

ISSUE BRIEF

PROMOTING
FOOD DONATION:
FOOD SAFETY
FOR DONATION
LAW AND POLICY

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Authors

This report was written by Regan Plekenpol, Joseph S. Beckmann, Molly Cohen, Trevor Findley, Emily M. Broad Leib, Esther Akwii, and Max De Faria at the Harvard Law School Food Law and Policy Clinic with contributions from The Global FoodBanking Network.

About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

FLPC serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit chlpi.org/FLPC.



About The Global FoodBanking Network

The Global FoodBanking Network supports community-driven solutions to alleviate hunger in more than 40 countries. While millions struggle to access enough safe and nutritious food, nearly a third of all food produced is lost or wasted. GFN is changing that. GFN believes food banks directed by local leaders are key to achieving Zero Hunger and building resilient food systems. For more information, visit foodbanking.org.



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ABOUT THIS ISSUE BRIEF

Food loss and waste (FLW) is a significant and complex food system challenge. FLW occurs at every stage of the supply chain and generates significant social, environmental, and economic costs.¹ An estimated one-third of food produced globally is ultimately lost or wasted along the supply chain.² This amounts to approximately 1.3 billion tons of food each year that ends up in landfills, where it emits methane, a potent greenhouse gas, as it anaerobically digests.³ At the same time, current data indicate that 820 million people across the globe are hungry and that more than 2 billion people were unable to regularly access safe, nutritious food in 2019.⁴ Thoughtful public policies can help address these troubling trends and augment food system resilience, aiding in food recovery for social benefit and mitigating the environmental cost of food loss and subsequent excess production.

Food donation offers a solution to these parallel issues. Redirecting safe, surplus food to those who need it decreases FLW and simultaneously increases food security. However, a key element to this process is the assurance of food safety. Clear and comprehensive food safety policies specifically tailored to donated food are critical to ensure beneficiaries are protected from spoiled or contaminated donations. They also remove unnecessary barriers such as licensing or labeling requirements, that are relevant to food that is sold, but add undue friction or limitations on food that could be safely donated. Many countries make no specific mention of food donation in their food safety laws or policies. Therefore, they miss an opportunity to offer guidance to food donors and food recovery organizations on what hygiene protocols and safety measures are relevant for food that is donated rather than offered for sale.

When faced with nonspecific, fragmented, or unclear policies on food safety for donations, many potential donors may opt to discard rather than donate edible, surplus food for fear of facing government oversight or penalties. Further, lack of clear food safety regulations or guidelines for food donation may result in the donation of unsafe food or in unsafe donation processes, ultimately jeopardizing vulnerable recipients. This issue brief highlights best practices for tailoring food safety laws to donated food, including codifying exemptions for donated food and issuing government guidance for safe food donation processes. It informs governments and policymakers of opportunities to optimize food safety policy to promote the donation of safe, surplus food; reduce food waste; and significantly reduce food insecurity.

This issue brief is part of The Global Food Donation Policy Atlas project,⁵ a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) that promotes strong food donation policies as global solutions to hunger and FLW.⁶ Across key issue areas—including food safety, date labeling, liability protection, tax incentives and barriers, donation requirements or food waste penalties, government grants and incentives, and national law or policy on food waste—restrictive or inadequate laws and policies can undermine the efforts of food recovery organizations and create obstacles for businesses and other private-sector actors seeking to donate food. Such laws may also fail to adequately incentivize socially beneficial behaviors. The Atlas project analyzes and compares these national laws and offers tailored recommendations to clarify and optimize the policy landscape for food donation.



RECOMMENDATIONS IN BRIEF

The recommendations presented in this issue brief provide a starting point for stakeholders across the globe to strengthen their food safety policy framework for donation. Food banks and other organizations with the mission to reduce FLW and increase food donation (collectively referred to as “food recovery organizations”), as well as donors and policymakers, should consider additional opportunities to advance food donation and reduce FLW. The recommendations are as follows:

To encourage safe donation of food and protect recipients from potential risks, national governments and their relevant departments or ministries should:

- **Adopt a donation-specific food safety law or policy or amend the relevant national food safety law or policy to feature a donation-specific chapter, section, or provision.**

To allow the donation of food that cannot be offered for sale but otherwise remains safe for human consumption, national governments and their relevant departments and agencies should:

- **Explicitly permit the donation of unsaleable food with labeling or permitting flaws that do not affect food safety or suitability for human consumption.**
- **Explicitly allow the donation of food past a quality-based date label.**

To ensure that businesses, food safety officials, and consumers fully understand the implications of the prevailing food safety law or policy of the country or economic region, national governments should:

- **Designate a department or ministry to develop and disseminate clarifying guidance on food safety requirements relevant to donation.**

