

# FOOD SAFETY REGULATIONS & GUIDANCE FOR FOOD DONATIONS:

A Fifty-State Survey of State Practices

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FOOD LAW  
*and* POLICY CLINIC  
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## About the Harvard Law School Food Law and Policy Clinic

The Harvard Law School Food Law and Policy Clinic, a division of the Center for Health Law and Policy Innovation, is an experiential teaching program at Harvard Law School that links law students with opportunities to work with clients and communities on various food law and policy issues. The clinic strives to increase access to healthy foods, assist small and sustainable farmers in breaking into new commercial markets, and reduce waste of healthy, wholesome food, while educating law students about ways to use law and policy to positively impact the food system. For more information, visit <http://www.chlpi.org/flpc>.

## About the Food Safety for Donations Working Group

The Food Safety for Donations Working Group is a coalition of people and organizations committed to promoting an understanding of safe food donation practices in order to reduce food waste and increase food recovery. The Working Group was established at *Reduce and Recover: Save Food for People*, a conference hosted by the Harvard Law School Food Law and Policy Clinic, the Massachusetts Department of Environmental Protection, RecyclingWorks Massachusetts, and the U.S. Environmental Protection Agency (EPA) in June 2016. Currently, we work to encourage safe food donation from food service and retail food establishments through the development of clear food safety guidance and sound, science-based regulations. We collaborate with the understanding that the health of our environment depends on food waste reduction, with the belief that every individual should have access to food, and the conviction that wherever possible, safe and wholesome surplus food should be shared with those in need. Any interested person is welcome to join.

## Acknowledgements

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# I. INTRODUCTION

Food waste is a major issue in the United States. While an abundance of food is produced each year,<sup>1</sup> approximately 40 percent of food in the U.S. goes uneaten,<sup>2</sup> much of which is still safe and edible. At the same time, approximately 42 million Americans, including thirteen million children, are food insecure, meaning that at some point during the year they lack access to a sufficient amount of food to lead an active, healthy lifestyle.<sup>3</sup> It has been estimated that recovering and redistributing just 30 percent of our nation's surplus food would provide enough food to feed all food insecure Americans their total diet.<sup>4</sup> Recognizing these startling facts, efforts to recover and redirect surplus food are on the rise, and businesses, nonprofits, and government agencies are joining the movement to reduce the waste of wholesome food.

A key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. This lack of information extends to both food donors and regulators. Many potential donors are concerned about the safety risks of donated food and lack knowledge about the procedures that must be followed in order to safely donate such foods. One reason for this lack of knowledge is that the large majority of states and localities do not include provisions regarding food safety for donated foods in their laws or regulations, nor do they have guidance materials on the topic available for food donors. Most states and localities use the Food and Drug Administration (FDA) Food Code, a model code developed by the Conference of Food Protection and adopted by the FDA, as the basis for their food safety regulations for food establishments (restaurants and retailers). But because the FDA Food Code does not include language relating to food donations, very few states or localities cover the topic in their laws or regulations.

The lack of regulatory language on food safety for donations has several impacts. First, businesses often do not know what steps they must take to donate food safely while remaining in compliance with applicable regulations. Health inspectors are often concerned that the donation of surplus foods by food retailers and restaurants may create or increase food safety risks, and without clear regulatory language, these inspectors may not be equipped to answer businesses' questions about the food safety procedures that must be followed in order to donate, or may be inconsistent in their interpretations of the existing regulations, since food donations are not explicitly covered. In the absence of sound guidance, some health inspectors may even discourage food establishments from donating surplus food rather than encourage safe food donation practices. Taken together, these challenges lead many potential donors to err on the side of caution and choose not to donate excess food. And those who do choose to donate do so without having the benefit of clear regulatory language or guidance that could help them to follow the best practices for safe donation.

## **SURVEY BACKGROUND**

While the lack of clarity and consistency regarding the food safety policies that apply to retail food donations is often cited as a barrier to donation,<sup>5</sup> to date there has been no comprehensive study of the national landscape of any such state legislation, regulations, and guidance. This study was undertaken in order to identify and analyze state-level legislation, regulations, and guidance around food safety for restaurant and retail food donations. The survey was conducted by the Food Safety for Donations Working Group, which is an informal coalition working to promote a better understanding of safe food donation practices in order to support more recovery of safe, edible food.<sup>6</sup> The Working Group was established at *Reduce and Recover: Save Food for People*, a conference hosted by the Harvard Law School Food Law and Policy Clinic, the Massachusetts Department of Environmental Protection, RecyclingWorks Massachusetts, and the U.S. Environmental Protection Agency (EPA) in June 2016. The group works "to encourage safe food donation from food service and retail food establishments through the development of clear food safety guidance and sound, science-based regulations."<sup>7</sup>

In order to better understand the landscape of state food safety regulations and guidance related to food donations, members of the Food Safety for Donations Working Group conducted a survey of officials at state food safety agencies in all 50 states, the results of which are analyzed in this report. The survey results can be used in several different ways. First, the trends observed in this study highlight systemic gaps and inconsistencies in the way food

safety for food donations is addressed, and help to identify opportunities to decrease barriers and disseminate best practices, thereby making food donation easier and safer. Second, the results can serve as a resource for individuals and businesses across the country by informing the public of relevant existing legislation, regulations, and guidance in each state, through the tables included in the report appendices.

## **BARRIERS TO DONATING DUE TO LACK OF GUIDANCE ON FOOD SAFETY FOR FOOD DONATIONS**

Across the entire supply chain, estimates show that only ten percent of food is recovered each year.<sup>8</sup> Several barriers to food donation contribute to this low rate of food recovery. One of the key barriers is a lack of knowledge about the types of foods that can be donated and the procedures that must be followed in order to safely donate surplus food. Currently, most states do not have regulations that delineate the food safety requirements for food donation.

As a result, many potential donors have trouble determining which food safety regulations apply to the foods they wish to donate or distribute.<sup>9</sup> For example, businesses are often unsure whether they can donate foods past the date that appears on the label of a packaged food, even though date labels on foods are generally indicators of freshness, not safety.<sup>10</sup> Many businesses also erroneously believe that they cannot donate surplus prepared food. Beyond these examples, businesses have logistical questions about how food can be donated, such as whether products need to be stored or packaged in a certain way, when the food needs to be transported in a refrigerated vehicle, and what labeling requirements must be met for donated food. Due to ongoing confusion about these issues, many businesses and food recovery organizations needlessly discard safe, wholesome food and miss opportunities to get this food to those in need.

This confusion extends to health inspectors, who may be unprepared to answer donors' questions, or inconsistently enforce existing regulations, due to a lack of specific regulatory language or guidance.<sup>11</sup> Some health inspectors may even dissuade food establishments from donating surplus food, rather than educate them on safe donation practices. As a result, potential donors may choose to not donate food.

It is important to note that many food businesses also choose not to donate due to a fear that they may be held liable if anyone were to fall ill from the donated food. A 2016 survey by the Food Waste Reduction Alliance, a joint food industry task force, found that 50 percent of manufacturers, 39 percent of restaurants, and 25 percent of retailers and wholesalers surveyed identified liability concerns as a barrier to donation.<sup>12</sup> However, food donors and food recovery organizations are well protected from liability under the federal Bill Emerson Good Samaritan Food Donation Act, which provides nationwide civil and criminal liability protection for food donors and the nonprofit food recovery organizations that receive their donated food and distribute it to individuals in need.<sup>13</sup> State-level laws in all 50 states offer similar protections.<sup>14</sup>

Yet, while liability protections would shield donors from liability after the fact if someone were to fall ill and bring a lawsuit, they do not clarify the procedures that a donor must follow to ensure that food is donated safely and legally in the first place. Further, the federal Emerson Act, as well as most state liability protection laws, require that the donated food comply with all federal, state, and local food safety regulations in order to be accorded liability protection.<sup>15</sup> This poses a challenge if the applicable food safety regulations are nonexistent or unclear regarding donated food. As a result, these liability protections do little to reduce the confusion that businesses and regulators experience regarding safe food donation requirements.

## **THE EXISTING LANDSCAPE OF RETAIL FOOD SAFETY REGULATION**

The federal government does not license and inspect food establishments such as restaurants and retail food stores. This is because these entities sell food within states, and the federal government generally only has the power to regulate food that is traveling in interstate commerce. Federal laws and regulations apply in food processing plants and production facilities that create products that will travel interstate.<sup>16</sup>

By contrast, state and local governments are responsible for regulating and enforcing food safety for retail and food service establishments within their borders. This regulatory authority is structured differently in different states. States may designate their health department, agriculture department, or both to regulate food safety in food establishments. In states that divide up regulatory authority between these two agencies, they generally give authority to the health department to oversee restaurants, and authority to the agriculture department to oversee retailers and grocery stores. In some states, the state agency or agencies regulating food safety share regulatory authority with local health departments. In such states, the state agency implements food safety regulations that apply statewide, but local health departments are charged with interpreting and enforcing those regulations, and may also implement stricter local regulations.<sup>17</sup> To make matters more complicated, several states delegate food safety authority to certain local governments in some areas, while the state agencies regulate and conduct inspections in other parts of the state.

While the federal government does not directly regulate retail food establishments, it plays a key role in influencing the state and local laws that regulate these entities by providing model food safety regulations for restaurants and retail stores via the FDA Food Code.<sup>18</sup>

### **FDA Food Code**

The FDA Food Code is a model code and reference document for state and local governments, consisting of model food safety standards for the food service and retail industries.<sup>19</sup> These recommendations are based on scientific and legal research, and are geared towards assisting state and local governments.<sup>20</sup>

Although the FDA Food Code is not binding unless a state or local government chooses to adopt it, it has a significant impact on state food codes. All 50 states and the District of Columbia have adopted versions of the FDA Food Code.<sup>21</sup> States are free to modify the Food Code in any manner they see fit when they adopt it into their laws or regulations; however, most such modifications are minor. This means that language in the FDA Food Code tends to wind up in state and local food safety codes, while concepts that are not addressed in the FDA Food Code are often not addressed by state and local codes. Specifically, because the FDA Food Code has never included language or guidance regarding food safety for food donations, many state regulations also lack specific information on this topic.

### **Comprehensive Resource for Food Recovery Programs**

In the late 1990s, the U.S. Department of Agriculture (USDA) and FDA, working with the Conference for Food Protection, responded to inquiries about safe practices in food recovery organizations by creating the document now known as the Comprehensive Resource for Food Recovery Programs (Comprehensive Resource).<sup>22</sup> The Comprehensive Resource is designed to assist stakeholders, particularly retail food operators, with the creation and implementation of food recovery programs.<sup>23</sup> The resource is primarily intended as guidance for the operation of food distribution organizations and food recovery programs (the recipients of donated foods), rather than for donors (the licensed food establishments). This helpful resource was recently updated in 2016,<sup>24</sup> but the Comprehensive Resource is not included in the FDA Food Code.<sup>25</sup> As a standalone document, the Comprehensive Resource is not as widely disseminated as the FDA Food Code, and may be less familiar to state regulators, health inspectors, and potential donors. It is also not written in the same format as the FDA Food Code, and lacks the specificity needed if its content were to be included in formal regulatory language. While the Comprehensive Resource is a useful tool that reflects the time and attention of a wide range of stakeholders, it is not intended to assist regulatory bodies and health inspectors in their oversight of licensed retail food establishments.

## **SURVEY GOALS**

The primary goal of the survey was to collect and analyze any existing state-level legislation, regulations, or guidance on food safety for donations. The survey also aimed to identify barriers that prevent states from enacting regulations or guidance related to food safety for food donations, and to learn about any resources that survey participants believe could support better state guidance or regulations on this topic. The data gathered is intended to serve as a launching point for interested parties and policymakers to identify and pursue solutions to address barriers to safe food donation.

## II. METHODOLOGY

### POPULATION SURVEYED

This study consisted of a short interview conducted by phone or via email with an individual or individuals within the state agency or agencies that handle the inspection and regulation of food service and retail food establishments. Interviews were conducted by several members of the Food Safety for Donations Working Group and other volunteers between the months of June and December 2017. The individuals conducting the survey used the online Directory of State and Local Authorities to determine the appropriate agency, typically either the Health or Agricultural Departments, and in some states, both.<sup>26</sup> Within those departments, the individual who manages food safety was contacted to participate in the survey.

Currently, the survey includes data from all 50 states, plus Washington, D.C., listed in the chart below. In twelve states, individuals from two agencies were surveyed: Connecticut, Georgia, Hawaii, Minnesota, Mississippi, New York, North Carolina, Ohio, Oregon, Utah, Virginia, and Washington. Each of these states divides regulatory authority over retail establishments between two agencies, typically giving one authority over restaurants and the other authority over retail and grocery stores. Five other states also divide regulatory authority between multiple agencies. However, the following agencies from those states did not respond to the survey request and thus have not been surveyed: Florida's Department of Business and Professional Regulation, Maine's Department of Agriculture, Tennessee's Department of Agriculture, West Virginia's Department of Agriculture, and Wisconsin's Department of Health. These agencies are highlighted in grey in the chart below and in Appendices B-C. No local agencies were surveyed in this study. Since in twelve states individuals representing different agencies were surveyed, a total of 63 individuals were surveyed for the 50 states and D.C. Throughout this report, when we use percentages or tallies to summarize the survey data we specify whether the percentages or tallies refer either to the total set of individual responses (63) or the total number of states (including D.C.) surveyed (51).

