EPA Sustainable Materials Management Web Academy

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

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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

U.S. FOOD SUPPLY

Eaten 60%
Not Eaten 40%

~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

Harvard Food Law and Policy Clinic

Release Date: Monday, October 24, 2016
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
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

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Deduction or Credit</th>
<th>Benefit</th>
<th>Eligible Donors</th>
<th>Eligible Food</th>
<th>Eligible Recipients</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Arizona</strong>&lt;br&gt;A R I Z. R E V. S T. A N N. § 42-5074</td>
<td>Deduction</td>
<td>Gross proceeds of sales or gross income from donated food</td>
<td>Restaurants</td>
<td>Prepared food, drink, or condiment</td>
<td>Nonprofits that regularly serve free meals to the needy and indigent at no cost</td>
</tr>
<tr>
<td><strong>Arizona</strong>&lt;br&gt;A R I Z. R E V. S T. A N N. § 43-1025</td>
<td>Deduction</td>
<td>Full wholesale market price, or the most recent sale price (whichever is greater) of donated crops</td>
<td>Taxpayer engaged in the business of farming or processing agricultural crops</td>
<td>Agricultural crops</td>
<td>Nonprofits located in Arizona whose use of the crop is related to their tax-exempt status</td>
</tr>
<tr>
<td><strong>California</strong>&lt;br&gt; C A L. R E V. &amp; T A X. C O D E § 17053.88</td>
<td>Credit</td>
<td>10% of inventory cost</td>
<td>Taxpayer responsible for planting, managing, and harvesting crops</td>
<td>Fresh produce</td>
<td>Food banks located in California</td>
</tr>
<tr>
<td><strong>California</strong>&lt;br&gt; C A L. R E V. &amp; T A X. C O D E § 17053.12</td>
<td>Credit</td>
<td>50% of transportation costs</td>
<td>Taxpayer engaged in the business of processing, distributing, or selling agricultural products</td>
<td>Agricultural crops</td>
<td>Nonprofits</td>
</tr>
<tr>
<td><strong>Virginia</strong>&lt;br&gt; V A. C O D E A N N. § 58.1-439.12:12</td>
<td>Credit</td>
<td>30% of market value</td>
<td>Any person engaged in the business of farming</td>
<td>Food crops (grains, fruits, nuts, or vegetables)</td>
<td>Nonprofit food bank engaged in providing food to the needy; food can be sold to the needy or other nonprofits</td>
</tr>
</tbody>
</table>
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?

- **BEST BEFORE DEC 12 12 V 20:30**
- **SELL BY AUG 27 21 P1189**
- **BEST IF USED BY: 11 30 13 31212 21213452 513 111430**
- **EXPIRY DATE / DATE LIMITE D’UTILISATION 504453371B 10:48B EXP 2016 MA 13**
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 Requiring Date Labeling

Figure 2: States Requiring Date Labels on At Least Some Food Products

- NO REQUIREMENT
- DATE LABELS REQUIRED
  - DAIRY
  - EGGS
  - SHELLFISH
  - MEAT
  - SANDWICHES
  - INFANT FORMULA
  - BAKERY PRODUCTS
  - HAZARDOUS FOODS
  - PERISHABLES
State Laws on Sale/Donation of Past-Date Foods

Figure 3: States Regulating Food Sales Past Some Label Dates

- **NO REGULATION**
- **PAST-DATE SALES REGULATED**

- **DAIRY**
- **EGGS**
- **Bakery products**
- **Shelfish**
- **Meat**
- **Perishables**
- **Infant formula**
- **Hazardous foods**
- **Sandwiches**
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 \textit{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.

<table>
<thead>
<tr>
<th></th>
<th>25 minute lunch</th>
<th>20 minute lunch</th>
</tr>
</thead>
<tbody>
<tr>
<td>% of Total Meal Consumed</td>
<td>77.2%</td>
<td>64.4%</td>
</tr>
<tr>
<td>% of Vegetables Consumed</td>
<td>46.6%</td>
<td>34.8%</td>
</tr>
</tbody>
</table>

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.
• 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
• 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
• 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

<table>
<thead>
<tr>
<th>Food Waste Generators Covered</th>
<th>Connecticut</th>
<th>Vermont</th>
<th>Massachusetts</th>
<th>Rhode Island</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial food wholesaler or distributor, industrial food manufacturer or processor, supermarket, resort or conference center.</td>
<td>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.</td>
<td>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).</td>
<td>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.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Waste Production Threshold to be Covered</th>
<th>2014: 104 tons/year</th>
<th>2015: 52 tons/year</th>
<th>2016: 26 tons/years</th>
<th>2017: 18 tons/year</th>
<th>2020: Food scraps banned from landfill completely</th>
<th>1 ton/week*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>*Generators are covered only for weeks during which they meet the threshold</td>
<td>2016: 104 tons/year</td>
<td>2018: 52 tons/year for covered educational facilities</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 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

• EXPIRED? Food Waste in America
  – http://notreallyexpired.com/

• Federal Enhanced Tax Deduction for Food Donation: A Legal Guide

• Leftovers for Livestock: A Legal Guide for Using Food Scraps as Animal Feed
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Questions?

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