

# Promoting Food Donation: Liability Protections, Tax Incentives, & Date Labeling



November 5, 2018: Food Recovery & Donation: Opportunities & Challenges in the Lakes Region

Christine Beling  
United States Environmental Protection Agency



CHANGING HOW WE THINK ABOUT OUR RESOURCES FOR A BETTER TOMORROW

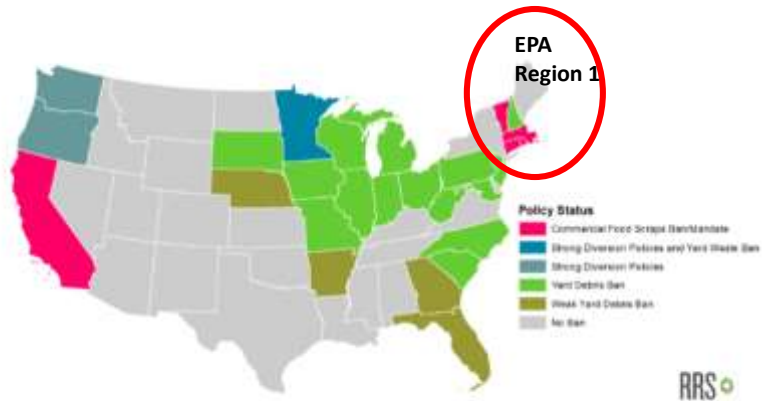


[www.epa.gov/smm](http://www.epa.gov/smm)

## EPA's Food Recovery Challenge



# National Picture of *Organics* Policy



**EPA** United States Environmental Protection Agency

July 22, 2017



**Rethink**

CHANGING HOW WE THINK ABOUT OUR RESOURCES FOR A BETTER TOMORROW

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[www.epa.gov/smm](http://www.epa.gov/smm)

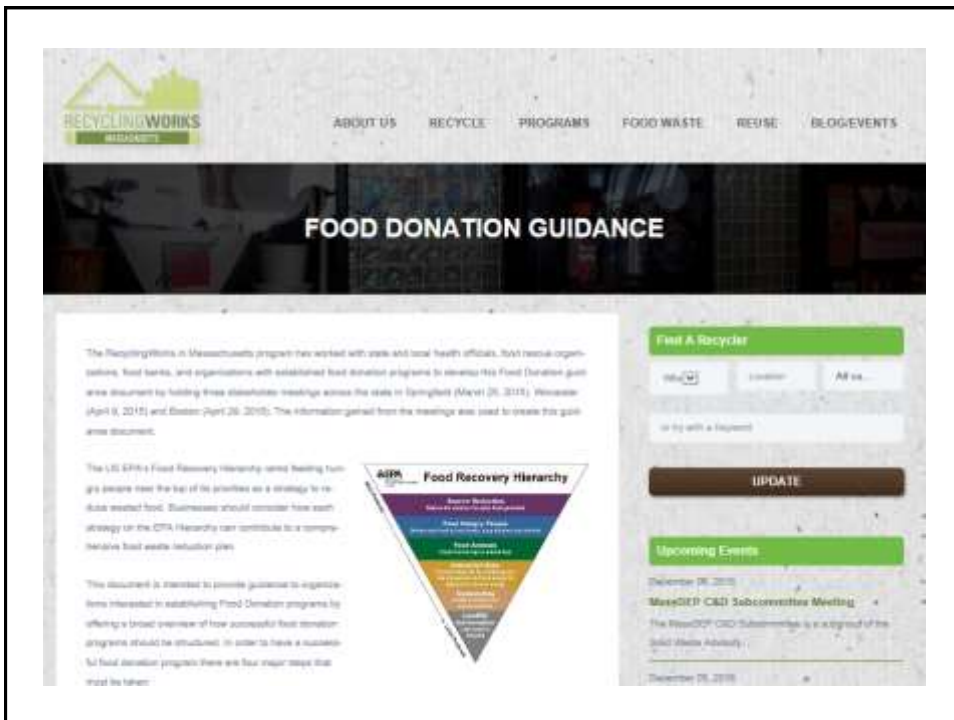
# Best Practices for Diverting Food for Donation



- Legal Fact Sheets:
  - Date Labels
  - Tax Incentives
  - Liability Protections
  - Animal Feed

MA, CT, RI, VT, TN, NC  
NH and ME just completed


SLIDE FROM HARVARD FOOD  
LAW AND POLICY CLINIC



The Recycling Works in Massachusetts program has worked with state and local health officials, food rescue organizations, food banks, and organizations with established food donation programs to review the Food Donation guidance document by holding three stakeholder meetings across the state in Springfield (March 26, 2018), Worcester (April 9, 2018) and Boston (April 26, 2018). The information gained from the meetings was used to create this guidance document.