**Table 1. Relevant agency or agencies in each state**

State	Agency
Alabama	Department of Health
Alaska	Department of Environmental Conservation
Arizona	Department of Health
Arkansas	Department of Health
California	Department of Health
Colorado	Department of Health
Connecticut	Department of Health/Department of Consumer Protection
Delaware	Department of Health
Florida	Department of Agriculture/Department of Business and Professional Regulation
Georgia	Department of Agriculture/Department of Health
Hawaii	Department of Agriculture/Department of Health
Idaho	Department of Health
Illinois	Department of Health
Indiana	Department of Health
Iowa	Department of Inspections and Appeals

State	Agency
Kansas	Department of Agriculture
Kentucky	Department of Health
Louisiana	Department of Health
Maine	Department of Health/Department of Agriculture
Maryland	Department of Health
Massachusetts	Department of Health
Michigan	Department of Agriculture
Minnesota	Department of Agriculture/Department of Health
Mississippi	Department of Health/Department of Agriculture
Missouri	Department of Health
Montana	Department of Health
Nebraska	Department of Agriculture
Nevada	Department of Health
New Hampshire	Department of Health
New Jersey	Department of Health
New Mexico	Department of Health
New York	Department of Agriculture/Department of Health
North Carolina	Department of Agriculture/Department of Health
North Dakota	Department of Health
Ohio	Department of Agriculture/Department of Health
Oklahoma	Department of Health
Oregon	Department of Agriculture/Department of Health
Pennsylvania	Department of Agriculture
Rhode Island	Department of Health
South Carolina	Department of Health
South Dakota	Department of Health
Tennessee	Department of Agriculture/Department of Health
Texas	Department of Health
Utah	Department of Agriculture/Department of Health
Vermont	Department of Health
Virginia	Department of Agriculture/Department of Health
Washington	Department of Agriculture/Department of Health
Washington DC	Department of Health
West Virginia	Department of Agriculture/Department of Health
Wisconsin	Department of Agriculture/Department of Health
Wyoming	Department of Agriculture



## SURVEY QUESTIONS

The survey consisted of fifteen pre-written, standardized questions,<sup>27</sup> which allowed for the comparison of answers across states. Questions were divided into four thematic sections:

1. **Regulation and Policy:** Questions in this section sought to determine whether any existing state-level laws or regulations specifically address food safety for food donations.
2. **Guidance and Education:** This section aimed to determine what, if any, formal or informal guidance exists in each state regarding food safety for donations.
3. **Developing Regulations and Guidance:** This section attempted to understand barriers to developing state regulations or guidance on food donation, and to determine whether survey respondents would find model language created at the federal level useful to their states.
4. **Closing Thoughts:** This final section provided an opportunity for survey respondents to offer any further information or insights that were not covered by their preceding answers.

The complete survey text is included in Appendix A to this report.

In preparing the data for this report, where the survey respondent answered that the state had regulations or guidance and pointed to specific documents, these laws or guidance documents were verified by our research team to confirm that they contained information relevant to this study. In cases where the survey respondent did not report any food safety for food donation legislation, regulations, or guidance, our research team did not conduct outside research to verify the response. In some instances, outside sources revealed additional existing laws or guidance not referenced by survey respondents. When relevant, this information was included in Appendix B. The complete list of responses is reported alongside the list of verified legislation, regulations, and guidance in Appendix B.

## III. RESULTS

The following section discusses the key results of the survey for each of the four categories of questions. The key survey results are presented and summarized in Appendices B-C.

### A. REGULATION AND POLICY

The goal of the questions in this section was to determine whether states have any laws or regulations specific to food safety for food donations. As noted above, results in this section include both the answers provided by the survey respondents, as well as the results of our own research efforts to verify those responses and their relevance.

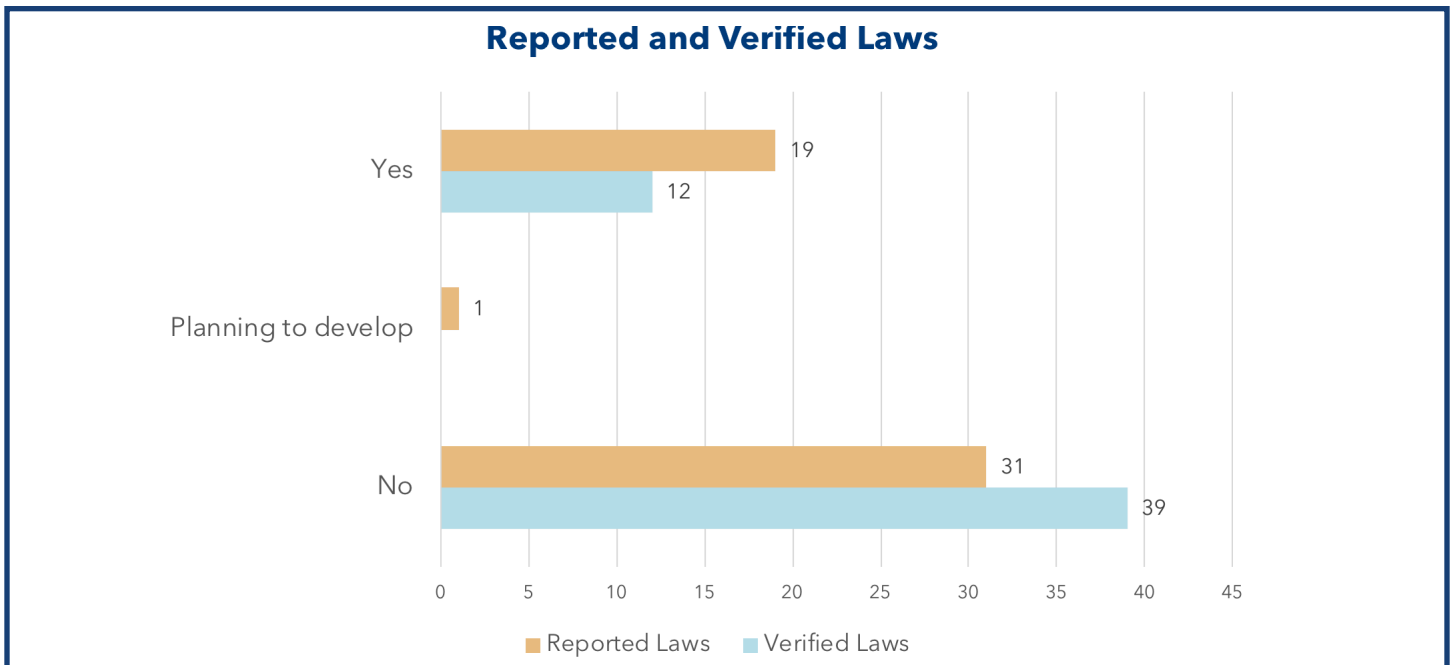
Twenty representatives from nineteen states<sup>28</sup> responded that their states had legislation or regulations related to food safety for donations, and one responded that their state was planning to develop regulations. However, not all of the legislative or regulatory provisions mentioned in survey responses were relevant to the topic of food safety for food donations. For example, several individuals cited their respective states' liability protection laws.<sup>29</sup> As described earlier, such laws are important for food donations, but are separate from food safety regulations and address a different set of concerns. Further, all 50 states have liability protection laws. Thus, such responses were omitted from our "verified responses" category in the chart in Appendix B.

Of the nineteen states that reported having legislation or regulations, the research team verified the laws reported for twelve states, but did not consider laws reported for seven others to be relevant. The research team also did not count as verified the one state that reported plans to develop regulations. Thus, although survey respondents from 31 states reported having no relevant legislation, after the verification process, it was determined that 39 total states have no relevant legislation. The twelve states with verified legislation or regulations addressing food safety for food donations are: Alaska, Connecticut, Illinois, Kentucky, Montana, Nevada, New Mexico, Oklahoma,

Oregon, Texas, Washington, and Wyoming. However, the relevant laws or regulations in these twelve states vary widely, and most are quite narrow. For example, Alaska’s food code includes regulations addressing the donation of raw, traditional foods (e.g., game meat or vegetables) to institutions or nonprofits, but does not mention donations of any other foods, including prepared foods.<sup>30</sup> Several states, including Connecticut, Kentucky, Montana, and Nevada, have laws explicitly allowing the donation of hunted game meat, but do not address donation of any other types of food.<sup>31</sup> Oklahoma’s law provides some clarification on which foods can be safely donated from schools.<sup>32</sup> Texas is the only state with a comprehensive section in its regulations addressing all types of donated food, which includes topics such as temperature, the quality of packaging, labeling of donated foods, and food shelf life.<sup>33</sup>

Figure 1: Reported and verified laws, respectively, on food safety for food donations<sup>34</sup>

The x axis represents the number of states, not survey respondents.



Of the survey participants that responded that their states did not have legislation or regulations about food safety for donations, 65 percent responded with “yes” or “maybe” when asked if such regulations would add value to their agency’s efforts, while less than a quarter replied they would not.<sup>35</sup> Amongst those that did not think such regulations or policy would add value, several cited the impracticality of rewriting their food code, low priority of this issue as compared to other issues such as combatting foodborne illness or conducting routine inspections, or hesitancy to enact more regulations. Some states were skeptical that such requirements would add value because regulation in those states is delegated to counties. Although it was expressed in response to different questions throughout the survey, many respondents believed that additional regulations regarding food safety for donations were not needed because they considered food safety to be the same for donated food as it is for food that is sold.

## B. GUIDANCE AND EDUCATION

The purpose of questions in this section was to discover whether each respondent’s state, or any localities within the state (to the knowledge of the survey participant), had issued any formal or informal guidance on food safety for food donations.

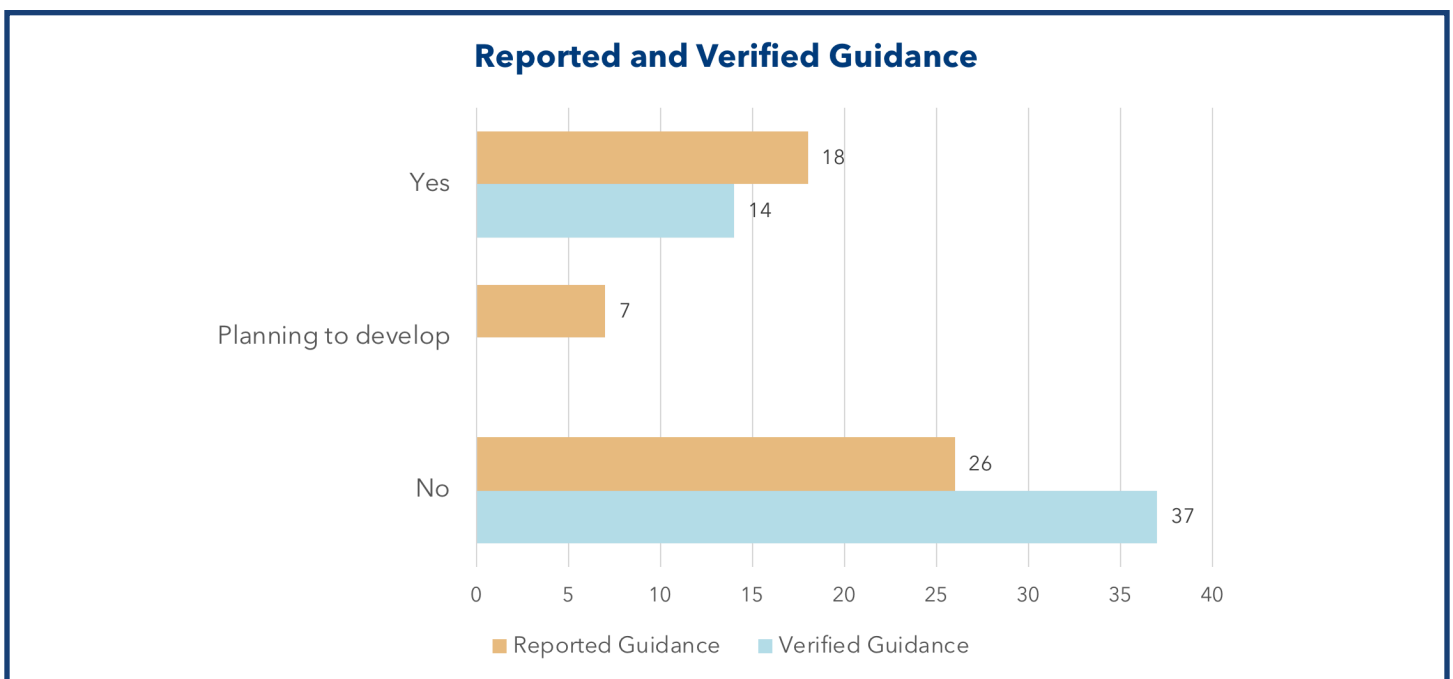
Compared to legislation and regulations, guidance documents and education campaigns are generally easier for states to implement because they are quicker to create, less costly to implement, and do not need to go through formal legislative or administrative processes. Publication of guidance can also be more palatable to those who fear that additional regulatory language might pose new burdens or costs for businesses or inspectors. A major

drawback of guidance, however, is that it is not binding, and may not be as well-disseminated as the state food code.

