



THE GLOBAL
FOOD DONATION
POLICY ATLAS

M E X I C O

LEGAL GUIDE

FOOD DONATION
LAW AND POLICY

JUNE 2020

Authors

This report was written by the following staff and students at the Harvard Law School Food Law and Policy Clinic: Emily M. Broad Leib, Melissa Shapiro, Nomin Jagdagdorj, Jordan Hill, Juliana Ferro, Maxine Ma, Brian Fink.

Acknowledgements

We are grateful to The Global FoodBanking Network whose input, ideas, and expertise informed much of our research. This report was also made possible with the advice and support of our on-site partners in Mexico, with whom we discussed the ideas provided herein, including Banco de Alimentos de México (BAMX), as well as many other NGOs, businesses, and government agencies.

About The Global Food Donation Policy Atlas

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

About the Harvard Law School Food Law and Policy Clinic

The Harvard Law School Food Law and Policy Clinic (FLPC) serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. Our focus is on increasing access to healthy foods, supporting sustainable food production and food systems, and reducing waste of healthy, wholesome food. For more information, visit www.chlpi.org/FLPC.



About The Global FoodBanking Network

The Global FoodBanking Network is an international non-profit organization that nourishes the world's hungry through uniting and advancing food banks in more than 40 countries. GFN focuses on combating hunger and preventing food waste by providing expertise, directing resources, sharing knowledge and developing connections that increase efficiency, ensure food safety, and help food banks reach more people facing hunger. For more information visit www.foodbanking.org.



Made Possible with Support from the Walmart Foundation

The research included in this report was made possible through funding by the Walmart Foundation. The findings, conclusions, and recommendations presented in this report are those of Harvard Law School Food Law and Policy Clinic alone, and do not necessarily reflect the opinions of the Walmart Foundation.



Report design by Najeema Holas-Huggins.

TABLE OF CONTENTS

- Introduction.....1**
 - Purpose of this Guide.....1
 - State of Food Insecurity, Food Loss, Waste, and Recovery in Mexico.....2
- Overview of Mexico’s Relevant Legal Framework.....4**
 - General Health Law.....4
 - Food Regulation: Official Mexican Norms.....5
 - Other Relevant Federal Law.....5
 - Provincial and Municipal Law.....5
- Legal Issues Relevant to Food Donation.....6**
 - Food Safety for Donations.....6
 - Date Labeling.....7
 - Liability Protection for Food Donation.....7
 - Taxes.....9
 - Incentives.....9
 - Barriers.....10
 - Donation Requirements or Food Waste Penalties.....10
 - Government Grants and Incentives.....10
 - Miscellaneous.....11
- Conclusion.....11**

INTRODUCTION

Purpose of this Guide

Food loss and waste has emerged as one of the greatest food system challenges that we face today. An estimated one-third of food produced globally is ultimately lost or wasted along the supply chain;¹ this amounts to approximately 1.3 billion tons of food each year that ends up in the landfill.² Food loss or waste occurs at every stage of the food system: during the initial harvest due to low market prices, because of high labor costs and demand for perfect-looking produce; by grocery stores and restaurants over-estimating customer demands; and by consumers who engage in inefficient shopping and cooking practices and lack a clear understanding about date labels.³

These behaviors have significant environmental, economic, and social consequences: food that is ultimately lost or wasted has a huge carbon footprint of 3.3 gigatons,⁴ using roughly 28% of agricultural land,⁵ and accounting for eight percent, or 70 billion tons, of total global greenhouse gas emissions.⁶ Collectively, this damage costs approximately \$940 billion per year.⁷ Meanwhile, more than 820 million people are undernourished and one in nine are food insecure.⁸ The international community has sought to address this paradox and mobilize the reduction of food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.⁹

In many countries, food donation has emerged as a popular and logical solution to redirect safe, surplus food into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, non-governmental organizations that recover surplus, wholesome food and redirect the recovered food to local beneficiary agencies (such as soup kitchens, shelters, and community pantries) to feed low-income, food insecure persons. As food insecurity, food loss, and food waste have continued to rise, new, innovative models of food recovery have emerged around the world.

However, uncertainty surrounding the laws and regulations most relevant to food donation are hindering the expansion of these food recovery organizations and limiting their potential impact. To help address the most pressing questions, the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) have partnered to create The Global Food Donation Policy Atlas. This innovative partnership will map the laws and policies affecting donations in 15 countries over the course of two years. The project aims to: identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation and share best practices and recommendations for overcoming these barriers.

THE PROJECT AIMS TO IDENTIFY AND EXPLAIN NATIONAL LAWS RELATING TO FOOD DONATION, ANALYZE THE MOST COMMON LEGAL BARRIERS TO PROMOTING GREATER FOOD DONATION AND SHARE BEST PRACTICES AND RECOMMENDATIONS FOR OVERCOMING THESE BARRIERS.

This **Legal Guide focuses on Mexico**, where 20.4 million tons of food are lost or wasted each year,¹⁰ and an estimated 25.5 million people are food insecure.¹¹ FLPC and GFN, in collaboration with partners in Mexico, have developed this resource to help food donors, food banks and other intermediaries (hereafter collectively referred to as “food recovery organizations”) understand the relevant legal frameworks that impact food waste and donation efforts.¹² It is also intended to serve as a resource for those in other countries who are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in Mexico, this guide provides an overview of the legal frameworks most relevant to food donation at the national and local level. The subsequent sections take a closer look at the laws generally applicable to food donation: food safety laws and regulations, food date labeling

laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and tax policy disincentives, and waste diversion laws that penalize food waste or require food donation or recovery. The extent to which Mexico has developed and subsequently implemented these authorities compared to other countries may vary.

State of Food Insecurity, Food Loss, Waste, and Recovery in Mexico

Policies to prevent food loss and waste and promote food donation are particularly important when a country’s socio-economic conditions perpetuate food insecurity, especially among the most vulnerable. This is the case in Mexico; despite serving as a major global producer and exporter of agricultural products, the country has experienced economic slowdown due to recent government cutbacks intended to reduce expenditures and expand social programs.¹³ As of 2016, approximately 43.6% of the population lived below the poverty line¹⁴ and an estimated 9 million people were living in extreme poverty.¹⁵

Patterns of malnutrition and food insecurity have coincided with persistent poverty: in 2018, 8.9% of the population was considered severely food insecure, two percent of children under the age of five suffered from wasting, and ten percent were stunted.¹⁶ At the same time, increased availability of cheap, highly-processed food products has contributed to a rise in overweight and obesity, even among food insecure populations. In 2016, for example, 24.3 million adults and 5.3% of children under the age of 5 were considered obese.¹⁷

The federal government has taken steps over the years to address economic instability, food insecurity and malnutrition, as well as hunger, more generally. From 2014 to 2018, the National Crusade Against Hunger (*Cruzada Nacional Contra el Hambre* or CNCH), administered by the Ministry of Social Development (*Secretaría de Desarrollo Social* or SEDESOL)¹⁸ designated the elimination of hunger as a national priority, calling for improvements to storage, transportation, and distribution infrastructure to reduce post-harvest food waste, among other actions.¹⁹ While results of this program were mixed,²⁰ other initiatives to provide social assistance, including through the conditional cash transfer “Prospera” program (previously known as “Oportunidades”), have helped to increase healthy food consumption among the food insecure.²¹

More recently, in 2019, the federal government created the Mexican Food Security Agency (*Seguridad Alimentaria Mexicana* or SEGALMEX) to promote agricultural productivity and food distribution to benefit vulnerable populations;²² it also amended the Sustainable Rural Development Law (*Ley de Desarrollo Rural Sustentable*) to promote food security and food sovereignty as well as provide greater equity and social justice for rural communities.²³

Mexico by the Numbers

Population 128,650,000	Prevalence of Severe Food Insecurity 8.9%	World Bank Classification Upper-Middle
Median Age 29.3 years	Global Food Security Index 69.4	Human Development Index 0.767
GDP \$1.221 trillion	GINI Index 48.3	FLW Estimates 20.4 million tons
Poverty Rate 41.9%	Food Sustainability Index 65.6	

Source: Global FoodBanking Network, Feb. 2020.