BACKGROUND

The past decade saw an exponential increase in attention toward food loss and waste (FLW), with the international community committing to halve FLW in the 2030 Agenda for Sustainable Development, reflected in Sustainable Development Goal 12.3.⁷ FLW occurs at every stage of the supply chain for a variety of reasons: during harvest and processing due to fluctuating market prices, high labor costs, inadequate infrastructure, and demand for flawless produce;⁸ during distribution due to spoilage; during the retail phase due to the overestimating of customer demands and misunderstanding of shelf life and product date labels by grocery stores and restaurants;⁹ and during the consumption phase due to inefficient shopping and cooking practices and confusion and inconsistency around date labels.¹⁰ These inefficiencies have significant environmental, economic, and social consequences. Food that is lost or wasted has a massive carbon footprint of 3.3 gigatons, using roughly 28% of agricultural land and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.¹¹ This damage is estimated at US\$700 billion in environmental costs and more than US\$900 billion in social costs per year.¹² This waste is expensive,¹³ squanders natural resources, causes lasting environmental damage, and presents a missed opportunity to redistribute food to the more than 820 million people experiencing hunger.¹⁴

Food banks and other food recovery organizations can help mitigate unnecessary FLW by recovering and redistributing safe, surplus food when policies enable and amplify such activities. In 2019, food banks in more than 70 countries recovered an estimated 3.75 million metric tons of safe, wholesome food.¹⁵ This recovery helped avoid an estimated 12.39 billion kilograms of greenhouse gas emissions arising from the anaerobic digestion of unnecessary food waste in landfills and provided food access to 66.5 million food-insecure people.¹⁶

Despite the burgeoning efforts to address it, high levels of FLW persist, especially exacerbated by the COVID-19 pandemic. The pandemic disrupted fragile food supply chains, especially those that ordinarily rely on specific customers such as restaurants, hotels, and entertainment venues.¹⁷ Food system actors encountered difficulty reaching alternative consumer markets, and many producers and manufacturers resorted to discarding wholesome food.¹⁸ These costly breakdowns undermine the resilience, sustainability, and equity of food systems worldwide.

While FLW results in economic loss, food donation can generate sizeable economic gains. First, donation reduces the economic and environmental costs of producing food that otherwise goes uneaten¹⁹ and curbs methane emissions caused by food decomposing in landfills.²⁰ Second, donation alleviates hunger, reducing health care expenses associated with malnutrition²¹ and increasing productivity, educational fulfillment, and economic potential.²² Third, food recovery operations create job opportunities at food banks and intermediaries and stimulate the economy by increasing the spending power of food recipients.²³ Indirect gains such as reduced hunger costs and more resilient supply chains flow to society and ultimately help build stronger communities. Unlocking this spectrum of benefits requires clarity and sufficient incentives for donors to redistribute rather than discard surplus food.

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety requirements and procedures for food donation. In particular, when laws do not specifically mention food donation, it is unclear if food donation is even allowed.²⁴ Frequently, potential donors and recovery organizations are uncertain which food safety regulations apply to donated food compared to food offered for sale. Confusion about whether some of the typical requirements are irrelevant to donated food or if any additional protocols should be followed often leads donors and recovery organizations to discard safe, surplus food. Clarifying food safety requirements specifically for food donation would significantly ease the compliance burden on food donors and recovery organizations and increase safe food donation.

OVERVIEW OF FOOD SAFETY LAWS IN RESEARCHED COUNTRIES OF THE ATLAS PROJECT

Country	Includes donation-specific section in national food safety law or regulation	Guidance for businesses on food safety law or regulation	Atlas ranking (food safety)
Argentina	NO	NO	No Policy
Australia	NO	NO	No Policy
Brazil	NO	YES	Moderate Policy
Canada	NO	NO	No Policy
Chile	NO	NO	No Policy
China	NO	NO	No Policy
Colombia	NO	NO	Limited Policy
Costa Rica	NO	NO	Limited Policy
Dominican Republic	NO	NO	Limited Policy
Ecuador	NO	NO	No Policy
Ghana	NO	NO	No Policy
Guatemala	NO	NO	Limited Policy
India	YES	YES	Strong Policy
Indonesia	NO	NO	No Policy
Israel	YES	NO	Strong Policy
Kenya	NO	NO	Limited Policy
Mexico	NO	NO	Limited Policy
Nigeria	NO	NO	No Policy
Paraguay	NO	NO	No Policy
Peru	NO	NO	Limited Policy
Singapore	NO	YES	Moderate Policy
South Africa	NO	NO	Limited Policy
United Kingdom	YES	YES	Strong Policy
United States	NO	YES ²⁵	Moderate Policy

KEY ISSUES

Virtually all countries have national laws and policies related to food safety. However, many of these laws or policies do not specifically relate to food donation and, therefore, indirectly contribute to the waste of safe, edible, surplus food. For example, many food safety laws or policies do not explicitly mention food donation in their provisions, leaving donors and recovery organizations unsure of which provisions and requirements apply to safe but unsaleable food that could be donated and, in some cases, unclear whether food donation is even permissible at all under the law.