21 survey respondents from eighteen different states reported that their states have existing guidance, and seven respondents from seven different states responded that their states had plans to develop guidance regarding food safety for donations. The research team reviewed the reported guidance and investigated whether any guidance had yet been published from the states where survey respondents reported plans to create guidance. Through this process, we were able to verify the existence of guidance in fourteen states. The fourteen states with relevant guidance addressing food safety for food donations are: Alaska, California, Indiana, Maine, Massachusetts, Minnesota, New York, North Carolina, Ohio, Oregon, Vermont, Washington, Wisconsin, and Wyoming. Survey respondents from 26 states reported having no relevant guidance, or plans to develop guidance, however, the verification process determined that 37 total states have no relevant guidance currently available. In reaching this total, we did not count any planned or in-progress (e.g., as-yet unpublished) guidance,<sup>36</sup> any informal or ad hoc guidance that is not publicly available,<sup>37</sup> or guidance for the retail industry that is only related to recalls.<sup>38</sup>

*Figure 2: Reported and verified guidance, respectively, on food safety for food donations*

*The x axis represents the number of states, not survey respondents.*



As with legislation and regulations, guidance varies widely across states. Some states have disseminated comprehensive food safety for food donation guidance, while in many states food safety is not the primary purpose of the guidance, the guidance only addresses limited issues like donation of wild game or traditional foods, or the guidance is provided by an agency or entity that is not the key food safety agency in the state. For example, six states<sup>39</sup> of the fourteen with verified guidance have developed guidance only related to food safety at school “share tables,” which are school programs that allow students to leave uneaten school lunch components, such as unpeeled fruits or unopened snacks, at a communal “share table” for other students to consume.<sup>40</sup> Although this type of guidance is valuable to support utilization of surplus foods in schools, it is only applicable in the school food context and therefore is not helpful to other institutions.

With the exception of the seven states that reported they were planning to release guidance, most states without guidance seemed hesitant to begin the process of developing such documents. Of the survey respondents that reported no current guidance or plans to develop guidance within their state, the most common reason given was limited time, staffing, or resources. Other answers included a lack of need or demand and low prioritization of the issue. And, for the most part, in states that have released guidance relating to food safety for food donations,

when asked whether they would be interested in going further and promulgating regulations, survey respondents expressed hesitation to formalize the requirements. Many respondents felt that guidance was sufficient, and believed promulgating regulations would pose unique costs and challenges.

This study only included state-level food safety officials, but representatives were also surveyed about any knowledge of local laws or guidance related to food safety for donations. Respondents generally had limited knowledge of local health department activities, and were unsure whether localities had additional food safety for food donation regulations or guidance. Only four survey respondents confirmed knowledge of county- or city-level guidance relating to food safety for food donations within the state.<sup>41</sup>

Respondents also were asked if food safety inspectors were trained on food donation practices, and whether they are given materials about donation to share with businesses. Seven states reported that they train health inspectors/sanitaricians who inspect food establishments on food donation practices or give materials on donations to businesses.<sup>42</sup> Many respondents were unsure if such training existed in their state.

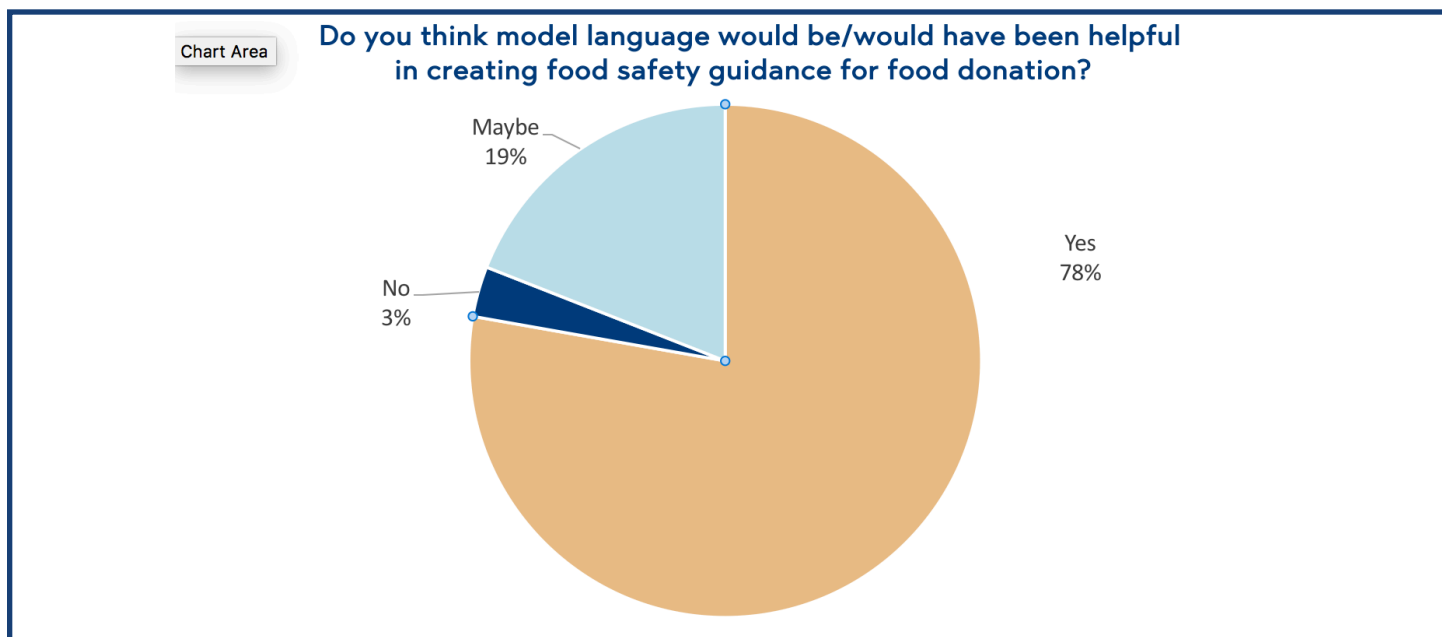
### C. DEVELOPING REGULATIONS AND GUIDANCE

The questions in this section of the survey aimed to identify ways to support development of food safety regulations or guidance for food donation, and gauge state interest in receiving model language regarding food safety for food donations.

According to respondents, one of the main barriers states face in developing regulations or guidance about food safety for food donation is a lack of resources and available staff. Model language can reduce the time and resources that states must put into the process of drafting regulations or guidance by providing states with a starting point that they can build on. States can insert model language directly into their statutes or regulations or modify it to fit their state's particular needs. The survey results show that respondents overwhelmingly reported that model language would be helpful to state efforts to create food safety regulations or guidance for food donation. Only two of the 63 individuals surveyed responded "no" when asked whether model language disseminated nationally would be helpful for creating state guidance on food safety for food donations. However, of those who responded "no" to that question, one of the two responded "yes" when asked whether language on food safety for donations should be a topic included in the FDA Food Code; the other survey respondent answered "maybe."

Figure 3: Model Language for Guidance

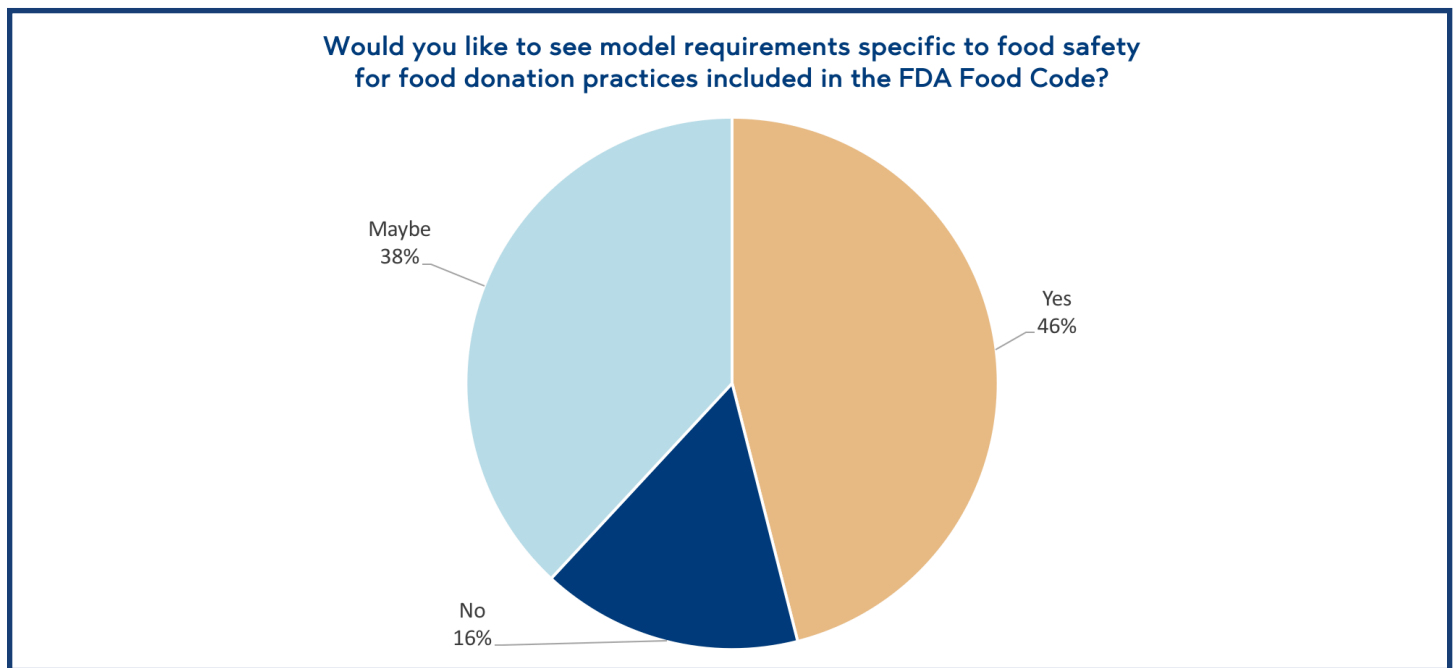
The percentages represent the proportion of total respondents (63).



While the vast majority of respondents agreed that model language regarding food safety for donations would be useful, the responses were more varied when respondents were asked if they would like to see model language in the FDA Food Code. Almost half of respondents were in favor of model language in the FDA Food Code; however, sixteen percent were not, and over a third were unsure. Some expressed that they would prefer guidance or a separate annex from the FDA Food Code. One survey respondent noted that a change in the Food Code might be helpful to provide more clarity, but expressed concern that such model language would have limited utility for certain potential donors such as farmers or fisherman, since their operations are not covered by the FDA Food Code. Others were concerned that adding language to the FDA Food Code would create regulations that would be burdensome for inspectors. However, several state representatives emphasized the value of having model language vetted at the federal level by FDA.

*Figure 4: Model Language in FDA Food Code*

*The percentages represent the proportion of total respondents (63).*



## **D. CLOSING THOUGHTS**

This section of the survey provided an opportunity for survey respondents to communicate any additional thoughts or other efforts their state has made on food safety for food donations that were not mentioned in the prior sections. Most survey participants acknowledged that issues exist in this area, while some discussed the difficulty of prioritizing this issue relative to other food concerns, such as food insecurity, nutrition, date labeling, and foodborne illnesses. Some survey participants that expressed hesitancy to develop additional regulations suggested that guidance or other non-regulatory mechanisms would be more impactful and less burdensome. Some respondents also commented on both the challenge and importance of reaching consensus among state agencies in states where two different agencies share food safety regulatory authority.

# IV. DISCUSSION

## REGULATION AND POLICY

The majority of states do not have legislation or regulations related to food safety for food donations. The survey results showed that survey respondents from nineteen states reported such legislation or regulations, and one reported plans to develop regulations; our verification process turned up twelve states with relevant provisions. We did not consider the laws mentioned by the seven remaining states to be relevant to food safety for food donations. All seven states that reported food safety for donations laws that were not verified referenced state liability protections for food donations; two survey respondents also mentioned other laws that were not verified, one of which has to do with the permitting process for benevolent organizations,<sup>43</sup> and the other of which is a legislative directive to state agencies to create guidance on safe food donation.<sup>44</sup>

The survey reveals the lack of clarity regarding what laws, regulations, and policies actually apply to food safety for donations, as well as the confusion surrounding the difference between food safety regulations and donor liability protections. As the Introduction to this report begins to explain, liability protection is an ex post protection that food donors could use if someone were to get sick from consuming their food and bring a case in court. By contrast, regulations or guidance regarding food safety for food donations are ex ante standards and procedures that ensure businesses are donating food safely and are in compliance with their food safety laws. Further, while most federal and state liability protection laws require that donated food meet local, state, and federal safety standards in order to receive liability protection, these liability laws do not clarify what safety standards actually apply to donated foods. As a result, while liability protection laws are incredibly valuable for donors, they are not sufficient to reduce the confusion surrounding donation. It is important that state officials understand the distinction between these two types of legislation and regulations, and the need for both; if state officials conflate liability and food safety measures, they may be hesitant to invest their already limited resources into creating food safety regulations or guidance, despite the demonstrated need.

Of the twelve states whose legislation or regulations we verified, the majority focus on a specific category of foods: six states have only the provisions for the donation of game meat, and one has regulations only for donations of traditional foods. Texas is the only state with comprehensive regulatory language regarding food safety for food donations. Yet over 65 percent of survey respondents who did not have any legislation or regulations in this area responded “yes” or “maybe” when asked if legislation or regulations on this topic would add value in their states.