Mexico has also recently turned its attention to the prevention of food loss and waste.²⁴ According to the Food and Agriculture Organization of the United Nations (FAO), over 35% of the total food produced in the country is lost or wasted.²⁵ This discarded food has tangible economic and environmental costs: carbon dioxide emissions generated from wasted food is estimated at \$36 billion,²⁶ exceeding the emissions of more than 14 million vehicles; the total cost of water that is lost with wasted food is approximately \$7.9 billion per year.²⁷

Most of the food loss and waste in Mexico occurs upstream in the supply chain,²⁸ meaning that food is discarded before it reaches consumers. Pre-consumer waste is driven by inefficient or inadequate management, transportation, distribution, and storage systems, as well as inappropriate packaging material and practices.²⁹ Assessment of these losses has indicated that certain supply chain reforms, including investments in cold-chain infrastructure (refrigeration during transportation and storage), could reduce losses of most staple fresh-food items.³⁰ At the consumption stage, excess purchasing, and improper handling or storage are among the top drivers of food loss and waste.³¹

The federal government has demonstrated an interest in promoting inclusive, multi-sectoral solutions to mitigate hunger and poverty that simultaneously combat food loss and waste. For example, Mexico is an active member of the United Nations' 10-Year Framework of Programmes on Sustainable Consumption and Production Patterns (10YFP), which aims to accelerate the shift to sustainable consumption and production through reducing food loss and waste.³² As part of this commitment, the Secretariat of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales* or SEMARNAT), along with other representatives from the federal government, collaborated with the World Bank Group and the Waste and Resources Action Programme (WRAP) and other private actors to develop a *Conceptual Framework for a National Strategy for Food Loss & Waste for Mexico* in August of 2019.³³

ACCORDING TO THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, OVER 35% OF THE TOTAL FOOD PRODUCED IN MEXICO IS LOST OR WASTED. THIS DISCARDED FOOD HAS TANGIBLE ECONOMIC AND ENVIRONMENTAL COSTS.

In the spirit of collective effort, actors from the public and private sectors country-wide have stepped up to promote food rescue and recovery. For example, the Ministry of Economy through the Global Economic Intelligence Unit and in coordination with the Partnering for Green Growth and Global Goals 2030 have engaged with private sector actors, including the Business Coordinating Council, to promote progress on the Sustainable Development Goals, including 12.3, as part of the Mexican Global Compact Network (*La Red Mexicana del Pacto Mundial*).³⁴

Bancos de Alimentos de México (BAMX), the national food banking association comprised of 55 food banks,³⁵ has also long supported public-private food recovery efforts in Mexico. Support from corporate and food industry actors, including Herdez, Nestle, Danone, Alpura, Kellogg, and the Walmart Foundation,³⁶ help BAMX rescue and redistribute over 118 million kilograms of food across forty different food banks annually,³⁷ serving 1.3 million beneficiaries in 2018, alone.³⁸ BAMX has also coordinated with hotels and restaurants through its *Al Rescate* program, to rescue, store, and serve more than 70 thousand kilograms of prepared food since 2014.³⁹ As explained later in this guide, the federal government has proposed legislation to strengthen support for these programs and expand food recovery infrastructure.⁴⁰

Scaling up these operations and investing in new solutions to food insecurity and food waste requires recognizing and understanding the laws that apply to food donation. The remaining sections of the Guide will provide an overview of Mexico's food donation legal framework and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders.

OVERVIEW OF MEXICO'S RELEVANT LEGAL FRAMEWORK

Mexico is a federal republic composed of 31 states and Mexico City.⁴¹ The federal constitution, which provides legal authority at both the federal level and state level, is divided between executive, legislative, and judicial branches.⁴² The constitution is the highest source of legal authority of Mexico's civil law system, followed by legislation, regulations, and customary law.⁴³ Mexico is one of a select number of countries to include a constitutional provision that formally recognizes the human right to adequate food and guarantees the protection of health.⁴⁴ These rights are codified in the General Law of Social Development (*Ley General de Desarrollo Social*), which states that the National Policy for Social Development is intended to promote the right to food, among others.⁴⁵

In recent years, policymakers in both chambers of Congress have proposed several federal laws on food waste or donation. For example, in 2018, the Green Party proposed to strengthen food recovery through a new General Law for the Recovery and Use of Foods, amendments to the Sustainable Rural Development Law, and amendments to the Income Tax Law.⁴⁶ In 2019, Senator Américo Villarreal Anaya proposed amendments to the General Law of Social Development and the Sustainable Rural Development Law related to food recovery and food donation.⁴⁷

As discussed below, in the absence of federal food donation laws, municipal and provincial governments have used certain delegated authorities to enact laws or implementation plans specific to food donation. These laws apply only within the respective local jurisdictions and are consistent with local constitutions and governance systems.

General Health Law

Most laws pertaining to food quality and safety are based in Mexico's General Health Law (*Ley General de Salud*), which was initially adopted in 1984 and most recently revised in 2009 to provide a legal foundation for realizing the right to health for all Mexicans.⁴⁸ Consisting of thirteen chapters, the law is quite broad in scope: it regulates not just food but medical products and health services, more generally. Recent amendments to the General Health Law are intended to align food regulation with better population health through new front-of-pack labeling requirements for products high in calories, sodium, sugars, or saturated fats, among changes.⁴⁹

The General Health Law also recognizes social assistance through the provision of basic food and other subsistence needs for vulnerable populations, such as those lacking socio-economic resources.⁵⁰ The federal Social Assistance Law (*Ley de Asistencia Social*) further defines these populations and the services to which they are entitled.⁵¹ Recognizing the importance of such social assistance, the General Health Law was amended in 2000 to include a provision that explicitly addresses food donation.⁵² The provision states that donated food handled by intermediaries (such as food recovery organizations) are subject to the sanitary conditions and other requirements set forth in the General Health Law.⁵³

The Secretariat or Ministry of Health (*Secretaría de Salud* or SSA) is the agency responsible for implementing and enforcing these requirements, and does so through the SSA's Federal Commission for Protection against Sanitary Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios* or COFEPRIS).⁵⁴ COFEPRIS is a decentralized and autonomous body led by a commissioner appointed by the Mexican president.⁵⁵ The General Health Law empowers COFEPRIS to identify and assess risks to human health and to establish national policies that mitigate food-borne illness.⁵⁶ The Commission coordinates with more than 100 authorized third-party organizations across Mexico's 25 states to make sure products comply with food labeling and food safety regulations.⁵⁷ It also provides guidance on sanitary condition requirements that are necessary to comply with

Ministry of Health regulations.⁵⁸ The Regulation on Sanitary Control of Products and Services (*Reglamento de Control Sanitario de Productos y Servicios*), which sets forth requirements relevant to prepackaged food labels, provides definitions for terms contained in the General Health Law.⁵⁹

Food Regulation: Official Mexican Norms

Food regulation is also established through mandatory administrative rules known as Official Mexican Norms (*Normas Oficiales Mexicanas* or NOMs).⁶⁰ These technical regulations are promulgated by government agencies, including the Ministry of Health, acting through COFEPRIS, as well as the Secretariat or Ministry of Agriculture and Rural Development (*Secretaría de Agricultura y Desarrollo Rural* or SADER),⁶¹ acting through the National Food Safety and Agri-Food Quality Service (*Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria* or SENASICA). NOMs are supposed to be regularly updated to respond to new information concerning food safety, public and environmental health, and consumer protection; however, most regulations were issued in the 1990s and remain unmodified.⁶²

