corporations, partnerships, and sole proprietorships.

The effectiveness of federal tax incentives can be illustrated by how food donations increased by 137% across the country when incentives were temporarily expanded to cover more businesses in 2015.²⁷ With liability protections and tax incentives, the federal government incentivizes food donation. States, too, play a role with laws that enhance these federal provisions.

State Mechanisms to Increase Food Donation

State law and policy actions to reduce food loss and waste through increases in food donation can be broadly defined under three categories: 1) policies expanding and clarifying liability protection beyond the Emerson Act baseline; 2) increased tax incentives; and 3) organic waste requirements that limit certain entities from disposing food waste to landfills above a certain threshold. The following section will review and analyze the spectrum of state policy actions.

Liability Protection Clarification and Extensions

The Emerson Act was enacted to address liability concerns and facilitate food donation, providing broad protection from criminal and civil liability for donations of “apparently wholesome food” for those who would qualify as a donor under the term “person” or “gleaner.” Nonetheless, criticism of the Emerson Act has highlighted weaknesses, ranging from a lack of public awareness to misconception and confusion surrounding language in the law as to “who” and “what” is protected for liability purposes.²⁸ Although the Food Donation Improvement Act amendments to the Emerson Act clarify protections for qualified direct donors and for food donated at a discounted rate, there are still ambiguities in the law that create liability concerns for various businesses, including the metric to determine quality and labeling standards. For example, due to how food date labels are currently unregulated at the federal level, date labeling is largely regulated under a patchwork of varying state requirements that can add confusion and complications to the donation of food.²⁹ These issues have led states to provide greater guidance that not only provides clarification but also offers greater liability protection beyond the federal baseline.³⁰

Many state laws include provisions quite like those in the Emerson Act, particularly as to who may donate free of liability and what food may be donated. In line with the updated Emerson Act, some states like New Hampshire explicitly allow for direct donation of food, with no requirement that the food pass through a non-profit organization.³¹ Several states, such as California and Oregon, provide liability protection regardless of if the donated food did not comply with laws, rules, or ordinances regulating the packaging or labeling for food.³² Some states like Massachusetts provide liability protection even to food donated past its expiration date.³³ Maryland does not extend liability protection for direct donation in line with the Emerson Act, however, it does offer protection for donated food regardless of the condition, nature, age, or packaging of the food if it was donated in good faith to a nonprofit.³⁴ Specific to the colder region of Alaska, liability protection extends to donors of hot food so long as it is apparently fit for human consumption and labeled as previously heated and best kept frozen until ready to eat.³⁵

The spectrum of liability protection among the states can be defined by how each state builds upon the federal baseline, clarifying any ambiguities and extending protections to products or groups not explicitly covered by the Emerson Act. States that offer greater liability protection beyond the federal baseline go further to remove the liability concerns serving as barriers restricting food donation. Details about and links to state food donation laws can be found on the accompanying [50-state survey](#).



Tax Incentives

Some states have adopted tax incentives beyond the federal enhanced deductions offered to business entities. California provides a tax credit on the transportation cost of donated crops, allowing farmers a credit valued at up to 50 percent of the total contribution.³⁶ Pennsylvania offers tax credits to donors approved under the Charitable Food Program, valued at up to 55 percent of the total contribution.³⁷ Maryland currently offers eligible farms that donate certified organic produce tax credits of up to 100 percent of the value of the donation capped at a maximum of \$5,000 per year.³⁸ Many states offer tax credits rather than an additional tax deduction like those found in federal law. Generally, tax credits would be more widely beneficial in providing support to the businesses and farms targeted.³⁹

While tax deductions look at reductions in a taxpayer's taxable income, tax credits provide direct reductions to the amount of taxes owed. When looking at the various tax incentives among the states, the differences lie in the targeted entities and the dollar amount of each program. Research has shown a general upward trend of food donation following the enactment of a state tax incentive on donated food.⁴⁰ States that offer greater tax incentives for food donation help to alleviate the costs associated with donation that can serve as another major roadblock alongside liability concerns.