The US EPA's Food Recovery Hierarchy used feeding hungry people near the top of its priorities as a strategy to reduce wasted food. Businesses should consider how each strategy on the EPA Hierarchy can contribute to a comprehensive food waste reduction plan.

This document is intended to provide guidance to organizations interested in establishing Food Donation programs by offering a broad overview of how successful food donation programs should be structured. In order to have a successful food donation program there are four major steps that must be taken:



**Find A Recycler**

Search by location:  All in...

or by with a keyword:

**UPDATE**

**Upcoming Events**

December 26, 2018  
**MassDEP C&I Subcommittee Meeting**  
 The MassDEP C&I Subcommittee is a subgroup of the Solid Waste Advisory...

December 26, 2018


Department of  
ENERGY & ENVIRONMENTAL PROTECTION

## Food Waste Reduction and Recovery

[Why Does It Matter?](#)

[EPA Food Recovery Hierarchy](#)

[Food Banks and Rescue Programs](#)

[Food Donation: Liability and Food Safety](#)

[Preventing Wasted Food at Home](#)

[Preventing Wasted Food at School](#)



[Preventing Wasted Food at Food Businesses](#)

[EPA Food Recovery Challenge](#)

[U.S. Food Waste Challenge](#)

[Gleaning Crops from Local Farms / Survey](#)

[Additional Resources](#)

*"Throwing away food is like stealing from the tables of the poor, the hungry"*  
 — Pope Francis, World Environment Day, 2013

**Legal Fact Sheets**

[Connecticut Food Donation: Date Labeling Laws](#)

[Connecticut Food Donation: Liability Protections](#)

[Connecticut Food Donation: Tax Incentives for Businesses](#)

