



Food Recovery in the District of Columbia: A LEGAL GUIDE | UPDATED EDITION OCTOBER 2019



FOOD LAW
and POLICY CLINIC
HARVARD LAW SCHOOL

Authors

This guide was originally written in 2017 and has been updated to reflect changes to District of Columbia law realized by the passage of the Save Good Food Amendment Act in 2018. The guide was written by the following faculty and students in the Harvard Law School Food Law and Policy Clinic: Emily Broad Leib, Christina Rice, Annika Nielsen, Tyler Mordecai, Victoria Hartmann, Ariel Ardura, Nomin-Erdene Jagdagdorj, and Matthew Elkwood. The guide was commissioned by the DC Food Recovery Working Group.

About the Harvard Law School Food Law and Policy Clinic

The Harvard Law School Food Law and Policy Clinic (FLPC) serves partner organizations and communities by providing guidance on cutting-edge food system issues while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods, supporting sustainable production and regional food systems, and reducing waste of healthy, wholesome food. FLPC offers law students the opportunity to work alongside practicing attorneys to develop policy strategies and legal and skills relating to the overarching goals of the Clinic. For more information, visit www.chlpi.org/FLPC.

About the DC Food Recovery Working Group

The DC Food Recovery Working Group was created in early 2016 to support overall food recovery efforts in the District of Columbia and the surrounding areas. This working group focuses on all aspects of food recovery, outlined by the EPA Food Recovery Hierarchy, to include but not limited to source reduction, source reuse, food security, composting, and plant-based diets. This group is comprised of food banks, non-profits working on food recovery, government agencies, local environmental and sustainability organizations, and food recovery advocates. For more information, visit <https://dcfoodrecovery.wordpress.com/>.

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Introduction

In the United States, approximately 40 percent of food goes to waste.¹ This amounts to 62.5 million tons of food waste per year;² 10.1 million tons of this waste is left unharvested on farms, while 52.4 million tons end up in landfills or incinerators.³ In total the United States spends \$218 billion per year growing, manufacturing, processing, distributing, and disposing of food that is never eaten.⁴ The land allocated to grow food, the use of scarce resources like water to make it grow, the fossil fuels used to ship it, and the space used to store it are all wasted when food ends up in a landfill. To illustrate, approximately 21 percent of the United States' fresh water supply⁵ and 300 million barrels of oil are used to produce food that goes to waste.⁶ Uneaten food is the largest contributor of solid waste in our landfills,⁷ leading to local crises with landfills that are running out of space. And once in a landfill, food waste is a significant emitter of methane, a greenhouse gas that is 25 times more potent than carbon dioxide.⁸

Maryland & Virginia Laws Related to Food Recovery

District food recovery efforts are not limited to initiatives within the state – they occur across the D.C. Metro Area. Food recovered in the District may end up being distributed in Virginia, or food rescued in Maryland may find its way to a food bank in the District. As such, this guide includes “quick look” fact boxes that provide brief information about food recovery laws in Maryland and Virginia as well.

Even as we waste approximately 40 percent of our food, many Americans are food insecure, and the problem of food insecurity is particularly pronounced in the District of Columbia. 10.6 percent of all households in the District of Columbia were food insecure from 2016–2018, meaning these households had limited or uncertain access to nutritionally adequate or safe food.⁹ Additionally, 14.8 percent of District residents reported not having enough money from 2016–2017 to buy food for themselves or their families.¹⁰ Households with children in the District said they were unable to afford enough food at almost twice the rate as households without children.¹¹ Furthermore, at 19 percent, the District's rate of seniors living with the threat of hunger is among the highest in the nation.¹²

The purpose of this District of Columbia legal guide is to answer some of the most common legal questions raised by businesses, schools, charities, and other stakeholders regarding food donation and food recovery in the District of Columbia. This guide describes what both the District of Columbia and the federal government are currently doing to address the problem of food waste. It covers District and federal laws and regulations relating to tax credits incentivizing food donation, liability protections for food donors, date labeling requirements for food packages, food safety guidance for food donations, and the donation of excess food by K-12 schools.

This guide was originally published in October 2017. After that time, the laws related to food recovery in the District changed, as the Save Good Food Amendment Act was signed into law on November 13, 2018 and all provisions not subject to appropriations went into effect on February 22, 2019.¹³ The Act made several changes to relevant District laws, each of which is discussed in more detail in the relevant sections, below:

- Authorized a tax credit for individuals and businesses that donate food to non-profit organizations (though that tax credit is subject to appropriations and therefore has not gone into effect);¹⁴
- Expanded liability protections for food donations to cover food donors that donate food directly to individuals;

- Expanded liability protections to cover charitable or non-profit organizations that charge a fee for distributed food to cover the cost of handling;
- Mandated that the Department of Health not require date labels on food products that do not pose an increased safety risk; and
- Required the Department of Health and the Office of Waste Diversion to develop a food donation guide and train health inspectors on the information in the guide.¹⁵

This Guide has been updated to reflect these changes. In addition, though this Guide is intended for use in the District, it has been amended to include “quick look” fact boxes on food recovery-related laws applicable in both Virginia and Maryland.



I. Tax Incentives for Food Donations

Cost is a major barrier to food donation. Businesses and organizations must bear the cost of harvesting or preparing surplus food for donation, storing it, transporting it, and ensuring it complies with federal, state, and local food safety and labeling laws. Federal tax incentives have been highly successful in motivating food donation. For instance, prior to 2015, enhanced federal tax incentives for food donations were limited to C-corporations.¹⁶ After the incentives were temporarily expanded to cover more businesses in 2005 in response to Hurricane Katrina, food donations across the country rose by 137% in 2006.¹⁷ Congress subsequently made the expansion permanent in 2015, providing all businesses with added incentive to increase food donations and prevent food waste.¹⁸ That includes the many independent restaurants, small grocery chains, smaller farms and other businesses that are not C-corporations and thus could not previously receive this incentive.

This section will provide an overview of the federal- and state-level tax incentives available to residents and businesses in the District, explain how the tax incentives are calculated, and explain the requirements that must be met to receive federal and District tax incentives.

WHAT FEDERAL TAX INCENTIVES ARE AVAILABLE FOR FOOD DONATIONS AND HOW ARE THEY CALCULATED?

Food donors are eligible for either a general deduction or an enhanced deduction for qualified food donations.

General Tax Deduction: Businesses that donate inventory, including food, may claim a tax deduction in the amount of the property’s basis, which is usually its cost to the business.¹⁹ C-corporations generally cannot deduct more than 10% of their taxable income for the year. Businesses other than C-corporations—including S-corporations,²⁰ sole proprietorships,²¹ and some LLCs²²—cannot deduct

more than either 30% or 50% of the business' total taxable income each year, depending on who the food is being donated to.²³

Enhanced Tax Deduction: In comparison to the general deduction, the enhanced deduction for food donations provides a significantly higher financial benefit, allowing businesses to deduct the lesser of (a) twice the basis value of the donated food or (b) the basis value of the donated food plus one-half of the food's expected profit margin (if the food were sold at its fair market value).²⁴ There is a cap on the amount a business can deduct using the enhanced deduction each year. A C-corporation's charitable deduction cannot exceed 10% of its taxable income,²⁵ except when the corporation has donated food, in which case it can increase its deduction to up to 15%.²⁶ Non-C-corporations can also claim up to 15% of their taxable income in the enhanced deduction.²⁷ Food donors can carry forward any excess deductions beyond the 15% income limitation for up to five years.²⁸

Example: A grocery store donates potatoes with a fair market value of \$100. The basis value of these potatoes was \$30. The expected profit from selling the potatoes is the fair market value minus the basis value (\$100 - \$30), which is \$70. Under the enhanced deduction, the grocery store is eligible to deduct the smaller of:

(a) Basis Value x 2 = \$30 x 2 = \$60, or

(b) Basis Value + (expected profit margin/2) = \$30 + (\$70/2) = \$65

The enhanced deduction would be \$60, which is substantially higher than the general deduction (the \$30 basis value).