Even when stakeholders understand food donation to be legally permissible, it is often not clear whether and how existing food safety laws or policies apply to food donation, particularly safe but unsaleable food (e.g., food with a labeling flaw). For instance, many countries have provisions within their food safety law or policy that prohibits the sale of food that is adulterated or unfit for use.²⁶ While there is no uniform definition of what constitutes adulterated food, it could mean food that is sold, prepared, packaged, stored, or displayed without a license;²⁷ handled or transported improperly;²⁸ harmful or unfit for consumption;²⁹ or mislabeled or misbranded.³⁰ As a result, businesses and nonprofits often assume that all of these interpretations of unsaleable food apply when donating food. Broad requirements in most food safety laws paired with limited guidance for businesses and nonprofits lead many to pursue the least risky option: throwing away safe, edible food.

Further complicating the matter, most legislation that offers liability protection for food donations makes protection conditional on meeting food safety requirements. Lack of clarity about which food safety laws apply to donated food may result in ineffective liability protection for donors and food recovery organizations. Confusion surrounding liability protection already presents a considerable barrier to food donation, as many potential donors and food recovery organizations are uncertain of the extent of their protection from legal action should a recipient of donated food become ill.³¹ Lack of specificity around safety laws relevant to food donation only adds complexity to concerns about liability protection.

Finally, while government guidance documents are critical for disseminating food safety rules for donations and elucidating legal requirements for all stakeholders, most countries have not issued such guidance. Even in countries that include reference to donation in food safety laws, guidance can help translate those requirements for stakeholder audiences. Because many countries have not issued guidance for businesses and food recovery organizations on how to donate food, the onus is on these organizations to learn, interpret, and comply with the existing laws—a burden many organizations lack the capacity to handle. As a result, businesses and food recovery organizations will often opt to discard safe, wholesome food rather than donate it.

Fortunately, the challenges of unclear food safety requirements for food donation are solvable with improved policy design along with tailored, widespread food safety guidance. Both are low-cost, high-impact solutions. The next section offers recommendations for achieving clear, explicit food safety rules that support enhanced food donation, highlighting best practices from around the globe. Each recommendation can be followed separately or paired together to increase legal clarity on safety for food donations. Adopting a food safety scheme that effectively incorporates these recommendations will contribute to clear and concise food safety requirements for donors and recovery organizations alike, reducing inaction caused by confusion.

RECOMMENDATIONS

1. ADOPT A DONATION-SPECIFIC FOOD SAFETY LAW OR POLICY OR AMEND THE RELEVANT NATIONAL FOOD SAFETY LAW OR POLICY TO FEATURE A DONATION-SPECIFIC CHAPTER, SECTION, OR PROVISION.

When it comes to food safety for donations, the question is not whether a country *has* food safety legislation and protocols (all countries do), but whether the law or policy carefully identifies how the provisions and requirements relate specifically to donated food. To reduce confusion among food donors and food recovery organizations on the requirements for handling, storing, transporting, and redistributing donated food safely and legally, food safety laws should include explicit reference to food donation. Donation-specific provisions should be clear, specific, and easily understandable for potential donors, food recovery organizations, and other relevant stakeholders. Governments can provide legal clarity by amending existing food safety laws to feature a donation-specific provision or by adopting a new law dedicated to food safety for donations.

The important nexus between liability protection and food safety is also critical to consider when designing a model policy. Liability protection refers to laws that protect donors and recovery organizations should an end recipient of food fall ill, provided they acted in good faith and in accordance with food safety provisions. Most countries that offer liability protection specify that food donations must adhere to all food safety regulations to warrant liability protection. However, in most cases, the liability protection law does not offer any nuanced or specific mention of the food safety regulations to which it refers. Often, the accompanying food safety regulations also fail to differentiate processes for food that is donated versus food that is sold. As a result, the assumption is that all food safety laws must be followed—even those that are irrelevant or unnecessarily cumbersome for donated food—to qualify for liability protection. For example, it may be unclear whether protection extends to a donor that distributes food with labeling errors or packaging flaws unrelated to food safety (e.g., incorrect net weight, a dented can, or an upside-down sticker), despite those items remaining perfectly safe for human consumption. In these instances, without clearly detailing what provisions apply to food donation, potential donors and food recovery organizations may be reluctant to donate food if the potential for liability protection is unknown. Codifying the food safety requirements for donation also protects end recipients, as donors and intermediaries are not given unconditional blanket protection to potentially mishandle donated food but instead are required to follow specific handling, hygiene, and safety measures that protect recipients.

