

ISSUE BRIEF



**PROMOTING**  
**FOOD DONATION:**  
**DATE LABELING**  
**LAW AND POLICY**

NOVEMBER 2021

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## About The Global Food Donation Policy Atlas

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

## About the Harvard Law School Food Law and Policy Clinic

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



## About The Global FoodBanking Network

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

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# ABOUT THIS ISSUE BRIEF

Excessive food loss and waste (FLW) is a pressing challenge facing global food systems. FLW occurs at every stage of the supply chain and generates significant social, environmental, and economic costs. International estimates predict that more than one-third—or 1.3 billion tons—of food produced is lost or wasted along the supply chain.<sup>1</sup> At the same time, current data indicate that between 720 and 811 million people were hungry in 2020<sup>2</sup> and that more than 2 billion people were unable to regularly access safe, nutritious food in 2019.<sup>3</sup> Thoughtful public policies can help address these troubling trends and augment food system resilience, aiding in food recovery for social benefit and mitigating the environmental cost of excess production and loss.

Food donation offers a solution to these parallel issues. Redirecting safe, surplus food to those who need it most both decreases FLW and increases food security. However, scaling food donation requires aligned incentives that motivate individuals and companies to donate rather than discard surplus food. Across the globe, date labeling law and policy are commonly identified as areas of missed opportunities. Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. They are generally intended to reflect how long the manufacturer believes the food will maintain its peak quality and flavor.<sup>4</sup> Yet manufacturers, retailers, consumers, and food recovery organizations mistakenly believe date labels are food safety indicators.<sup>5</sup> Thus, once food passes its “expiration date,” it is often thrown away by potential food donors or refused by food recovery organizations who deem it unfit for human consumption.

In the many countries that do regulate date labels, inconsistent, under-developed, and prohibitive date labeling schemes contribute to this widespread misinterpretation. Countries rarely do not have national standardized date labeling schemes, but when this does occur, the onus is on regional governments and manufacturers to develop a date labeling scheme. These schemes are highly varied, are often not clearly defined, and only further exacerbate confusion. Further, some countries that employ national date label standardization do not clearly distinguish between quality-based and safety-based dates or do not permit the sale or donation of food past the quality-based date label despite no instances where doing so resulted in a consumer falling ill.<sup>6</sup> This issue brief informs governments and policymakers of best practices for effectively regulating the date labeling of food products to address these issues; support safe, surplus food donation; and reduce food waste and food insecurity.

This issue brief was developed as part of The Global Food Donation Policy Atlas project,<sup>7</sup> a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) that aims to promote strong food donation policies as global solutions to hunger and FLW.<sup>8</sup> Across key issue areas—including food safety, date labeling, liability protection, taxes, donation requirements or food waste penalties, and government grants and incentives—restrictive or inadequate laws and policies can undermine the efforts of food rescue organizations and create obstacles for businesses and other private-sector actors seeking to donate food. Such laws may also fail to properly incentivize socially beneficial behaviors. The Atlas project analyzes and compares these national laws and offers tailored recommendations to clarify and optimize the policy landscape for food donation.



## RECOMMENDATIONS IN BRIEF

The recommendations presented in this brief provide a starting point for stakeholders across the globe to strengthen date labeling policy frameworks. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as “food recovery organizations”), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste. The recommendations are as follows:

*To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption or donation, national governments or governments of a common economic region should:*

- **Standardize to a dual date labeling scheme, clearly differentiating between a quality-based and a safety-based date label, and**
- **Expressly permit the sale and donation of food past its quality-based date label.**

*To ensure that businesses, food safety officials, and consumers fully understand the meaning of date labeling schemes, national governments and their relevant departments should:*

- **Launch widespread consumer education campaigns about the meaning of date labels on food products in partnership with the private sector to maximize the effectiveness of these campaigns.**

# BACKGROUND

Attention toward food loss and waste (FLW) has increased exponentially in the past decade, with the international community committing to halve FLW pursuant to the 2030 Agenda for Sustainable Development and Sustainable Development Goal 12.3.<sup>9</sup> FLW occurs at every stage of the food system: during the initial harvest due to fluctuating market prices, high labor costs, inadequate infrastructure, and demand for flawless produce;<sup>10</sup> by grocery stores and restaurants that overestimate customer demands and misunderstand shelf life and product date labels;<sup>11</sup> and by consumers that engage in inefficient shopping and cooking practices.<sup>12</sup> These behaviors have significant environmental, economic, and social consequences. Food that is lost or wasted has a massive carbon footprint of 3.3 gigatons, using roughly 28% of agricultural land and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.<sup>13</sup> This damage is estimated at \$700 billion in environmental costs and more than \$900 billion in social costs per year.<sup>14</sup> This waste is expensive,<sup>15</sup> squanders natural resources, causes lasting environmental damage, and presents a missed opportunity to redistribute food to the more than 820 million people experiencing hunger.<sup>16</sup>

**Food banks and other food recovery organizations can help mitigate unnecessary FLW by recovering and redistributing safe, surplus food through donation when policies enable and support such activities. In 2019 food banks in more than 70 countries recovered an estimated 3.75 million metric tons of safe, wholesome food. This helped avoid an estimated 12.39 billion kilograms of greenhouse gas emissions arising from unnecessary food waste in landfills and provided food access to 66.5 million food-insecure people.<sup>17</sup>**

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

While FLW results in economic loss, food donation can generate sizeable economic gains. First, donation reduces the economic and environmental costs of producing food that otherwise goes uneaten<sup>20</sup> and curbs methane emissions caused by food decomposing in landfills.<sup>21</sup> Second, donation alleviates hunger, reducing health care expenses associated with malnutrition<sup>22</sup> and increasing productivity, educational fulfillment, and economic potential.<sup>23</sup> Third, food rescue operations create job opportunities at food banks and intermediaries and stimulate the economy by increasing the spending power of donation recipients. Indirect gains such as reduced hunger costs and more resilient supply chains that flow to society ultimately help build stronger communities. The spectrum of benefits cannot be realized, however, if food donors lack clarity or incentives to donate rather than discard surplus food.