## GUIDANCE AND EDUCATION

In general, more states have developed guidance documents than legislation or regulations to address food safety for food donations. As discussed above, guidance can be less costly and more politically feasible to develop than legislation or regulations. However, the guidance cited by survey respondents varies widely in scope. In some cases, respondents pointed to a guidance document that they used but that neither they nor another agency in their state developed. In others, respondents pointed to a local-level document.

Alaska has developed guidance, which includes a poster, a toolkit, and a webpage that aims to educate potential donors on what types of food they can and cannot donate.<sup>45</sup> There is also a guidance document for food recovery in child nutrition programs, including schools, after school programs, and summer feeding programs.<sup>46</sup> Yet, similar to Alaska’s regulations around food safety for food donations, the first three resources focus narrowly on the donation of traditional foods to food service programs such as residential child care or senior facilities, and are not intended to address donation of other types of foods to other organizations.<sup>47</sup> The guidance for child nutrition programs is similarly limiting in focus. These resources are very helpful and good first steps, but this effort could be strengthened by creating similar regulations and guidance for donation of all types of foods.

Vermont provides a good example of a detailed and comprehensive guidance document that is publicly available. Published by the Agency of Natural Resources and the Department of Health, the guidance outlines specific food

safety information (including time and temperature controls, labeling, date labels, donation tracking, etc.) relevant to businesses and institutions donating food.<sup>48</sup>

The Washington State Department of Agriculture created guidance for the donation of a number of protein sources, including poultry, wild game, and freshly caught fish.<sup>49</sup> These thorough guidance documents include detailed information on how to prepare, label, and transport products for donation, as well as information on liability protection, relevant laws, and whether or not private citizens may donate.

## **MODEL LANGUAGE TO HELP STATES DEVELOP REGULATIONS AND GUIDANCE**

The vast majority of survey respondents stated that model language would be helpful in facilitating their agency's efforts to ensure food safety for food donations. Some respondents were wary of adding food safety for donation language into the FDA Food Code, and cited concerns that additional requirements could be too onerous, or that they would be unable to account for regional differences and peculiarities. These concerns are understandable but can be addressed by the fact that the FDA Food Code is flexible and allows states to adopt, reject, or modify its provisions before adopting them into state law.

Those state officials who did not believe model language would be helpful in the FDA Food Code said they would prefer to see an annex or guidance document on this topic instead, indicating that they may not be aware of the Comprehensive Resource for Food Recovery Programs. The fact that such a document already exists but many officials are unaware of it suggests that its format may not be effective at reaching audiences such as state and local health inspectors and officials. Including model language in the FDA Food Code will increase the likelihood that such language will be absorbed into state legislation and regulations. The widespread adoption of the FDA Food Code will also increase the likelihood that such safety standards for food donations will be relatively consistent among states.

## **SHARED AUTHORITY**

As described earlier in this report, food safety regulatory authority is structured differently in different states. The majority of states give food safety authority to one state agency, while some states designate multiple departments to regulate food safety in food establishments. Many states also delegate food safety authority to local health departments. As a result, food establishments sometimes must comply with food safety regulations that are enacted by two different state agencies, or by both state and local agencies. Furthermore, survey responses indicated a lack of communication between departments on the subject of food safety for donations. Within states that share regulatory authority with local health departments, a great deal of survey respondents were unsure whether municipalities within their state had guidance or regulations specific to this issue. Since food donors must comply with both the local and state regulations in these states, this lack of communication and cohesion poses a challenge, particularly in the already-murky arena of food donation safety procedures.

In states in which authority is distributed between two different agencies, the survey answers between the two agencies often conflicted. In some cases, respondents were unaware of relevant guidance documents produced by a different state agency, or one of the agencies was not aware of relevant legislation in their state. Conflicting answers may occur because the agencies operate under different sections of the state legislation or have unique regulations, because the two agencies have adopted different version of the FDA Food Code, or because of a lack of inter-agency communication. Whatever the reason, for food establishments seeking to gain general information about food safety rules regarding food donations, or for those entities that may be regulated by both agencies, the inconsistent responses from two agencies can cause further confusion about when and how food can be safely donated. In both cases of shared authority, increased communication between agencies could support better answers to food establishments, enforce best practices for safe donations, and help with the dissemination of relevant regulations and guidance documents.

## V. CONCLUSION

The survey results confirmed that legislation, regulations, and guidance regarding food safety for food donations vary widely from state to state, and that many states have no regulations or guidance on this topic. We verified that twelve states have language regarding food safety for food donations in existing laws or regulations, and fourteen states have publicly-released guidance regarding food safety for food donations.

The results of the survey also indicate that many states recognize a need for regulations or guidance regarding food safety for food donation, but are hindered by barriers such as low staffing, uncertainty about the best practices, and a lack of time and resources. Because of these constraints, providing clear and concise model food safety for donations language is likely to be the best way to address these issues while also creating a more consistent body of regulation. Nearly all of the survey respondents (78 percent) expressed interest in model language for such regulations or guidance, and 46 percent of respondents expressed an interest in model language in the FDA Food Code, with another 38 percent saying that it should “maybe” be included in the FDA Food Code.





# APPENDIX A. SURVEY QUESTIONS

## **Part I – Regulation & Policy**

1. Does your state's retail food code contain any language **specifically** addressing food donation by retail stores and food service establishments?
2. Outside the food code, has your state established food safety requirements that are **specific** to food donation by retail stores and/or food service establishments? If yes, are these requirements established by:
  - a. Statute
  - b. Regulation
  - c. Other
3. If specific food safety for donation regulations or legislation exists:
  - a. Are there any regulations that focus on **expanding** or facilitating donations, for example by clarifying the food safety standards or addressing how such donations are allowed to be made?
  - b. Are there any requirements created to **limit** donations of food in order to prevent foodborne illness? For example, regulations that do not allow certain foods or that specify certain food safety requirements for food to be legally donated?
  - c. If food safety for donation regulations or policy do NOT exist, do you think such requirements would add value to your agency's efforts to improve food safety?

## **Part II – Guidance & Education**

1. Has your state developed, or does it have plans to develop, guidance specific to the issue of food safety for food donations that targets either businesses who would like to donate food, or food recovery/food rescue operations and feeding sites that distribute donated food?
2. If guidance DOES exist or if there are plans to develop guidance, did you contemplate issuing regulation as opposed to guidance, and was there a reason you didn't address food donations in regulations?
3. If there is NO guidance or no plans to develop guidance, is there a reason why not? Do you perceive any barriers to creating guidance?
4. Are Health Inspectors/Sanitarians who inspect food establishments trained in any way on food donation practices or given any materials on donation to share with businesses?
5. To your knowledge, do any municipalities in the state have guidance or regulations specific to food safety for food donation? What municipality?
6. Can you please share with me the citation or link for any state guidance you have created, or any municipal regulations or guidance that you know of?

## **Part III – Developing Regulations & Guidance**

1. Do you think model language would be/would have been helpful in creating food safety guidance for food donation?
2. Would you like to see model requirements specific to food safety for food donation practices included in the FDA Food Code?
3. Is there anything in particular that would be helpful to you if you were to develop regulations or guidance specific to safe food donation in the future?

## **Part IV – Closing thoughts**

1. Do you have any other comments or thoughts, or anything else we should know about what your state is doing in this area or your opinion on this matter?

## APPENDIX B. STATE REGULATIONS AND GUIDANCE

The chart below tracks existing state regulations and guidance related to food safety for food donations. Column 1 of the chart details responses to the question “Does your state’s retail food code contain any language specifically addressing food donation by retail stores and food service establishments?” and the question “Outside the food code, has your state established food safety requirements that are specific to food donation by retail stores and/or food service establishments?” Column 2 details the responses to the question “Has your state developed, or does it have plans to develop, guidance specific to the issue of food safety for food donations that targets either businesses who would like to donate food, or food recovery/food rescue operations and feeding sites that distribute donated food?” The chart also indicates, in footnotes, responses by survey participants to questions regarding whether health inspectors in the state are trained on food safety for food donations, and whether they reported knowledge of any local-level regulations or guidance related to food safety for food donations. For the purposes of this study, local-level regulations or guidance were not counted in the totals for states with verified regulations or guidance. For states that divide food safety regulatory authority over retail establishments between two agencies, the table includes two rows. The agencies that were not responsive to the survey are highlighted in grey.

After completing the survey, we examined all laws, regulations, or guidance provided by survey participants in response to these questions, to determine which were relevant for the purposes of this study. Columns 3 and 4 show the laws and guidance documents, respectively, that were verified by our research team. Many of the laws referenced by survey participants were not relevant to food safety for donations. Most notably, several participants indicated that they had relevant laws or regulations, but then pointed to liability protections for donated foods, which provide immunity from liability for food donors. Because these liability protections exist in all 50 states and are not relevant to the safety procedures that should be followed for donation, these were not included in Column 3. The list of verified laws or guidance also does not include legislation or regulations regarding permitting for hunger relief or food recovery organizations, as the focus of our research is on policies and guidance for food retail or food service establishments.

Further, only publicly-available guidance documents that are officially produced by the state in question were included in Column 4. We considered any food safety for food donation guidance from any state agency to be relevant and included it in Column 4, even if it was not produced by the agency interviewed. However, we did not include, for example, guidance documents produced by an outside entity, or those that were not made publicly available through an agency website or link. Although we did not conduct any research into laws or guidance when a respondent indicated that none existed within their state, we did include laws or guidance, respectively, in Columns 3 and 4, if other sources brought them to our attention. And when one respondent from a state did not mention regulations or guidance, but the other state agency in that state referred us to something relevant, in order to express the fact that verified state-level regulations or guidance exists in the state, we direct readers to those verified documents using “see above” or “see below.”

## State Regulations and Guidance Responses and Verification

State	Regulations & Guidance Documents: Responses from Survey Participants		Regulations & Guidance Documents: Verified as relevant by FLPC	
	[1] Laws	[2] Guidance	[3] Laws	[4] Guidance
<b>Alabama</b>	Ala. Code § 20-1-6 – Liability protection for food donors and organizations receiving and distributing donations <sup>50</sup>	None	None	None
<b>Alaska</b>	Alaska Stat. § 17.20.346 – liability protection for food donors and organizations receiving and distributing donations <sup>51</sup>  Alaska Admin. Code tit.18 § 31.205 – Provision regulating traditional foods donated to institutions or nonprofits <sup>52</sup>	Healthy Traditional Alaskan Foods in Food Service Programs Poster, Toolkit, and web page <sup>53</sup>  Child nutrition program donation guidance <sup>54</sup>	Alaska Admin. Code tit.18 § 31.205 – Provision regulating traditional foods donated to institutions or nonprofits <sup>55</sup>	Healthy Traditional Alaskan Foods in Food Service Programs Toolkit <sup>56</sup>  Child nutrition program donation guidance <sup>57</sup>
<b>Arizona</b>	Ariz. Rev. Stat. Ann. § 36-916 – Liability protection for food donors and organizations receiving and distributing donations <sup>58</sup>	None	None	None
<b>Arkansas</b>	None	Ad hoc guidance	None	No publicly available guidance
<b>California</b>	None	None <sup>59</sup>	None	Guidance Toolkit for safe food donation through the California Conference of Directors of Environmental Health <sup>60</sup>  Guidance Toolkit <sup>61</sup> and training program for Environmental Health departments <sup>62</sup>

State	Regulations & Guidance Documents: Responses from Survey Participants		Regulations & Guidance Documents: Verified as relevant by FLPC	
	[1] Laws	[2] Guidance	[3] Laws	[4] Guidance
<b>Connecticut (Health)</b>	Conn. Gen. Stat. Ann. § 52-557I – Liability protection for food donors and organizations receiving and distributing donations <sup>63</sup>  Conn. Gen. Stat. Ann. § 26-78a – Specification on how to label and donate wild game <sup>64</sup>	None	Conn. Gen. Stat. Ann. § 26-78a – Specification on how to label and donate wild game <sup>65</sup>	None
<b>Connecticut (Consumer Protection)</b>	None	None	See above	None
<b>Delaware</b>	None	Ad hoc guidance	None	No publicly available guidance
<b>Florida (Agriculture)</b>	None	None	None	None
<b>Florida (Business &amp; Professional Regulation)</b>				
<b>Georgia (Agriculture)</b>	None	Recall guidance for the retail industry <sup>66</sup>	None	None
<b>Georgia (Health)</b>	Ga. Code Ann., § 51-1-31 – Liability protection for food donors and organizations receiving and distributing donations <sup>67</sup>	None	None	None
<b>Hawaii (Agriculture)</b>	Haw. Rev. Stat. Ann. § 145D-2 – Liability protection for food donors and organizations receiving and distributing donations <sup>68</sup>	Planning to develop guidance	None	None
<b>Hawaii (Health)</b>	Haw. Code R. § 11-50-7 – No permit fees for benevolent/charitable organizations <sup>69</sup>	None	None	None