Businesses that do not account for inventories and are not required to capitalize indirect costs²⁹ have the option to calculate the basis value at 25% of the food products' fair market value.³⁰

Example: If a farm that does not account for inventories and is not required to capitalize indirect costs donates pears with a fair market value of \$100 the farmer could choose to calculate the basis value of the pears at \$25 (\$100 x .25).

Businesses also have the option to calculate the fair market value of certain products—i.e., those that cannot be sold because of failure to meet internal standards, lack of a market, or similar reasons—by using the price of the same or substantially similar, saleable food items.³¹

Example: If a farm grew an acre of crooked carrots that did not meet its distributors' cosmetic standards, provided that the fair market value for the same amount of the straight carrots is \$150, they could donate those carrots and calculate their fair market value as \$150.

WHAT REQUIREMENTS MUST BE MET FOR A BUSINESS TO QUALIFY FOR THE GENERAL DEDUCTION AND ENHANCED DEDUCTION?

General Deduction: For a charitable contribution to qualify for a general federal tax deduction, the donation must be used for charitable purposes and given to a qualified organization as laid out under section 170 of the Internal Revenue Code (IRC).³²

Enhanced Deduction: To claim the enhanced deduction, the food donation must meet several requirements. If any of these conditions are not met, the donation is disqualified from the enhanced

deduction and is only eligible for the general deduction. The requirements are:

1. The recipient organization must be an IRC 501(c)(3) organization, a public charity, or a private operating foundation.³³
2. The recipient must use the donated food solely for the care of the ill (those requiring medical care), needy (those lacking necessities of life as a result of poverty or temporary distress), or infants (a minor child, as determined by local law).³⁴
3. The recipient may not use or transfer the food in exchange for money, property, or services. However, the recipient organization may charge another organization a nominal amount for “administrative, warehousing, or other similar costs.”³⁵

Example: If a business donates 500 lbs. of cabbage to a food bank (the recipient organization), and the food bank accepts the cabbage in order to donate it to a soup kitchen, the soup kitchen may not charge the individuals at the soup kitchen. The food bank, however, may charge the soup kitchen a nominal fee based on the total number of pounds for reimbursement of the costs of administering and storing the food in a warehouse.

4. The donating business must receive a written statement from the recipient organization.³⁶ The statement must describe the contributed property and represent that the property will be used in compliance with the requirements outlined above.³⁷
5. The donated property must satisfy the requirements of the Federal Food, Drug, and Cosmetic Act (FDCA) at the time of donation and for the preceding 180 days.³⁸ For food that did not exist for 180 days prior to donation, this requirement is satisfied if the food was in compliance with the FDCA for the period of its existence and at donation, and any similar property held by the donor during the 180 days prior to donation was also held in compliance with the FDCA.³⁹



WHAT STATE-LEVEL TAX INCENTIVES ARE AVAILABLE FOR FOOD DONATIONS IN THE DISTRICT AND HOW ARE THEY CALCULATED?

Like a number of other states, District legislation authorizes the creation of state-level tax incentives for food donations.⁴⁰

Prior to April 7, 2017, the District provided a tax credit to District residents and businesses who donated food from urban farms or community gardens to food banks or shelters in the District.⁴¹ The credit was equal to 50 percent of the value of the donation, up to \$2,500 per taxpayer per year. While the credit was repealed in 2017, District residents and businesses could still take advantage of a deduction for charitable donations under District law - donors could deduct from their taxable income the full value of any charitable contributions and gifts made to 501(c)(3) organizations, including food banks,⁴² up to 15 percent of an individual or business's annual adjusted gross income.⁴³ The credit was preferable to the deduction because it was a direct reduction in the amount of taxes owed by the donor, whereas the deduction only reduces the taxpayer's taxable income, which is then used to calculate taxes owed.

As part of the Save Good Food Amendment Act, the D.C. Council authorized a new tax credit for food donations by District residents and businesses.⁴⁴ However funds for this tax credit have not been appropriated; therefore, even as other provisions of the Save Good Food Amendment Act went into effect on February 22, 2019,⁴⁵ the tax credit provision has not yet gone into effect.⁴⁶ This may be because, according to the D.C. Council, funding this tax incentive could cost several million dollars over budget.⁴⁷ However, exceeding the budget can be avoided by capping the credit at a set amount, as other states have done - for example, Virginia set a cap at \$250,000 per fiscal year⁴⁸ and Maryland set a cap at \$100,000 per fiscal year.⁴⁹ D.C. Council rule 736 states that laws subject to appropriations that have not been funded after two fiscal years are subject to repeal.⁵⁰ Since the Act was signed into law on November 13, 2018,⁵¹ the credit, if left unfunded, would therefore be subject to sunset starting the third fiscal year, which begins October 1, 2020.⁵²

Maryland & Virginia Tax Incentives for Food Donations

Maryland's food donation tax credit, which began as a pilot program in 2017 and expanded state-wide in 2019, allows qualified farms and farm businesses in the state of Maryland to claim up to 50 percent of the value of the donation for eligible food donations and up to 75 percent of certified organic produce donations to charitable organizations, each not to exceed \$5,000 per year. The tax credit may be claimed through tax year 2021 and has been limited to \$100,000 cumulative value per fiscal year.

See MD. CODE ANN. § 10-745.

Virginia's "food crop donation credit" provides state tax credits of 30 percent of fair market value, up to \$5,000 annually, for any person engaged in the business of farming who donates grains, fruits, nuts, or vegetables they have grown. The law covers taxable years beginning on or after January 1, 2016 but before January 1, 2022. Donated food crops must (i) go to "providing food for the needy," (ii) cannot be transferred for use outside the Commonwealth of Virginia, and (iii) if sold by the food bank, must be sold to the needy, other nonprofit food banks, or organizations that intend to use the food crops to provide food to the needy. The tax credits are capped at \$250,000 per fiscal year.

See VA CODE ANN. § 58.1-439.12:12

If money is appropriated for the tax credit, it would allow taxpayers to claim a tax credit equal to 50% of the fair market value of eligible food donations, up to \$2,500 per year for individuals and up to \$5,000 per year for joint filers and corporations. Eligible food donations include:

- Vegetables, fruits, and other food products grown in the District at an urban farm or community garden;
- Prepared foods made in a certified kitchen and stored in conditions that meet District and federal health regulations; and
- Vegetables, fruits, fresh and frozen meat, eggs, and dairy products donated by a licensed District retailer.⁵³

Food donations must be food intended for human consumption and must meet all quality and labeling standards under District and federal law and regulations, though they do not have to be “readily marketable due to appearance, age, freshness, grade, or size.”⁵⁴

Conclusion

All District businesses are eligible for the federal general and enhanced tax deductions for food donations. The District has signed legislation to provide a tax incentive for food donation, but has not yet appropriated funds for that provision to go into effect as of time of publication. Thus, unless funds are appropriated to it, the tax incentive is subject to repeal starting on October 1, 2020. Regardless, District residents and businesses can still take advantage of the deduction for charitable donations available under District law.