Organic Waste Requirements

Regulating food waste disposal is another policy lever that discourages waste and reduces the environmental burden of food waste. Among state laws, organic waste requirements typically target entities that produce above a certain threshold of waste and follow common principles such as mandating these entities to separate their organic waste from other solid waste and to reduce their output by either donating the food when possible, composting their organic waste in authorized facilities, and generally diverting waste away from landfills. States with organic waste requirements include California, Connecticut, Massachusetts, New Hampshire, Rhode Island, New York, Vermont, Washington, the District of Columbia, and Maryland. The differences among these organic waste requirements can come down to the targeted entities. For example, Massachusetts' organic waste requirement targets businesses generating more than one ton of food per week while Connecticut targets commercial food wholesalers, industrial manufacturers, supermarkets, and resorts or conference centers that produce more than 140 tons per year.⁴¹

Further, the breadth of targeted entities and the scope of exceptions dictate the relative strength of an organic waste requirement in reducing food waste. Under Maryland law, an organic waste requirement targets any person, business, or cafeteria producing more than one ton of food waste a week, requiring them to separate their organic waste from solid waste and divert it from entering a landfill. Exceptions apply if a given entity is 30 or more miles away from an organic recycling facility that prevents them from composting the waste to meet the requirement. Additionally, entities can also apply for a waiver if the burden of diverting food is 10 percent more expensive than the cost of disposing food at a refuse disposal system or "other reasonable circumstances." In comparison, California does not have the same kind or number of exceptions found in Maryland, mandating households and businesses to comply with the waste ban and requiring the recycling or donation of food to reduce waste with little wiggle room.⁴² States with strong organic waste requirements and with fewer exceptions have greater enforceability in targeting food waste generators in reducing their waste output.

Other

States have introduced other measures to reduce food waste that do not fit in the categories described above. Minnesota directly funds food banks, food shelves, and meal programs, with the Farm-to-Food Shelf program being notable. The program targets farmers and aims to offset the cost of donation to harvest, package, or transport donated food.⁴³ By having various food banks, shelves, and meal programs receive funding directly from the state under the program, they can cover the logistical costs that farmers would otherwise have to pay. Farmers can more readily choose the option of donating food rather than letting it go to waste as a result of the financial costs linked with donation. The program has seen success, with data finding that the program has enabled an increase in donation sourcing 7.6 million pounds of produce, 540,000 gallons of milk, and 300,000 pounds of lean protein from food producers and processors in



Minnesota.⁴⁴ Some states have developed unique and innovative approaches to promoting food donation. For example, Montana law allows courts to accept food donations in lieu of a criminal fine for some offenses.⁴⁵ Montana cities such as Butte have launched initiatives resulting in thousands of pounds of canned food being donated to food banks in replacement of paying of a fine.⁴⁶ These are just a few examples of state and local innovation designed to increase food donation.

Conclusion

The redistribution of surplus food is vital in addressing the environmental impact of food waste and the detrimental effects of food insecurity on health outcomes. Food donation serves as an avenue for all groups to reduce food waste and contribute to helping those in need. Robust food donation would contribute to health equity by providing an avenue to all households to access healthy foods, regardless of their socioeconomic status. Providing liability protection and financial incentives can help address the major barriers concerning individuals and businesses. Protection policies should focus on clarity that can address ambiguities in the law to give donor confidence in the kinds of activities that are allowed and protected. Tax incentives can help address the financial impact of food donation. Especially for bigger businesses such as retailers or farmers, food donation is not free. Factors such as storage capacity or transportation of donatable food come with a cost that can result in businesses forgoing donation. The inclusion of organic waste requirements could be effective but is dependent on the types of provisions involving the relative scope of enforceability, the kinds of exceptions in place, and the state of infrastructure allowing for the efficient recycling of organic waste. For example, an organic waste requirement would impose a huge burden on regions without an organic waste recycling plant nearby, requiring either lengthy travel or paying the upfront cost of creating such a plant. These various policies can be effective with proper awareness of the state-by-state circumstances.


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