State	Regulations & Guidance Documents: Responses from Survey Participants		Regulations & Guidance Documents: Verified as relevant by FLPC	
	[1] Laws	[2] Guidance	[3] Laws	[4] Guidance
<b>Idaho</b>	None	Planning to develop share table guidance	None	None
<b>Illinois</b>	<p>745 Ill. Comp. Stat. 50/1–50/4 – Liability protection for food donors and organizations receiving and distributing donations<sup>70</sup></p> <p>77 Ill. Admin. Code 750.110 (a)(2) – Handling requirements for donated game meat<sup>71</sup></p> <p>77 Ill. Admin Code 750.110 (c) – Exempts donated foods from ingredients listing requirement for prepared, ready-to-eat donated food<sup>72</sup></p>	None	<p>77 Ill. Admin. Code 750.110 (a)(2) – Handling requirements for donated game meat<sup>73</sup></p> <p>77 Ill. Admin Code 750.110 (c) – Exempts donated foods from ingredients listing requirement for prepared, ready-to-eat donated food<sup>74</sup></p>	None
<b>Indiana</b>	None	<p>Share table guidance<sup>75</sup></p> <p>Guidance explaining that food banks generally need not be subject to food establishment inspections<sup>76</sup></p>	None	Share table guidance <sup>77</sup>
<b>Iowa</b>	None	None	None	None
<b>Kansas</b>	None	None	None	None
<b>Kentucky</b>	Ky. Rev. Stat. Ann. § 217.217 – Allows donation of game meat to not-for-profit organizations <sup>78</sup>	None	Ky. Rev. Stat. Ann. § 217.217 – Allows donation of game meat to not-for-profit organizations <sup>79</sup>	None
<b>Louisiana</b>	None	None	None	None
<b>Maine (Agriculture)</b>				
<b>Maine (Health)</b>	None	Share table guidance <sup>80</sup>	None	Share table guidance <sup>81</sup>
<b>Maryland</b>	None	None	None	None

State	Regulations & Guidance Documents: Responses from Survey Participants		Regulations & Guidance Documents: Verified as relevant by FLPC	
	[1] Laws	[2] Guidance	[3] Laws	[4] Guidance
<b>Massachusetts</b>	None; mentioned that regulations were under consideration	Planning to develop guidance	None	Food Donation Guidance from the Massachusetts Department of Environmental Protection and RecyclingWorks MA <sup>82</sup>
<b>Michigan</b>	None	Planning to develop guidance	None	None
<b>Minnesota (Agriculture)</b>	None	<p>Fact sheet on sale and donation of locally raised eggs<sup>83</sup></p> <p>Fact sheet on sale and donation of locally grown produce<sup>84</sup></p> <p>Fact sheet on donating venison<sup>85</sup></p> <p>Other<sup>86</sup></p>	None	<p>Fact sheet on sale and donation of locally raised eggs<sup>87</sup></p> <p>Fact sheet on sale and donation of locally grown produce<sup>88</sup></p> <p>Fact sheet on donating venison<sup>89</sup></p> <p>Guidance on safe food sourcing and handling at onsite feeding locations, food pantries, and food banks<sup>90</sup></p>
<b>Mississippi (Health)</b>	None	None	None	None
<b>Missouri</b>	None	None	None	None
<b>Montana</b>	Mont. Code Ann. § 87-1-293 – Allows donation of wild game for free distribution by the Montana Food Bank Network <sup>91</sup>	None	Mont. Code Ann. § 87-1-293 – Allows donation of wild game for free distribution by the Montana Food Bank Network <sup>92</sup>	None
<b>Nebraska</b>	None	None	None	None
<b>Nevada</b>	Nev. Admin. Code § 446.128– Regulates donated game meat <sup>93</sup>	Planning to develop guidance	Nev. Admin. Code § 446.128– Regulates donated game meat <sup>94</sup>	None
<b>New Hampshire</b>	None	None	None	None
<b>New Jersey</b>	None	None	None	None

State	Regulations & Guidance Documents: Responses from Survey Participants		Regulations & Guidance Documents: Verified as relevant by FLPC	
	[1] Laws	[2] Guidance	[3] Laws	[4] Guidance
<b>New Mexico</b>	N.M. Code R. § 7.6.2.9 – Regulates the donation of wild game meat to nonprofits <sup>95</sup>	None	N.M. Code R. § 7.6.2.9 – Regulates the donation of wild game meat to nonprofits <sup>96</sup>	None
<b>New York (Agriculture)</b>	NY Agric. & Mkts. §§ 71-y,z – Liability protection for food donors and organizations receiving and distributing donations <sup>97</sup>  Senate Bill S5664B – Recently passed legislation directs Department of Agriculture and Markets and Department of Education to develop guidance for food donation from all education institutions <sup>98</sup>	None	None <sup>99</sup>	See below
<b>New York (Health)</b>	None	Share table guidance <sup>100</sup>	None	Share table guidance <sup>101</sup>
<b>North Carolina (Agriculture)</b>	None	None	None	See below
<b>North Carolina (Health)</b>	None	Position statement_on food donation, with references to share tables <sup>102</sup>	None	Position statement_on food donation, with references to share tables <sup>103</sup>
<b>North Dakota</b>	None	None	None	None
<b>Ohio (Agriculture)</b>	None	Share table guidance <sup>104</sup>	None	Share table guidance <sup>105</sup>
<b>Ohio (Health)</b>	None	Share table guidance <sup>106</sup>	None	Share table guidance <sup>107</sup>

State	Regulations & Guidance Documents: Responses from Survey Participants		Regulations & Guidance Documents: Verified as relevant by FLPC	
	[1] Laws	[2] Guidance	[3] Laws	[4] Guidance
<b>Oklahoma</b>	Okla. Stat. Ann. tit. 76, § 5.6 – Liability protection for donors, organizations receiving and distributing donations <sup>108</sup>  Okla. Stat. Ann. tit. 70 §, 5-147.1 – Food Donations from Schools to Nonprofit Organizations <sup>109</sup>	Page on Health Department website refers to safe food donation <sup>110</sup>	Okla. Stat. Ann. tit. 70 §, 5-147.1 – Food Donations from Schools to Nonprofit Organizations <sup>111</sup>  Okla. Stat. Ann. tit. 310, § 257-5-8(b) – Requirements for the donation of wild game <sup>112</sup>	None
<b>Oregon (Agriculture)</b>	Or. Admin. R. 333-150-0000 § 3-201.11 (L) – Details food safety measures for benevolent organizations serving home-prepared foods to needy individuals <sup>113</sup>	Benevolent Meal Site information guide. <sup>114</sup>	Or. Admin. R. 333-150-0000 § 3-201.11 (L) – Details food safety measures for benevolent organizations serving home-prepared foods to needy individuals <sup>115</sup>	Benevolent Meal Site information guide <sup>116</sup>
<b>Oregon (Health)</b>	None	Ad hoc guidance	See above	See above
<b>Pennsylvania</b>	10 Pa. Stat. and Const. Stat. Ann. § 351-58 – liability protection for the donation of wild game <sup>117</sup>	Refer potential donors to FDA Surplus, Salvaged, and Donated Foods: guidance <sup>118</sup> and USDA guidance on school food <sup>119</sup>	None	None
<b>Rhode Island</b>	None	Internal “Rhode to End Hunger” guidance document outlines receiving and storage guidelines for donated food <sup>120</sup>	None	No publicly available guidance
<b>South Carolina</b>	None	Planning to develop guidance <sup>121</sup>	None	None
<b>South Dakota</b>	None	None	None	None
<b>Tennessee (Agriculture)</b>				
<b>Tennessee (Health)</b>	None	None <sup>122</sup>	None	None



State	Regulations & Guidance Documents: Responses from Survey Participants		Regulations & Guidance Documents: Verified as relevant by FLPC	
	[1] Laws	[2] Guidance	[3] Laws	[4] Guidance
<b>Texas</b>	25 Tex. Admin. Code § 228.83 –Comprehensive food safety regulations for donated food <sup>123</sup>	None	25 Tex. Admin. Code § 228.83 – Comprehensive food safety regulations for donated food <sup>124</sup>	None
<b>Utah (Agriculture)</b>	Utah Admin. Code r. § 4-34-106 – Liability protection for food donors and organizations receiving and distributing donations <sup>125</sup>	None	None	None
<b>Utah (Health)</b>	None	None <sup>126</sup>	None	None
<b>Vermont</b>	None	Guidance for Food Donation for Businesses and Institutions <sup>127</sup>  Share table guidance <sup>128</sup>	None	Guidance for Food Donation for Businesses and Institutions <sup>129</sup>  Share table guidance <sup>130</sup>
<b>Virginia (Agriculture)</b>	None	None	None	None
<b>Virginia (Health)</b>	None	None	None	None
<b>Washington (Agriculture)</b>	None	Egg Donation <sup>131</sup>  Exotic Meat Donation (Ex: antelope, deer, elk) <sup>132</sup>  Fresh Fish Donation <sup>133</sup>  Livestock Donation <sup>134</sup>  Poultry Donation <sup>135</sup>  Wild Game Donation <sup>136</sup>  Other <sup>137</sup>	See below.	Egg Donation <sup>138</sup>  Exotic Meat Donation (Ex: antelope, deer, elk) <sup>139</sup>  Fresh Fish Donation <sup>140</sup>  Livestock Donation <sup>141</sup>  Poultry Donation <sup>142</sup>  Wild Game Donation <sup>143</sup>

State	Regulations & Guidance Documents: Responses from Survey Participants		Regulations & Guidance Documents: Verified as relevant by FLPC	
	[1] Laws	[2] Guidance	[3] Laws	[4] Guidance
<b>Washington (Health)</b>	<p>Wash. Rev. Code Ann. § 69.80.031 – liability protection for food donors<sup>144</sup></p> <p>Wash. Admin. Code § 246-215-09415 – List of foods that may be donated to a Donated Food Distribution Organization; donation safety guidelines for game meat<sup>145</sup></p>	<p>Product-Specific Donation Guidance<sup>146</sup></p> <p>Washington State Department of Health: Charity Food Donation Guidance<sup>147</sup></p> <p>Washington State Department of Health: School Food Donation Guidelines<sup>148</sup></p> <p>EPA: Washington School Food Share Program Toolkit<sup>149</sup></p> <p>Washington State Department of Ecology: Focus on Food Donation Guidance<sup>150</sup></p> <p>Other<sup>151</sup></p>	<p>Wash. Admin. Code § 246-215-09415 – List of foods that may be donated to a Donated Food Distribution Organization; donation safety guidelines for game meat<sup>152</sup></p>	<p>Washington State Department of Health: Charity Food Donation Guidance<sup>153</sup></p> <p>Washington State Department of Health: School Food Donation Guidelines<sup>154</sup></p> <p>EPA: Washington School Food Share Program Toolkit<sup>155</sup></p> <p>Washington State Department of Ecology: Focus on Food Donation Guidance<sup>156</sup></p>
<b>Washington DC</b>	None	Planning to develop guidance	None	None
<b>West Virginia (Agriculture)</b>				
<b>West Virginia (Health)</b>	None	None	None	None
<b>Wisconsin (Agriculture)</b>	None	Share table guidance <sup>157</sup>	None	Share table guidance <sup>158</sup>
<b>Wisconsin (Health)</b>				
<b>Wyoming</b>	Wyo. Stat. Ann. § 35-7-1302 – Allows the donation of game to a nonprofit organization to feed individuals in need <sup>159</sup>	Food Donation Policy outlines food safety regulations for various types of donated foods <sup>160</sup>	Wyo. Stat. Ann. § 35-7-1302 – Allows the donation of game to a nonprofit organization to feed individuals in need <sup>161</sup>	Food Donation Policy outlines food safety regulations for various types of donated foods <sup>162</sup>

The table below is a summary of the table on the previous page:

	<b>Laws</b>	<b>Guidance</b>
<b>Survey Response: laws or guidance exist</b>	20 respondents, representing 19 states	21 respondents, representing 18 states
<b>FLPC verified: Yes</b>	12 states	14 states
<b>Survey Response: planning to develop</b>	One state (Massachusetts)	7 respondents, representing 7 states planning to develop guidance

# APPENDIX C. DEVELOPING REGULATIONS AND GUIDANCE

The questions in this section of the survey aimed to identify ways to reduce barriers to the development of food safety regulations or guidance for food donations, notably by gauging state interest in receiving model language regarding food safety for food donations.

For states that divide food safety regulatory authority over retail establishments between two agencies, the table includes two rows. The agencies that were not responsive to the survey are highlighted in grey.