II. Liability Protections for Food Donations

Businesses (including farms) and nonprofits that provide or receive donated food are well-protected by laws designed to provide immunity from liability related to such donations. The Bill Emerson Good Samaritan Food Donation Act provides federal liability protection for food donors, and the District’s Good Faith Donor and Donee Act of 1981,⁵⁵ as amended by the Save Good Food Amendment Act, provides additional liability protection to businesses and nonprofits in the District. This section will discuss both the Emerson Act and the District’s Good Faith Donor and Donee Act and Save Good Food Amendment Act.

A. Federal Liability Protections

WHAT IS THE BILL EMERSON GOOD SAMARITAN FOOD DONATION ACT?

Congress passed the Bill Emerson Good Samaritan Food Donation Act (Emerson Act) in 1996 to incentivize food donations by providing civil and criminal liability protections to food donors and recipient non-profit organizations across the country.⁵⁶

WHO IS COVERED UNDER THE BILL EMERSON GOOD SAMARITAN FOOD DONATION ACT?

The Act covers individuals, businesses, non-profit organizations, the officers of businesses, non-profit organizations, and gleaners, which are individuals or entities that harvest donated agricultural crops from the fields.⁵⁷ The Emerson Act’s liability protection also extends to property owners who allow gleaners or food recovery personnel onto their property.⁵⁸ In this case, the property owner is protected from liability if injury or death arises due to any donation or collection activities on the owner’s premises.⁵⁹

HOW DO FOOD DONORS AND DISTRIBUTING NON-PROFITS RECEIVE LIABILITY PROTECTION UNDER THE ACT?

In order to receive protection, donors and distributors must meet the following four requirements:

1. The food must be donated to a nonprofit organization in good faith, meaning that the food must be donated with the honest belief that it is safe to eat;⁶⁰
2. The food must meet all federal, state, and local quality and labeling requirements, even if it is not “readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.”⁶¹

*NOTE: If all quality and labeling requirements are not met, the Act will still extend liability protection to donors and distributing non-profits if the non-conforming food is reconditioned to meet all quality and labeling requirements before it can be donated.*⁶²

To extend liability protection to non-conforming items, the following steps must be followed:

- A. The donor informs the non-profit of the non-conforming nature of the product;
- B. The non-profit agrees to recondition the item so that it is compliant with all federal, state and local quality and labeling requirements; and
- C. The non-profit knows the standards for reconditioning the item.⁶³

This provision allows for the recovery and donation of edible and wholesome foods that are mislabeled or have technical flaws, such as missing or marred labels, or produce that requires washing or trimming prior to donation.

Example: If a food manufacturing company donates 250 bottles of mislabeled pasta sauce to a food bank and informs the food bank at the time of donation that the pasta sauce includes the incorrect net weight, and the food bank agrees and has the knowledge and resources to relabel the bottles with the correct net weight, then the donor and food bank would still receive liability protection under the Act.

3. The nonprofit organization that receives the donated food must distribute it to “needy individuals.”⁶⁴

Example: A school that wants to donate leftover food from meals to families picking up their kids at the end of the day is protected from liability.

4. The end recipient must not pay anything of monetary value for the donated food.⁶⁵ Note, however, that if one non-profit donates food to another non-profit for distribution, the Act allows the first non-profit to charge the distributing non-profit a nominal fee to cover handling and processing costs.⁶⁶

Example: If a business donates food to a food bank (the recipient organization), and the food bank donates the food to a food pantry, the food pantry may not charge the individuals eating at the soup kitchen. The food bank can, however, charge the food pantry a nominal fee for reimbursement of the costs of storing the food in a warehouse.

WHAT IS NOT PROTECTED UNDER THE EMERSON ACT?

Food donors and distributing non-profits that participate in acts or omissions that constitute gross negligence or intentional misconduct resulting in injury or death to the recipients of the donated food are not protected under the Act.⁶⁷

- **Gross Negligence** involves “voluntary and conscious conduct (including a failure to act)” by a person or organization that knew when the donation was made that the donated food was likely to have harmful health impacts.⁶⁸
- **Intentional Misconduct** is when a person or organization donates “with knowledge . . . that the conduct is harmful to the health or well-being of another person.”⁶⁹

In other words, one should not donate or facilitate the distribution of donated food that one knows is likely to be harmful or dangerous.

Please Note: the Emerson Act gives little guidance on what activities qualify as gross negligence or intentional misconduct. The Emerson Act has not been challenged in court, so no judicial interpretations of its language exist.⁷⁰ However, the lack of court cases related to the Emerson Act suggests how protective the Act is of donors.⁷¹

Example: If a business donates 1,000 gallons of ice cream that had recently been recalled due to listeria contamination, the business would not be protected under the Emerson Act, because the business knew when the donation was made that the donated food was likely to have harmful health impacts.

B. District Liability Protections for Food Donations

What additional liability protection does the District offer for food donations?

States and the District of Columbia are free to enact state liability protection that is equal to or more protective of donors than the Emerson Act, which sets a minimum level of liability protection.⁷² In 1981, The District of Columbia passed such legislation, known as the Good Faith Donor and Donee Act, which provides civil and criminal liability protection to food donors and nonprofits organizations that receive and distribute donated food free of charge or at a nominal fee.⁷³

The Save Good Food Amendment Act amended the Good Faith Donor and Donee Act, expanding liability protections for food donations in the District by:

- Providing liability protection

Maryland & Virginia Liability Protections for Food Donations

Maryland state law protects from civil liability those who donate food for use or distribution by a nonprofit. Maryland also protects those who prepare donated food for use or distribution by a nonprofit, and those who serve or dispense donated food distributed by a nonprofit. The donor or donee must be acting in good faith and is not protected if they act with gross negligence or willful and wanton misconduct. Maryland does not provide protection for direct donations.

See MD. CODE ANN. CTS. & JUD. PROC. § 5-634; MD. CODE ANN. HEALTH—GEN. § 21-322.

Virginia provides state-level civil liability protections for any farmer, processor, distributor, wholesaler, food service establishment, restaurant, or retailer of food who donates food to any food bank, except for those who act with gross negligence or intentional misconduct. The Virginia liability protection statute does not cover donations straight to consumers, nor does it provide protection for the organizations accepting or distributing food donations.

See VA. CODE ANN. § 3.2-5144

to food donors who donate food directly to those in need

- Providing liability protection to non-profit organizations that charge end recipients a small fee to cover the handling and preparation of food donations

WHO IS COVERED UNDER DISTRICT LAW?

The Act covers a broad range of food donors, such as individuals, businesses, non-profits and charitable organizations.⁷⁴

HOW DO FOOD DONORS AND DISTRIBUTING NON-PROFITS RECEIVE LIABILITY PROTECTION UNDER DISTRICT LAW?

In order to receive protection, donors and distributors must meet the following three requirements:⁷⁵

1. Donors must donate food in good faith to a bona fide charitable or nonprofit organization or directly to an individual for consumption;
2. If the food is donated to a bona fide charitable or nonprofit organization, the charitable organization must receive and distribute the food in good faith, meaning that the food must be donated with the honest belief that it is safe to eat; and
3. The bona fide charitable or nonprofit organization must distribute the food to those in need free of charge or for a nominal fee sufficient to cover the cost of handling and preparing the food.

