

EPA Sustainable Materials Management Web Academy



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

October 20, 2016

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web-academy](https://www.epa.gov/smm/sustainable-materials-management-web-academy)**

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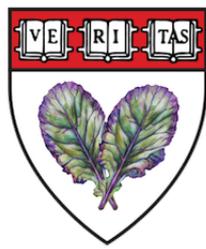
Food Law and Policy Clinic

A Division of the Center for Health Law and Policy Innovation

KEEPING FOOD OUT OF THE LANDFILL

POLICY IDEAS FOR STATES & LOCALITIES

October 20, 2016



Harvard

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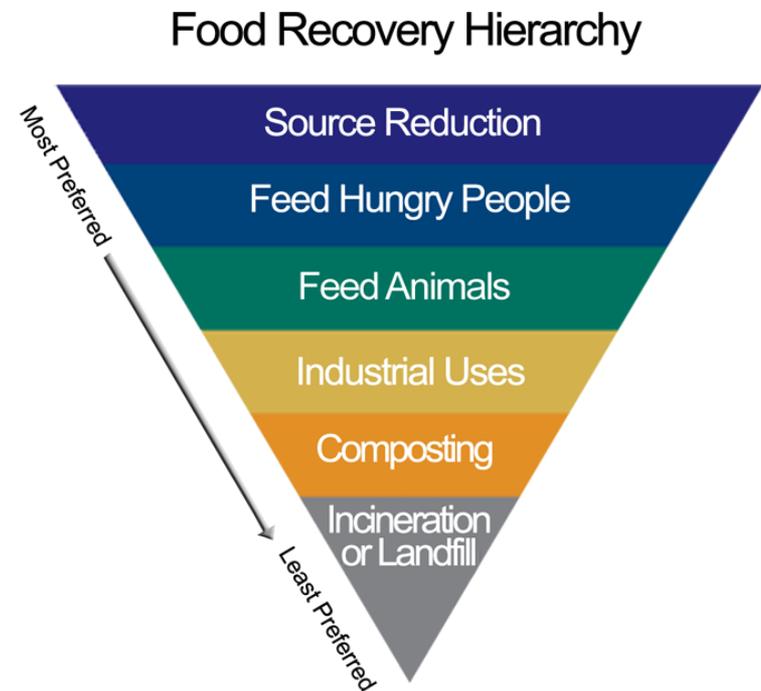
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- **Serve clients**
- **Train students**
- **4 Main Policy Areas:**
 - **Community Empowerment**
 - **Sustainable Food Production**
 - **Food Access & Obesity Prevention**
 - **Reducing Food Waste**



Overview

- Impacts of Food Waste
- Genesis of the Toolkit
- Toolkit Overview
- Toolkit Sections