Several countries have developed best practices to ensure that food donations are clearly referenced in food safety laws and that the laws elaborate on specific practices needed to maintain food safety. For example, to remedy confusion about the legality of food donation in **India**, the Food Safety and Standards Authority of India (FSSAI) enacted India's Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations (hereinafter, "Surplus Food Regulations"), outlining clear food safety protocols for donations and expressly permitting food donation.³² Previously, the Food Safety and Standards Act (FSSA)³³ did not discuss food donation at all. This caused considerable confusion for businesses and food recovery organizations on the legality of food donation.³⁴ The Surplus Food Regulations explicitly state that it is legal to donate food, and they set specific safety, handling, and distribution requirements for donation.³⁵ The regulations apply to any person or food business that donates surplus food (i.e., any leftover, unused portions of safe food that have not been sold or served to customers).³⁶ The regulations permit food donation to food distribution

organizations, defined as “any person or any organization that collects surplus food from food donor[s] and distributes directly to any person free of cost without any profit.”³⁷ Distributing organizations must maintain proper transportation, storage, and reheating facilities.³⁸ The regulations prohibit distribution of food past its “expiry” date, or past when the food would be fit for human consumption.³⁹ However, the regulations do not prohibit distribution past the “best before” date, despite the rules not addressing this explicitly.⁴⁰ The regulations also specifically require the separation of surplus food between perishable and nonperishable food items.⁴¹ Food must be properly stored, kept segregated from any waste materials and be marked as “food for disposal” when it is no longer fit for consumption.⁴² Finally, to further implement the purpose of the regulations, they also require each state commissioner to establish monitoring committees to implement measurement mechanisms, make recommendations for improving the food donation framework in their state, and conduct training programs specific to food handling for donated food.⁴³

Outside of drafting specific laws or regulations on food safety for donations, governments can accomplish similar outcomes by amending food safety laws to clearly reference food donation, ideally in a specific section within the broader food safety law. For example, after considerable policy advocacy, **Israel** included references to food donation in the Law for the Protection of Public Health (Food) 5776-2015 (PHPL), including a definitions section to codify terms like “food distribution organizations” (FDOs) and specifying that provisions regulating the use of leftover food apply equally to FDOs and “food dealers.”⁴⁴ The law defines FDOs as nonprofits that provide food to those in need without an exchange of consideration or for a nominal fee and do not sell food otherwise.⁴⁵ To ensure that costly or cumbersome requirements do not unnecessarily limit food redistribution, section 159 of the PHPL allows exemptions for FDOs from production, storage, and transportation license requirements.⁴⁶ Section 162 permits FDOs to use food that has passed its “best before” date, as long as it is not a sensitive (highly perishable) type of food and they have written authorization from the manufacturer to use the food after the “best before” date. Section 161 indicates that the relevant agency will establish instructions regarding the applicability of the provisions to FDOs, though these specific regulations are not yet released. This law, if accompanied with the forthcoming guidance, represents a best practice for handling food donation within food safety legislation.

The **United Kingdom** (UK) also updated its food safety law to establish a detailed legal framework relevant to food donation. Aligning with the EU-wide food donation guidelines (discussed in further detail in recommendation 2), the UK’s food donation framework,⁴⁷ particularly the amended UK Food Safety Act,⁴⁸ specifically enumerates protocols for food safety for donations. The law also permits donation of food with labeling flaws and food past the quality date, provided it remains safe to consume, as discussed further in the following recommendations.⁴⁹

Food safety for donations can be included in laws either by enacting a donation-specific law or regulation or by amending the food safety law to include a section on food donations. Either way, the law should be comprehensive and clear, providing as much detail as possible to ensure food donors and food recovery organizations know which food safety law provisions do or do not apply to donations. This is especially critical because some provisions of food safety laws ensure transparency for the commercial market but are not essential for food safety. Clarifying which provisions are relevant for safe donation can ensure safety of end recipients while not making surplus food donation overly burdensome. The text box below suggests key provisions to include in a law or guidance document on food safety for donations.

Best practices on what to include in a food safety law or guidance document specifically for donated food.

When adopting a donation-specific food safety law, governments should ensure that the law is comprehensive and detailed so that donors and food recovery organizations can easily apply it. Each of the following should be included to offer the most comprehensive and clear framework for food donation safety. Ideally, they would

be included in a food safety law, but they also could provide a useful framework for guidance on food safety for donations.

1. Definitions:

- a. Specific terminology related to food donation should be included in the definitions section of the law.