Note that whereas the Emerson Act only allows nonprofits to charge other nonprofits for handling and processing costs,⁷⁶ District law allows nonprofits to charge food recipients to cover the cost of handling and preparing the food.⁷⁷

Example: If a restaurant distributed a pallet of tomatoes with visible signs of rot to a soup kitchen and the recipients fell ill, then the restaurant would not receive liability protection under the District's Good Faith Donor and Donee Act.

WHAT IS NOT PROTECTED UNDER DISTRICT LAW?

Food donors and distributing non-profits will not receive protection under the Act if any injury or death occurs that is the result of the donor's or the nonprofit's gross negligence or intentional misconduct.⁷⁸

Conclusion

Federal law and District law provide ample liability protection for food donors and the non-profits and charitable distributors to which they donate, so long as they do not act with gross negligence and intentional misconduct, and the food is donated and distributed in good faith. Beyond the federal protections provided by the Emerson Act, the Good Faith Donor and Donee Act and the Save Good Food Amendment Act further strengthen liability protections for food donors and donees in the District – there are now protections for donations made either to a nonprofit or to an individual. Further, in the District protection is available whether the food is distributed to those in need for free or for a cost that covers the cost of preparing or handling the food. In summary, the Emerson Act and the District's local laws work in conjunction to provide robust immunity from liability for businesses and nonprofits that provide, receive, and distribute good faith food donations.



III. Date Labels on Food Products

Date labels are the dates on food packages that are accompanied by phrases such as “use by,” “best before,” “sell by,” and “enjoy by.” The dizzying array of phrases on date labels are misleading to consumers and result in safe, wholesome food being needlessly thrown away, instead of being eaten or donated.⁷⁹ Many consumers mistakenly believe that date labels are indicators of a food’s microbial safety, but in fact for most foods the date is simply a manufacturer’s best guess as to how long the product will be at its peak quality.

This section will discuss the date label requirements for food products both at the federal level and in the District.

ARE DATE LABELS REGULATED AT THE FEDERAL LEVEL?

No. There currently is no federal law regulating date labels on food products other than infant formula.⁸⁰ Congress has given general authority to the FDA and the USDA to ensure food safety and protect consumers from deceptive or misleading food labeling,⁸¹ However, the FDA and the USDA have not used this authority to regulate date labels, thus:

- The FDA does not require date labels on foods other than infant formula.⁸² While food manufacturers are thus free to select whether to use a date label and what phrase to include, in May 2019 the FDA released a letter encouraging the food industry to use the phrase “Best if Used by” on products if a date label is meant to indicate quality.⁸³ The USDA does not require date labels on foods under its purview, including meats, poultry, and egg products.⁸⁴ If, however, USDA-regulated foods are dated, either as required under state law (see below) or voluntarily, they must include: (i) a day and month (and year for frozen or shelf-stable products) and (ii) an explanatory phrase, such as “sell by” or “best if used by.”⁸⁵ While food manufacturers are free to select which explanatory phrase to include on a date label, the USDA recommends “Best if Used By” be used for products where the date is intended as an indicator of quality.⁸⁶

In the absence of federally-mandated date labels, some food businesses have thought about how to make date labeling clearer. In 2017, the Grocery Manufacturer’s Association and Food Marketing Institute launched a voluntary Product Code Dating Initiative that food companies could participate in, in an effort to standardize industry date labels. Program participants use a “BEST if Used by” label on a product to indicate quality or freshness or a “USE by” label to indicate that a food is an increased risk and should be discarded.⁸⁷ While many companies have agreed to use these standard labels, they are not required under any laws and utilization is still voluntary.⁸⁸

ARE DATE LABELS REGULATED AT THE STATE LEVEL?

Yes, in many states. Because federal law is so limited, states have broad discretion to regulate date labels. As a result, inconsistent date labeling laws exist across the country.⁸⁹ For instance, Michigan requires date labels on pre-packaged perishable foods⁹⁰ and dairy products,⁹¹ and restricts the sale of both of these items once the labeled date has passed,⁹² while New York does not require date labels on any food products and does not regulate the sale of past-date foods.⁹³

Maryland & Virginia Approaches to Food Date Labeling

Maryland requires “Sell by” labels on milk and milk products. “Milk products” are variations of milk, cream, or yogurt. Such products must be labeled with the month and day after which the product may not be sold, delivered, or offered for sale (18 days from the date of processing). The products can be used or served up to four days after the “Sell by” date in specific establishments: food service facilities, hospital, schools, institutions, and places where milk is consumed on the premises.

Source: Md. Code. Regs. 10.15.06.10, Md. Code. Regs. 10.15.06.11

Virginia requires “Sell by” labels for dairy products (butter, cheese, and milk) and shellfish. Dairy products cannot be sold after their label date.

Source: 2 Va. Admin. Code § 5-531-10; 2 Va. Admin. Code § 5-585-400

Neither Maryland nor Virginia have any restrictions on donating food after a date label.

HOW DOES THE DISTRICT REGULATE DATE LABELS?

Under District law, the Department of Health is responsible for regulating date labels. The 2018 Save Good Food Amendment Act represented a change in the law that will have a notable impact on the Department of Health’s date labeling requirements. In the past, District regulations required date labels on the following foods: pasteurized fluid milk, fresh meat, poultry, fish, bread products, eggs, butter, cheese, cold meat cuts, mildly processed pasteurized products, shellfish, and potentially hazardous foods⁹⁴ sold in retail establishments that are pre-wrapped and not intended to be eaten on the premises of the food establishment (like deli meat or pre-made sandwiches).⁹⁵ The Save Good Food Amendment charges the Department of Health with updating these outdated regulations with new ones that focus on reducing the amount of safe, quality food that is wasted.

The Save Good Food Amendment states that the District may only require date labels for products that pose “an increased safety risk to consumers when consumed after the date on the label.”⁹⁶ The Department of Health was thus required to release new regulations, which were supposed to have been released by March 30, 2019 but have yet to be issued. While the regulations were not yet available as of the publication of this guide, it seems likely that a much smaller number of foods will require date labels, as date labels are only very rarely linked with food safety. For the large majority of foods, the label is an indicator of freshness or quality, and the food does not become more prone to cause foodborne illness over time.

It is important to note that under the Save Good Food Amendment Act, food producers are still able to voluntarily include date labels on their products, even though these labels may or may not align with food safety concerns. The Act only changes what the Department of Health is allowed to require.

CAN PAST DATE FOODS BE SOLD OR DONATED AFTER THE DATE LABEL HAS PASSED?

The sale and donation of food products after their date labels are also impacted by the Save Good Food Amendment. The new law requires the Department of Health to issue rules that only limit the donation or sale of food only if the products “pose an increased safety risk to consumers when consumed after the date on the label.”⁹⁷

Under the old regulation, all food products except packaged perishable foods could be sold and donated after the “pull date,” subject to certain requirements and limitations. These food products could be sold as long as the products were isolated and labeled as being past the last date on which the food should be sold without a significant risk of spoilage or loss of palatability.⁹⁸ Additionally they could be donated after the date on the date label, so long as the food remained “fit for human consumption.”⁹⁹ So, for example, since bread products often remain fresh well past the date on their date label and do not require temperature control, they could be sold after that date. Packaged perishable foods were explicitly not, under any circumstances, to be resold, traded, or bartered after the pull by date.¹⁰⁰ Retailers were also prohibited from rewrapping packaged perishable foods and updating the pull date.¹⁰¹

The Department of Health has yet to release their new regulations in this area, but the new rules also likely will change what foods have restrictions on sale or donation past the date, in order to reflect the mandate from City Council that such restrictions must only be for foods that increase in risk after the date.