State	Do you think model language would be helpful in creating food safety for food donation guidance?	Would you like to see model requirements specific to food safety for food donation in the FDA Food Code?	Is there anything that would be helpful in developing such regulations or guidance?
Alabama	Maybe	Maybe	N/A
Alaska	Yes	Yes	Focused recommendations
Arizona	Yes	Yes	N/A
Arkansas	Yes	Maybe	Best practices, field studies with plain language
California	Maybe	Maybe	N/A
Colorado	Yes	Yes	Investigation into other states' work on this issue
Connecticut (Health)	Maybe	Maybe	N/A
Connecticut (Consumer Protection)	No	Maybe	N/A
Delaware	Yes	Yes	Guidance
Florida (Agriculture)	Yes	Maybe	Taking stakeholder input into account
Florida (Business and Professional Regulation)			
Georgia (Agriculture)	Yes	No	N/A
Georgia (Health)	Yes	No	N/A
Hawaii (Agriculture)	Yes	Maybe	Guidance with plain language
Hawaii (Health)	Yes	Yes	N/A

<b>State</b>	<b>Do you think model language would be helpful in creating food safety for food donation guidance?</b>	<b>Would you like to see model requirements specific to food safety for food donation in the FDA Food Code?</b>	<b>Is there anything that would be helpful in developing such regulations or guidance?</b>
<b>Idaho</b>	Yes	Maybe	Education for those involved in food donation
<b>Illinois</b>	Yes	Yes	N/A
<b>Indiana</b>	Yes	No	Conversation at national level, at Conference for Food Protection
<b>Iowa</b>	Maybe	Maybe	More resources
<b>Kansas</b>	Yes	No	Guidance in FDA Food Code appendix with more resources, scientific studies
<b>Kentucky</b>	No	Yes	Presentation at Conference for Food Protection, research
<b>Louisiana</b>	Yes	Maybe	N/A
<b>Maine (Health)</b>	Yes	Yes	N/A
<b>Maine (Agriculture)</b>			
<b>Maryland</b>	Maybe	Maybe	N/A
<b>Massachusetts</b>	Yes	Maybe	Conference for Food Protection guidance integrated with FDA Food Code
<b>Michigan</b>	Yes	Yes	Information/regulations on how time/temperature control for safety foods can be donated
<b>Minnesota (Agriculture)</b>	Yes	Maybe	N/A
<b>Minnesota (Health)</b>	Yes	Maybe	N/A
<b>Mississippi (Agriculture)</b>	Maybe	No	Investigation into other states' work on this issue
<b>Mississippi (Health)</b>	Yes	No	N/A
<b>Missouri</b>	Yes	Yes	Investigation into other states' work on this issue
<b>Montana</b>	Yes	Yes	Guidance with specific, illuminating examples
<b>Nebraska</b>	Yes	Yes	N/A
<b>Nevada</b>	Yes	Yes	Model language

<b>State</b>	<b>Do you think model language would be helpful in creating food safety for food donation guidance?</b>	<b>Would you like to see model requirements specific to food safety for food donation in the FDA Food Code?</b>	<b>Is there anything that would be helpful in developing such regulations or guidance?</b>
<b>New Jersey</b>	Yes	Yes	Model language
<b>New Mexico</b>	Yes	Yes	N/A
<b>New Hampshire</b>	Yes	Yes	Model language in FDA Food Code
<b>New York (Agriculture)</b>	Yes	No	Guidance
<b>New York (Health)</b>	Yes	No	Buy-in from donating organizations to ensure compliance; voluntary laws for donating and receiving entities
<b>North Carolina (Agriculture)</b>	Yes	Maybe	N/A
<b>North Carolina (Health)</b>	Yes	Yes	Guidance with clear and straightforward language
<b>North Dakota</b>	Yes	Yes	Guidance
<b>Ohio (Health)</b>	Yes	Maybe	Model language from FDA
<b>Ohio (Agriculture)</b>	Yes	No	Comprehensive Resource is sufficient
<b>Oklahoma</b>	Maybe	Yes	N/A
<b>Oregon (Agriculture)</b>	Maybe	Maybe	N/A
<b>Oregon (Health)</b>	Maybe	Maybe	Model language
<b>Pennsylvania</b>	Maybe	Maybe	National uniformity
<b>Rhode Island</b>	Yes	Yes	N/A
<b>South Carolina (Health)</b>	Yes	Yes	FDA or USDA guidance in plain language
<b>South Dakota</b>	Yes	Yes	Investigation into other states' work on this issue
<b>Tennessee (Health)</b>	Yes	Yes	Continue updating any food recovery guidelines with current scientific information
<b>Tennessee (Agriculture)</b>			
<b>Texas</b>	Maybe	No	N/A

State	Do you think model language would be helpful in creating food safety for food donation guidance?	Would you like to see model requirements specific to food safety for food donation in the FDA Food Code?	Is there anything that would be helpful in developing such regulations or guidance?
Utah (Agriculture)	Maybe	Maybe	N/A
Utah (Health)	Yes	Yes	Guidance
Vermont	Yes	Yes	Guidance vetted by Conference for Food Protection, FDA, USDA, or EPA
Virginia (Agriculture)	Yes	Maybe	Model language in FDA Food Code
Virginia (Health)	Yes	Maybe	N/A
Washington (Agriculture)	Yes	Maybe	Important to convene all stakeholders involved to offer opinions and expertise
Washington (Health)	Yes	Yes	Investigation into other states' work on this issue
Washington, DC	Yes	Yes	N/A
West Virginia (Health)	Yes	Maybe	Investigation into other states' work on this issue
West Virginia (Agriculture)			
Wisconsin	Yes	Yes	N/A
Wyoming	Yes	Yes	N/A

The table below is a summary of the table above:

	Do you think model language would be helpful in creating guidance?	Should these requirements be included in the FDA Food Code?
Yes	49	29
No	2	10
Maybe	12	24
Total Responses	63	63

## ENDNOTES

- <sup>1</sup> REFED, A ROADMAP TO REDUCE U.S. FOOD WASTE BY 20 PERCENT 12 (2016), [http://www.refed.com/downloads/ReFED\\_Report\\_2016.pdf](http://www.refed.com/downloads/ReFED_Report_2016.pdf).
- <sup>2</sup> DANA GUNDERS & JONATHAN BLOOM, NATURAL RES. DEF. COUNCIL, WASTED: HOW AMERICA IS LOSING UP TO 40 PERCENT OF ITS FOOD FROM FARM TO FORK TO LANDFILL 10 (2d ed. 2017), <https://www.nrdc.org/sites/default/files/wasted-2017-report.pdf>.
- <sup>3</sup> ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., ECON. RESEARCH SERV., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2015 6–7, 10 (2016), <https://www.ers.usda.gov/webdocs/publications/79761/err-215.pdf?v=42636>.
- <sup>4</sup> This calculation assumes 2,500 kcal/capita/day and an annual total of 150 trillion calories in losses. See GUNDERS & BLOOM, *supra* note 2, at 4; K.D. Hall et al., National Institute of Diabetes and Digestive and Kidney Diseases, *The Progressive Increase of Food Waste in America and Its Environmental Impact*, 4 PLOS ONE 11 (2009); COLEMAN-JENSEN ET AL., *supra* note 3.
- <sup>5</sup> See, e.g., REFED, *supra* note 1, at 45; GUNDERS & BLOOM, *supra* note 2, at 6, 39.
- <sup>6</sup> Food Safety for Food Donation Working Group, *Mission Statement* (Feb. 15, 2017) (on file with the authors).
- <sup>7</sup> *Id.*
- <sup>8</sup> JONATHAN BLOOM, AMERICAN WASTELAND: HOW AMERICA THROWS AWAY NEARLY HALF OF ITS FOOD (AND WHAT WE CAN DO ABOUT IT) 179 (2011).
- <sup>9</sup> HARVARD FOOD LAW & POL'Y CLINIC & NATURAL RES. DEF. COUNCIL, DON'T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 23-26 (2017) [hereinafter HARVARD FOOD LAW & POL'Y CLINIC & NATURAL RES. DEF. COUNCIL, DON'T WASTE, DONATE], <https://www.nrdc.org/sites/default/files/dont-waste-donate-report.pdf>.
- <sup>10</sup> HARVARD FOOD LAW & POL'Y CLINIC & NATURAL RES. DEF. COUNCIL, THE DATING GAME: HOW CONFUSING FOOD DATE LABELS LEAD TO FOOD WASTE IN AMERICA 19 (2013) [hereinafter HARVARD FOOD LAW & POL'Y CLINIC & NATURAL RES. DEF. COUNCIL, THE DATING GAME], <https://www.chlpi.org/wp-content/uploads/2013/12/dating-game-report.pdf>.
- <sup>11</sup> HARVARD FOOD LAW & POL'Y CLINIC & NAT'L RES. DEF. COUNCIL, DON'T WASTE, DONATE, *supra* note 9, at 23.
- <sup>12</sup> FOOD WASTE REDUCTION ALLIANCE, ANALYSIS OF U.S. FOOD WASTE AMONG FOOD MANUFACTURERS, RETAILERS, AND RESTAURANTS 17, 24, 32 (2016), [http://www.foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report\\_Final.pdf](http://www.foodwastealliance.org/wp-content/uploads/2013/05/FWRA-Food-Waste-Survey-2016-Report_Final.pdf).
- <sup>13</sup> See Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C.A. § 1791(c) (West 2017); HARVARD FOOD LAW AND POL'Y CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 8–12 (2016), [http://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit\\_Oct-2016\\_smaller.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf).
- <sup>14</sup> HARVARD FOOD LAW AND POL'Y CLINIC, *supra* note 13, at 6.
- <sup>15</sup> See 42 U.S.C. §§ 1791(b)(2), (e) (West 2017); HARVARD FOOD LAW AND POL'Y CLINIC, *supra* note 13, at 8–9.
- <sup>16</sup> See, e.g., 21 U.S.C. § 331 (West 2017).
- <sup>17</sup> HARVARD FOOD LAW AND POL'Y CLINIC, *supra* note 13, at 34.
- <sup>18</sup> FOOD & DRUG ADMIN., FOOD CODE (2017), <https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/UCM595140.pdf>.
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.*
- <sup>21</sup> 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 2 (2016), <https://www.fda.gov/downloads/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/UCM577858.pdf>.
- <sup>22</sup> FOOD RECOVERY COMMITTEE, CONFERENCE FOR FOOD PROTECTION, COMPREHENSIVE RESOURCE FOR FOOD RECOVERY PROGRAMS 2 (2016), <http://www.foodprotect.org/media/guide/comprehensive-resource-for-food-recovery-2016-version.pdf>.
- <sup>23</sup> *Id.*
- <sup>24</sup> HARVARD FOOD LAW & POL'Y CLINIC & NAT'L RES. DEF. COUNCIL, DON'T WASTE, DONATE, *supra* note 9, at 26.
- <sup>25</sup> The 2017 FDA Food Code does, however, identify an earlier iteration of the Comprehensive Resource as a supporting document in an annex. See FOOD & DRUG ADMIN., *supra* note 18, at annex 2, pt. 3(M).
- <sup>26</sup> DIRECTORY OF STATE AND LOCAL AUTHORITIES, ASSOC. OF FOOD AND DRUG OFFICIALS, <http://dslo.afdo.org/> (last visited Jan. 11, 2018).
- <sup>27</sup> See Appendix A for a copy of the full survey.
- <sup>28</sup> Any state where at least one of the agency representatives answered “yes” to this question was counted as a “yes” in this total. Note that in Connecticut, Georgia, New York, Oregon, Utah, and Washington, one agency responded “yes” and the other responded “no”.
- <sup>29</sup> See, e.g., ARIZ. REV. STAT. ANN. § 36-916 (2017); CONN. GEN. STAT. ANN. § 52-557I (West 2017); GA. CODE ANN., § 51-1-31 (West 2017); HAW. REV. STAT. ANN. § 145D-2 (LexisNexis 2017).
- <sup>30</sup> ALASKA ADMIN. CODE tit.18 § 31.205 (2017).
- <sup>31</sup> CONN. GEN. STAT. ANN. § 26-78a (West 2017); KY. REV. STAT. ANN. § 217.217 (West 2017); MONT. CODE ANN. 87-1-293 (West 2017); NEV. ANN. CODE ANN. 446.128 (West 2017).
- <sup>32</sup> OKLA. STAT. ANN. tit. 70 §, 5-147.1 (West 2017).
- <sup>33</sup> 25 TEX. ADMIN. CODE § 228.83 (2017).
- <sup>34</sup> The sum of the “Yes”, “Planning to Develop,” and “No” columns for the Reported and Verified categories, respectively, is 51, representing the 50 states and D.C.
- <sup>35</sup> Some survey participants did not respond to this question.
- <sup>36</sup> The following seven states reported that they were discussing or had plans to develop guidance: Hawaii, Idaho, Massachusetts, Michigan, Nevada, South Carolina, and D.C.
- <sup>37</sup> For example, the survey respondent from Delaware reported that their agency has developed informal guidelines released via e-mails to respond to relevant inquiries.
- <sup>38</sup> See, e.g., GA. DEP'T OF AGRIC., RECALL GUIDANCE FOR THE RETAIL INDUSTRY, [http://agr.georgia.gov/Data/Sites/1/media/ag\\_consumerprotection/](http://agr.georgia.gov/Data/Sites/1/media/ag_consumerprotection/)



food\_safety/files/GFIA-Recall-Guidance-for-the-Retail-Industry-05-2015.pdf (last visited Jan. 11, 2018).

<sup>39</sup> The following six states have only developed publicly available share table guidance: Indiana, Maine, New York, North Carolina, Ohio, Vermont, Washington, and Wisconsin. See IND. STATE DEP'T OF HEALTH, GUIDANCE ON SCHOOLS AND OTHER FACILITIES IMPLEMENTING "SHARING TABLES" AND "FOOD RECOVERY" PROGRAMS RECOMMENDED BY USDA (2015), [https://www.in.gov/isdh/files/School\\_Sharing\\_Tables\\_and\\_Food\\_Recovery\\_12-23-2015\\_\(2\).pdf](https://www.in.gov/isdh/files/School_Sharing_Tables_and_Food_Recovery_12-23-2015_(2).pdf); ME. CTR. FOR DISEASE CONTROL & PREVENTION, FOOD SHARING TABLES-GUIDANCE FOR SCHOOLS (2017), <http://www.maine.gov/doe/nutrition/resources/documents/ShareTableGuidanceHandout.pdf>; SHARE/SHARING TABLES GUIDANCE, N.Y. STATE DEP'T OF HEALTH & N.Y. STATE EDUC. DEP'T, <http://www.cn.nysed.gov/file/sharing-tables-guidancepdf> (last visited Jan. 11, 2018); N.C. DEP'T OF HEALTH AND HUMAN SERVICES, POSITION STATEMENT: DONATED FOODS (2016), <http://ehs.ncpublichealth.com/docs/position/DonatedFood-Position-Statement-Dec2016.pdf>; OHIO DEP'T OF AGRIC. & OHIO DEP'T OF HEALTH, GUIDANCE FOR SCHOOL SHARE TABLES (2017), [http://www.hamilton-countyrecycles.org/UserFiles/Servers/Server\\_3788196/File/EnvironmentalServices/SolidWaste/Schools/Ohio Department of Health Share table guidance \(2\).pdf](http://www.hamilton-countyrecycles.org/UserFiles/Servers/Server_3788196/File/EnvironmentalServices/SolidWaste/Schools/Ohio%20Department%20of%20Health%20Share%20table%20guidance%20(2).pdf); WIS. DEP'T OF PUBLIC INSTRUCTION, FACT SHEET FOR SHARING TABLES (2016), <https://dpi.wi.gov/sites/default/files/imce/school-nutrition/doc/sharing-tables.docx>.