Globally: 1.3 billion tons food loss/waste

Food waste and food loss around the world, millions of metric tons¹

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

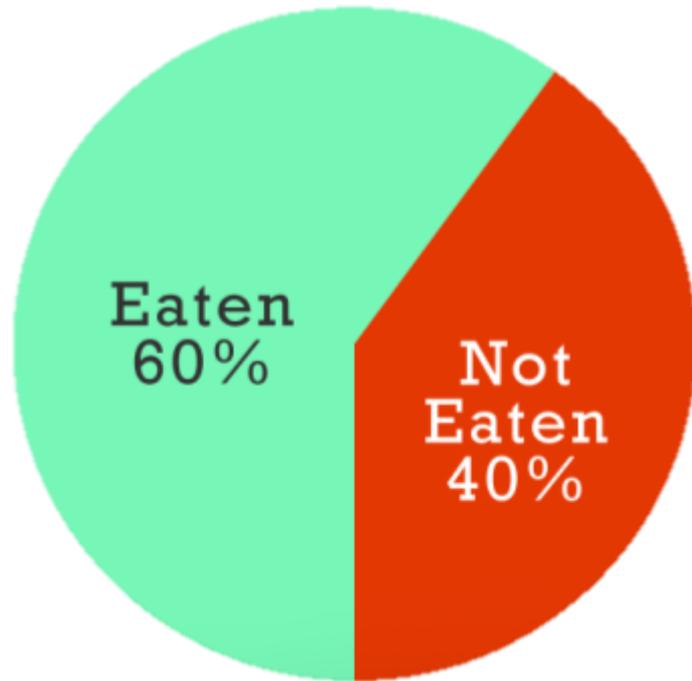


Mmt = million metric tonnes

Source: (1) FAO "Global Food Losses and Food Waste," 2011; Dalberg analysis

Food Waste

U.S. FOOD SUPPLY



~21 % of U.S. water use



4% of U.S. oil



~15% of U.S. methane



~18% of cropland

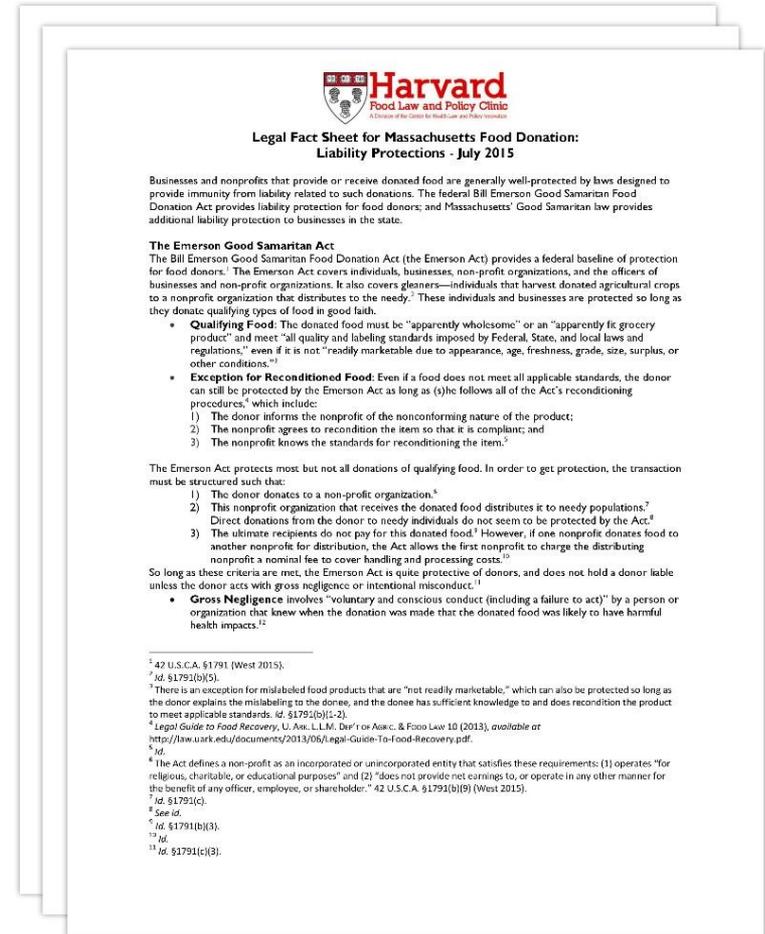
Land use
Pesticide use
Water quality
GHG emissions

National Food Waste Reduction Goal 50% by 2030



Genesis of the Toolkit

- Food waste is a problem with solutions
- National, state, & local opportunities
- States and localities are well-positioned to identify ways to reduce food waste



Keeping Food Out of the Landfill:

Policy Ideas for States and Localities



October 2016



Release Date: Monday, October 24, 2016

Toolkit Table of Contents

1. Liability Protection for Food Donations
- 2. Tax Incentives for Food Donations**
- 3. Date Labeling**
4. Food Safety for Food Donations
- 5. Food Waste Reduction in K-12 Schools**
6. Feeding Food Scraps to Livestock
- 7. Organic Waste Bans & Waste Recycling Laws**
8. Government Support for Food Waste Reduction