Conclusion

In sum, because there is no federal law on date labeling, regulation of these labels has been left largely to the states. The District formerly had some of the strictest date labeling requirements in the county, but the Save Good Food Amendments Act will significantly reduce the burden and scope of date labeling requirements and food donation restrictions for past-date foods. While not yet released by the Department of Health, the new regulations will reduce the number of foods required to bear date labels, and will reduce the number of foods for which past-date sale or donation is restricted.



IV. Food Safety for Food Donations

Food donors and food recovery organizations must comply with food safety regulations. However, these regulations often do not directly address food donation, and can be difficult to navigate for food donors, food recovery organizations, non-profits and health inspectors alike. Without explicit regulations, donors operate in the dark in terms of what procedures they must follow for storing or transporting food, as well as deciding whether certain foods are even appropriate for donation. This section will discuss federal and District food safety laws for food donations. While the District has no official regulations related to food donation safety at the moment, guidance on food safety donations is expected to be released by the Department of Health soon, as required under the Save Good Food Amendment Act.

DOES THE FEDERAL GOVERNMENT REGULATE FOOD SAFETY FOR FOOD ESTABLISHMENTS IN THE DISTRICT?

Comprehensive Resource for Food Recovery Programs

The Comprehensive Resource for Food Recovery Programs is a guidance document for the various stakeholders involved in or impacted by food recovery on how to create a food donation program that adheres to food safety standards. It includes guidance and sample forms on the relevant food safety rules for food recovery programs. The Comprehensive Resource is not binding law and is only intended to be a supportive tool.

Source: Comprehensive Resource for Food Recovery Programs, CONF. FOR FOOD PROT., 15-16 (Apr. 2016), http://www.foodprotect.org/issues/packets/2016Packet/attachments/l_011_content_b.pdf.

The federal government does not regulate food safety for food establishments such as restaurants, institutional kitchens, and retail food stores. That is because these entities sell food within states or the District, and the federal government only has the power to regulate food that is traveling in interstate commerce. As a result, states and the District are responsible for regulating and enforcing food safety regimes for food establishments within their borders and the federal

government is responsible for regulating food facilities that process food for sale nationally.

However, state food safety laws and regulations are largely based on model federal food safety guidance published by the United States Food and Drug Administration (FDA), the federal agency responsible for protecting the public health by ensuring the safety of the nation's food supply.¹⁰² The FDA Food Code is the primary guidance states and localities follow when developing food safety laws.¹⁰³ It reflects the input of an array of experts—including regulatory officials, industry, academia, and consumers—who participate in a biennial Conference for Food Protection.¹⁰⁴

Although the federal government provides guidance via the FDA Food Code, individual states are responsible for regulating the safety of food establishments.¹⁰⁵ The FDA Food Code is not binding law unless a state or local government chooses to adopt it as such by passing a statute or by incorporating it into regulations.¹⁰⁶ All fifty states and the District of Columbia have adopted some version of the FDA Food Code.¹⁰⁷ Unfortunately, the FDA Food Code does not specifically address food safety for food donations, meaning that states, including the District, generally do not have language about food donations in their regulations.

DOES THE DISTRICT HAVE ANY FOOD SAFETY REGULATIONS THAT FOCUS ON FOOD RECOVERY?

No. Although the District has food safety and sanitation standards for food establishments in the city (restaurants, grocery stores, etc.) the standards do not clearly indicate what safety requirements specifically govern food donations.¹⁰⁸ Nevertheless, businesses in the District should ensure that

they are following District food safety standards when starting a food recovery program, specifically any provisions that apply to the storage, transportation, handling, and packaging of food.¹⁰⁹ For example, food donors should:

- Store donated food in a clean, dry location where it does not face exposure to splash, dust, or other contaminants;¹¹⁰
- Ensure that employees and staff handling food donations follow proper hand washing and hygiene practices by washing hands thoroughly for at least 20 seconds before handling food;¹¹¹
- Monitor the time and temperature of potentially hazardous prepared food to ensure that the food does not stay in temperature danger zone (42° F - 139° F) for more than two hours;¹¹² and
- Avoid cross-contamination of foods by keeping raw food, such as meats and poultry away from cooked or ready to eat food.¹¹³

More information about the Food Code and food safety standards for food establishments in the District can be found here: <https://doh.dc.gov/service/food-code-frequently-asked-questions>.

Maryland & Virginia Approaches to Food Donation Safety

Neither Maryland nor Virginia have regulations outlining the safety expectations or restrictions for food donations. However, cities and counties within the states may have laws or guidelines in place.

Source: Food Safety Guidelines, *Community Food Rescue*, <https://www.communityfoodrescue.org/wp-content/uploads/2017/10/CFR-Food-Safety-Guidelines-101917-klb.pdf> (last visited Oct. 7, 2019).

ARE THERE ANY GUIDANCE DOCUMENTS THAT BUSINESSES CAN USE TO ENSURE FOOD IS BEING DONATED SAFELY?

Under the Save Good Food Amendment Act, The Department of Health and the Department of Public Works were tasked with creating a guide outlining the food safety regulations that apply to food donations. The Act required the guide to be completed by May 29, 2019, but it had not yet been released at time of publication. According to the Save Good Food Amendment Act, the guide should include a list of foods that will be allowed for donation, recommended procedures for the storage and handling of donations, and a list of organizations that accept food donations.¹¹⁴ As the guidance is still being drafted, it is unclear what specific procedures are expected of food donors. However, the agencies may follow the lead of other states that have created food safety guidelines to help ensure safe food handling and distribution practices:

- **San Diego County, California** produced a “Too Good to Waste!” guide that includes sections on food handling rules for how to donate food safely, such as required temperatures for cooling down cooked food. They also produced an easy-to-use safe food handling donation checklist.¹¹⁵ The guide can be found at <http://www.sandiegocounty.gov/content/sdc/dpw/recycling/Food.html>.
- The **Massachusetts** Department of Environmental Protection, in partnership with the Center for EcoTechnology’s RecyclingWorks program, produced a guide for best management practices for food donation.¹¹⁶ It has been vetted by the Massachusetts Department of Public Health and accurately reflects Massachusetts food safety regulations, as well as best practices for donating food. This guide is disseminated to interested potential donors online and via trainings, presentations, and direct technical assistance to help donors create well-structured

food recovery programs. The guide can be found at <https://recyclingworksma.com/donate/>.

- **New York City, New York** created “Simple Steps to Donate Your Healthy Surplus: A Guide for Food Donors,” which contains food safety instructions, answers to frequently asked questions that directly address donors’ concerns, contact information for food recovery organizations in NY, and information on the liability protections donors receive.¹¹⁷ The guide can be found at <https://www1.nyc.gov/assets/doh/downloads/pdf/public/food-donor-resource-guide.pdf>.