2. Establish legality of food donation:

- a. The law should make clear that donating food is legal in the country and explain how the law interacts with any liability protection for food donors and nonprofit organizations donating or distributing food in accordance with food safety requirements.

3. Food safety for donations:

- a. The law should specify which types of foods *cannot* be safely donated and clearly outline required distribution timelines or temperature control and other hygiene requirements for safe donation of foods, including storage, transportation, and handling.

[It is much simpler to allow donation for all foods except those that are unsafe or adulterated rather than enumerate each of the many foods that cannot be donated. This informs donors that the large majority of surplus food is safe for donation.]

- b. The law should provide clarity to food donors and food recovery organizations regarding which food safety requirements do not apply to donations and should exempt donated food from certain unnecessary protocols or distribution limitations, such as permitting requirements, misbranding unrelated to safety, or other cosmetic/labeling flaws.

[The law could note that food that is safe for donation but misbranded for purposes of sale be labeled "Not for Sale."]

- c. The law should define safety protocols for donating prepared or ready-to-eat foods such as specific distribution timelines or temperature controls (e.g., freezing prepared food prior to donation).

4. Past-date donation:

- a. If the country currently has a dual date labeling system that distinguishes between expiration dates related to safety and those related to quality:
 - i. The law should expressly allow past-date donation if the date label relates to food quality and the food remains suitable for human consumption.
- b. If the country does not currently have a dual date labeling system that distinguishes between date labels related to safety versus quality, the law should specify that:
 - i. Ready-to-eat foods and those that require time/temperature control for safety should not be donated after the manufacturer's "best by" or "use by" date passes unless it was frozen prior to that date and has remained in a frozen state.
 - ii. Foods that are neither ready to eat nor require time/temperature control for safety may be donated after the passage of the manufacturer's "best by," "use by," or other date label so long as they remain suitable for human consumption.

5. Additional permissions:

- a. The law should explicitly allow for donation by governmental officials of confiscated foods, provided that the reason for confiscation is unrelated to food safety.
- b. The law should allow donation of food that is misbranded, provided the labeling error does not affect food safety. Labels related to safety that must be included on donated foods should be clearly stated and include food name, ingredients, allergens, and the name and address of the manufacturer.

6. Stakeholder-specific sections:

- a. Where relevant, the law should include sections that define distinct responsibilities for donors and food recovery organizations. The law should also include specific best practices for different food sectors such as restaurants, retailers, and institutional food service.

1a.

EXPLICITLY PERMIT THE DONATION OF UNSALEABLE FOOD WITH LABELING OR PERMITTING FLAWS THAT DO NOT AFFECT FOOD SAFETY OR SUITABILITY FOR HUMAN CONSUMPTION.

To increase the donation of food fit for consumption, food safety requirements should explicitly permit the donation of food with labeling flaws and food seized due to labeling or permitting violations that do not implicate safety concerns or the suitability of the food for human consumption. Countries' food safety regimes include numerous labeling requirements. While many exist to protect consumers' health, such as providing allergen warnings or the names and addresses of producers for traceability purposes, some are unrelated to health and safety but are required for economic reasons (e.g., net weight or country of origin labeling). As a result, much food with labeling flaws is unsaleable but remains safe to consume. Of the countries researched in the Atlas project, few explicitly permit the donation of mislabeled food and, even then, only for specific products or in certain instances. However, lack of guidance on donating mislabeled food results in food that is otherwise safe to consume being discarded rather than donated. To increase food donation, governments' food safety requirements should explicitly permit the donation of mislabeled food as long as that mislabeling does not implicate food safety concerns. The requirements should also outline which labeling flaws preclude food donation and which do not. Governments can permit such donation either by strategically including language in laws or regulations or by drafting guidance documents.

Similarly, in many countries food is seized because of these labeling errors or due to violations of permitting rules such as missing documentation for storage or transportation. Since food seized for these reasons is often still safe and edible, food safety laws should clarify when such food is safe for donation.

For example, the US Department of Agriculture (USDA), which regulates meat and poultry in the **United States**, published detailed and clear guidance that explicitly permits donation of meat and poultry products with certain labeling flaws. The document, *USDA FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Non-profit Organizations*, specifically outlines which mislabeled foods may be donated, what flaws need to be corrected prior to donation, and what other actions food donors must take to donate mislabeled food.⁵⁰ It outlines requirements for donating mislabeled food, such as including a statement with the quantity and description of the donated products, the reason the products are being donated, and a "Not for Sale" label.⁵¹ It also recommends donors add allergen information if it was omitted due to a labeling flaw.⁵² By permitting donation of mislabeled but otherwise safe food and clarifying the responsibilities and requirements of donating such food, this guidance helps spur the donation of mislabeled meat and poultry products, thereby reducing food waste.