TAX INCENTIVES FOR FOOD DONATIONS

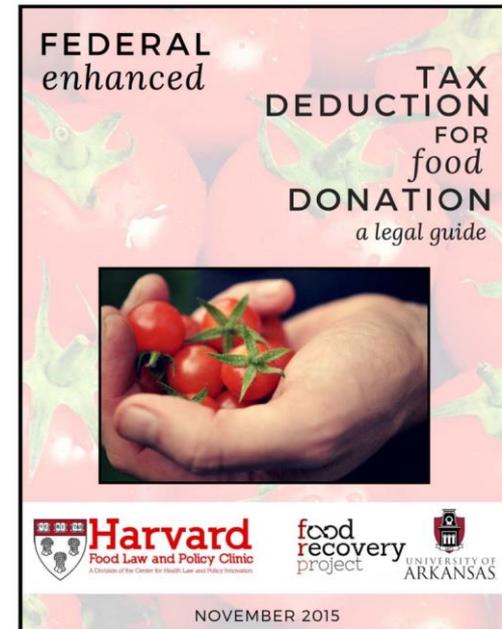
Overview of Tax Incentives

- Cost is a major barrier to food donation
- Tax incentives are cost effective & economically beneficial
- A **win-win** for all parties involved
- Overview:
 - Federal tax incentives
 - State tax incentives
 - Recommendations



Federal Tax Incentives

- (1) General Deduction
 - Eligibility requirements:
 - Used for charitable purpose
 - Recipient must be a qualified 501(c)(3) non-profit
- (2) Enhanced Deduction
 - Eligibility requirements:
 - Recipient must be a qualified 501(c)(3)
 - Donation used for the care of the ill, needy, or infants
 - Donate food free of charge
 - Recipient must provide a written statement to the donor
 - Food must be in compliance with the Food, Drug, and Cosmetic Act (FDCA)



General v. Enhanced Deductions

- Let's take a bag of potatoes. You bought it for \$30 and would normally sell it for \$100...
 - Basis value = \$30
 - FMV = \$100
 - Expected Profit Margin = \$70
- General Deduction
 - Limited to the basis value of \$30
- Enhanced Deduction
 - The lesser of :
 1. **Basis Value x 2 = \$30 x 2 = \$60**
 - or
 2. **Basis Value + (expected profit margin / 2) = \$30 + 70/2 = \$65**

Existing State Tax Incentives

Arizona, California, Colorado, Iowa, Kentucky, Missouri, Oregon, South Carolina, Virginia, Washington DC

Table 1: Existing State-Level Tax Incentives

Legislation	Deduction or Credit	Benefit	Eligible Donors	Eligible Food	Eligible Recipients
Arizona ARIZ. REV. STAT. ANN. § 42-5074	Deduction	Gross proceeds of sales or gross income from donated food	Restaurants	Prepared food, drink, or condiment	Nonprofits that regularly serve free meals to the needy and indigent at no cost
Arizona ARIZ. REV. STAT. ANN. § 43-1025	Deduction	Full wholesale market price, or the most recent sale price (whichever is greater) of donated crops	Taxpayer engaged in the business of farming or processing agricultural crops	Agricultural crops	Nonprofits located in Arizona whose use of the crop is related to their tax-exempt status
California CAL. REV. & TAX. CODE § 17053.88	Credit	10% of inventory cost	Taxpayer responsible for planting, managing, and harvesting crops	Fresh produce	Food banks located in California
California CAL. REV. & TAX. CODE § 17053.12	Credit	50% of transportation costs	Taxpayer engaged in the business of processing, distributing, or selling agricultural products	Agricultural crops	Nonprofits
Virginia VA. CODE ANN. § 58.1-439.12:12	Credit	30% of market value	Any person engaged in the business of farming	Food crops (grains, fruits, nuts, or vegetables)	Nonprofit food bank engaged in providing food to the needy; food can be sold to the needy or other nonprofits

Recommendations: State Tax Incentives

- Tax **credits** instead of tax **deductions** (e.g., **Iowa**)
- Place only reasonable limits on amount a business can claim per year (e.g., **Missouri & California**)
- Create tax incentive eligibility requirements that suit the state
- Provide the incentive even when nonprofit food recovery organizations charge for food (e.g., **Virginia**)
- Offer additional credits for transportation & processing (e.g., **California & South Carolina**)