Conclusion

The federal government does not regulate food safety for food establishments such as restaurants, institutional kitchens, and retail food stores. Thus, states and the District generally regulate food safety in food establishments. Although the District has food safety regulations for food establishments, it is unclear which food safety requirements in those regulations apply to food donations. The Save Good Food Amendment requires the development of guidance to help food donors and donees in the District navigate these food safety law and understand what procedures are expected of them ¹¹⁸

V. Food Recovery in K-12 schools

Schools present unique and important food recovery opportunities. Food waste in schools has long been an issue, with rates mirroring larger trends in consumer food waste. It is estimated that elementary and secondary schools waste about two pounds of food per student each month.¹¹⁹ School food waste is caused by a multitude of factors. Students generally have too little time to eat, and rushed students eat less and throw away more.¹²⁰ Additionally, widespread misunderstanding of school food regulations contribute to waste. This section will discuss both federal and District laws and policies that pertain to the recovery and donation of excess foods from K-12 schools, including the District’s new guidance on share tables in schools.

DOES THE FEDERAL GOVERNMENT REGULATE THE RECOVERY AND DONATION OF SURPLUS FOOD FROM K-12 SCHOOLS?

The federal government plays an active role in regulating school food, particularly food procured using funds under the National School Lunch Program (NSLP) and the School Breakfast Program (SBP).¹²¹ The National School Lunch Act explicitly allows schools to donate food not consumed from the NSLP and SBP as long as the unconsumed food is donated to a food bank or charitable organization. Schools that participate in the NSLP and SBP are already required to follow certain food safety standards, including implementing a written food safety program and undergoing a health inspection twice a year.¹²² The National School Lunch Act explicitly states that schools are protected by the same food donation liability protections set forth in the federal Emerson Act.¹²³

The United States Department of Agriculture (USDA) also encourages schools participating in NSLP and SBP to use “share tables.” Share tables are a table or cart where students can put uneaten food still in its original wrapper or peel and another student can take the food for free, or the school can donate the food.¹²⁴ Share tables must meet the same food safety standards that schools that participate in NSLP and SBP are already required to follow and must also meet state and local health and food standards.¹²⁵ More information about the USDA’s policy on share tables can be found here: <https://www.fns.usda.gov/use-share-tables-child-nutrition-programs>.

Maryland & Virginia Approaches to School Food Donation

Neither Maryland nor Virginia have any laws or regulations in place related to food donations by schools.

ARE THERE ANY LAWS IN THE DISTRICT THAT PERTAIN TO THE RECOVERY AND DONATION OF EXCESS FOOD FROM K-12 SCHOOLS?

No. There are no specific laws in the District pertaining to donating excess food from schools. However, the District Department of Health and Department of General Services have created guidance on share tables in District schools. The guidance describes how share tables work and provides lists of food items that can be placed on share tables, donated, or should not be shared or donated.¹²⁶ The District's Food Code allows packaged, closed, non-potentially hazardous foods, such as cereal packs, or bags of carrots, to be re-served.¹²⁷ In order to re-serve "potentially hazardous foods," such as milk, cheese or other foods requiring time and temperature control on a share table, schools must maintain a proper temperature (41°F or colder) by storing foods in temperature-controlled storage, such as a cooler or fridge.¹²⁸

According to the District's guidance, the following foods are allowed and not allowed on share tables in District schools:

Foods allowed on share tables in the District¹²⁹

- Individually packaged shelf-stable items
- Whole uneaten fruits and vegetables with inedible peels, like bananas and oranges
- Temperature-controlled foods, such as yogurt or milk, when a temperature-control mechanism is in place

Foods **not** allowed on share tables in the District but allowed to be donated¹³⁰

- Fruits and vegetables with edible skin, like apples, pears, and peaches
- Foods with common allergens, such as nuts
- Share table leftovers (at end of day)

Foods not included in these lists or foods that have been opened may not be put on a share table or donated.¹³¹

ARE THERE ANY GUIDANCE DOCUMENTS THAT SCHOOLS CAN USE TO ENSURE EXCESS FOOD IS BEING RECOVERED AND DONATED SAFELY?

While the District's guidance on share tables does provide some brief guidance on food donation by schools, more detailed guidance on donations by schools could help schools feel more comfortable donating their excess food. The following states and school districts have developed helpful guidance for food donation in schools, and can serve as useful models for a District guidance document to offer legal guidance and best practices for school food donation programs:

USDA Guidance on School Food Donation

The USDA has issued guidance on school food donation. This guidance advises schools to plan menus carefully to avoid making excess food altogether, and recommends that schools, in consultation with local and state health and sanitation codes, consider incorporating leftover food into subsequent meals, or offering "share tables" where students can leave extra food to be taken by other students. The guidance only suggests donating to a food bank or 501(c)(3) charitable organization when these other avenues of mitigating food waste are not possible.

Source: *Guidance on the Food Donation Program in Child Nutrition Programs*, U.S. DEP'T OF AGRIC., Feb. 3, 2012
https://www.usda.gov/oce/foodwaste/FNS_Guidance.pdf

- **Oakland Unified School District** created a food donation guide with step-by-step instructions and customizable templates that can be utilized to create a school food donation program.¹³² The guide can be found here: https://furtherwithfood.org/wp-content/uploads/2017/06/Food-Donation-Guide-June1_17.pdf.
- **Indiana's Department of Health** created guidance documents on food donation best practices for schools. The Indiana guidance document includes distinctions between opened and unopened packages as well as temperature control requirements, and instructs how to set up a share table system.¹³³ The guidance document can be found here: [https://in.gov/isdh/files/School_Sharing_Tables_and_Food_Recovery_12-23-2015_\(2\).pdf](https://in.gov/isdh/files/School_Sharing_Tables_and_Food_Recovery_12-23-2015_(2).pdf).
- **Wisconsin's Department of Public Instruction** created a food safety protocol and monitoring program for schools to use when setting up a share table.¹³⁴ The food safety protocol can be found here: <https://dpi.wi.gov/school-nutrition/food-safety#waste>.

Conclusion

The federal government plays an active role in regulating the nutrition of school food, particularly food procured using funds under the NSLP and the SBP and explicitly allows and promotes the donation of surplus food from these programs.¹³⁵ The USDA supports, and has issued guidance on, school food donation for schools interested in starting a food donation program. Currently, the District does not have any specific laws or guidance pertaining to donating excess food from schools in the District. While the District government does not provide guidance specific to school food donation, it does provide guidance on share tables in District schools that also includes basic information on food donation by schools. Schools should review this guidance if interested in creating share tables or in donating food.