Argentina has a law that explicitly permits donation of food that has been seized by the government.⁵³ Under Resolution No. 38/2012, the National Agro-Food Safety and Quality Service (*Servicio Nacional de Sanidad y Calidad Agroalimentaria*, or SENASA) may donate food that it seizes for violations of Argentina's food safety law, provided the violation does not render the food unsafe for human consumption.⁵⁴ This resolution permits the donation of food that has been seized for packaging or permitting violations that do not compromise the product's integrity.⁵⁵ For example, in 2019 SENASA confiscated and subsequently donated approximately 500 kilograms of food merchandise, including fresh eggs, meat, and poultry that were seized due to irregularities in their documentation.⁵⁶ This policy allows Argentina to reroute food that does not comply with legal requirements but is still safe for consumption to food recovery operations for distribution.

Often safe, edible food needlessly goes to waste because a labeling, permitting, or other minor flaw prevents it from being legally offered for sale. To establish best practices and increase donation, governments should clearly allow food donation when the flaw does not compromise food safety and develop laws, regulations, or guidance that specify which labeling flaws or permitting issues preclude food donation and which do not. Governments should also specify any remediation or reconditioning requirements that food donors and food recovery organizations need to consider when donating. However, governments should keep in mind that requiring unnecessary relabeling or reconditioning might pose a cost barrier that keeps food from donation, so they should only require relabeling when needed for safety.

1b. EXPLICITLY ALLOW THE DONATION OF FOOD PAST A QUALITY-BASED DATE LABEL.

In developing food safety requirements, policymakers should ensure that the scheme expressly permits the sale and donation of food past a quality-based date. Food is wasted when governments expressly prohibit or are silent on whether food can be donated past a quality-based date label.⁵⁷ Quality-based dates are used by manufacturers to indicate peak food quality and do not provide any useful information on safety. However, businesses, consumers, and policymakers often misunderstand date labels and believe they indicate safety, leading to bans on the sale and donation of past-date food. These prohibitions typically do not distinguish between quality-based and safety-based dates, which often leads to the disposal of all past-date foods, including those that are still safe to eat.⁵⁸ Even where selling or donating food past the date is not prohibited, the law can be unclear as to the legality of past-date donation, leaving food donors and food recovery organizations fearful of the risks associated with the rescue of safe, wholesome, past-date food because of the lack of clear guidance.⁵⁹ To ensure that confusion over date labeling does not lead to the disposal of wholesome food, countries should adopt food safety policies that expressly permit the sale or donation of food after the quality-based date. To complement, countries should designate appropriate agencies/departments to issue clarifying guidance.

Strong policy would specifically permit donation of food past a quality-based date label. For example, **Israel's** Law for the Protection of Public Health (Food) explicitly permits food distribution organizations to use food that has passed its “best before” date as long as it is not a sensitive (highly perishable) type of food and the food distribution organization receives written authorization from the manufacturer to use the food after the “best before” date.⁶⁰

Short of specific mention in the food safety law, there are also effective examples of issuing government guidance to clarify the relationship between date labels and donation. For example, in the **United Kingdom**, the Food Standards Agency provided food safety guidance stating that food may not be sold after the “use by,” or safety-based, date, but it may still be sold, donated, or eaten after the “best before,” or quality-based, date.⁶¹ The nonprofit Waste and Resources Action Programme (WRAP) collaborated with the Food Standards Agency and the UK Department for Environment, Food, and Rural Affairs (Defra)—the regulatory body for food production and standards—to publish guidance entitled the *Redistribution Labelling Guide: Date Labels, Storage Advice and Freezing for Food Safety*.⁶² This guidance clearly states that food with a “best before,” or quality-based, date label can legally be sold, donated, redistributed, and consumed past this date. On the other hand, food past the safety-date label may not be distributed.⁶³

In the **United States**, the *USDA FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Non-profit Organizations* (previously discussed) permits food donors to donate meat and poultry products that are past-date, noting that such dates are provided to “help consumer and retailers decide when food is of best quality.”⁶⁴ To ensure food is safe and wholesome, the guidance recommends that food recovery organizations and consumers “evaluate the quality of the products before their distribution and consumption.”⁶⁵

An alternative to allowing all products to be donated past a quality-based date label, **Costa Rica** used detailed annexes to outline which food products are permissible for past-date donation. Early in the COVID-19 pandemic, Costa Rica issued COVID-19 Food Donation Guidelines, which sought to avoid unnecessary

waste of safe, past-date food by explicitly allowing the donation and consumption of certain foods after the date label.⁶⁶ The guidelines' annexes identify how long after the date the various types of food may be safe to donate and consume. While this guidance refers only to food distribution during the COVID-19 pandemic in Costa Rica, it could be used over the long term.⁶⁷ By explicitly permitting the donation of certain past-date foods, governments may help clarify date labels and food safety requirements and reduce liability concerns associated with food donation.