<sup>40</sup> ANGELA KLINE, U.S. DEP'T OF AGRIC., THE USE OF SHARE TABLES IN CHILD NUTRITION PROGRAMS (2016), [https://fns-prod.azureedge.net/sites/default/files/cn/SP41\\_CACFP13\\_SFSP15\\_2016os.pdf](https://fns-prod.azureedge.net/sites/default/files/cn/SP41_CACFP13_SFSP15_2016os.pdf).

<sup>41</sup> Orange County in California, Hennepin County in Minnesota, Salt Lake County in Utah, and King County in Washington all had guidance documents on food donation. This guidance was verified, although it was not counted toward state totals in Appendix B.

<sup>42</sup> The states that responded that training was conducted are Alaska, Nevada, Oklahoma, Rhode Island, South Carolina, Tennessee, Wisconsin, and Wyoming.

<sup>43</sup> See HAW. CODE R. § 11-50-7 (LexisNexis 2017).

<sup>44</sup> See S.5664B, S. Reg. Sess. 2017-2018 (N.Y. 2017), <http://legislation.nysenate.gov/pdf/bills/2017/S5664B>.

<sup>45</sup> See ALASKA DEP'T OF ENVTL. CONSERVATION, LET'S EAT MORE OF ALASKA'S TRADITIONAL FOODS! [hereinafter ALASKA DEP'T OF ENVTL. CONSERVATION, *Let's Eat More of Alaska's Traditional Foods!*], <http://dec.alaska.gov/eh/pdf/fss/resources-traditional-foods-poster.pdf> (last visited Jan. 11, 2018); ALASKA DEP'T OF ENVTL. CONSERVATION, HEALTHY TRADITIONAL ALASKAN FOODS IN FOOD SERVICE PROGRAMS, [hereinafter ALASKA DEP'T OF ENVTL. CONSERVATION, *Healthy Traditional Alaskan Foods*], <http://dec.alaska.gov/eh/pdf/fss/resources-traditional-foods-toolkit.pdf> (last visited Jan. 11, 2018); *Traditional Foods*, ALASKA DIVISION OF HEALTH, [http://dec.alaska.gov/eh/fss/Food/Traditional\\_Foods.html](http://dec.alaska.gov/eh/fss/Food/Traditional_Foods.html) (last visited Jan. 11, 2018).

<sup>46</sup> See ALASKA DEP'T OF EDU. AND EARLY DEV'T CHILD NUTRITION PROGRAM & ALASKA DEP'T OF ENVTL. CONSERVATION, FOOD RECOVERY FOR CHILD NUTRITION PROGRAMS IN ALASKA (2017), <http://dec.alaska.gov/eh/pdf/fss/resources-food-guide-school-food-service-food-recovery.pdf>.

<sup>47</sup> See ALASKA DEP'T OF ENVTL. CONSERVATION, *Let's Eat More of Alaska's Traditional Foods!*, *supra* note 45; ALASKA DEP'T OF ENVTL. CONSERVATION, *Healthy Traditional Alaskan Foods* *supra* note 45; ALASKA DIVISION OF HEALTH, *supra* note 45; ALASKA ADMIN. CODE tit.18 § 31.205 (2017).

<sup>48</sup> See VT. AGENCY OF NAT'L RES. & VT. DEP'T OF HEALTH, GUIDANCE FOR FOOD DONATION: BUSINESSES AND INSTITUTIONS (2016), [http://www.healthvermont.gov/sites/default/files/documents/2016/11/ENV\\_FL\\_DonatingFoodSafely.pdf](http://www.healthvermont.gov/sites/default/files/documents/2016/11/ENV_FL_DonatingFoodSafely.pdf).

<sup>49</sup> See WASH. DEP'T OF AGRIC., POULTRY DONATIONS GUIDE, <https://agr.wa.gov/FP/Pubs/docs/FSCS/560-PoultryDonation.pdf> (last visited Jan. 4, 2018); WASH. DEP'T OF AGRIC., WILD GAME DONATIONS GUIDE, <https://agr.wa.gov/FP/Pubs/docs/FSCS/559-WildGameDonation.pdf> (last visited Jan. 4, 2018); WASH. DEP'T OF AGRIC., FRESH FISH DONATIONS GUIDE, <https://agr.wa.gov/FP/Pubs/docs/FSCS/557-FishDonation.pdf> (last visited Jan. 4, 2018).

<sup>50</sup> ALA. CODE § 20-1-6 (2017), <http://alisondb.legislature.state.al.us/alison/codeofalabama/1975/20-1-6.htm>.

<sup>51</sup> ALASKA STAT. ANN. § 17.20.346 (West 2017), <http://www.touchngo.com/1glcntr/akstats/statutes/title17/chapter20/section346.htm>.

<sup>52</sup> ALASKA ADMIN. CODE tit.18 § 31.205 (2017), <https://dec.alaska.gov/commish/regulations/pdfs/18-aac-31.pdf>.

<sup>53</sup> See ALASKA DEP'T OF ENVTL. CONSERVATION, *Let's Eat More of Alaska's Traditional Foods!*, *supra* note 45; ALASKA DEP'T OF ENVTL. CONSERVATION, *Healthy Traditional Alaskan Foods* *supra* note 45; ALASKA DEP'T OF ENVTL. CONSERVATION, *Healthy Traditional Alaskan Foods*, *supra* note 45.

<sup>54</sup> See ALASKA DEP'T OF EDU. AND EARLY DEV'T CHILD NUTRITION PROGRAM & ALASKA DEP'T OF ENVTL. CONSERVATION, *supra* note 46.

<sup>55</sup> ALASKA ADMIN. CODE tit.18 § 31.205.

<sup>56</sup> ALASKA DEP'T OF ENVTL. CONSERVATION, *Healthy Traditional Alaskan Foods*, *supra* note 45.

<sup>57</sup> ALASKA DEP'T OF EDU. AND EARLY DEV'T CHILD NUTRITION PROGRAM & ALASKA DEP'T OF ENVTL. CONSERVATION, *supra* note 46.

<sup>58</sup> ARIZ. REV. STAT. ANN. § 36-916 (2017), <https://www.azleg.gov/viewdocument/?docName=http://www.azleg.gov/ars/36/00916.htm>.

<sup>59</sup> The respondent mentioned local guidance in Orange County. The research team found a video released by the county's Health Department that states that the Department encourages food donation. See WasteNot OC, *Orange County Environmental Health – The Facts to Know When Donating Food*, YOUTUBE (Nov. 14, 2014), <https://www.youtube.com/watch?v=T8Un6Ft-YRM>.

<sup>60</sup> PUB. HEALTH ALLIANCE OF S. CAL., CAL. CONF. OF THE DIRECTORS OF ENVTL. HEALTH, AND CTR. FOR CLIMATE CHANGE & HEALTH, SAFE SURPLUS FOOD DONATION TOOLKIT (2017), <http://www.ocfoodinfo.com/civicax/filebank/blobdload.aspx?BlobID=68959>. This toolkit was released after the interview with the California Department of Public Health was conducted.

<sup>61</sup> PUB. HEALTH ALLIANCE OF S. CAL., CAL. CONF. OF THE DIRECTORS OF ENVTL. HEALTH, AND CTR. FOR CLIMATE CHANGE & HEALTH, SAFE SURPLUS FOOD DONATION BEST MANAGEMENT PRACTICES (2017), <https://www.ccdeh.com/resources/documents/training-1/2017-safe-surplus-food-donation-training/1711-ccdeh-safe-surplus-food-donation-best-management-practices-guidance-for-environmental-health-departments/file>.

<sup>62</sup> CAL. CONF. OF THE DIRECTORS OF ENVTL. HEALTH, SAFE SURPLUS FOOD DONATION TRAINING 2017, <https://www.ccdeh.com/education-events/training/391-safe-surplus-food-donation-training-2017> (last visited Dec. 27, 2017). This training program was released after the interview with the California Department of Public Health was conducted.

<sup>63</sup> CONN. GEN. STAT. ANN. § 52-557I (West 2017), <https://law.justia.com/codes/connecticut/2012/title-52/chapter-925/section-52-557I/>.

<sup>64</sup> CONN. GEN. STAT. ANN. § 26-78a (West 2017), [https://www.cga.ct.gov/2015/pub/chap\\_490.htm#sec\\_26-78a](https://www.cga.ct.gov/2015/pub/chap_490.htm#sec_26-78a).

<sup>65</sup> *Id.*

<sup>66</sup> GA. DEP'T OF AGRIC., *supra* note 38.

<sup>67</sup> GA. CODE ANN., § 51-1-31, <https://law.justia.com/codes/georgia/2010/title-51/chapter-1/51-1-31/>.

68 HAW. REV. STAT. ANN. § 145D-2 (West 2017), [https://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0145D/HRS\\_0145D-0002.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0145D/HRS_0145D-0002.htm).

69 HAW. CODE R. § 11-50-7 (2017), <https://health.hawaii.gov/opppd/files/2015/06/HAR-11-50-2017.pdf>.

70 745 ILL. COMP. STAT. ANN. 50/1-50/4 (West 2017), <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2077&ChapterID=58>.

71 77 ILL. ADMIN. CODE 750.110 (a)(2) (2017), <http://www.dph.illinois.gov/sites/default/files/publications/750-FoodSanitation-JCARCode-011217.pdf>.

72 77 ILL. ADMIN. CODE 750.110 (c) (2017), <http://www.dph.illinois.gov/sites/default/files/publications/750-FoodSanitation-JCARCode-011217.pdf>.

73 77 ILL. ADMIN. CODE 750.110 (a)(2) (2017), <http://www.dph.illinois.gov/sites/default/files/publications/750-FoodSanitation-JCARCode-011217.pdf>.

74 77 ILL. ADMIN. CODE 750.110 (c) (2017), <http://www.dph.illinois.gov/sites/default/files/publications/750-FoodSanitation-JCARCode-011217.pdf>.

75 IND. STATE DEP'T OF HEALTH, *supra* note 39.

76 IND. DEP'T OF HEALTH, ADDITIONAL GUIDANCE FOR CHANGES TO DEFINITION OF "FOOD ESTABLISHMENT" UNDER SENATE ENROLLED ACT 190 (IC 16-18-2-137) (May 14, 2008), [http://www.in.gov/isdh/files/SEA190\\_FinalGuidance.pdf](http://www.in.gov/isdh/files/SEA190_FinalGuidance.pdf).

77 IND. STATE DEP'T OF HEALTH, *supra* note 39.

78 KY. REV. STAT. ANN. § 217.217 (West 2017), <http://www.lrc.ky.gov/Statutes/statute.aspx?id=44391>.

79 *Id.*

80 ME. CTR. FOR DISEASE CONTROL & PREVENTION, *supra* note 39.

81 *Id.*

82 FOOD DONATION GUIDANCE, RECYCLINGWORKS MASS., <https://recyclingworksma.com/donate/> (last visited Jan. 4, 2018).

83 *Sale of Locally Raised Eggs to Food Facilities*, MINN. DEP'T OF AGRIC. (May 2016), <http://www.mda.state.mn.us/licensing/inspections/~media/Files/food/foodsafety/eggssales.ashx>.

84 *Selling or Serving Locally Grown Produce in Food Facilities*, MINN. DEP'T OF HEALTH & MINN. DEP'T OF AGRIC. (July 2016), <https://www.mda.state.mn.us/food/safety/~media/Files/food/foodsafety/fs-produce.ashx>.

85 *Guide to Donating Hunter-Harvested Deer in Minnesota*, MINN. DEP'T OF AGRIC., <http://files.dnr.state.mn.us/recreation/hunting/deer/venison-donation-guide.pdf> (last visited Jan. 4, 2018).

86 The respondent mentioned local guidance. Hennepin County in Minnesota has guidance on food safety for food donations; *Food donation guidelines for licensed food facilities*, HENNEPIN COUNTY ENV'T AND ENERGY, <http://www.minneapolismn.gov/www/groups/public/@health/documents/webcontent/wcmssp-206440.pdf> (last visited Jan. 5, 2018).

87 *Sale of Locally Raised Eggs to Food Facilities*, MINN. DEP'T OF AGRIC. (May 2016), <http://www.mda.state.mn.us/licensing/inspections/~media/Files/food/foodsafety/eggssales.ashx>.