Endnotes

- ¹ A Roadmap to Reduce U.S. Food Waste by 20 Percent, ReFed 10 (2016), https://www.refed.com/downloads/ReFED_Report_2016.pdf.
- ² Id. at 16.
- ³ Id.
- ⁴ Id. at 10.
- ⁵ Id.
- ⁶ Kevin D. Hall et al., The Progressive Increase of Food Waste in America and Its Environmental Impact 2 (2009), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0007940>.
- ⁷ Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2013 eS-14, U.S. ENVTL. PROT. AGENCY (Apr. 15, 2015).
- ⁸ Overview of Greenhouse Gases, U.S. ENVTL. PROT. AGENCY, <https://www.epa.gov/ghgemissionsoverview-greenhouse-gases>.
- ⁹ Alisha Coleman-Jensen et al., U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., Household Food Security in the United States in 2018 23 (2016), <https://www.ers.usda.gov/publications/pub-details/?pubid=94848>.
- ¹⁰ See Hunger in D.C., D.C. HUNGER SOLUTIONS, <https://www.dchunger.org/hunger-in-dc/> (last visited on Sep. 20, 2019).
- ¹¹ See Id.
- ¹² See Id.
- ¹³ See District of Columbia B72 – Save Good Food of 2017, TRACKBILL, <https://trackbill.com/bill/district-of-columbia-bill-72-save-good-food-amendment-act-of-2017/1357937/> (last visited on Sep. 27, 2019).
- ¹⁴ See Id.
- ¹⁵ See Save Good Food Amendment Act of 2017, B22-0072, 2017 D.C. Legislative Sess., Period Twenty-Two (2017) <http://lims.dccouncil.us/Download/37273/B22-0072-Introduction.pdf>.
- ¹⁶ See Tax Reform Act of 1976, Pub. L. No. 94-455, § 2135, 90 Stat. 1525, 1928-29 (1976).
- ¹⁷ Don't Waste, Donate: Enhancing Food Donations Through Federal Policy, HARVARD FOOD LAW AND POL'Y CLINIC 12 (Mar. 2017), https://www.chlpi.org/wp-content/uploads/2013/12/Dont-Waste-Donate_-March-2017.pdf.
- ¹⁸ H.R. 2029, 114th Cong. § 113(a) (2017) ((codified at I.R.C. § 170(e)(3)(C)).
- ¹⁹ See I.R.C. § 170(e)(1); Charitable Contributions: For Use in Preparing 2014 Tax Returns, I.R.S., DEP'T OF THE TREASURY 11 (Jan. 13, 2015), <http://www.irs.gov/pub/irs-pdf/p526.pdf> (noting the amount of the deduction is the fair market value minus the amount of income gained had the product been sold at fair market value).
- ²⁰ See I.R.C. §§ 170(b)(1)(B)(i) 1363(b).
- ²¹ I.R.S., Sole Proprietorships, <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Sole-Proprietorships> (last visited Jan. 8, 2016); I.R.C. § 170(b)(1)(B)(i).
- ²² I.R.S., Single Member Limited Liability Companies, <https://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Single-Member-Limited-Liability-Companies> (last visited Jan. 8, 2016).
- ²³ I.R.C. § 170(b)(1)(B)(i).
- ²⁴ Id., I.R.C. § 170(b)(2)(A); I.R.C. § 170(e)(3)(B); 26 C.F.R. § 1.170A-4A(b)(4) (2017).
- ²⁵ I.R.C. § 170(b)(2)(A).
- ²⁶ I.R.C. § 170(e)(3)(C)(ii).
- ²⁷ Id.
- ²⁸ Id. § 170(e)(3)(C)(iii)(I).
- ²⁹ Id. § 170(e)(3)(C)(iv)(I), (II).
- ³⁰ Id. § 170(e)(3)(C)(iv).
- ³¹ Id. § 170(e)(3)(C)(v).
- ³² I.R.C. § 170(b),(c), (e)(3)(c).
- ³³ I.R.C. § 170(e)(3)(A) (2017).
- ³⁴ 26 C.F.R. § 1.170A-4A(b).
- ³⁵ Id. § 1.170A-4A(b)(3).
- ³⁶ Id. § 1.170A-4A(b)(4).
- ³⁷ I.R.C. § 170(e)(3)(iii).
- ³⁸ Id. § 170(e)(3)(iv).
- ³⁹ 26 C.F.R. § 1.170A-4A(b)(5).
- ⁴⁰ See Keeping the Food out of the Landfill: Policy Ideas for States and Localities, HARVARD FOOD LAW AND POL'Y CLINIC (Apr. 2016), http://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf.
- ⁴¹ See D.C. CODE § 21-257 (repealed § 47-1807.12), <https://otr.cfo.dc.gov/sites/default/files/dc/sites/otr/publication/attachments/OTR%20Notice%20Farm%20to%20Food%20Tax%20Credit%20Repeal%20%283%29.pdf>.
- ⁴² Id. § 47-1803.03(a)(8).

43 Id. § 47–1803.03.

44 See District of Columbia B72 – Save Good Food of 2017, TRACKBILL, <https://trackbill.com/bill/district-of-columbia-bill-72-save-good-food-amendment-act-of-2017/1357937/> (last visited on Sep. 27, 2019). See also 2019 April 15 Subject to Funding Legislation Report, COUNCIL OF THE DISTRICT OF COLUMBIA, <http://dccouncil.us/wp-content/uploads/2019/04/2019-April-15-Subject-to-Funding-Legislation-report.pdf> ([Office of Revenue Analysis] issued [Financial Impact Statement] 9/26/18 estimating costs of \$5.7M over the plan, due to revenue reduction.).

45 See District of Columbia B72 – Save Good Food of 2017, TRACKBILL, <https://trackbill.com/bill/district-of-columbia-bill-72-save-good-food-amendment-act-of-2017/1357937/> (last visited on Sep. 27, 2019).

46 See Id. See also 2019 April 15 Subject to Funding Legislation Report, COUNCIL OF THE DISTRICT OF COLUMBIA, <http://dccouncil.us/wp-content/uploads/2019/04/2019-April-15-Subject-to-Funding-Legislation-report.pdf> ([Office of Revenue Analysis] issued [Financial Impact Statement] 9/26/18 estimating costs of \$5.7M over the plan, due to revenue reduction.).

47 See District of Columbia B72 – Save Good Food of 2017, TRACKBILL, <https://trackbill.com/bill/district-of-columbia-bill-72-save-good-food-amendment-act-of-2017/1357937/> (last visited on Sep. 27, 2019). See also 2019 April 15 Subject to Funding Legislation Report, COUNCIL OF THE DISTRICT OF COLUMBIA, <http://dccouncil.us/wp-content/uploads/2019/04/2019-April-15-Subject-to-Funding-Legislation-report.pdf> ([Office of Revenue Analysis] issued [Financial Impact Statement] 9/26/18 estimating costs of \$5.7M over the plan, due to revenue reduction.).

48 See VA CODE ANN. § 58.1-439.12:12

49 See Md. Code Ann. § 10-745.

50 See Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 23, Resolution of 2019, at 83, COUNCIL OF THE DISTRICT OF COLUMBIA (January 2, 2019), <http://lms.dccouncil.us/Download/41509/PR23-0001-Enrollment.pdf>.

51 See District of Columbia B72 – Save Good Food Act of 2017, TRACKBILL, <https://trackbill.com/bill/district-of-columbia-bill-72-save-good-food-amendment-act-of-2017/1357937/> (last visited on Sep. 27, 2019).

52 See D.C. CODE § 1–204.41.

53 See Save Good Food Amendment Act of 2018, B22-0072, 2018 D.C. Legislative Sess., Period Twenty-Two (2018) <http://lms.dccouncil.us/Download/37273/B22-0072-SignedAct.pdf>.

54 See District of Columbia B72 – Save Good Food of 2017, TRACKBILL, <https://trackbill.com/bill/district-of-columbia-bill-72-save-good-food-amendment-act-of-2017/1357937/> (last visited on Sep. 27, 2019).

55 See D.C. LAW 4-39 (1981), <https://code.dccouncil.us/dc/council/laws/docs/4-39.pdf>.

56 Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. § 1791 (2017).

57 42 U.S.C. § 1791(c)(1), (b)(9) (Farmers interested in allowing gleaners on their land should be aware that the Federal Crop Insurance Corporation encourages the gleaning of unharvested crops but has additional requirements to which farmers must adhere to when allowing gleaners on their land in order for their crop insurance to be unaffected); Loss Adjustment Manual (LAM) Standards Handbook, U.S. Dep’t of Agric. and Federal Crop Ins. Corp. 137, 152-55 (2016), http://www.rma.usda.gov/handbooks/25000/2016/16_25010.pdf.