Food past the quality date is still safe to consume, and banning its donation results in the unnecessary disposal of healthy, wholesome food. Explicitly permitting the donation of all food past its quality date and providing clarifying guidance to food donors and food recovery organizations can ensure safe, wholesome food can still be used to serve people in need. For more information on the best practices for date labeling, please see the *Promoting Food Donation: Date Labeling Law and Policy* issue brief and the Global Food Donation Atlas website.⁶⁸

2.

DESIGNATE A DEPARTMENT OR MINISTRY TO DEVELOP AND DISSEMINATE CLARIFYING GUIDANCE ON FOOD SAFETY REQUIREMENTS RELEVANT TO DONATION.

To ensure that food donors and food recovery organizations fully understand which food safety provisions apply to food donations, governments should designate a department, agency, or other relevant organization to develop and disseminate clarifying guidance. Given that many countries have overlapping laws, regulations, and responsible agencies related to food safety, simply amending the food safety laws and policies may not eliminate donor and intermediary uncertainty. Clear guidance from food safety departments or ministries on which provisions or other requirements apply to donated food would ease concerns of food donors and food recovery organizations and support increased and safer food donation.

At a regional level, the **European Union's** guidance on food safety for donations is an excellent example. The "EU Guidelines" provide an EU-wide food safety framework specific to food donation.⁶⁹ The guidelines were developed in consultation with the EU Platform on Food Losses and Food Waste to facilitate the recovery and redistribution of safe, edible food.⁷⁰ They clarify which EU regulations apply to food donation (including which specific food safety regulations), facilitate compliance with relevant requirements in the EU regulatory framework, and promote a common interpretation by member states' regulatory authorities of EU rules applying to the redistribution of surplus food. This guidance trickles down to each member state with the expectation that they will incorporate the guidance into their own national laws and policies as they see fit.

In **Singapore**, the National Environment Agency (now the Singapore Food Agency) issued "Guidelines on Food Donation" ("Guidelines") on food safety for donations in 2016 to clarify food safety standards for the procurement, processing, and distribution of donated food.⁷¹ The guidelines state that all food safety provisions must be adhered to by nongovernmental organizations, food and beverage retail establishments, and food manufacturers that are: (a) donating/collecting and redistributing prepackaged and perishable food items, (b) preparing and cooking food, and/or (c) transporting donated food to recipients.⁷² They provide specific food safety instructions for food banks and food recovery organizations on when and how to donate food, including storage guidelines, transportation best practices, and hygiene protocols.⁷³ They outline the responsibilities of donors and food recovery organizations regarding perishable, nonperishable, and cooked food, with specific guidance on what food donors can redistribute and the attributes of food that should be accepted or discarded.⁷⁴ Food recovery organizations that receive donated food are responsible for checking its condition upon receipt and should request information on the safety measures required to ensure safe consumption if that information is not available.⁷⁵

The **United Kingdom** also provides excellent guidance on food safety laws that pertain to food donation. As noted above, the United Kingdom includes detailed information on food donation in its food safety law. To ensure this law is clear to donors and food recovery organizations, Food Standard Agency, Defra, and WRAP

published the aforementioned *Redistribution Labelling Guide*. Additionally, the Food Standards Agency published guidance entitled *Food Safety for Community Cooking and Food Banks*, which discusses the proper transport and storage guidelines for businesses and nonprofits to follow when redistributing their food.⁷⁶ Specifically, the guidance states that chilled food must be stored, handled, and transported at the correct temperature by both the donor and the donating recipient and that they must be aware of the product's date label to ensure that proper action is taken.⁷⁷ The guidance goes on to discuss simple redistribution considerations for particular foods that typically carry “best before” dates and provide additional clear and detailed guidance on redistribution practices that businesses can follow.

In the **United States**, the *USDA FSIS Guideline to Assist with the Donation of Eligible Meat & Poultry Products to Non-profit Organizations* (previously discussed) is also a good example of clear guidance on food safety for donations.⁷⁸ In particular, this guidance stands out for putting a thumb on the scale in favor of donation by stating that *all* food is safe for donation *except* for two categories of food: food that is adulterated and experimental products or products that were created for research or development.⁷⁹

In **Brazil**, the food safety agency (*Agência Nacional de Vigilância Sanitária* (ANVISA)) released a *Guide for Food Donation with Sanitary Safety* on November 7, 2022. The guide explains best practices with regard to procedures, routines, and methods considered adequate to maintain the safety of donated food.⁸⁰ While not legally binding, the guide provides thorough instruction for food donors, intermediaries, and recipients that are concerned with maintaining food safety.⁸¹ For example, one of the weakest links in ensuring food safety in Brazil is the transportation and distribution of food across long distances without robust cold storage chains. To address this concern, the guide provides clear instructions regarding food transportation, effective safety and hygiene methods for different food products, proper temperatures at which food must be kept during transport to ensure safety, and an example of a donation temperature control record.⁸² At the time of this writing (through November 11, 2023), ANVISA is accepting comments on the guide and intends to promote it widely to various audiences and stakeholders in the food donation ecosystem.