A major driver of food waste is inconsistent, unclear, or prohibitive date labels that cause confusion among all actors along the value chain and limit the ability of businesses to donate food. This increases the likelihood that safe, surplus food will go to waste.<sup>24</sup> Date labels are the dates found on food packaging with phrases such as “sell by,” “expires on,” “use by,” “best before,” or “best by.” Manufacturers use date labels to indicate what they consider the time for peak food quality of their product. Food safety risks only increase over time for limited types of foods, which may vary across cultures based on production processes. For example, in the United States, studies show that only deli meats and unpasteurized dairy products increase in risk over time.<sup>25</sup> Those products carry a higher contamination risk of *Listeria*—a pathogen that can grow under refrigeration temperatures—than other products in the US market.<sup>26</sup>

Despite these findings, businesses and consumers, often lacking clarifying guidance on their country’s date labeling schemes, mistakenly believe date labels are safety indicators. In the European Union, consumer confusion over date labeling creates roughly 10% of annual food waste.<sup>27</sup> In the United Kingdom, research shows

that consumers discard about 22% of food that they could eat due to uncertainty regarding the meaning of the date label.<sup>28</sup> In Singapore, a study shows that more than 80% of consumers failed to understand the difference between varying label terms.<sup>29</sup> In the United States, 37% of American consumers always throw away food close to or past the date on its label, and 84% throw such food away “at least occasionally.”<sup>30</sup>

Lack of clear, standardized date labeling laws causes food waste at the household level across high-, middle-, and low-income countries.<sup>31</sup> While global food waste data availability is limited and measurement approaches vary significantly, an estimated 61% of the 931 million tons of food wasted in 2019 came from households.<sup>32</sup> Confusion over date labeling is a major reason.

## OVERVIEW OF DATE LABELING LAWS IN RESEARCHED COUNTRIES OF THE ATLAS PROJECT

Country	Nationally Standardized Date Label Law or Policy	Clear Distinction Between Quality-Based and Safety-Based Date Labels	Express Permission to Sell or Donate Past Quality-Based Date	Nationwide Consumer Education Campaigns	Atlas Policy Ranking
Argentina	YES	NO <sup>33</sup>	NO	NO	Limited Policy
Canada	YES	NO <sup>34</sup>	YES	NO	Moderate Policy
Chile	YES	NO <sup>35</sup>	NO	NO	Limited Policy
Colombia	YES	NO	NO	NO	Limited Policy
Costa Rica	YES	NO	NO	NO	Limited Policy
Dominican Republic	YES	NO <sup>36</sup>	NO	NO	Limited Policy
Guatemala	YES	NO	NO	NO	Limited Policy
India	YES	NO	NO	NO	Limited Policy
Mexico	YES	YES <sup>37</sup>	NO	NO	Moderate Policy
Peru	YES	NO	NO	NO	Limited Policy
Singapore	YES	NO	NO	NO	Limited Policy
South Africa	YES	NO	NO	NO	Limited Policy
United Kingdom	YES	YES	YES	YES	Strong Policy
United States	NO	NO	NO	NO	No Policy

# KEY ISSUES

Research for the Global Food Donation Policy Atlas project shows that most countries currently have some national law or policy related to date labeling. However, these laws often do not adequately distinguish between date labels used for quality and safety. This means that while some countries require date labels on certain foods, the national law or policy does not clearly indicate when to apply a particular date label. Frequently, the law or policy also does not indicate whether food with a quality-based label can be donated past this date. Further, the regulation does not require manufacturers select only one date label but permits the use of any labels, or multiple labels concurrently, deferring to the manufacturer to determine which label(s) to choose. This leads to inconsistencies, confusion, and unnecessary food waste.

South Africa provides one example of such confusion. South Africa has a detailed date labeling scheme set forth in its Regulations Relating to the Labelling and Advertising of Foodstuffs (No. R.146) under the Foodstuffs, Cosmetics, and Disinfectants Act 54 of 1972 (FCDA).<sup>38</sup> This regulation applies to all food offered for sale and requires a “date of minimum durability” expressed as “best before,” “sell by,” and/or “use by,” depending on the type of food product.<sup>39</sup> This regulation does not standardize which food products get which date label. Further, the regulation does not require manufacturers to select only one label but permits the use of any labels or multiple labels concurrently. Thus, the manufacturer determines which label(s) to choose without any clear standards as to which terms should be used and when.<sup>40</sup>

In the United States and other countries or common economic regions that do not have a standardized date labeling scheme, date label policy can vary and confuse consumers and manufacturers alike. Lack of uniform date label policy causes a regulatory void that may be filled in various ways, including by local-level policies, government guidance, and voluntary standards implemented by some food businesses. For example, lack of federal date label law in the United States has created a patchwork of state-level policies and voluntary industry standards.<sup>41</sup> Forty-one of the 50 US states have date label laws, with a high degree of variation among states.<sup>42</sup> For example, date labels in Connecticut are only required on dairy products, while date labels in Massachusetts are required on all prepackaged perishable and semi-perishable food products.<sup>43</sup> Further, state laws often do not distinguish between quality and safety, using numerous phrases meant to describe the same thing (*e.g.*, “best if used by,” “best by,” “sell by,” or “expires on”). This exacerbates consumer confusion and leads to food waste that could be avoided with national standards. Twenty US states also prohibit or restrict the sale or donation of past-date foods, regardless of whether the dates indicate quality or safety.

**Lack of uniform date label policy causes a regulatory void that may be filled in various ways including local-level policies, government guidance, and voluntary standards followed by some food businesses, but they lack enforcement mechanisms and thus are limited in their ability to cure widespread inconsistency in and confusion regarding date labels.**

Some voluntary initiatives from the private and public sectors have helped fill the void.<sup>44</sup> In 2017, for instance, the Consumer Goods Forum (CGF) and Champions 12.3—whose members include the chief executive officers of Tesco, Kellogg’s, Walmart, Campbell’s, and Nestlé—issued a global call to action. That action asked retailers and food producers to partner with nonprofit organizations and government agencies and comply with a voluntary dual date labeling scheme that suggests but does not require the use of “Best if used by” to indicate food quality and “Use by” to indicate food safety.<sup>45</sup> While this is a step in the right direction, voluntary initiatives lack enforcement mechanisms and thus are limited in their ability to stop widespread inconsistency and confusion regarding date labels.

Several countries developed their date labeling schemes based on the *Codex Alimentarius*’ 2018 update, General Standard for the Labelling of Prepackaged Foods, which sets out a dual date labeling scheme as the model practice.<sup>46</sup> The *Codex Alimentarius* is a set of international food standards developed by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO).<sup>47</sup> The recommended dual



labeling scheme distinguishes between dates used to indicate safety and those used to indicate peak quality.<sup>48</sup> Specifically, the *Codex Alimentarius* recommends using a “Use-By Date” or “Expiration Date” to indicate safety and a “Best-Before Date” or “Best Quality-Before Date” to indicate quality.<sup>49</sup> The standards also state that national laws should require a food to **have only one date label: either** a quality-based label **or** a safety-based label. *Codex Alimentarius* standards are voluntary but establish a uniform guide. Countries can incorporate these standards into their national regulations and policies and adopt them as binding law.<sup>50</sup> The *Codex Alimentarius* Commission consists of 189 member countries<sup>51</sup>—including all the countries researched in the Atlas project—but only some of its members follow its recommended date labeling policy. In some instances, date labeling policies emulating the *Codex Alimentarius* can be adopted across common economic regions such as the European Union.<sup>52</sup> If a common economic region decides to pass a law adopting the *Codex Alimentarius* date labeling standards, this law applies to all countries within that economic region.