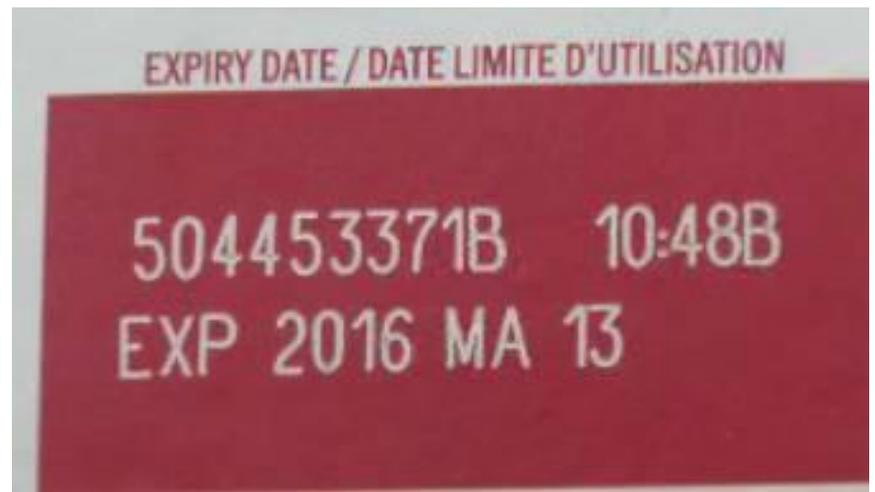
DATE LABELING

Roadmap: Date Labels

- What are date labels?
- Current (lack of) federal law
- Variability of current state law
- Proposed federal legislation
- State and local-level recommendations