Mexico has not published a NOM that regulates food donation as a solution to food waste; however, there are several NOMs that are relevant to the regulation of food and to food recovery practices. For example, with respect to food safety, NOM-251 establishes the minimum sanitary requirements for handling and processing food and beverages⁶³ with several other NOMs regulating the safe handling of specific products, such as meat, dairy, fish, and water.⁶⁴ Labeling requirements for packaged foods are set forth in NOM-086⁶⁵ and NOM-051.⁶⁶

To ensure that all Mexicans have regular, unrestricted access to adequate food, the Ministry of Health has also issued NOM-169 to regulate the operation of food assistance programs;⁶⁷ NOM-043 to prescribe the quantity and quality of food to which each person is entitled;⁶⁸ and NOM-014 to establish minimum requirements for public, social, and private institutions providing social and food assistance.⁶⁹

Other Relevant Federal Law

Relevant to food safety, the Plant Health Law (*Ley Federal de Sanidad Vegetal*) sets out requirements for primary agricultural production of fruits and vegetables, in order to mitigate potential safety risks associated with these products and their by-products.⁷⁰ The Law authorizes SENASICA to regulate and promote plant health through inspection, verification, and certification systems.⁷¹ Related to food waste, Article 38, provision III of the Plant Health Law states that the Secretariat, through NOMs or other legal provisions, shall establish specifications for field studies to set maximum levels for waste disposal.⁷² The Federal Animal Health Law (*Ley Federal de Sanidad Animal*) addresses good manufacturing practices for animal products.⁷³ As discussed below, the Federal Income Tax Law (*Ley del Impuesto Sobre la Renta*) also has implications for food recovery because the law provides tax deductions for food donations.⁷⁴

Provincial and Municipal Law

Municipal and provincial governments in Mexico have also passed laws specific to food waste and donation. In Mexico City, for example, the government adopted the Law to Incentivize the Altruistic Donation of Food (*Ley General para Fomentar la Donación Altruista de Alimentos*) in 2017.⁷⁵ This law sets forth the responsibilities and roles of food donors, food banks, and beneficiaries, reiterates the tax benefits to which donors are entitled under federal law, and promises public recognition of food donors.⁷⁶ In the state of Mexico, the Law for the Recovery and Use of Foods in the State of Mexico (*Ley General para la Recuperación y Aprovechamiento de Alimentos*) was adopted in June 2019.⁷⁷ In at least eight other states, food donation laws have been passed or amended in the last three decades: Chihuahua, Coahuila de Zaragoza, Colima, Durango, Nuevo León, Quintana Roo, Sinaloa, Sonora, and Tamaulipas.⁷⁸ Each of these state laws aim to promote, encourage, and/or regulate the donation of food.

Distinct from laws in other states, the food donation law in Nuevo León formally recognizes food recovery organizations as civil society organizations, and outlines their role in food donation.⁷⁹ The law requires food recovery organizations to have trained personnel and equipment to safely and hygienically select, handle, transport, and distribute food and to provide food guidance and disseminate information about nutritional content.⁸⁰ The law permits food recovery organizations to charge up to 10 percent of the value of the food for operational expenses,⁸¹ and provides the country’s strongest tax incentive for food donation—a tax deduction for 50 to 100 percent of the value of the donated food, as determined by the food bank at the time of receipt.⁸²

LEGAL ISSUES RELEVANT TO FOOD DONATION

Food Safety for Donations

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills. In Mexico, the General Health Law features a separate provision addressing the general responsibilities of organizations supplying, receiving, and distributing food donations, however, the application of these obligations remains unclear.⁸³

Federal food safety requirements are largely contained in the General Health Law, as previously discussed. Chapter I of the General Health Law’s Tenth Title features “common provisions” that describe sanitary controls applicable to the process, import, and export of food; these provisions also apply to medical equipment, medicines, and pesticides, among other products.⁸⁴ Within this Title, article 199-Bis explicitly addresses food donation, explaining that institutions involved in the supply, receipt and distribution of food donation should do the following:

- (1) have establishments that meet all sanitary conditions required to handle food,
- (2) have trained staff and equipment for the safe and hygienic handling and transportation of food,
- (3) distribute food in a timely manner to avoid contamination, alteration, or decomposition of the food, and
- (4) adopt measures of sanitary control, as mandated by the authorities.⁸⁵

While the article clearly requires compliance with certain sanitary controls and conditions, it does not specifically identify the relevant General Health Law provisions to which the subject organizations must adhere. Rather, the broad language suggests that food recovery organizations as well as food donors may be subject to all sanitary control provisions in Chapter I, Title 10 of the General Health Law, including those that do not clearly relate to food.

The law does not further address how the Article 199-Bis requirements apply in situations where they do not align with an institution’s operation; for example, some organizations assist in the recovery and donation of on-farm surplus but do not operate an “establishment” such as a warehouse or storage facility. To date, the government has not offered clarifying guidance or regulations on this provision; in fact, as previously mentioned, Mexico has not issued regulations that apply exclusively to food donation, and existing food safety regulations, such as NOM-251, do not offer guidance on donated food. Accordingly, Article 199-Bis offers the only guidance for food donors and food recovery organizations with respect to food safety.

Date Labeling

Date labels affixed to food products are a major driver of food waste, and obstacle to food donation. As explained in the previous section, most food donors and food recovery organizations are appropriately cautious about donating food that meets safety standards, but it is not always clear which standards relate to food safety. And, while fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to consume, it can be more difficult to gauge when this is the case for packaged foods. Many donors interpret date labels as indicators of safety and will therefore throw away food once the “expiration date” has passed; intermediaries may refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety. Manufacturers use a variety of quality-based methods to determine the timeframe for label dates, all of which are intended to reflect when the food will be at its “peak quality.”⁸⁶ Nevertheless, global trends indicate that consumers generally interpret date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discarded about 22% of food that they could have eaten due to confusion over date labeling.⁸⁷ Similarly, 84% of Americans report that they throw away food after the expiration date passes due to safety concerns, even if there is minimal risk of a foodborne illness at that time.⁸⁸

In Mexico, date labels are standardized under Official Mexico Norm, NOM-051 (*Especificaciones generales de etiquetado para alimentos y bebidas no alcohólicas preenvasados*), which requires manufacturers to select from either a safety-based date label, referred to as the expiration date (*fecha de caducidad, caducidad, fecha de expiracion, expira, etc.*) or quality-based date referred to as the preferred consumption date (*consumir preferentemente antes del*) for all pre-packaged food and non-alcoholic beverages.⁸⁹ According to the regulation, the expiration date refers to the date after which the pre-packaged food’s safety and quality characteristics are so diminished that the food cannot be safely consumed.⁹⁰ The preferred consumption date, on the other hand, is the date after which the product cannot be sold, but can still be consumed.⁹¹

The regulation also requires manufacturers to denote when special preservation instructions are vital to the effect of the affixed date (e.g. “keep refrigerated,” “keep frozen,” “do not freeze after thawed,” “keep refrigerated after opening”).⁹² However, there is no further guidance as to how these instructions inform which date to use. With the exception of a few food items, the law also does not provide guidance as to when the expiration date as opposed to the preferred consumption date should apply; it is instead left to the manufacturer’s discretion to choose the specific date and label language.