## CODEX ALIMENTARIUS GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS

Revised in 2018

- Standard updating recommended labeling of prepackaged foods
- “Use-By Date” or “Expiration Date” is required when a food must be consumed before a certain date to ensure its safety and quality. This label “means the date which signifies the end of the period under any stated storage conditions, after which the product shall not be sold or consumed due to safety and quality reasons.”
- “Best-Before Date” or “Best Quality-Before Date” is required when “Use-By Date” or “Expiration Date” is not required. This label “means the date which signifies the end of the period, under any stated storage conditions, during which the unopened product will remain fully marketable and will retain and any specific qualities for which implied or express claims have been made. However, beyond the date the food may still be acceptable for consumption.”
- Exemptions to the labeling requirement:
  - “Where safety is not compromised and quality does not deteriorate because the nature of the food is such that it cannot support microbial growth (e.g. alcohol, salt, acidity, low water activity under intended or stated storage conditions[]).”
  - “Where deterioration is clearly evident by physical examination at the point of purchase, . . . that has not been subject to processing and presented in a manner that is visible to the consumer.”
  - “Where the key/organoleptic quality aspects of the food are not lost.”
  - “Where the food by its nature is normally consumed within 24 hours of its manufacture.”

Below is an illustrative, but not all-encompassing, list of food items that fall under the exemptions to the labeling requirements:

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• “fresh fruit and vegetables, including tubers, which have not been peeled, cut or similarly treated;</li> <li>• wines, liqueur wines, sparkling wines, aromatized wines, fruit wines and sparkling fruit wines;</li> <li>• alcoholic beverages containing at least 10% alcohol by volume;</li> <li>• bakers’ or pastry-cooks’ wares, which</li> </ul> | <p>given the nature of their content, are normally consumed within 24 hours of their manufacture;</p> <ul style="list-style-type: none"> <li>• vinegar;</li> <li>• non-iodized food grade salt;</li> <li>• non-fortified solid sugars;</li> <li>• confectionary products consisting of flavoured and/or coloured sugars; [and]</li> <li>• chewing gum.”</li> </ul> |
|--|--|

Lastly, even though most date labels do not indicate food safety, the sale or donation of past-date food is often restricted or forbidden. Even bottled water may have an “expiration” date, which would prohibit its sale or donation in some jurisdictions in the United States.<sup>53</sup> In Argentina, Singapore, and some US states, for example, the sale or donation of past-date food is expressly forbidden by law.<sup>54</sup> The prohibition on sale or donation of past-date foods that are labeled for quality directly contributes to FLW. It also confuses consumers, who assume that quality-based labels indicate food safety, impacts food businesses’ willingness to donate, and perpetuates a stigma against past-date food among food donation recipients. Based on research of the Global Food Donation Policy Atlas to date, only the European Union and the United Kingdom grant clear permission to donate and sell food after the quality date.<sup>55</sup>

**Even though most date labels do not indicate food safety, the sale or donation of past-date food is often restricted or forbidden.**

Luckily, the challenges presented by a lack of date labeling policy, or an unclear or underdeveloped policy can be ameliorated, and best practices are available as models. The next section discusses in greater detail three recommendations for achieving a strong, consistent, and comprehensive national date labeling scheme. It also provides examples of other country’s schemes. All three elements discussed in detail below are necessary to maximize the effectiveness of a country’s date labeling scheme. A country that adopts a date labeling scheme incorporating these elements will increase its capacity to donate food, ensure safety, and reduce food waste.

## RECOMMENDATIONS

### 1. NATIONAL GOVERNMENTS OR GOVERNMENTS OF A COMMON ECONOMIC REGION SHOULD STANDARDIZE TO A DUAL DATE LABELING SCHEME, CLEARLY DIFFERENTIATING BETWEEN A QUALITY-BASED AND A SAFETY-BASED LABEL.

Date labeling schemes should be designed to help businesses and consumers make safe and informed decisions about food.<sup>56</sup> The law should clearly distinguish between quality-based and safety-based labels to provide consistent information about whether food poses a potential risk to safety, such as an increase in foodborne illness, past the date. This is called a dual date labeling scheme, as such laws propose using only

#### BEST PRACTICE

- Develop a dual date labeling scheme that clearly differentiates between a quality-based and safety-based date label.
- Only have one date label on a product or item.
- Use a safety-based date label, such as “Use By,” only on food items that pose a health risk to the consumer due to the product’s increased likelihood of safety risk past the date.
- Use a quality-based date label, such as “Best Before,” to indicate how long food can be expected to retain its optimal taste or quality.

two types of date labels. By committing to a dual date labeling scheme, governments may reduce uncertainty among businesses and consumers about the meaning of labels. This will dramatically reduce global food waste. For example, leading research suggests that standardizing and clarifying date labels is the most cost-effective solution to reducing food waste in the United States, with the potential to divert 582,000 tons of food from landfills per year and create \$2.41 billion per year in economic value.<sup>57</sup>

A dual date labeling scheme uses two standard labels. First, a safety-based label, such as “Use By,” should be used to specifically protect a consumer from potential danger. Its use should be limited to products demonstrated to be highly perishable and likely, after a short period of time, to cause an immediate health risk to the consumer.<sup>58</sup>

Second, a quality-based date label, such as “Best Before” or “Best

If Used By,” should be used on most foods to indicate the period of time a food can be expected to maintain its peak quality.<sup>59</sup> Provided the food is stored in appropriate conditions and has not otherwise become contaminated, products labeled with a quality date are safe to consume after this date. This clearly indicates that consumers can safely eat those foods, provided they still smell and taste fine.

The above-suggested date labeling scheme aligns with the guidance in the 2018 update of the *Codex Alimentarius*.<sup>60</sup> To bolster its effectiveness, countries should provide further guidance to food businesses, specifying when to affix a “Best Before” or “Best If Used By” quality-based date label and when to affix a “Use By” safety-based date label. When feasible, countries adopting a dual date labeling scheme should offer guidance on methods to determine which date to include.

Despite the value of a dual date labeling scheme as recommended in the *Codex Alimentarius* guidelines, governments should be mindful of ongoing uncertainty and potential misinterpretation if the terms are not clearly defined. For example, the Food Sanitary Regulations (*Reglamento Sanitario de los Alimentos* or RSA) in Chile introduces two labels: an “expiration date” (“*fecha de vencimiento*”)<sup>61</sup> and a “minimum duration date” (“*fecha de duración mínimo*”).<sup>62</sup> Yet the RSA’s definitions for these labels do not clearly align with the 2018 update to the *Codex Alimentarius*.<sup>63</sup> In the *Codex Alimentarius*, as noted above, the “Expiration Date” is a safety-based label and indicates the last date on which the product should be sold or consumed “due to *safety and* quality reasons.”<sup>64</sup> The RSA refers to the “expiration date” as the date or period after which the manufacturer cannot guarantee that a product, having been stored under certain conditions, will retain its expected attributes.<sup>65</sup> This definition allows for manufacturers to ultimately choose an “expiration date” that reflects peak quality rather than safety.