These examples of guidance showcase the importance of clarifying, simplifying, and widely communicating food donation safety requirements to relevant stakeholders to ensure that all parties are operating safely, efficiently, and confidently when donating surplus food. Guidance can be extremely effective, whether or not the law itself discusses food safety for donation, as it is designed to speak directly to food donors and food recovery organizations.

CONCLUSION

Food safety is a major concern associated with food donation and recovery, and it is incumbent on all stakeholders to ensure that donated food is safe for recipients. However, food safety laws in most countries make it more difficult for food donors and food recovery organizations to understand and comply with food safety requirements. Current food safety laws in most countries do not explicitly detail food safety requirements for donation, meaning that food donors and food recovery organizations may not even realize donation is allowable. They may assume that all food-related laws apply, even those that are not germane to food safety for donations. These laws often prohibit the donation of food that is mislabeled, past a quality date, or otherwise flawed yet still safe for human consumption. To support food donation, policymakers should codify food safety for donation provisions in food safety laws and regulations, ideally in one donation-specific section that highlights the exact food safety standards that apply to donated food. They should also publish and disseminate guidance on food safety for donation and ensure that such guidance is clear and detailed. These policies can work independently or in tandem to bring greater legal clarity to the food safety requirements associated with food donation and can thereby reduce legal confusion for food donors and food recovery organizations, thus increasing food donation and ensuring that safe, wholesome, surplus food is delivered to those in need rather than to landfills.

ENDNOTES

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- ³ Id.
- ⁴ FAO ET AL., *THE STATE OF FOOD SECURITY & NUTRITION IN THE WORLD: TRANSFORMING FOOD SYSTEMS FOR FOOD SECURITY, IMPROVED NUTRITION AND AFFORDABLE HEALTHY DIETS FOR ALL*, 22 (2021), <https://www.fao.org/3/cb4474en/cb4474en.pdf> [<https://perma.cc/TSC9-RM9X>]; Projections indicate that more than 840 million will be hungry by 2030 if current trends continue.
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- ⁹ FLPC, *Keeping Food Out of the Landfill*, *supra* note 8.
- ¹⁰ Id.
- ¹¹ FAO, *FOOD WASTAGE FOOTPRINT*, *supra* note 1; see also FAO, *FOOD WASTAGE FOOTPRINT: IMPACTS ON NATURAL RESOURCES SUMMARY REPORT 6* (2011), <http://www.fao.org/3/i3347e/i3347e.pdf> [<https://perma.cc/EFM9-W968>] [hereinafter FAO, *FOOD WASTAGE FOOTPRINT SUMMARY REPORT*].
- ¹² FAO, *The State of Food and Agriculture 2019: Moving Forward on Food Loss and Waste Reduction v* (2019), <http://www.fao.org/3/ca6030en/ca6030en.pdf> [<https://perma.cc/3RQM-4A2A>]; FLPC, *Keeping Food Out of the Landfill*, *supra* note 8.
- ¹³ FAO, *FOOD WASTAGE FOOTPRINT*, *supra* note 1 (stating that the market value of food products lost is an estimated \$940 billion per year).
- ¹⁴ See FAO, *FOOD WASTAGE FOOTPRINT SUMMARY REPORT*, *supra* note 11 at 6 (showing that food waste accounts for a 3.3 gigaton carbon footprint and uses 28% of agricultural land, which results in 70 billion tons of global greenhouse gas emissions).
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- ³² Food Safety and Standards (Recovery and Distribution of Surplus Food) Regulations, 2019, Gazette of India, pt. III sec. 4 (Jul. 26, 2019) [hereinafter India Surplus Food Regulations].
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- ³⁵ *Id.*
- ³⁶ *Id.*
- ³⁷ *Id.* at pt. III sec. 4.
- ³⁸ *Id.* at pt. III sec. 4 §§ 2(a), 3, 5.
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- ⁴³ *Id.* These committees must consist of two members from the state enforcement agency, one member from the state Department of Consumer Affairs, one member from a nongovernmental organization, one member from a food donation organizations, one industry member, and may include “other relevant stakeholders.”
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