The regulation also does not clearly convey the impact of these dates on food donation. Based on the food safety concerns associated with the expiration date, and the explanation that food cannot be safely consumed after the expiration date, it is reasonable to presume that organizations should not sell or donate food once this date has passed. The implications of the preferred consumption date, however, are less clear. While the regulation prohibits the sale of food after such date, it also explains that food is still safe for human consumption.⁹³ The regulation does not specifically address whether food may be donated free of charge, after the preferred consumption date has passed. As a result, food donors and food recovery organizations may not be sure whether to interpret this regulation as permitting the donation of past-due food that is still suitable for human consumption.

Liability Protection for Food Donations

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. Other countries, including the United States and Argentina, have established protections for food donors and food recovery organizations so that these actors will not be held legally or

financially responsible for resulting harm, provided that they acted in good faith and in accordance with relevant laws.⁹⁴ Mexico does not offer federal liability protections for donors and intermediaries; as a result, food donation may be perceived as a potentially risky endeavor, even though food donors and food recovery organizations are unlikely to encounter a claim for damages.⁹⁵

Mexico does not offer liability protection for donors and food recovery organizations. Federal law offers some insight as to which actors may be liable, and under what circumstances, if a donation beneficiary alleges harm. Under Mexico's General Health Law, for example, Article 199-Bis provides that persons or institutions that distribute donated food are exclusively responsible for the supply of food that has spoiled and therefore causes damage to human health.⁹⁶ Since the exclusive responsibility lies with those distributing the donated food, food donors supplying the donations may be shielded from liability. Nevertheless, this narrow provision places responsibility on distributing organizations only in situations involving spoiled food, and does not address responsibility in the event that food is contaminated, adulterated, or otherwise compromised.

Article 464-Bis of Mexico's General Health Law, however, suggests that food donors and actors not deemed responsible under Article 199-Bis, may nevertheless be subject to liability. According to Article 464-Bis, any person who, directly or through an intermediary, knowingly authorizes or orders the distribution of spoiled food which endangers a person's health could be subject to a penalty of either (1) a prison term between six months to two years and (2) a monetary penalty equal to 500 to 5,000 minimum wage days in the Federal District or economic zone in question.⁹⁷ In the case of negligence (instead of actual knowledge), half of this sentence may be imposed.⁹⁸ Article 464-Bis thus confirms that while food donors and food recovery organizations will not automatically be held liable for harm that is caused to a beneficiary, they may face liability if the beneficiary is able to prove a certain level of intention or misconduct.

While Articles 199-Bis and 464-Bis of Mexico's General Health Law apply when harm arises from spoiled food that has been donated,⁹⁹ Mexico's Federal Civil Code (*Código Civil Federal*) applies in all other situations giving rise to a claim of a claim of damages. Standards of liability set forth in the Civil Code include: "contractual liability," "objective liability" and "extra-contractual" liability arising from "illicit acts."¹⁰⁰ The first standard, "contractual liability" is unlikely to be invoked by a claim brought by a beneficiary against a food recovery organization or food donor, as it only applies when parties enter into a contractual relationship.¹⁰¹ Similarly, "objective liability" applies only in circumstances involving "inherently dangerous" mechanisms or substances, which does not include donated food, even if spoiled, altered, contaminated, mislabeled, or otherwise compromised.¹⁰²

A claim of harm brought by a third party beneficiary against a food recovery organization or food donor would generally assert "extra-contractual" liability, the standard that is most commonly used by Mexican courts to resolve personal injury or wrongful death cases.¹⁰³ Under this standard, the person alleging injury would bear the burden of proving that the food recovery organization or food donor acted "illicitly" or "against good customs" and defend against a claim of contributory-negligence, *i.e.* show that the injury did not result from the victim's own "fault or inexcusable negligence."¹⁰⁴ Without further explanation of this standard, food donors and food recovery organizations are not likely to be held liable, as it is unclear what actions would qualify as "illicit" or "against good custom." The legislature has not offered clarifying definitions of these terms, nor is it likely to do so.¹⁰⁵ Instead, the interpretation is left to the courts, which are also unlikely to address any claim of wrongdoing brought against a food recovery organization or food donors, as federal civil liability cases in Mexico are so rarely brought before courts that they are considered "simply non-existent."¹⁰⁶

Despite the dearth of civil liability claims brought in Mexico, in 2016, the federal government proposed the General Law to Promote Altruistic Food Donation (*Ley General para Fomentar la Donación Altruista de Alimentos* or the Altruistic Donation Law), which would have provided liability protection for food recovery organizations.¹⁰⁷ Specifically, the proposed federal legislation explained that, in cases where donated food causes harm, food recovery organizations will only be held liable if they acted negligently or fraudulently in reception, care, or distribution of the donated food.¹⁰⁸ Such protection was limited to food recovery organizations and did not extend to food donors. Since this proposed law was not adopted, there is currently no federal liability protection that extends to these organizations.

Taxes

Reducing food loss and waste results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding food that is never consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food recovery organizations provide jobs or sponsor community development, and recipients of donated food are able to spend limited financial resources on other basic goods and services.

Yet food donation can also be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded at no cost. As a result, it is often easier and less expensive for farmers, businesses, and private individuals to throw away food instead of donating it. Some countries have sought to address this issue by offering tax incentives and removing financial barriers to food donation. As explained below, Mexican law does provide for tax incentives to donors and intermediaries through the Income Tax Law (*Ley del Impuesto Sobre la Renta*); however, food donors often find that these benefits are not sufficient to overcome the actual or perceived costs of donation.¹⁰⁹

Incentives

Tax incentives can provide significant support for food donation efforts and for the reduction of food loss and waste. Tax incentives can also help to make food donation more cost effective and economically beneficial for donors. For example, corporate donors may be more likely to donate surplus food to food recovery organizations if they receive a charitable deduction to offset the cost of transportation and logistics.

In Mexico, corporate and individual donors are eligible to claim an annual deduction for the total value of donations, up to 7% of the donor's taxable income (for an individual) or taxable profit (for corporations) from the previous year.¹¹⁰ This benefit is set forth in the Income Tax Law (*Ley del Impuesto Sobre la Renta*) and applies only to donations made to qualified non-governmental organizations (NGOs) that have registered as "authorized donees" (*donatarias autorizadas*) with the Tax Administration System (*Sistema de Administración Tributaria* or SAT).¹¹¹ The SAT also permits donors of food and other basic goods for human subsistence to claim an additional monthly deduction of up to 5% of the market value of the donation.¹¹² Donors are only eligible to claim this benefit if the gross profit margin for selling the donated food would have been at least 10%; if the gross profit margin for selling the donated food would have been less than 10%, then the deduction is reduced to 50% of the expected profit margin.¹¹³

Articles 108 and 109 of the Regulations of the Income Tax Law (*Reglamento de la Ley del Impuesto Sobre la Renta*) set forth the process for offering food donations, explaining that persons seeking the charitable deduction must inform SAT that they intend to donate food products at least five days before the expiration date.¹¹⁴ Article 32-F of the Federal Tax Code (*Código Fiscal de la Federación*) further elaborates that the donation offer must be extended to those authorized donees that registered with the SAT as dedicated to the distribution of food and other basic necessities.¹¹⁵

Under Article 27, taxpayers are further encouraged to pursue donation before discarding food. The article allows taxpayers to still claim the 7% tax deduction if they destroy or discard food that has lost commercial value, *provided* that the taxpayer first offered this food for donation to an authorized donee, *i.e.* food recovery organizations.¹¹⁶ Authorized donees may not accept the donations for a myriad of reasons, including a lack of resources or capacity to receive, handle, store, and distribute the food; in such situations, food donors that have offered safe, surplus food for donation may still be able to claim the tax benefit even if the food is ultimately wasted.