Of the countries and economic regions researched in the Atlas project, the European Union and the United Kingdom are the best examples of a dual date labeling scheme. The European Union date labeling scheme distinguishes between safety-based and quality-based date labels. It requires manufacturers to affix a safety-based date, expressed as “use by,” only for foods that are considered “highly perishable”<sup>66</sup> and no longer safe to consume after the date.<sup>67</sup> For all other foods, manufacturers are required to affix a quality-based, “best before” date, after which food may still be perfectly safe to consume and donate. This scheme was adopted and enforced across the European Union before the United Kingdom’s exit. Per the terms of the exit, all previously passed European Union law remains in force as retained law.<sup>68</sup> Further, the United Kingdom also issued guidance to clearly specify which products should be labeled with “Best Before” versus “Use By.”<sup>69</sup> This guidance is aimed at directly addressing the United Kingdom’s estimated 2 million tons of household food waste each year, about one-third of which is because of consumer confusion surrounding date labels.<sup>70</sup>

## **2. NATIONAL DATE LABELING LAWS SHOULD EXPRESSLY PERMIT THE SALE AND DONATION OF FOOD PAST THE QUALITY DATE.**

In existing national date labeling schemes or in the process of developing such schemes, countries and economic regions should ensure that the scheme expressly permits the sale and donation of food past a quality-based date. Food is wasted when governments expressly prohibit or are silent on whether food can be donated past a quality-based date label.<sup>71</sup> These prohibitions do not distinguish between quality-based and safety-based dates, which often leads to the mandated disposal of all past-date foods, including those that are safe to eat.<sup>72</sup> Even where selling or donating food past the date is not expressly prohibited, the law can be unclear. Businesses and individuals often discard past-date food products because of unfounded fears of safety risk. Further, food recovery organizations are often unaware or fearful of the risks associated with the rescue of safe, wholesome, past-date food because of the lack of clear guidance.<sup>73</sup>

For example, Singapore does not allow for the sale or donation of food past its date.<sup>74</sup> This rule applies to all four acceptable date label terms used on the packaging (“USE BY,” “EXPIRY DATE,” “BEST BEFORE,” or “SELL BY”).<sup>75</sup> Under Singapore’s Food Regulations, it is forbidden to “import, sell, consign or deliver any prepacked food with an expired date mark.”<sup>76</sup> Part III of the regulations clarifies that the law applies to any food intended

for human consumption, even if such food is offered as free gifts for charity.<sup>77</sup> Therefore, since date labels are required on most prepackaged foods, donation after the label date is not permitted.

In other countries, such as Argentina, food donation after the date is not expressly prohibited in legislation. Yet donors, food recovery organizations, and lawyers generally agree that the law prohibits food donation past the quality-based date.<sup>78</sup> Given this overwhelming consensus, without further clarification by the Argentine government, past-date foods are not accepted for donation.<sup>79</sup> While the United States has no national laws on food date labels, 20 states restrict or prohibit the sale or donation of past-date food, even when the date indicates quality.<sup>80</sup> However, the other states allow past-date sales and/or donation, making the issue even more confusing for donors and food rescue organizations.

Countries should adopt policies that expressly permit the sale and donation of food after the quality-based date. If this is already allowed, countries should designate appropriate agencies or departments to issue clarifying guidance to that effect. Countries may still restrict the past-date sale or donation of food bearing a safety-based label, as such a label communicates that a food item should be discarded due to risks that increase past the date.

## BEST PRACTICE

- Countries that have a nationally standardized date labeling scheme should consider whether their scheme expressly permits the sale and donation of food past its quality-based date.
- If there is no express permission, countries should amend the existing law.
- If there is a prohibition, countries should amend the existing law to repeal this provision.
- Countries that have not adopted a national date labeling scheme should ensure that any new law expressly permits the sale and donation of food past its quality-based date.

Of the countries researched in the Atlas project, the United Kingdom and European Union policies are in line with this best practice. In 2017, before the 2018 update to the *Codex Alimentarius's* General Standard endorsed the dual date labeling scheme, the European Union Commission issued guidance explaining that food is presumed safe to consume after the quality-based “best before” date and therefore may be donated and distributed after this date.<sup>81</sup> The United Kingdom Food Standards Agency (FSA)—an independent agency responsible for developing food policies that protect against food-borne illnesses and unsafe labeling<sup>82</sup>—also provided guidance that food may not be sold after the “Use By” or safety-based date, but it may still be eaten after the “Best Before” or quality-based date.<sup>83</sup> The nonprofit Waste and Resources Action Programme (WRAP) partnered with the Department for Environment, Food, and Rural Affairs (Defra)—the United Kingdom regulatory body for environmental protection, food production and standards, agriculture, fisheries, and rural communities<sup>84</sup>—to publish guidance on date labels in the context of donation and redistribution.<sup>85</sup> This guidance clearly states that food with a “Best Before” or quality-based date label can legally be sold, donated, redistributed, and consumed past this date.<sup>86</sup> It also states that food cannot be sold, redistributed, or consumed after its “Use By” or safety-based date label unless the food is frozen or cooked prior to the date.<sup>87</sup> This clarifies and distinguishes between the date labels and helps the public understand these terms, enabling the sale and donation of past-date safe, wholesome food.

Although the European Union Commission issued the aforementioned guidance, some countries within the European Union—also known as member states—restrict or even prohibit marketing food that is past the quality-based date.<sup>88</sup> As a result, food businesses and consumers may still be confused by the law surrounding donation of food past its quality-based date. To facilitate redistribution of food past the quality-based date, some national authorities within these member states have provided additional guidance, encouraging donation so long as the food has been properly handled and stored.<sup>89</sup>

### 3.

## GOVERNMENTS SHOULD PROVIDE EDUCATION AND AWARENESS CAMPAIGNS IN PARTNERSHIP WITH THE PRIVATE SECTOR TO MAXIMIZE THE EFFECTIVENESS OF THE DATE LABELING SCHEME.