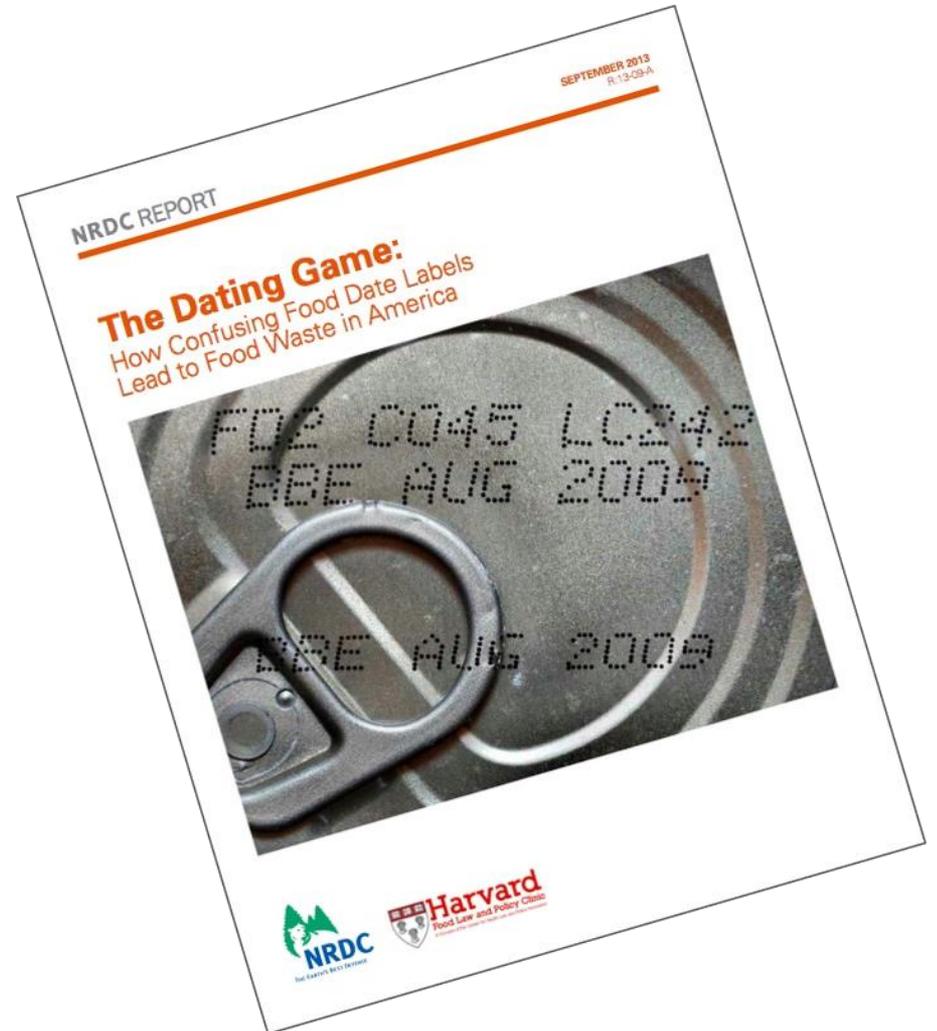


Date Labels – What are They?



Current Date Label Law

- No federal law regulating date labels (except for infant formula)
- State law for date labels and sale/donation of past-date foods varies widely



State Laws on Sale/Donation of Past-Date Foods



Proposed Federal Legislation

Federal Date Labeling Act of 2016

- Standard quality label (“best if used by”)
- Standard safety label (“expires on”)
 - List/criteria for specific foods
- Reduce barriers to sale/donation after the *quality* date
- Education campaign for consumers

Recommendations: Date Labels

- Eliminate confusion by standardizing date labels
 - E.g. **California**
- Change laws to eliminate bans on selling/donating past-date foods
 - E.g. **New York City**
- Liability protections for past-date food donations
 - E.g. **Massachusetts**
- Support date label education
 - E.g. **Connecticut**



FOOD WASTE REDUCTION IN K-12 SCHOOLS

Reduce, Recover, Recycle : A Roadmap

- Why is it important to talk about school food waste?
- Regulations: Federal and State
- The 3R's of School Food Waste
 - Reduce food waste in schools
 - Recover food to be donated and repurposed
 - Recycle food via composting

The Issue: Why is it important?

- Nearly 25% of all elementary school lunches are thrown in the trash each year.
- Reducing school food waste will ultimately save schools money.
- Reducing waste has important educational benefits for children and trains students to value food as a resource.
- Some school food waste is due to a misunderstanding of the regulations in place surrounding school meals.

Federal Regulation of School Food

- Meal Reimbursement Programs
 - National School Lunch Program
 - School Breakfast Program
 - A La Carte Foods, Snacks and Vending
- Food Waste Initiatives
 - EPA Food Recovery Challenge
 - USDA and EPA Food Waste Challenges
 - USDA webinars

State Regulation of School Food

- States enforce compliance with food safety regulations
 - State agency can conduct food inspections
 - Local departments of health can enforce regulations
- Schools have to follow a food safety program if they are a part of the National School Lunch Program.
- States can have their own nutrition requirements above the federal rules (**e.g. Massachusetts**)

Reducing Food Waste

- Increasing lunch and breakfast meal times and putting lunch after recess will cut back on wasted food.
 - Studies prove that students with less time to eat, waste more.

	25 minute lunch	20 minute lunch
% of Total Meal Consumed	77.2%	64.4%
% of Vegetables Consumed	46.6%	34.8%

Elementary school students waste 30% less food when lunch is after recess.

Reducing Food Waste

- Encourage students to only take the food they know they will eat.
 - Consider banning trays.
 - E.g. **University of Michigan**
 - Implement Offer Versus Serve
 - Allows students participating in FSLP/SBP to decline up to two types of food they know they will not eat.
 - Mandatory in high schools
 - Implement this in elementary schools and middle schools



Reducing Food Waste

- Conduct food waste audits to track how much food is being wasted.
- Two types of audits:
 - Back-of-the-Kitchen waste audits
 - Plate Waste audits
 - E.g. **Fayetteville, Arkansas**' plate waste audit helped identify most wasted foods



Recovering Food

- Create share tables to allow food that goes uneaten by one student to be eaten by another student.
- States can create guidance documents on share tables
 - E.g. **California** Department of Education
 - E.g. **Indiana** State Department of Health



Recovering Food

- Donate food to food banks or local food pantries.
- USDA supports the donation of surplus food.
- The National School Lunch Act explicitly allows schools to donate leftovers from the NSLP / SBP
 - E.g. **Wichita, Kansas**
 - E.g. **Sanborn Elementary School - Andover, Massachusetts**

42 U.S.C. § 1758 (l)(1)

Each school and local educational agency participating in the school lunch program under this chapter may donate any food not consumed under such program to eligible local food banks or charitable organizations.