Mexico's Income Tax Law also provides tax benefits for authorized donees; article 79 of the Income Tax Law provides tax benefits for the charitable and NGO institutions that are registered under the Federal Law for the Promotion of Activities Carried Out by Civil Society Organizations (*Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil*) receiving and distributing food donations. This exemption

permits authorized donees to collect donations, membership fees, bank interest, income from the sale of property, and income from leasing of property without paying taxes.¹¹⁷ Additionally, authorized donees are exempt from state and municipal taxes and duties.¹¹⁸

While the law does not explicitly reference food banks or other food recovery organizations, it does apply to social assistance organizations that promote access to food and other basic necessities, consistent with the Social Assistance Law and General Health Law.¹¹⁹ The Mexican Association of Food Banks (*Asociación Mexicana de Bancos de Alimentos*), for example, is an active member of the Registry of Civil Society Organizations under the Federal Law for the Promotion of Activities Carried Out of Civil Society Organizations, and is thus eligible for the above-mentioned benefits.¹²⁰

Barriers

While many tax schemes are intended to incentivize donation, some taxes may actually have the opposite impact, creating a barrier to food recovery. In many countries, the Value Added Tax (Impuesto al Valor Agregado, IVA or VAT), in particular, presents a financial barrier to donating food. The VAT is a federal tax that is levied on a good at each stage of the supply chain, from production to the point of sale, whenever value is added. Since food donation is generally not considered to be a taxable event, *i.e.* value is not added at the donation stage and receiving institutions do not incur an input VAT (or VAT credit). As a result, food donors are often responsible for repaying the full cost of an input VAT to the relevant tax authority. Food donors may perceive this reimbursement as a type of penalty, one which does not apply when food is simply discarded.

To avoid this barrier, many countries adjust VAT rates or alter the reimbursement scheme to align with greater policy agendas; for example, countries may exempt food donation entirely from the VAT or apply reduced VAT rates to basic essentials, such as pharmaceuticals, healthcare services and education. This is the case in Mexico, where most foods are not subject to the VAT (otherwise imposed at a rate of 16%).¹²¹ As a result of this exemption, food donors do not have bear this additional cost when donating food, as is the case in other Latin American countries, such as Argentina, where the food donor is responsible for reimbursing the VAT credit for donated foods.¹²² Accordingly, the VAT does not present a major barrier to food donation in Mexico.

Donation Requirements or Food Waste Penalties

Some countries have created food donation requirements or impose monetary penalties for food that is sent to the landfill (often known as organic waste bans or waste taxes) to influence business behavior and promote sustainable food systems. Mexico has not adopted such penalties or requirements at a federal level. At the state level, however, donation laws impose certain requirements or prohibitions. For example, the state of Mexico's food donation law imposes sanctions on individuals and organizations that "participate in irrational or unnecessary food waste."¹²³ According to partners in Mexico, however, the government has not yet levied sanctions in the case of violations.¹²⁴

Government Grants and Incentives

Government grants for food recovery initiatives, infrastructure, and organizational support can help countries launch new programming or scale up existing donation efforts. Mexico's federal government administers several agricultural support and poverty reduction programs consistent with the objectives of reducing food waste and loss.¹²⁵ For example, the Social Infrastructure Contribution Fund (FAIS) is intended to finance basic works, social activities and investments that directly benefit populations in extreme poverty in accordance with the General Law of Social Development.¹²⁶ Under the previous two administrations, the federal government also allocated funds to support the infrastructure of BAMX and expand the reach of food recovery efforts. Currently, however, there are no federal grants or financing mechanisms specifically designed to support on-farm recovery of produce, reduce food waste at the retail level, or fund food recovery organizations and donation efforts.

Miscellaneous

In addition to the relevant laws addressed in the above sections, there may be other federal, municipal, or provincial laws and policies that impact food donation efforts in Mexico. These may include agricultural programs administered under SADER and SEGALMEX, such as the Production for Wellbeing (*Producción para el Bienestar*) program,¹²⁷ which is intended to increase domestic grain production and help small producers achieve self-sufficiency. The impact of these programs on local production, market availability, and food supply—all of which may drive a surplus of safe food—is not yet known.

CONCLUSION

This Legal Guide is intended to identify Mexico's current laws, policies and programs that relate to food waste or food donation. While the federal government is primarily responsible for guaranteeing food security and sustainable food systems, food recovery organizations acting in a private capacity can provide an additional social safety net. In Mexico, the federal government has not implemented an overarching federal law on food loss, waste, or recovery. Instead, it regulates food donation within its general food law framework, relying on the General Health Law, Civil Code, and Income Tax Law, as well as food-related NOMs, to set forth food safety standards, date labeling requirements, standards of liability, and tax benefits that apply to donated food. At the state level, governments have adopted specific food donation laws that explicitly promote food recovery efforts as part of a greater policy agenda. However, these state laws do not address all legal issues that are likely to arise in the context of donation, and apply only in the applicable jurisdiction.

This Legal Guide provides a starting point from which policymakers, private sector actors, and civil society may better understand the current laws and policies as well as begin a dialogue about food loss and waste prevention and the value of food recovery to Mexico's food security, economic stability, and environmental sustainability. A separate document produced under the Global Food Donation Policy Atlas Project sets forth policy recommendations specific to Mexico to contribute to this discussion. In the meantime, food donors and food recovery organizations should take into account the laws, policies and legal issues discussed in this Legal Guide when donating food or facilitating the distribution of donated food to those in need. To better understand the regulation of food donation in Mexico, donors, intermediaries, and policymakers should investigate the laws identified in this guide and seek additional legal counsel, if necessary.