**NEW:** [Connecticut Food Donation: Feeding Food Scraps to Animals](#)

VERMONT OFFICIAL STATE WEBSITE
VERMONT


AGENCY OF NATURAL RESOURCES


## Department of Environmental Conservation

AIR AND CLIMATE
LAND
WASTE
WATER
LEGAL, POLICY, OR MORE

Welcome to DEC

Welcome to the Vermont Department of Environmental Conservation



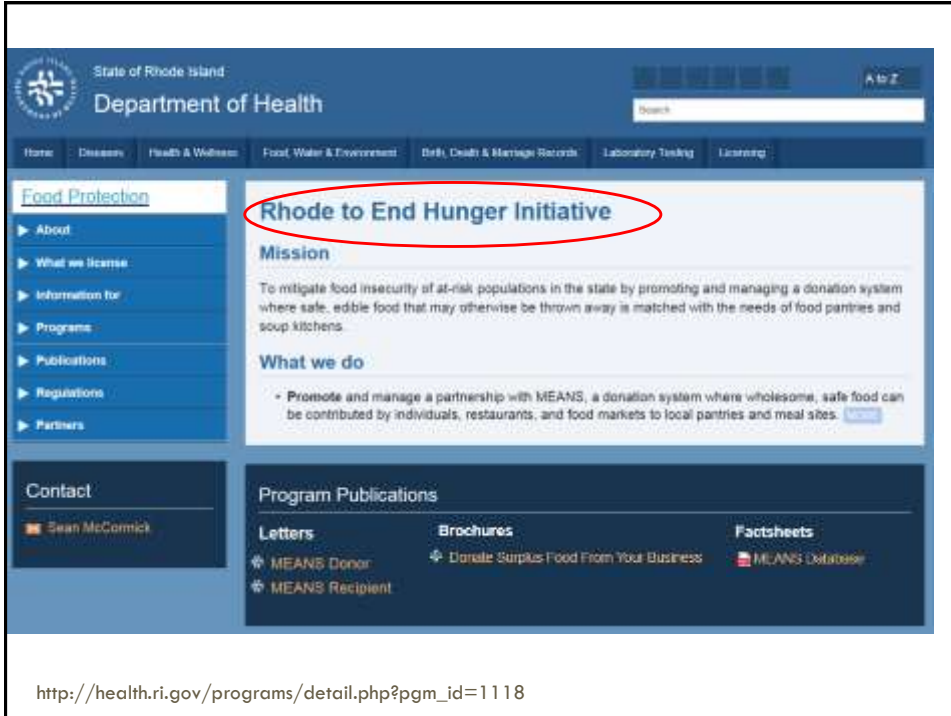


### FOOD DONATION IN VERMONT

Feed People Not Landfills

Vermont's Universal Recycling law adopted a Food Recovery Hierarchy into law in 2012. Vermont is the first state in the nation to legislatively adopt priority management for food before it is discarded.

The USEPA and USDA estimate that food waste is over 30% of the United States food supply. In 2010 an estimated 133 billion pounds of food never was eaten. In response to the impact of wasted food on the environment, the USEPA and USDA announced in September 2015 a national goal to reduce food waste by 30% by 2030.



State of Rhode Island  
Department of Health

Home Diseases Health & Wellness Food, Water & Environment Birth, Death & Marriage Records Laboratory Testing Licensing

**Food Protection**

**Rhode to End Hunger Initiative**

**Mission**  
To mitigate food insecurity of at-risk populations in the state by promoting and managing a donation system where safe, edible food that may otherwise be thrown away is matched with the needs of food pantries and soup kitchens.

**What we do**

- Promote and manage a partnership with MEANS, a donation system where wholesome, safe food can be contributed by individuals, restaurants, and food markets to local pantries and meal sites. [View](#)

**Contact**  
Sean McCormick

**Program Publications**

<b>Letters</b>	<b>Brochures</b>	<b>Factsheets</b>
<ul style="list-style-type: none"> <li>MEANS Donor</li> <li>MEANS Recipient</li> </ul>	<ul style="list-style-type: none"> <li>Donate Surplus Food From Your Business</li> </ul>	<ul style="list-style-type: none"> <li>MEANS Database</li> </ul>

[http://health.ri.gov/programs/detail.php?pgm\\_id=1118](http://health.ri.gov/programs/detail.php?pgm_id=1118)



# Harvard

## Food Law and Policy Clinic

A Division of the Center for Health Law and Policy Innovation

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- **Solange Eteessami**, J.D. Candidate, Harvard Law School
- **Darya Minovi**, MPH Candidate, Harvard T.H. Chan School of Public Health



# Legal Fact Sheet

## New Hampshire Food Donation: Liability Protections

Created by the Harvard Food Law and Policy Clinic, November 2018

Businesses (including farms) and nonprofits that provide or receive donated food are generally well-protected by laws designed to provide immunity from liability related to such donations. The federal Bill Emerson Good Samaritan Food Donation Act provides liability protection for food donors, and New Hampshire state law provides some additional liability protection to food donors in the state.

### Conclusion

Federal law and New Hampshire state law provide ample liability protections for food donors, so long as the donated food complies with federal and state safety and labeling rules, and it is donated in good faith and without the donor acting with gross negligence or intentional misconduct. New Hampshire state law bolsters federal liability protections by extending liability protection to donors that 1) donate food directly to the end recipient and 2) charge end consumers a fee to cover the cost of administering and distributing the food.

# Legal Fact Sheet

## New Hampshire Food Donation: Date Labels

Created by the Harvard Law School Food Law and Policy Clinic, November 2018

Date labels are the dates on food packaging that are accompanied by phrases such as "use by," "best before," "sell by," "enjoy by," and "expires on." Date labels can lead to food waste because they are misleading to consumers and are generally not related to food safety. As a result, consumers needlessly throw away safe, wholesome food.

### Conclusion

In sum, because there is no federal law on date labeling, regulation of these labels has been left largely to the states. New Hampshire date labeling law applies only to prepackaged sandwiches, but otherwise does not regulate date labeling. However, municipalities within the state may impose additional restrictions on date labeling; it is therefore important for manufacturers and local retailers to be aware of local laws.