Recovering Food

- Partner with a nonprofit, such as Food Bus
 - bringing leftover food to a local food pantry once a week
 - organizing a pop-up pantry
 - bringing leftover food from one school to another nearby.



Stuff the Bus!

Recycling Food Waste

- Encourage composting programs.
- Composting can be on-site or off-site
 - States can provide guidance documents and provide funding to schools that would like to build a composting program.
 - E.g. **Connecticut**
 - E.g. **Cuyahoga County, Ohio**
 - Cities and school-districts can partner with companies and farmers for off-site composting.
 - E.g. **Charleston County, South Carolina**

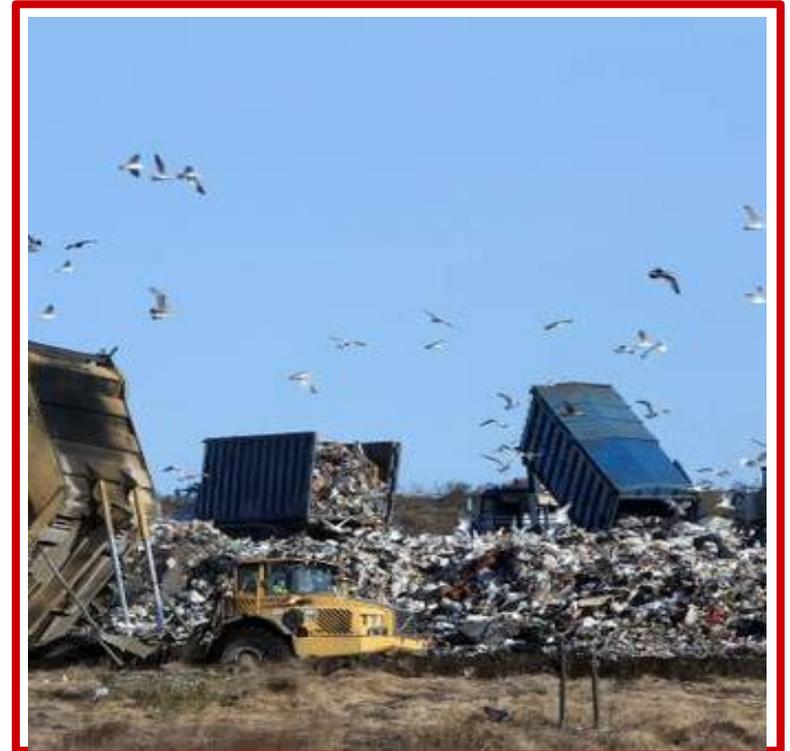




ORGANIC WASTE BANS AND WASTE RECYCLING LAWS

Overview

- Over **97%** of food waste ends up in landfills
- Food waste in landfills produces large amounts of methane and **135 million** tons of greenhouse gases each year
- Overview:
 - Profile of state and municipal organic waste bans & waste recycling laws
 - Recommendations