Manufacturer and consumer confusion may persist even with national date labeling schemes. For example, FAO estimates that 37% of food is wasted in the Dominican Republic because of consumer confusion over the meaning of its dual date labeling terms.<sup>90</sup> In Mexico, which adopted a dual date labeling scheme, many stakeholders still express confusion as to whether the “expiration dates” and “preferred consumption dates” indicate safety or quality. Such lack of clarity contributes to uncertainty among potential donors.<sup>91</sup>

To resolve this confusion some governments launched education campaigns to increase public awareness. Food Banks Canada—a national charitable organization representing the food bank community across Canada<sup>92</sup>—issued guidance for interpreting date labels to reduce FLW.<sup>93</sup> While these actions are helpful, there may still be uncertainty as to the legitimacy of this guidance without government agency or department support.

### BEST PRACTICE

- Governments and their relevant agencies or departments should promote education awareness campaigns.
- When a national dual date labeling scheme exists, governments should designate agencies or departments to issue clarifying guidance on the date labels.
- When there are not standardized date labels, governments and their relevant agencies or departments should provide clarifying guidance on the recommended treatment of date labels.

Government agencies or departments responsible for food regulations should promote education and awareness. If they already have laws including a dual date label standard, governments should instruct the appropriate agencies or departments to issue clarifying guidance that differentiates between quality-based and safety-based date labels and offers consumer education on the meaning of the two standard date label phrases.

Where a country has not adopted a national date labeling scheme, governments should issue recommended guidance on the treatment of various date labels used within their respective country. This guidance should focus on educating manufacturers, donors, and food recovery organizations that most date labels indicate quality and not safety. The guidance could also specify the few foods under which circumstances food safety would be of concern.

A strategy that may prove effective is the partnership of governments and private food system actors to issue widespread, unified guidance. The United Kingdom serves as a model for this best practice. Defra,<sup>94</sup> FSA,<sup>95</sup> and the Zero Waste Scotland initiative<sup>96</sup> offer clarifying guidance on the United Kingdom’s dual date labeling scheme to increase public awareness.<sup>97</sup> United Kingdom public- and private-sector actors also assist in bolstering these governmental efforts to promote greater industry and consumer awareness on this scheme. WRAP has emerged as a principal driving actor. It partnered with government agencies to publish updated guidance on the meaning of United Kingdom date labels and issued additional guidance on the process of donating past quality date food.<sup>98</sup> Several UK-wide consumer awareness campaigns have launched to clearly differentiate between the United Kingdom’s quality-based and safety-based date labels, including the “Love Food Hate Waste”<sup>99</sup> and “Look, Smell, Taste, Don’t Waste” campaigns.<sup>100</sup> Since implementing guidance and public awareness campaigns, the United Kingdom has seen a reduction in food waste and an increase in food donation in recent years.<sup>101</sup> According to WRAP’s latest data, public awareness initiatives launched in the past three years have resulted in up to an 11% decrease in household food waste.<sup>102</sup> The data suggest that awareness-raising is gaining traction through increased social media connections and viewership, according to a survey reporting that 69% of United Kingdom households have seen or heard information about food waste in the preceding year.<sup>103</sup>

Educating the public about standard date labeling terms is essential to ensure that consumers make informed

decisions about when to discard food products. It enables consumers to eat food if it smells and tastes good and to not be fearful of foods that do not pose safety risks. This can also save households money, which is particularly relevant as the world economy recovers from the COVID-19 pandemic. Further, it can educate food donation recipients so they can feel more confident about the safety of consuming food past a quality date. Once date labels are standardized nationally or across a common economic region, guidance and education are necessary to achieve awareness and change consumer behavior. Even among countries without standardized date labeling laws, consumer awareness can help reduce confusion. Clear agency or department guidance and consumer education can drastically reduce the unnecessary waste of wholesome food and allow donation where it can be safely done.

## **CONCLUSION**

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Date label confusion can cause unnecessary food waste, as label terms are inconsistently used and do not distinguish between safety and quality. Countries frequently prohibit or do not explicitly permit the donation of food past its quality date. Confusion and uncertainty over the meaning of date labels and their application to food donation ultimately leads to food waste, as stakeholders either dispose of past-date food or refrain from donating such food, thus inhibiting food donation. To reduce food waste and increase food donations, governments and economic regions should nationally standardize to a dual date labeling scheme that clearly distinguishes between safety-based and quality-based date labels; expressly permit the sale and donation of food after a quality-based date; and issue clarifying guidance with the private sector to promote consumer education and awareness on the meaning of the existing or newly developed date labeling scheme and its application to food donation, food safety, and consumption.