88 MINN. DEP'T OF HEALTH & MINN. DEP'T OF AGRIC., *supra* note 84.

89 MINN. DEP'T OF AGRIC., *supra* note 85.

90 MINN. DEP'T OF HEALTH & MINN. DEP'T OF AGRIC., FOOD SAFETY GUIDELINES FOR ONSITE FEEDING LOCATIONS, FOOD SHELVES AND FOOD BANKS, <http://www.health.state.mn.us/divs/eh/food/fs/foodbanksafety.pdf> (last visited Jan. 4, 2018).

91 *Id.*

92 MONT. CODE ANN. § 87-1-293 (West 2017), [http://leg.mt.gov/bills/mca/title\\_0870/chapter\\_0010/part\\_0020/section\\_0930/0870-0010-0020-0930.html](http://leg.mt.gov/bills/mca/title_0870/chapter_0010/part_0020/section_0930/0870-0010-0020-0930.html).

93 NEV. ADMIN. CODE § 446.128 (2017); <https://www.leg.state.nv.us/NAC/NAC-446.html>. Note that health inspectors are trained on this regulation.

94 *Id.*

95 N.M. CODE R. § 7.6.2.9 (2017), [https://www.env.nm.gov/fod/Food\\_Program/regulatory\\_4.html](https://www.env.nm.gov/fod/Food_Program/regulatory_4.html).

96 *Id.*

97 NY AGRIC. & MKTS. §§ 71-y,z (2017), <https://www.agriculture.ny.gov/FS/pdfs/circs/art4d.pdf>.

98 S.5664B, S. Reg. Sess. 2017-2018 (N.Y. 2017), <http://legislation.nysenate.gov/pdf/bills/2017/S5664B>.

99 The legislation was not verified as a law related to food safety for donations, as it directs the agencies to create guidance, but the legislation not itself provide guidance or procedures regarding how food can be safely donated.

100 N.Y. STATE DEP'T OF HEALTH & N.Y. STATE EDUC. DEP'T, *supra* note 39.

101 *Id.*

102 N.C. DEP'T OF HEALTH AND HUMAN SERVICES, *supra* note 39.

103 *Id.*

104 OHIO DEP'T OF AGRIC. & OHIO DEP'T OF HEALTH, *supra* note 39.

105 *Id.*

106 *Id.*

107 *Id.*

108 OKLA. STAT. ANN. tit. 76, § 5.6 (West 2017), <https://law.justia.com/codes/oklahoma/2014/title-76/section-76-5.6/>.

109 OKLA. STAT. ANN. tit. 70, § 5-147.1 (West 2017), <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=481256>.

110 OPTIONS FOR SAFE FOOD DONATION, OKLA. DEP'T OF HEALTH, [https://www.ok.gov/health/Protective\\_Health/Consumer\\_Health\\_Service/Options\\_for\\_Safe\\_Food\\_Donation/](https://www.ok.gov/health/Protective_Health/Consumer_Health_Service/Options_for_Safe_Food_Donation/). Note that health inspectors are trained on this guidance (last visited Dec. 27, 2017).

111 OKLA. STAT. ANN. tit. 70, § 5-147.1 (West 2017), <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=481256>.

112 OKLA. STAT. ANN. tit. 310, § 257-5-8(b) (West 2017), <https://www.ok.gov/health2/documents/CPD-OSDH%20257%20FDA2009%20Finalized%208-31-11.pdf>.

113 OR. ADMIN. R. 333-150-0000 § 3-201.11 (L), <http://www.oregon.gov/oha/ph/HealthyEnvironments/Foodsafety/Documents/foodsafetyrule-web.pdf>.

114 OR. HEALTH AUTH., BENEVOLENT MEAL SITE INFORMATION GUIDE, <http://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/FOODSAFETY/Documents/benevolentguide.pdf> (last visited Jan 4, 2018).

115 OR. ADMIN. R. 333-150-0000 § 3-201.11 (L), <http://www.oregon.gov/oha/ph/HealthyEnvironments/Foodsafety/Documents/foodsantiationrule-sweb.pdf>.

116 OR. HEALTH AUTH., *supra* note 114.

117 10 PA. STAT. AND CONS. STAT. ANN. § 351-58 (West 2017), <http://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1981/0/0076..PDF>.

118 SURPLUS, SALVAGED, AND DONATED FOODS: SAFETY TIPS, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/Food/ResourcesForYou/Consumers/ucm197835.htm> (last visited Jan. 4, 2018).

119 U.S. DEP’T OF AGRIC., GUIDANCE ON THE FOOD DONATION PROGRAM IN CHILD NUTRITION PROGRAMS (2012), [https://fns-prod.azureedge.net/sites/default/files/cn/SP11\\_CACFP05\\_SFSP07-2012os.pdf](https://fns-prod.azureedge.net/sites/default/files/cn/SP11_CACFP05_SFSP07-2012os.pdf).

120 Health inspectors are trained on food safety for food donation guidance document.

121 Respondent discussed in-progress “Don’t Waste Food” initiative, and noted that specific food safety for donation guidance materials were under development. *See* DON’T WASTE FOOD SC, S.C. DEP’T OF HEALTH & ENVTL. CONTROL, <http://www.scdhec.gov/HomeAndEnvironment/Recycling/FoodWaste/#> (last visited Jan. 5, 2018). Health inspectors distribute “Don’t Waste Food” materials with information about donation to restaurants during inspections.

122 Survey respondent reported that health inspectors are given the Conference for Food Protection’s Comprehensive Resource, and can share this with person in charge.

123 25 TEX. ADMIN. CODE § 228.83 (2017), [http://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=25&pt=1&ch=228&rl=83](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=228&rl=83). Health inspectors are trained on food safety for food donation regulations.

124 25 TEX. ADMIN. CODE § 228.83 (2017), [http://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=25&pt=1&ch=228&rl=83](http://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=228&rl=83); Health inspectors are trained on food safety for food donation regulations.

125 UTAH ADMIN. CODE r. § 4-34-106 (2017), [https://le.utah.gov/xcode/Title4/Chapter34/C4-34\\_2017050920170701.pdf](https://le.utah.gov/xcode/Title4/Chapter34/C4-34_2017050920170701.pdf)

126 The respondent mentioned local guidance. Salt Lake County Health Department created a guide for serving food to the homeless, which includes information on food safety practices. *See* SALT LAKE COUNTY HEALTH DEP’T, FOOD SAFETY GUIDE FOR VOLUNTEER GROUPS PROVIDING MEALS TO HOMELESS AND DISADVANTAGED POPULATIONS (2014), [http://slco.org/uploadedFiles/depot/fHealth/programs/food/homeless\\_outreach\\_guide.pdf](http://slco.org/uploadedFiles/depot/fHealth/programs/food/homeless_outreach_guide.pdf).

127 VT. AGENCY OF NAT’L RES. & VT. DEP’T OF HEALTH, *supra* note 48.

128 VT. DEP’T OF HEALTH, FOOD SHARING TABLES – GUIDANCE FOR SCHOOLS (2016), <https://cswd.net/wp-content/uploads/Sharing-Tables-Guidance-for-Schools-2016.pdf>.

129 VT. AGENCY OF NAT’L RES. & VT. DEP’T OF HEALTH, *supra* note 48.

130 VT. DEP’T OF HEALTH, *supra* note 128.

131 WASH. DEP’T OF AGRIC., EGGS IN THE SHELL DONATIONS GUIDE, <https://agr.wa.gov/FP/Pubs/docs/FSCS/561-EggsInShellDonation.pdf> (last visited Jan. 4, 2018).

132 WASH. DEP’T OF AGRIC., EXOTIC DONATIONS GUIDE, <https://agr.wa.gov/FP/Pubs/docs/FSCS/562-ExoticMeatDonation.pdf> (last visited Jan. 4, 2018).

133 WASH. DEP’T OF AGRIC., FRESH FISH DONATIONS GUIDE, <https://agr.wa.gov/FP/Pubs/docs/FSCS/557-FishDonation.pdf> (last visited Jan. 4, 2018).

134 WASH. DEP’T OF AGRIC., LIVESTOCK DONATIONS GUIDE, <https://agr.wa.gov/FP/Pubs/docs/FSCS/558-LivestockDonation.pdf> (last visited Jan. 4, 2018).

135 WASH. DEP’T OF AGRIC., POULTRY DONATIONS GUIDE, <https://agr.wa.gov/FP/Pubs/docs/FSCS/560-PoultryDonation.pdf> (last visited Jan. 4, 2018).

136 WASH. DEP’T OF AGRIC., WILD GAME DONATIONS GUIDE, <https://agr.wa.gov/FP/Pubs/docs/FSCS/559-WildGameDonation.pdf> (last visited Jan. 4, 2018).

137 The respondent also mentioned local guidance in King County. *See Guide to donating prepared and perishable food*, FOOD LIFELINE & CITY OF SEATTLE PUB. UTILITIES, <http://kingcounty.gov/~media/depts/dnrp/solid-waste/garbage-recycling/documents/edible-food-prepared.ashx?la=en> (last visited Jan. 9, 2018).

138 WASH. DEP’T OF AGRIC., EGGS IN THE SHELL DONATIONS GUIDE, *supra* note 131.

139 WASH. DEP’T OF AGRIC., EXOTIC DONATIONS GUIDE, *supra* note 132.

140 WASH. DEP’T OF AGRIC., FRESH FISH DONATIONS GUIDE, *supra* note 133.

141 WASH. DEP’T OF AGRIC., LIVESTOCK DONATIONS GUIDE, *supra* note 134.

142 WASH. DEP’T OF AGRIC., POULTRY DONATIONS GUIDE, *supra* note 135.

143 WASH. DEP’T OF AGRIC., WILD GAME DONATIONS GUIDE, *supra* note 136

144 WASH. REV. CODE ANN. § 69.80.031 (West 2017), <http://apps.leg.wa.gov/rcw/default.aspx?cite=69.80.031>.

145 WASH. ADMIN. CODE § 246-215-09415 (2017), <http://apps.leg.wa.gov/wac/default.aspx?cite=246-215-09415>.

146 DONATIONS, WASH. DEP’T OF AGRIC., <https://agr.wa.gov/FoodProg/Donations.aspx> (last visited Jan. 5, 2018).

147 CHARITY FOOD DONATIONS, WASH. DEP’T OF HEALTH., <https://www.doh.wa.gov/CommunityandEnvironment/Food/FoodWorkerandIndustry/CharityFoodDonations> (last visited Jan. 4, 2018).

148 SCHOOL FOOD DONATION GUIDELINES, WASH. DEP’T OF HEALTH, <https://www.doh.wa.gov/CommunityandEnvironment/Food/FoodWorkerandIndustry/SchoolFoodDonations> (last visited Jan. 11, 2018);

149 U.S. ENVTL. PROT. AGENCY, WASHINGTON SCHOOL FOOD SHARE PROGRAM TOOLKIT (2017), [https://www.epa.gov/sites/production/files/2017-07/documents/washingtonschoolfoodshare5087717\\_a.pdf](https://www.epa.gov/sites/production/files/2017-07/documents/washingtonschoolfoodshare5087717_a.pdf).

150 *Focus on Food Donation*, WASH. DEP’T OF ECOLOGY (Nov. 2011), <https://fortress.wa.gov/ecy/publications/publications/1107032.pdf>.

151 The respondent also mentioned local guidance in King County. *See* GUIDE TO DONATING PREPARED AND PERISHABLE FOOD, FOOD LIFELINE & CITY OF SEATTLE PUB. UTILITIES, <http://kingcounty.gov/~media/depts/dnrp/solid-waste/garbage-recycling/documents/edible-food-prepared.ashx?la=en> (last visited Jan. 9, 2018).

152 WASH. ADMIN. CODE § 246-215-09415 (2017), <http://apps.leg.wa.gov/wac/default.aspx?cite=246-215-09415>.

- <sup>153</sup> CHARITY FOOD DONATIONS, WASH. DEP'T OF HEALTH, *supra* note 147.
- <sup>154</sup> SCHOOL FOOD DONATION GUIDELINES, WASH. DEP'T OF HEALTH, *supra* note 148.
- <sup>155</sup> U.S. ENVTL. PROT. AGENCY, *supra* note 149.
- <sup>156</sup> Wash. DEP'T OF ECOLOGY, FOCUS ON FOOD DONATION (2011), <https://fortress.wa.gov/ecy/publications/publications/1107032.pdf>.
- <sup>157</sup> WISCONSIN SCHOOL FOOD SAFETY, WISC. DEP'T OF PUB. INSTRUCTION, <https://dpi.wi.gov/school-nutrition/food-safety#waste> (last visited Jan. 4, 2018). Health inspectors are trained on this resource.
- <sup>158</sup> *Id.*
- <sup>159</sup> WYO. STAT. ANN. § 35-7-1302 (West 2017), <https://law.justia.com/codes/wyoming/2011/title35/chapter7/section35-7-1302/>.
- <sup>160</sup> WYO. DEP'T OF AGRIC., FOOD DONATION POLICY (2011), <http://wyagric.state.wy.us/images/stories/pdf/chs/Basicreq/fooddonation-2011.pdf>. Health inspectors are trained on the Food Donation Policy.
- <sup>161</sup> WYO. STAT. ANN. § 35-7-1302 (West 2017).
- <sup>162</sup> WYO. DEP'T OF AGRIC., *supra* note 160.



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