Existing Laws

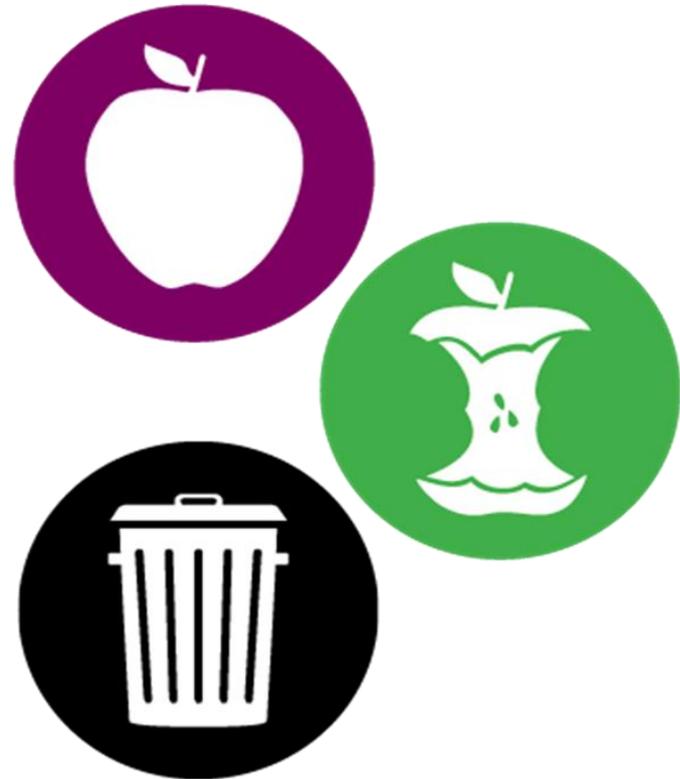
- 5 states have implemented state-level waste bans/recycling laws.
- Organic Waste Bans
 - Ban waste from landfills; entity determines alternative action
 - E.g., Rhode Island, Massachusetts, Connecticut, Vermont
- Waste Recycling Laws
 - Require entities to take specific action with their waste
 - Composting or anaerobic digestion
 - E.g., California
- Each prohibit certain entities that generate specified amounts of food waste from sending waste to landfills

State Organic Waste Bans

	Connecticut	Vermont	Massachusetts	Rhode Island
Food Waste Generators Covered	Commercial food wholesaler or distributor, industrial food manufacturer or processor, supermarket, resort or conference center.	Any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the State of Vermont or any agency, department, or subdivision of the State, federal agency, or any other legal or commercial entity.	Any individual, partnership, association, firm, company, corporation, department, agency, group, public body (including a city, town, district, county, authority, state, federal, or other governmental unit).	Commercial food wholesaler or distributor, industrial food manufacturer or processor, supermarket, resort or conference center, banquet hall, restaurant, religious institution, military installation, prison, corporation, hospital or other medical care institution, casino, and covered educational facility.
Waste Production Threshold to be Covered	2014: 104 tons/year 2020: 52 tons/year	2014: 104 tons/year 2015: 52 tons/year 2016: 26 tons/year 2017: 18 tons/year 2020: Food scraps banned from landfill completely	1 ton/week* *Generators are covered only for weeks during which they meet the threshold	2016: 104 tons/year 2018: 52 tons/year for covered educational facilities
Distance Exemptions	20 miles	20 miles	None	15 miles

California

- CA waste recycling law covers:
 - Generators that produce 8 cubic yards per week
 - 2017: 4 cubic yards per week
 - 2020: 2 cubic yards per week
- Distance exemptions for rural jurisdictions
- Educational campaigns
 - Emphasize source reduction & food donation



Recommendations:

Organic Waste Bans & Waste Recycling Laws

- Phase out exemptions based on distance from a processing facility (e.g., Vermont)
- Phase in additional categories of waste generators (e.g., Vermont)
- Eliminate exemptions based on the cost of composting (e.g., Rhode Island)
- Incorporate language encouraging diversion through methods other than composting (e.g., Vermont, San Francisco, CA, & Folsom, CA)
- Provide guidance and education to covered generators (e.g., Massachusetts)
- Utilize financial incentives to divert waste (e.g., Vermont)

Additional FLPC Resources

- The Dating Game: How Confusing Food Date Labels Lead to Food Waste in America
 - <https://www.nrdc.org/sites/default/files/dating-game-report.pdf>
- EXPIRED? Food Waste in America
 - <http://notreallyexpired.com/>
- Federal Enhanced Tax Deduction for Food Donation: A Legal Guide
 - <https://law.uark.edu/service-outreach/food-recovery-project/FederalEnhancedTaxDeductionforFoodv2.pdf>
- Leftovers for Livestock: A Legal Guide for Using Food Scraps as Animal Feed
 - http://www.chlpi.org/wp-content/uploads/2013/12/Leftovers-for-Livestock_A-Legal-Guide_August-2016.pdf



Stay Connected with the Food Law and Policy Clinic

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Questions?



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