# ENDNOTES

- <sup>1</sup> FOOD & AGRIC. ORG. OF THE U.N. [FAO], GLOBAL FOOD LOSSES AND FOOD WASTE—EXTENT, CAUSES, AND PREVENTION 4 (2011), <https://www.fao.org/3/i2697e/i2697e.pdf> [<https://perma.cc/XY94-VA7L>].
- <sup>2</sup> FAO ET AL., THE STATE OF FOOD SECURITY & NUTRITION IN THE WORLD 2020: TRANSFORMING FOOD SYSTEMS FOR FOOD SECURITY, IMPROVED NUTRITION AND AFFORDABLE HEALTHY DIETS FOR ALL 10, 125 (2021), <https://www.fao.org/3/cb4474en/cb4474en.pdf> [<https://perma.cc/N7CD-DUN6>].
- <sup>3</sup> Projections indicate that more than 840 million will be hungry by 2030 if current trends continue. *Id.* at 22.
- <sup>4</sup> HARV. L. SCH. FOOD L. & POL’Y CLINIC [FLPC] & NAT. RES. DEF. COUNCIL [NRDC], DON’T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 19 (2017), [http://www.chlpi.org/wp-content/uploads/2013/12/Dont-Waste-Donate\\_-March-2017.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Dont-Waste-Donate_-March-2017.pdf) [<https://perma.cc/X8M9-MT6B>].
- <sup>5</sup> See Debasmita Patra et al., *Evaluation of global research trends in the area of food waste due to date labeling using a scientometrics approach*, 115 FOOD CONTROL 107307 (Sept. 2020) (discussing that global confusion over date labels leads to food waste).
- <sup>6</sup> Cecilia Varga, *Get the ‘Real Answers’ on What Those Food Expiration Labels Mean*, ABS NEWS, Sept. 10, 2013, <https://abcnews.go.com/blogs/lifestyle/2013/09/get-the-real-answers-on-what-those-food-expiration-labels-mean> [<https://perma.cc/6LP4-LZKZ>] (quoting Jena Roberts, vice president of business development at the National Food Lab in the United States, who states, “I don’t think we can really pinpoint a single food safety incident that happened because a food product was past its date.”).
- <sup>7</sup> See FLPC & Glob. FoodBanking Network [GFN], *The Global Food Donation Policy Atlas*, <https://atlas.foodbanking.org/atlas.html> (last visited Oct. 22, 2021).
- <sup>8</sup> The Global Food Donation Policy Atlas was made possible through the funding of the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document, or the views contained herein. The findings, conclusions, and recommendations presented in this project and issue brief are those of the Harvard Law School Food Law and Policy Clinic. The content of this document should not be interpreted as legal advice. Those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law.
- <sup>9</sup> G.A. Res. 70/1. At 22 (Oct. 21, 2015) (“By 2030, 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.”).
- <sup>10</sup> See U.N. ENVIRONMENTAL PROGRAMME [UNEP], UNEP FOOD WASTE INDEX REPORT 2021 8 (2021), <https://www.unep.org/resources/report/unep-food-waste-index-report-2021>; FLPC, 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](https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf) [<https://perma.cc/PYS5-AW37>].
- <sup>11</sup> KEEPING FOOD OUT OF THE LANDFILL, *supra* note 10.
- <sup>12</sup> *Id.*
- <sup>13</sup> FAO, FOOD WASTAGE FOOTPRINT: IMPACTS ON NATURAL RESOURCES SUMMARY REPORT 6 (2011), <http://www.fao.org/3/i3347e/i3347e.pdf> [<https://perma.cc/EFM9-W968>] [hereinafter FOOD WASTAGE FOOTPRINT SUMMARY REPORT]; FAO, *Food wastage footprint & Climate Change* 1 (2015), <https://www.fao.org/3/bb144e/bb144e.pdf> [<https://perma.cc/RHP8-DKNY>].
- <sup>14</sup> FAO, THE STATE OF FOOD AND AGRICULTURE 2019: MOVING FORWARD ON FOOD LOSS AND WASTE REDUCTION v (2019), <http://www.fao.org/3/ca6030en/ca6030en.pdf> [<https://perma.cc/3RQM-4A2A>]; see also KEEPING FOOD OUT OF THE LANDFILL, *supra* note 10.
- <sup>15</sup> *Food Wastage Footprint & Climate Change*, *supra* note 13 (stating that the market value of food products lost is an estimated \$940 billion per year).
- <sup>16</sup> FOOD WASTAGE FOOTPRINT SUMMARY REPORT, *supra* note 13 (showing that food waste accounts for a 3.3 gigaton carbon footprint and uses 28% of agricultural land, which results in 70 billion tons of global greenhouse gas emissions); see also *Food Wastage Footprint & Climate Change*, *supra* note 13.
- <sup>17</sup> GFN, *Advancing the Sustainable Development Goals: Roadmap to 2030: 2020 Update on Waste Not Want Not: Food Banks as a Green Solution to Hunger* (2020), <https://www.foodbanking.org/stateofglobalfoodbanking/advancing-the-sdgs.html> [<https://perma.cc/NT53-DQ9S>].
- <sup>18</sup> Katie Brigham, *Why coronavirus is causing a massive amount of food waste*, CNBC (May 19, 2020), <https://www.cnn.com/2020/05/19/how-coronavirus-is-causing-mountains-of-food-waste.html> [<https://perma.cc/7C94-BVS6>]; *ReFED’s COVID-19 U.S. Food System Review*, REFED (Apr. 6, 2020), <https://refed.com/articles/refeds-covid-19-u-s-food-system-review> [<https://perma.cc/28V3-VXKM>].
- <sup>19</sup> David Yaffe-Bellany & Michael Corkery, *Dumped Milk, Smashed Eggs, Plowed Vegetables: Food Waste of the Pandemic*, N.Y. TIMES (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/business/coronavirus-destroying-food.html> [<https://perma.cc/9XDE-7PVK>].
- <sup>20</sup> Hannah Ritchie & Max Roser, *Environmental impacts of food production*, Our World in Data (Jan. 2020, rev. June 2021), <https://ourworldindata.org/environmental-impacts-of-food> [<https://perma.cc/9XDE-7PVK>].
- <sup>21</sup> UNEP & CLIMATE & CLEAN AIR COAL., GLOBAL METHANE ASSESSMENT: BENEFITS AND COSTS OF MITIGATING METHANE EMISSIONS (2021), <https://www.unep.org/resources/report/global-methane-assessment-benefits-and-costs-mitigating-methane-emissions>.
- <sup>22</sup> Seth A. Berkowitz et al., *Food Insecurity and Health Care Expenditures in the United States, 2011–2013*, 53 HEALTH SERVS. RSCH. 1600, 1600–01 (June 2018), <https://onlinelibrary.wiley.com/doi/10.1111/1475-6773.12730> (last visited Oct. 22, 2021) (finding that food insecurity is associated with preventable yet costly medical problems such as obesity, type 2 diabetes, and hypertension).
- <sup>23</sup> See, e.g., FLPC, THE GLOBAL FOOD DONATION POLICY ATLAS ARGENTINA LEGAL GUIDE: FOOD DONATION LAW AND POLICY 1 (2020), <https://www.foodbanking.org/wp-content/uploads/2020/06/Argentina-Legal-Guide.pdf> [<https://perma.cc/X9ER-BY6R>] [hereinafter ATLAS ARGENTINA LEGAL GUIDE]; FLPC, THE GLOBAL FOOD DONATION POLICY ATLAS CANADA LEGAL GUIDE: FOOD DONATION LAW AND POLICY 1 (2020), <https://www.foodbanking.org/wp-content/uploads/2020/06/Canada-Legal-Guide.pdf> [<https://perma.cc/T7T5-87QV>] [hereinafter ATLAS CANADA LEGAL GUIDE]; FLPC, THE GLOBAL FOOD DONATION POLICY ATLAS COLOMBIA LEGAL GUIDE: FOOD DONATION LAW AND POLICY 1 (2020), <https://www.foodbanking.org/wp-content/uploads/2021/01/Colombia-Legal-Guide.pdf> [<https://perma.cc/Y9J3-TM6K>]; see Berkowitz, *supra* note 22; see Haley Swartz, *Visualizing State and County Healthcare Costs of Food Insecurity*, FEEDING AM. HUNGER & HEALTH BLOG (Aug. 5, 2019), <https://>