ENDNOTES

- ¹ FOOD & AGRIC. ORG. OF THE UNITED NATIONS [FAO], GLOBAL FOOD LOSSES AND FOOD WASTE—EXTENT, CAUSES, AND PREVENTION 4 (2011), <http://www.fao.org/3/a-i2697e.pdf> [<https://perma.cc/DD6H-U99T>]
- ² *Id.*
- ³ HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 1 (2016), https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf.
- ⁴ FAO, FOOD WASTAGE FOOTPRINT: IMPACTS ON NATURAL RESOURCES 6 (2011).
- ⁵ *Id.*
- ⁶ FAO, FOOD WASTAGE FOOTPRINT & CLIMATE CHANGE 1 (2015).
- ⁷ *Id.*
- ⁸ FAO, THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD: SAFEGUARDING AGAINST ECONOMIC SLOWDOWNS AND DOWNTURNS 6 (2019), <http://www.fao.org/3/ca5162en/ca5162en.pdf> [<https://perma.cc/WS34-9DCZ>].
- ⁹ G.A. Res. 70/1 at 22 (Oct. 21., 2015) (“By 2030, to halve per capita global food waste at the retail and consumer levels and reduce food losses along production and supply chains, including post-harvest losses.”).
- ¹⁰ Genaro Aguilar Gutiérrez, World Bank-Mexico, Food Losses and Food Waste in Mexico: quantification and some proposals for public policy, <http://www.cec.org/sites/default/files/pdf/fww/wb-presentations/6-genaro-aguilar.pdf>.
- ¹¹ CONSEJO NACIONAL DE EVALUACIÓN DE LA POLÍTICA DE DESARROLLO SOCIAL [CONEVAL], NOTA INFORMATIVA: LA POBLACIÓN INDÍGENA ES EL GRUPO QUE PRESENTA LA MAYOR CARENCIA POR ACCESO A LA ALIMENTACIÓN (2019), https://www.coneval.org.mx/SalaPrensa/Comunicadosprensa/Documents/2019/NOTA_INFORMATIVA_MUNDIAL_DE_LA_ALIMENTACION.pdf
- ¹² FLPC and GFN recognize that the legal and policy landscape relevant to the prevention of food loss and waste and promotion of food donation is changing rapidly. This guide is intended reflect the state of legal and policy developments during the research period (September-December 2019).
- ¹³ See Jesus Leal Trujillo, *Economic slowdown likely to continue in 2020*, DELOITTE INSIGHTS (Dec. 17, 2019), <https://www2.deloitte.com/us/en/insights/economy/americas/mexico-economic-outlook.html>; Mexico, FOREIGN AGRIC. SERVICE, U.S. DEP’T. OF AGRIC., <https://www.fas.usda.gov/regions/mexico> (last visited Jan. 26, 2020)
- ¹⁴ Mexico, THE WORLD BANK, <https://data.worldbank.org/country/mexico> (last visited Feb. 25, 2020).
- ¹⁵ *Poverty in Mexico*, CONEVAL, https://www.coneval.org.mx/Medicion/Paginas/Pobreza_2008-2016.aspx (last visited Jan. 26, 2020).
- ¹⁶ FAO, THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD: SAFEGUARDING AGAINST ECONOMIC SLOWDOWNS AND DOWNTURNS 129 (2019), <http://www.fao.org/3/ca5162en/ca5162en.pdf> [<https://perma.cc/WS34-9DCZ>].
- ¹⁷ *Id.*
- ¹⁸ Now the Ministry of Welfare (*Secretaria de Bienestar*)
- ¹⁹ FOREIGN AGRIC. SERVICE, U.S. DEP’T. OF AGRIC., MEXICO PUSHES CRUSADE AGAINST HUNGER CAMPAIGN, GAIN Report (Jan. 1, 2013), https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Mexico%20Pushes%20Crusade%20Against%20Hunger%20Campaign_Mexico_Mexico_1-29-2013.pdf.
- ²⁰ See, e.g., *Anti-hunger campaign failed to meet its goal and is short 1.6 million pesos*, MEXICO NEWS DAILY (18 December 2018), <https://mexiconewsdaily.com/news/anti-hunger-campaign-failed-to-meet-its-goal/>.
- ²¹ *Mexico tackles malnutrition with the PROSPERA social protection program*, SCALING UP NUTRITION (24 January 2017), <https://scalingupnutrition.org/news/mexico-program-of-social-inclusion-prospera/>.
- ²² Estatuto Orgánico del Organismo Público Descentralizado Seguridad Alimentaria Mexicana (Organic Law of the Decentralized Public Organism of Mexican Food Security) Diario Oficial de la Federación [DOF] 26-09-2019 (Mex.)
- ²³ Ley de Desarrollo Rural Sustentable [LDRS] Diario Oficial de la Federación [DOF] 07-12-2001, últimas reformas DOF 12-04-2019 (Mex.)http://www.diputados.gob.mx/LeyesBiblio/pdf/235_120419.pdf.
- ²⁴ Gutiérrez, *supra* note 11; See also *Mexico wastes more than 20.4 million tons of food each year*, EL UNIVERSAL ENGLISH (Sept. 12, 2017) <https://www.eluniversal.com.mx/english/mexico-wastes-more-204-million-tons-food-each-year>.
- ²⁵ WORLD BANK GROUP, MEXICO: CONCEPTUAL FRAMEWORK FOR A NATIONAL STRATEGY ON FOOD LOSS AND WASTE 6 (2019), http://www.wrap.org.uk/sites/files/wrap/Conceptual_Framework_for_a_National_Strategy_on_Food_Loss_and_Waste_for_Mexico.pdf
- ²⁶ Gutiérrez, *supra* note 11.
- ²⁷ Gutiérrez, *supra* note 11; See also *Mexico wastes more than 20.4 million tons of food each year*, EL UNIVERSAL ENGLISH (Sept. 12, 2017) <https://www.eluniversal.com.mx/english/mexico-wastes-more-204-million-tons-food-each-year>.
- ²⁸ COMMISSION FOR ENVIRONMENTAL COOPERATION [CEC], CHARACTERIZATION AND MANAGEMENT OF FOOD LOSS AND WASTE IN NORTH AMERICA 12 (2017) <http://www3.cec.org/islandora/en/item/11772-characterization-and-management-food-loss-and-waste-in-north-america-en.pdf>.
- ²⁹ FAO, FOOD LOSSES AND WASTE IN LATIN AMERICA AND THE CARIBBEAN, 27 (2016), <http://www.fao.org/3/a-i5504e.pdf>.
- ³⁰ CEC, *supra* note 25, at vii.
- ³¹ FAO, *supra* note 26 at 26–27.
- ³² CEC, *supra* note 25, at 74.
- ³³ WORLD BANK GROUP, *supra* note 22 (2019).
- ³⁴ *Making Global Goals Local Business-Mexico*, UNITED NATIONS GLOBAL COMPACT, <https://www.unglobalcompact.org/take-action/events/1707-making-global-goals-local-business-mexico> (last visited Feb. 25, 2020).
- ³⁵ BANCOS DE ALIMENTOS DE MEXICO, <https://bamx.org.mx> (Last visited Feb. 28, 2020).
- ³⁶ BANCOS DE ALIMENTOS DE MEXICO, INFORME ANUAL 2018 (Aug. 2019).
- ³⁷ *Id.* at 19.
- ³⁸ *Id.*
- ³⁹ *Food Bank Leadership Institute 2019 focuses on advancing zero hunger across the globe*, GLOBAL FOODBANKING NETWORK (April 4, 2019), <https://www.foodbanking.org/fbli-2019/>.
- ⁴⁰ Américo Villarreal Anaya, *Iniciativa Con Proyecto De Decreto Por El Que Se Adicionan Diversas Disposiciones A La Ley General De Desarrollo Social Y La Ley De Desarrollo Rural Sustentable* (Sep. 3, 2019).
- ⁴¹ LIBRARY OF CONGRESS, COUNTRY PROFILE: MEXICO 1 (2008), <https://www.loc.gov/rr/frd/cs/profiles/Mexico.pdf>
- ⁴² Constitución Política De Los Estados Unidos Mexicanos [CPEUM], Título Tercero Capítulo I, Diario Oficial de la Federación [DOF] 05-02-1917, 28-03-1951, <http://www.ordenjuridico.gob.mx/Constitucion/cn16.pdf> [hereinafter “Constitution of Mexico”]

⁴³ *An Electronic Guide to Mexican Law*, GLOBALLEX (Dec. 2019), <http://www.nyulawglobal.org/globalex/Mexico1.html>.

⁴⁴ See CPEUM, art. 4, cl. 3 (In 2011, Mexico amended its Constitution to provide that “[e]very person has a right to nutritional, sufficient, and quality food.”)

⁴⁵ Ley General de Desarrollo Social [LGDS], Artículo 6, Diario Oficial de la Federación [DOF] 20-01-2004, 25-06-2018, https://www.coneval.org.mx/Evaluacion/NME/Documents/Ley_General_de_Developmento_Social.pdf

⁴⁶ Integrantes del Grupo Parlamentario del PVEM, *Que expide la Ley General para la Recuperación y Aprovechamiento de Alimentos; y Reforma y Adiciona Diversas Disposiciones de las Leyes de Desarrollo Rural Sustentable, y del Impuesto Sobre la Renta*, SISTEMA DE INFORMACIÓN LEGISLATIVA, (Sep. 18, 2018), http://sil.gobernacion.gob.mx/Archivos/Documentos/2018/09/asun_3735894_20180918_1537285005.pdf.

⁴⁷ Américo Villarreal Anaya, *supra* note 40.