# Legal Fact Sheet



## New Hampshire Food Donation: Tax Incentives

Created by the Harvard Law School Food Law and Policy Clinic, October 2018

Federal tax incentives provide important financial incentives that make food donation more cost-effective and economically beneficial. These tax incentives have been extraordinarily successful in motivating food donation. In the past, federal tax incentives for food donations were limited to C-corporations.<sup>1</sup> Tax incentives for donations were temporarily expanded to cover more businesses in 2005. Following a series of temporary extensions, Congress subsequently made the expansion permanent in 2015,<sup>2</sup> providing all businesses with added incentive to increase food donations and prevent food waste. At the federal level, tax incentives are available in the form of general or enhanced deductions, each of which are discussed in this fact sheet.

In addition to the federal tax incentives, a number of states have enacted state-level tax incentives. As of October 2018, New Hampshire State does not provide a state-level tax credit for food donations. However, New Hampshire has adopted most of the Internal Revenue Code, as in effect on December 31, 2016, for the calculation of business income and deductions.<sup>3</sup> The provisions that cover the federal food donation tax deductions are included within those adopted by New Hampshire.<sup>4</sup> New Hampshire businesses are therefore eligible to count federal tax deductions for food donations in the calculation of their income for both federal and state purposes.<sup>5</sup>



### Conclusion

As of October 2018, New Hampshire does not have its own state tax incentive for food donations. However, New Hampshire businesses are eligible for the federal general and enhanced tax deductions for food donation. Because New Hampshire has adopted the Internal Revenue Code provisions covering food donation deductions, eligible businesses also may claim the deduction when calculating their New Hampshire State taxes.



# Legal Fact Sheet



## New Hampshire Food Donation: Food Scraps for Animals

Created by the Harvard Food Law and Policy Clinic, October 2018

Societies have incorporated food waste into animal feed for centuries.<sup>1</sup> This practice declined in the 1980s, when state and federal laws tried to limit the feeding of food waste to animals following several disease outbreaks linked to animal products in livestock feed. Recently, there has been renewed interest in the practice of feeding safe, properly treated food waste to animals.

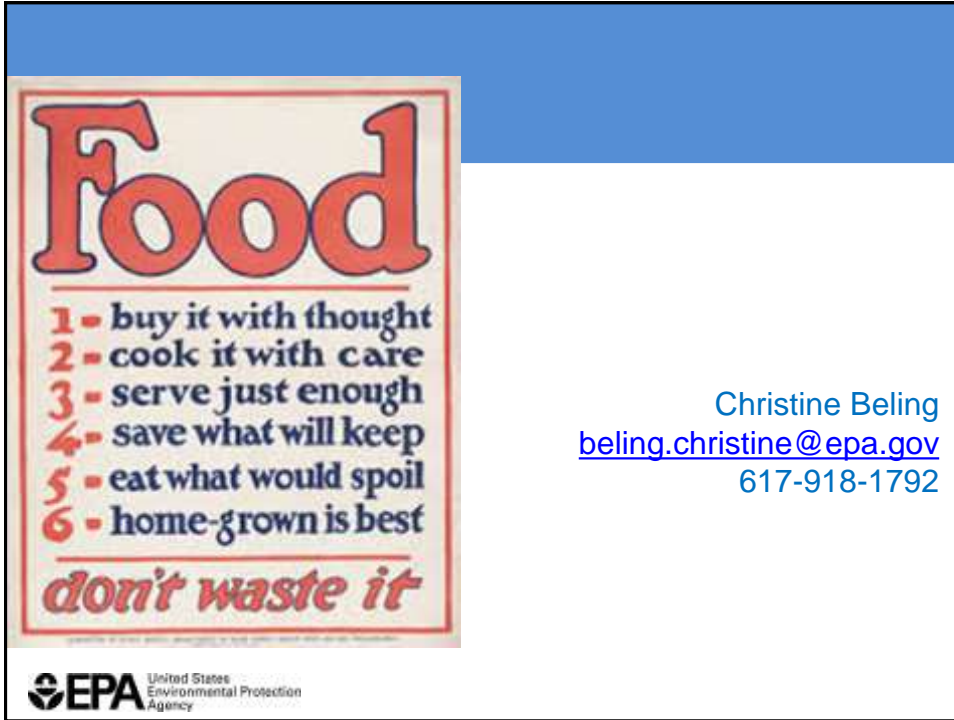
Using food scraps as animal feed in a safe, resource-efficient way can be an environmentally friendly and energy-efficient alternative to exclusively feeding livestock crops grown for that purpose. Repurposing otherwise wasted food has multiple benefits for regional farmers and food waste generators, such as retailers, restaurants, and educational institutions. These entities can partner to enhance the sustainability of their operations and reduce feed and disposal costs. Incorporating food scraps into animal feed can also reduce the demand for commercial feeds and the land, water, and other resources needed to produce them.