- hungerandhealth.feedingamerica.org/2019/08/visualizing-state-county-healthcare-costs-food-insecurity [https://perma.cc/E9BP-F5LP].
- <sup>24</sup> KEEPING FOOD OUT OF THE LANDFILL, *supra* note 10 at 26–7.
- <sup>25</sup> FOOD & DRUG ADMIN. [FDA] CTR. FOR FOOD SAFETY & APPLIED NUTRITION & FOOD SAFETY & INSPECTION SERV. [FSIS], QUANTITATIVE ASSESSMENT OF RELATIVE RISK TO PUBLIC HEALTH FROM FOODBORNE *Listeria monocytogenes* AMONG SELECTED CATEGORIES OF READY-TO-EAT FOODS, U.S. DEP’T HEALTH & HUMAN SERVS. [HHS] & U.S. DEP’T AGRIC. [USDA] viii (2003), <https://www.fda.gov/media/124721/download> [https://perma.cc/FW6N-NJX7] [hereinafter QUANTITATIVE ASSESSMENT]; *see also* FLPC & NRDC, THE DATING GAME: HOW CONFUSING FOOD DATE LABELS LEAD TO FOOD WASTE IN AMERICA (2013), <https://www.chlpi.org/wp-content/uploads/2013/12/dating-game-report.pdf> [https://perma.cc/WA2F-8NW3] [hereinafter THE DATING GAME].
- <sup>26</sup> QUANTITATIVE ASSESSMENT, *supra* note 25; *see also id.* at xii–xv (noting that “reformulation of products to reduce their ability to support the growth of *Listeria monocytogenes* or encouraging consumers to keep refrigerator temperatures at or below 40° Fahrenheit” are important parallel interventions); *see also* Gerri Ransom, National Advisory Committee on Microbiological Criteria for Foods, *Considerations for establishing safety-based consume-by date labels for refrigerated ready-to-eat foods*, 68 J. FOOD PROT. 1761, 1763, 1772 (2005) (“[T]he impact of temperature on the risk of listeriosis [is] significantly greater than the impact of time.”).
- <sup>27</sup> *Date marking and food waste*, EUR. COMM’N (2018), [https://ec.europa.eu/food/safety/food\\_waste/eu\\_actions/date\\_marking\\_en](https://ec.europa.eu/food/safety/food_waste/eu_actions/date_marking_en) (last visited Oct. 22, 2021).
- <sup>28</sup> U.S. GOV’T ACCOUNTABILITY OFF. [GAO], DATE LABELS ON PACKAGED FOODS: USDA AND FDA COULD TAKE ADDITIONAL STEPS TO REDUCE CONSUMER CONFUSION, GAO-19-407 13 (2019), <https://www.gao.gov/assets/710/701238.pdf> [https://perma.cc/Z4W3-KML2]; *see also* MILLIE ELSEN ET AL., MILAN BEXPO 2015: A BEHAVIOURAL STUDY ON FOOD CHOICES AND EATING HABITS: FINAL REPORT, EUR. COMM’N 8 (2015), [https://ec.europa.eu/food/sites/food/files/safety/docs/fw\\_eu-actions\\_bexpo-milan\\_final-report.pdf](https://ec.europa.eu/food/sites/food/files/safety/docs/fw_eu-actions_bexpo-milan_final-report.pdf) [https://perma.cc/JL8A-47L4].
- <sup>29</sup> FLPC, THE GLOBAL FOOD DONATION POLICY ATLAS SINGAPORE LEGAL GUIDE: FOOD DONATION LAW AND POLICY 7 (2021), <https://www.foodbanking.org/wp-content/uploads/2021/04/Singapore-Legal-Guide-V2-1.pdf> [https://perma.cc/M938-FQCM] [hereinafter ATLAS SINGAPORE LEGAL GUIDE]; SINGAPORE ENVIRONMENT COUNCIL & DELOITTE, ADVANCING A CIRCULAR ECONOMY FOR FOOD: KEY DRIVERS AND RECOMMENDATIONS TO REDUCE FOOD LOSS AND WASTE IN SINGAPORE 10 (2019), [https://sec.org.sg/wp-content/uploads/2019/09/SEC\\_Food-Loss-Study.pdf](https://sec.org.sg/wp-content/uploads/2019/09/SEC_Food-Loss-Study.pdf) (last visited Oct. 22, 2021).
- <sup>30</sup> Emily Broad Leib et al., *Consumer Perceptions of Date Labels: National Survey*, FLPC, NAT’L CONSUMERS INST., & JOHNS HOPKINS CT. FOR LIVABLE FUTURE 1–2 (May 2016), [http://www.chlpi.org/wp-content/uploads/2013/12/Consumer-Perceptions-on-Date-Labels\\_May-2016.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Consumer-Perceptions-on-Date-Labels_May-2016.pdf) [https://perma.cc/RV35-2A4A].
- <sup>31</sup> U.N. ENVIRONMENT PROGRAMME, FOOD WASTE INDEX REPORT 8 (2021), <https://wedocs.unep.org/bitstream/handle/20.500.11822/35280/FoodWaste.pdf>.
- <sup>32</sup> *Id.* at 4.
- <sup>33</sup> Argentina’s National Administration of Drugs, Foods, and Medical Technology (*Administración Nacional de Medicamentos, Alimentos y Tecnología Médica* or ANMAT), which is responsible for overseeing compliance with the Argentine Food Code (*Código Alimentario Argentino*), requires food manufacturers to affix a minimum duration date (*fecha de duración* or *fecha de vencimiento*) on product packages, but defers to manufacturers to select the specific date within a range determined by ANMAT and permits manufacturers to select qualifying language from an approved list (e.g. “consume before...”, “valid until...”, “expires on...” etc.). However, ANMAT has not clarified whether minimum duration dates are intended to convey food safety or food quality, which allows manufacturers to choose an “expires on...” label that reflects peak quality rather than food safety. *See* CÓDIGO ALIMENTARIO ARGENTINO [CÓD. ALIM.][HEALTH CODE] Ch. 1 § 6.6.1 (Arg. 1969); Joint Resolution MSyA No. 149/60 and SAGPyA No. 683/05, Sept. 26, 2005 [30746] B.O. 20 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=110017> [https://perma.cc/9MF9-YXS7] (incorporating the Mercosur standards into the Food Code); Decree No. 4238/68, July 19, 1968 [21505] B.O. 9 (Arg.) (updated 2004), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/24788/texact.htm> [https://perma.cc/JCE5-R4KR].
- <sup>34</sup> Canada’s Food and Drug Regulations require a safety-related expiration date for baby formula and human milk substitutes, nutritional supplements, meal replacements, pharmacist-sold foods for very-low-energy diets, and formulated liquid diets. Food and Drug Regulations, B.24.001-B.25.001. The Regulations require quality-related dates (i.e., “best-before”) for perishable foods with a shelf life of 90 days or less. *Id.* at B.01.007(1.1)(b). In addition to these required date labels food businesses may choose to include date labels on other products, meaning that a wide range of products carry date labels in Canada with terminology such as “use by,” “sell by,” “freeze by,” “manufactured on,” and “packaged on.” *See Date markings and storage instructions on food labels: Other date marking systems*, GOV’T CANADA (Jan. 15, 2019), <https://inspection.canada.ca/food-label-requirements/labelling/industry/date-markings-and-storage-instructions/eng/1328032988308/1328034259857?chap=4#s15c4> [https://perma.cc/QN9B-LZGS].
- <sup>35</sup> Consistent with the *Codex Alimentarius*, Chile’s Food Sanitary Regulations introduces an “expiration date,” and a “minimum duration date,” but does not clarify that food is no longer safe for consumption after the “expiration date” has passed. This lack of a clear distinction between the meaning of these two labels allows for manufacturers to ultimately choose an “expiration date” that reflects peak quality rather than food safety. Decree No. 977, *Reglamento Sanitario de los Alimentos*, Mayo 13, 1997 DIARIO OFICIAL [D.O.] (Chile); *See also* FAO & WHO, CODEX ALIMENTARIUS INTERNATIONAL FOOD STANDARDS: GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS, CXS 1-1985 (Rev. 2018), [http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS\\_001e.pdf](http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf) [hereinafter CODEX 2018 DATE LABELING STANDARD] [https://perma.cc/X3RP-5P5T].
- <sup>36</sup> Most prepackaged food items in the Dominican Republic need to affix a “minimum duration date” date label, but manufacturers may express this date using the terms “best before . . .” or “consume preferably before the end of . . .” depending on the product’s “shelf life.” NORDOM 53, *Etiquetado general de los alimentos previamente envasados* (pre envasados), 5.8.1 f) (Nov. 27, 2015), <https://www.indocal.gob.do/wp-content/uploads/2021/05/NORDOM-53.pdf> [https://perma.cc/2PBQ-XF2E].
- <sup>37</sup> In Mexico, the date labeling law provides for separate safety-based and quality-based labels (i.e. “dual labeling” system), but confusion as to when to apply which label persists as described below. Date labeling is regulated through an Official Mexico Norm, NOM-051 – General