⁴⁸ Ley General de Salud [LGS] artículo 50, Diario Oficial de la Federación [DOF] 07-02-1984 (Mex.), http://www.salud.gob.mx/cnts/pdfs/LEY_GENERAL_DE_SALUD.pdf [hereinafter “General Health Law”]

⁴⁹ See Norma Oficial Mexicana, NOM-051-SCFI / SSA1-2010, Proyecto de Modificación a la Norma Oficial Mexicana NOM-051-SCFI/SSA1-2010, Especificaciones generales de etiquetado para alimentos y bebidas no alcohólicas preenvasados-Información comercial y sanitaria, publicada el 5 de abril de 2010, Diario Oficial de la Federación [DOF] 11-10-2019 (Mex.) [hereinafter “NOM-051”] (effectively modifying the General Health Law to include additional front of pack labeling for products with excess nutrients. The update to NOM-51 was approved on Jan. 24, 2020 but is currently subject to injunction.).

⁵⁰ General Health Law, arts. 167, 168.

⁵¹ See Ley de Asistencia Social [LAS] artículo 12, Diario Oficial de la Federación [DOF] 24-04-2018, http://www.diputados.gob.mx/LeyesBiblio/pdf/270_240418.pdf

⁵² General Health Law, art 199-bis.

⁵³ *Id.*

⁵⁴ General Health Law, art. 17-bis; Constitution of Mexico, art. 4.

⁵⁵ *Id.*

⁵⁶ General Health Law, art. 17-bis.

⁵⁷ PEW CHARITABLE TRUSTS, LEGAL AND REGULATORY FRAMEWORKS GOVERNING THE GROWING, PACKING AND HANDLING OF FRESH PRODUCE IN COUNTRIES EXPORTING TO THE U.S. 70 (2010).

⁵⁸ General Health Law, art. 199-bis.

⁵⁹ Reglamento de Control Sanitario de Productos y Servicios [R.C.S.P y S.] [Regulation of the Sanitary Control of Products and Services], Título 1, Capítulo 1, Artículo 1, Diario Oficial de la Federación [DOF] 09-08-1999 (Mex.), <http://www.salud.gob.mx/unidades/cdi/nom/compi/rcsps.html>

⁶⁰ Mexico’s Federal Metrology Law provides for the Official Mexican Norm (NOM), which is akin to a regulation, and the Mexican Standard (NMX), which is voluntary and recognized as a standard. NMX proposals are presented by private institutions, are not discussed in this guide.

⁶¹ Formerly known as the *Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación* or SAGARPA.

⁶² Rebeca López-García. *Food Law in Mexico: Regulatory Framework and Public Policy Strategies to Address the Obesity Crisis in Latin America*. 33 *International Food Law and Policy* 793, 795 (2016); Marco A. Leon, *A perspective of food safety laws in Mexico*, 94 *J. Science of Food and Ag.* 1954, 1955 (2014).

⁶³ Norma Oficial Mexicana, NOM-251-SSA1-2009, Prácticas de higiene para el proceso de alimentos, bebidas o suplementos alimenticios, Diario Oficial de la Federación [DOF] 01-03-2009.

⁶⁴ See, e.g., Norma Oficial Mexicana, NOM-213-SSA1-2002 Productos y Servicios. Productos Carnicos Procesados. Especificaciones Sanitarias. Metodos de Prueba, Diario Oficial de la Federación [DOF] 11-07-2005; Norma Oficial Mexicana, NOM-243-SSA1-2010, Productos y servicios. Leche, fórmula láctea, producto lácteo combinado y derivados lácteos. Disposiciones y especificaciones sanitarias. Métodos de prueba, Diario Oficial de la Federación [DOF] 27-09-2010; Norma Oficial Mexicana, NOM-242-SSA1-2009, Productos y servicios. Productos de la pesca frescos, refrigerados, congelados y procesados. Especificaciones sanitarias y métodos de prueba, Diario Oficial de la Federación [DOF] 10-02-2011; and Norma Oficial Mexicana, NOM-201-SSA1-2015, Productos y servicios. Agua y hielo para consumo humano, envasados y a granel. Especificaciones sanitarias, Diario Oficial de la Federación [DOF] 22-12-2015.

⁶⁵ Foods and Nonalcoholic Beverages with a Modified Composition under Nutritional Specifications (*Alimentos y Bebidas No Alcoholicas Con Modificaciones en su Composicion*), which has not been fully updated since its original publication in 1994. NOM-051 requires food and beverage labels to contain information that is true and does not lead the consumer to a misconception about the product’s nature and characteristics.

⁶⁶ NOM-051 was updated in 2020 during the process of review and update of the NOM-051-scfi/ssa1-2010. It is jointly enforced by the Federal Consumer Protection Agency (PROFECO, under the Secretariat of the Economy) and COFEPRIS (under the Secretariat of Health) and was updated with the following changes: Nutritional profile; NOM seal (conformity assessment); Sweeteners octagon (following Chile’s model); “AVOID EXCESSIVE CONSUMPTION” caption; “CONTAINS CAFFEINE” caption; Nutrients per 100 g, 100 ml, portion or container; Implementation time; Use of endorsements, personalities, etc.; Use of Claims; Definitions of “Sugars” and Products not labeled for individual sale. As of March 2020, the application of this regulation had stalled pending a judicial injunction.

⁶⁷ Norma Oficial Mexicana, NOM-169-SSA1-1998, Para la Asistencia Social Alimentaria a Grupos de Riesgo, Diario Oficial de la Federación [DOF] 09-12-1998.

⁶⁸ Norma Oficial Mexicana, NOM-043-SSA2-2005, Servicios básicos de salud. Promoción y educación para la salud en materia alimentaria. Criterios para brindar orientación, Diario Oficial de la Federación [DOF] 23-01-2006.

⁶⁹ Norma Oficial Mexicana, NOM-014-SSA3-2013, Para la asistencia social alimentaria a grupos de riesgo, Diario Oficial de la Federación [DOF] 11-11-2004

⁷⁰ Ley Federal de Sanidad Vegetal, Diario Oficial de la Federación [DOF] 05-01-1994, 26-12-2017 (Mex.) [hereinafter “Federal Law on Plant Health”]; see also FOREIGN AGRIC. SERVICE, U.S. DEP’T. OF AGRIC., MEXICO: FOOD AND AGRICULTURAL IMPORT REGULATIONS AND STANDARDS 3 (2018).

⁷¹ Federal Law on Plant Health, art. 47 §§ 7,7A.

⁷² Federal Law on Plant Health, art. 38.

⁷³ Ley Federal de Sanidad Animal, Diario Oficial de la Federación [DOF] 25-07-2007, 16-02-2018 (Mex.).

⁷⁴ Ley del Impuesto Sobre la Renta [LIR] Diario Oficial de la Federación [DOF] 11-12-2013, 30-11-2016 (Mex.), http://www.diputados.gob.mx/LeyesBiblio/pdf/LISR_301116.pdf

⁷⁵ Ley para la Donación Altruista de Alimentos de la Ciudad de México, *Gazeta Oficial de la Ciudad de México* 16-02-2017, <http://www.ordenjuridico.gob.mx/Documentos/Estatal/Ciudad%20de%20Mexico/wo119835.pdf>

⁷⁶ *Id.*, art. 19.

⁷⁷ See Decreto por el que se Expide la Ley Para la Recuperación y Aprovechamiento de Alimentos del Estado de México, 27-11-2018.