58 Id. § 1791(d).

59 Id.

60 Id. § 1791(c); Legal Guide to Food Recovery, U. ARK. L.L.M. DEP’T OF AGRIC. & FOOD LAW 7 (2013), <http://law.uark.edu/documents/2013/06/Legal-Guide-To-Food-Recovery.pdf>. (hereinafter Legal Guide to Food Recovery).

61 Id. §§ 1791(b)(1), (b)(2).

62 Id. §1791(c)(e).

63 Id.

64 Id. § 1791(c)(2). Note that although direct donations from the donor to needy individuals are not expressly protected by the Act, in the 2018 Farm Bill Congress announced a new category of “qualified direct donors” (defined as “retail food store, wholesaler, agricultural producer, restaurant, caterer, school food authority, or institution of higher education”) and included a requirement for USDA to create guidance on the protections available to direct donations by such qualified direct donors. (See Katie Sandson, 2018 Farm Bill Includes Major Food Waste Reduction Provisions, Including Several FLPC Recommendations, HARVARD LAW SCHOOL CENTER FOR HEALTH LAW AND POLICY INNOVATION, <https://www.chlpi.org/2018-farm-bill-includes-major-food-waste-reduction-provisions-including-several-flpc-recommendations/>).

65 Id. § 1791(b)(3).

66 Id.

67 Id. §1791(c)(3).

68 Id. §1791(b)(7).

69 Id. §1791(b)(8).

70 Legal Guide to Food Recovery, supra note 60 at 10.

71 Id.

72 Id.

73 D.C. CODE § 48–301(2017).

74 Id.

75 Id.
76 Id.
77 Id.
78 Id.
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81 21 U.S.C.A. § 331(b) (West 2017); 21 U.S.C.A. § 343 (West, 2017); 21 U.S.C.A. § 463(a) (West, 2017); 21 U.S.C.A. § 607(c) (West, 2017); 21 U.S.C.A. § 1043 (West 2017).
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83 Letter from Frank Yiannas, Deputy Commissioner, Food Policy and Response, U.S. Food & Drug Admin., to Food Industry (May 23, 2019), <https://www.fda.gov/media/125114/download>.
84 See Food Product Dating, U.S. DEP'T OF AGRIC. FOOD SAFETY & INSPECTION SERV., <https://www.fsis.usda.gov/wps/portal/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/food-product-dating/food-product-dating> (last visited Sept. 15, 2019). The USDA does, however, require a "pack date" for poultry and a "lot number" or "pack date" for egg products certified by the USDA. HARVARD FOOD LAW & POLICY CLINIC AND NAT'L RES. DEF. COUNCIL, THE DATING GAME: HOW CONFUSING FOOD DATE LABELS LEAD TO FOOD WASTE IN AMERICA 11 (2013).
85 9 C.F.R. §317.8(b)(32)(i)-(ii) (West 2017).
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90 MICH. COMP. LAWS ANN. § 289.8107 (2017).
91 Id. § 288.539.
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94 See U.S. FOOD & DRUG ADMIN. FOOD CODE § 1-201.10(61). "'Potentially hazardous food' means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting: (i) The rapid and progressive growth of infectious or toxigenic microorganisms; (ii) The growth and toxin production of Clostridium botulinum; or (iii) In raw shell eggs, the growth of Salmonella Enteritidis. (b) "Potentially hazardous food" includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support growth."
95 D.C. MUN. REGS. TIT. 25-A § 718(2017).
96 D.C. ACT 22-513 § 201(b)
97 D.C. ACT 22-513 § 201(b)
98 D.C. MUN. REGS. TIT. 25-A § 9901.
99 D.C. ACT 22-513 § 201(b); D.C. CODE § 48-301 (2014). For example, bread products often remain fresh well past the date on their label and do not require temperature control, so they may still be sold after their pull date.
100 D.C. MUN. REGS. TIT. 25-A § 3606.
101 Id.
102 U.S. FOOD & DRUG ADMIN., What We Do, <http://www.fda.gov/AboutFDA/WhatWeDo/> (last visited Sept. 15, 2019).
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105 Id.
106 Id.
107 U.S. FOOD & DRUG ADMIN., Adoption of the FDA Food Code by State and Territorial Agencies Responsible for the Oversight of Restaurants and Retail Food Stores, <https://www.fda.gov/media/107543/download> (last visited Sept. 15, 2019).

¹⁰⁸ D.C. MUN. REGS. TIT. 25-A § 100 et al.
¹⁰⁹ Id.
¹¹⁰ Id. § 816.1.
¹¹¹ Id. § 401.
¹¹² Appropriate temperature and time control for food potentially hazardous food products can be found in D.C.'s food safety regulations for food establishments. See D.C. MUN. REGS. TIT. 25-A §§ 1000 – 1011.
¹¹³ See D.C. MUN. REGS. TIT. 25-A § 802.
¹¹⁴ D.C. ACT 22-513 § 201(b)
¹¹⁵ Too Good to Waste!, COUNTY OF SAN DIEGO HEALTH AND HUMAN SERV. AGENCY, <http://www.sandiegocounty.gov/content/sdc/dpw/recycling/Food.html> (last visited Sept. 15, 2019).
¹¹⁶ RECYCLINGWORKS MASS., Food Donation Guidance, <http://recyclingworksma.com/donate/> (last visited Sept. 15, 2019).
¹¹⁷ Simple Steps to Donate Your Health Surplus, N.Y.C. DEP'T OF HEALTH AND MENTAL HYGIENE, (2015), <http://docplayer.net/8563080-Simple-steps-to-donate-your-healthy-surplus.html> (last visited Sept. 15, 2019).
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¹¹⁹ See Food Waste Estimation Guide, RECYCLINGWORKS MASS., <http://recyclingworksma.com/wp-content/uploads/2014/01/2015-05-Printable-Threshold-Estimation-Guide-Elementary-and-Secondary-Schools.pdf>. (last visited Sept. 15, 2019). See also Digging Deep Through School Trash, MINNESOTA POLLUTION CONTROL AGENCY (Sept. 2010.), <https://www.pca.state.mn.us/sites/default/files/p-p2s6-14.pdf>.
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¹²¹ National School Lunch Program, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/nslp/national-school-lunch-program-nslp> (last visited Sept. 15, 2019); School Breakfast Program, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/sbp/school-breakfast-program-sbp> (last visited Sept. 15, 2019).
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¹²³ Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C.A. §1791(c) (2017).
¹²⁴ The Use of Share Tables in Child Nutrition Programs, SP 41-2016, CACFP 13-2016, SFSP 15-2016, U.S. DEP'T OF AGRIC. (June 22, 2016), <https://www.fns.usda.gov/use-share-tables-child-nutrition-programs>.
¹²⁵ Id.
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¹²⁷ D.C. MUN. REGS. TIT. 25-A, §§ 823, 1300.10.
¹²⁸ Share Tables: Guidance for DC Schools., DEP'T OF GENERAL SERVICES (Oct. 2018).
¹²⁹ Id.
¹³⁰ Id.
¹³¹ Id.
¹³² OAKLAND UNIFIED SCHOOL DISTRICT et. al., Oakland Unified School District Food Donation Guide, <https://furtherwithfood.org/resources/oakland-unified-school-district-food-donation-guide/> (last visited Sept. 15, 2019).
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