Federal and New Hampshire laws regulate the use of food waste in animal feed. This guide will examine both types of law.



### Conclusion

Feeding food waste to animals has many economic and environmental benefits when done responsibly and in conformity with state and federal law. Individuals or businesses interested in the practice can learn more by consulting the New Hampshire Department of Agriculture, Markets, Food.



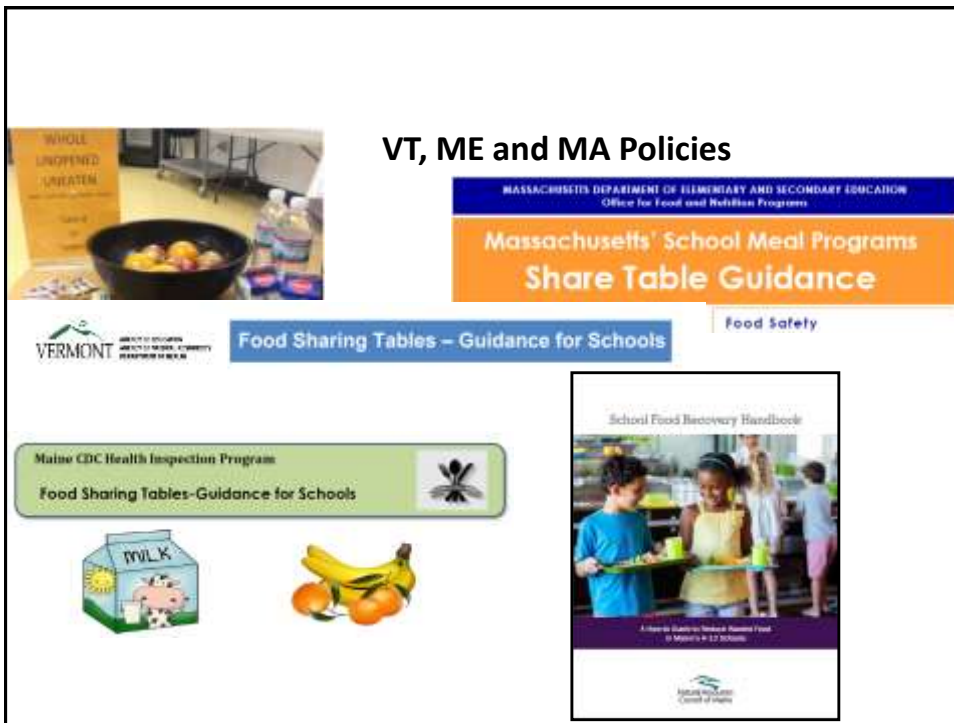
**Food**

- 1 - buy it with thought
- 2 - cook it with care
- 3 - serve just enough
- 4 - save what will keep
- 5 - eat what would spoil
- 6 - home-grown is best

*don't waste it*

**EPA** United States Environmental Protection Agency

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**VT, ME and MA Policies**

MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION  
 Office for Food and Nutrition Programs

**Massachusetts' School Meal Programs  
 Share Table Guidance**

Food Safety

VERMONT DEPARTMENT OF EDUCATION AND HEALTH SERVICES  
 VERMONT DEPARTMENT OF HEALTH SERVICES

**Food Sharing Tables – Guidance for Schools**

Maine CDC Health Inspection Program  
 Food Sharing Tables-Guidance for Schools

School Food Recovery Handbook  
 A Guide to Reducing Food Waste in Schools

VERMONT DEPARTMENT OF EDUCATION AND HEALTH SERVICES