⁷⁸ See e.g., Ley para la donación altruista de alimentos, 11-11-2007 (promoting the altruistic donation of food in Chihuahua); Ley para el aprovechamiento integral de alimentos y su donación altruista del Estado de Coahuila de Zaragoza 18-12-2017 (prohibiting industrial and commercial waste of food that is suitable for human consumption in Coahuila de Zaragoza); Ley para regular y promover la donación altruista de alimentos 01-02-2005 (promoting the periodic and altruistic donation of food in Colima); Ley del Derecho a la Alimentación Adecuada y Combate Contra el Desperdicio de Alimentos para el Estado de Nuevo León 17-11-2017 (establishing the right to food and to combat food loss and waste in Nuevo León), http://www.hcnl.gob.mx/trabajo_legislativo/leyes/leyes/ley_del_derecho_a_la_alimentacion_adeuada_y_combate_contra_el_desperdicio_de_alimentos_para_el_esta/ [hereinafter “Nuevo León Food Donation Law”]; Ley para fomentar la donación altruista de alimentos 15-04-2013 (promoting the altruistic donation of food in Quintana Roo); Ley para el aprovechamiento integral de alimentos y su donación altruista 24-09-2018 (approving the importance of food donation in Sinaloa); Ley para el aprovechamiento integral de alimentos y su donación altruista del Estado de Sonora, 28-06-2018 (recognizing the importance of food and altruistic donation in Sonora); Ley para Fomentar la Donación

Altruista de Artículos de Primera Necesidad, 17-08- 2017) (providing for the donation of food and other basic necessities in Tamaulipas).

79 Nuevo León Food Donation Law, art. 6.
80 *Id.*, arts. 8, 12.
81 *Id.*, art. 12.
82 *Id.*, art. 21.
83 General Health Law, art 199-bis.
84 *Id.*, title 10, ch. I.
85 *Id.*, art. 199-bis.
86 HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC [FLPC] AND NATURAL RESOURCES DEFENSE COUNCIL [NRDC], DON'T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 19 (2017).
87 US GAO. DATE LABELS ON PACKAGED FOODS: USDA AND FDA COULD TAKE ADDITIONAL STEPS TO REDUCE CONSUMER CONFUSION, GAO-19-407 (SEPT. 2019) <https://www.gao.gov/assets/710/701238.pdf>
88 FLPC and NRDC, *supra* note 86 at 19.
89 NOM-051, arts. 3.17, 3.18.
90 *Id.*, art. 3.17.
91 *Id.*, art. 3.18.
92 *Id.*, art. 4.2.7.2.
93 *Id.*, arts. 3.17, 3.18.
94 See e.g. Law 25989, Dec. 16, 2004, [30564] B.O. 1 (Arg.) amended via Law 27454, October 10, 2018, [33984] B.O. 3 (Arg.).
95 See Código Civil Federal [CC] Arts. 1910-1934, Diario Oficial de la Federación [DOF] 26-05-1928, 03-06-2018, http://www.diputados.gob.mx/LeyesBiblio/pdf/2_030619.pdf [hereinafter "Federal Civil Code"] (regulating "extra-contractual liability cases" under Mexican law).
96 General Health Law, art. 199-bis.
97 *Id.*, art. 464-bis.
98 *Id.*
99 *Id.*, art. 199-bis.
100 See Federal Civil Code, arts. 1910–1934.
101 *Id.*, art. 1792.
102 *Id.*, art. 1913 (referring to mechanisms or substances that are "inherently dangerous" due to "the speed which they develop, or due to their explosive or flammable nature, or due to the electric power that they carry, or as a result of similar dangers.")
103 See *Id.*, Book Four, Chapter V, "Liability from Illicit Acts."
104 *Id.*, art. 1910
105 Jorge A. Vargas, *Legal Studies Research Paper Series: Mexican Law and Personal Injury Cases*, Research Paper No. 07-77 at 29 (2006).
106 *Id.* at 18.
107 Daniel Torres Cantu, Que Expide la Ley General para fomentar la Donación Altruista de Alimentos, Gaceta Parlamentaria, Numero 4501-IV (Apr 5, 2016).
108 *Id.*
109 FLPC conversation with business associations in Mexico, Nov. 12, 2019.
110 LIR, art. 27.
111 *Id.*
112 Reglamento de la Ley del Impuesto sobre la Renta [RLIR], Artículos 107 y 108, Diario Oficial de la Federación [DOF] 08-10-2015, 06-05-2016 (Mex.), http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LISR_060516.pdf (Income Tax Regulation); Ley de ingresos de la federación para el ejercicio fiscal 2016, Artículo 16, apartado A, fracción IX, Diario Oficial de la Federación [DOF] 18-11-2015.
113 *Id.*; see also SAT, *Preguntas Frecuentes*, <https://www.sat.gob.mx/tramites/97905/avisos-de-donacion-y-destruccion-de-mercancias-que-han-perdido-su-valor-> (last visited Feb. 2, 2020).
114 RLIR, arts. 107, 108.
115 *Id.*; LIR, arts. 27, 32-F.
116 LIR, art. 27; RLIR, arts. 107, 108; and record 38 / LIR "Multiple notice for: Destruction of goods that have lost their value. Donation of merchandise that have lost their value. Fixed assets and investments that ceased to be useful. Donation of perishable products subject to expiration date. Agreements with donors to receive donations from the ISR" Miscellaneous Tax Resolution, Annex 1-A.
117 *Nonprofit Law in Mexico*, COUNCIL ON FOUNDATIONS (Aug. 2019), <https://www.cof.org/content/nonprofit-law-mexico>.
118 *Id.*
119 Ley Federal de Fomento a las Actividades Realizadas por Organizaciones de la Sociedad Civil, art. 5, Diario Oficial de la Federación [DOF] 07-06-2005; see also Ley de Asistencia Social [LAS], art. 4, Diario Oficial de la Federación [DOF] 02-09-2004, 24-04-2018 (Mex) and General Health Law, art. 168.
120 *Buscador de OSC*, Comisión de Fomento de las Actividades de las Organizaciones de la Sociedad Civil, http://www.sii.gob.mx/portal/?cluni=&nombre=Bancos+de+Alimentos&acronimo=&rfc=&status_osc=&status_sancion=&figura_juridica=&estado=&municipio=&asentamiento=&cp=&rep_nombre=&rep_apaterno=&rep_amaterno=&num_notaria=&objeto_social=&red=&advanced= (last visited Feb. 27, 2020).
121 Ley del Impuesto al Valor Agregado [LIVA] Artículo 2o, Diario Oficial de la Federación [DOF] 29-12-1978, 09-12-2019 (Mex.), http://www.diputados.gob.mx/LeyesBiblio/pdf/77_091219.pdf (Value Added Tax).
122 See Decree 692/1998, Art. 58, June 11, 1998, [28918] B.O. 3 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=51323> [<https://perma.cc/7BL7-QV2C>] [hereinafter "VAT Regulatory Decree"].
123 See, e.g., La Ley Para La Donación Altruista De Alimentos De La Ciudad De Mexico, 18-10-2016, (Mex.).
124 FLPC discussions with BAMX and partners in Mexico, Nov. 2019.
125 See e.g., the PROSPERA program; the development of the Integrated Social Information System (SIS). Food and Nutrition Security Platform (FNS), *FNS Related Programs in Mexico*, <https://plataformacelac.org/en/programas/0/mex>
126 Secretaría de Bienestar, *Fondo de Aportaciones para la Infraestructura Social (FAIS)*, GOBIERNO DE MEXICO (Nov. 2015), <https://www.gob.mx/bienestar/documentos/fondo-de-aportaciones-para-la-infraestructura-social-fais> (in Spanish).
127 Acuerdo por el que se emiten los Lineamientos para la Operación del Programa Producción para el Bienestar para el ejercicio fiscal 2019, Diario Oficial de la Federación [DOF] 23-01-2019, http://www.dof.gob.mx/nota_detalle.php?codigo=5548620&fecha=23/01/2019



© JUNE 2020



**THE GLOBAL
FOOD DONATION
POLICY ATLAS**