Labeling Specifications for Pre-Packaged Foods and Non-Alcoholic Beverages (*Especificaciones generales de etiquetado para alimentos y bebidas no alcohólicas preenvasados*), which is the main food and beverage regulation. Specifically, NOM-051 requires food to be labeled with either an expiration date (*fecha de caducidad, caducidad, fecha de expiración, expira*, etc.) or preferred consumption date (*consumir preferentemente antes del*). 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. The preferred consumption date, on the other hand, is the date after which the product cannot be sold but can still be consumed. Except for a few food items, the law does not provide guidance as to when the expiration date as opposed to the preferred consumption date should be applied; it is instead left to the manufacturer's discretion to choose the specific date and preceding language. See Luis Chavez, *Mexico Issues notice on NOM-051 Labeling Revisions*, GAIN REP. (Dec. 20, 2010), [https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Mexico%20Issues%20Notice%20on%20NOM-051%20Labeling%20Revisions\\_Monterrey%20ATO\\_Mexico\\_12-20-2010.pdf](https://apps.fas.usda.gov/newgainapi/api/report/downloadreportbyfilename?filename=Mexico%20Issues%20Notice%20on%20NOM-051%20Labeling%20Revisions_Monterrey%20ATO_Mexico_12-20-2010.pdf) [<https://perma.cc/8CAG-7FLS>]; NOM-051-SCFI/SSA1-2010 (translated by Marketing Solution Firm), at 3.17–3.18, 9–15, 24, [http://piorin.gov.pl/files/userfiles/wnf/przepisy/meksyk/mexico\\_nom-051-english\\_-\\_food\\_label.pdf](http://piorin.gov.pl/files/userfiles/wnf/przepisy/meksyk/mexico_nom-051-english_-_food_label.pdf) [<https://perma.cc/9X8T-T594>].

<sup>38</sup> FLPC, GLOBAL FOOD DONATION POLICY ATLAS SOUTH AFRICA LEGAL GUIDE: FOOD DONATION LAW AND POLICY 7 (2021), <https://www.foodbanking.org/wp-content/uploads/2021/04/South-Africa-Legal-Guide-v2.pdf> [<https://perma.cc/85XG-T7E9>] (citing No. R.146 (REGULATIONS RELATING TO THE LABELLING AND ADVERTISING OF FOODSTUFFS)); see Foodstuffs, Cosmetics, and Disinfectants Act No. 54 of 1972 (S. Afr.). No. R.145 (REGULATIONS RELATING TO THE LABELLING AND ADVERTISING OF FOODSTUFFS) §12 (1)–(2)).

<sup>40</sup> *Id.*

<sup>41</sup> It is important to note that in the US, Congress has never mandated that the FDA or USDA implement a national date label regime, the only exception being infant formula, which is subject to explicit FDA date labeling requirements. Infant Formula Act, Pub. L. No. 96-359 (1980) (codified at 21 U.S.C. §§ 350a, 301, 321 (aa), 331, 37(a) (1980)). In response to scandals resulting from recalls of infant formula products that were causing illnesses among children because the products lacked sufficient nutrients, and due to findings that the industry had too much discretion to decide the appropriate nutritional content of these products, Congress passed the Infant Formula Act of 1980, mandating that the FDA set uniform standards for the nutritional content of these products. *Id.*; see also Toby Milgrom Lebin, *The Infant Formula Act of 1980: A Case Study of Congressional Delegation to the Food and Drug Administration*, 42 FOOD DRUG COSM. L.J. 101–04 (1987); House Subcomm. On Oversight and Investigations of the Comm. On Interstate and Foreign Commerce, 96<sup>th</sup> Cong., 2d Sess., *Infant Formula: Our Children Need Better Protection* 3 (Comm. Print 96-IFC 42); 21 U.S.C. § 350a (1980). Under this Act, FDA established a range of regulations impact infant formula, including a requirement that its labels include “use by” dates. *Id.* The regulations mandate that determinations used to assign such dates to infant formula must be based on tests that prove the concentration of nutrients is adequate for the health of children up to the marked date. *Id.*

<sup>42</sup> THE DATING GAME, *supra* note 25.

<sup>43</sup> See *ReFED Insights Engine: Standardized Date Labels*, ReFED, <https://insights-engine.refed.org/solution-database/standardized-date-labels> (last visited Oct. 25, 2021); see also REFED ROADMAP TO 2030: REDUCING U.S. FOOD WASTE BY 50% AND THE REFED INSIGHTS ENGINE: AT-A-GLANCE (2020), [https://insights.refed.com/uploads/refed\\_roadmap2030-FINAL.pdf?\\_cchid=a013dff6534d1409dcf3fe652a4691fc](https://insights.refed.com/uploads/refed_roadmap2030-FINAL.pdf?_cchid=a013dff6534d1409dcf3fe652a4691fc) [<https://perma.cc/Y4RF-3RP4>]; see generally *ReFED U.S. Food Waste Policy Finder: Date Labeling Regulations* (updated Sept. 13, 2021), <https://policyfinder.refed.org/spotlight-on-date-labeling> [<https://perma.cc/GL42-C94Z>].

<sup>44</sup> Over the past three legislative sessions in the United States, more than 30 bills on date labeling have been introduced in 15 different states. See FLPC, *FLPC Date Label Bill Tracking Spreadsheet* (2021), on file with author.

<sup>45</sup> Champions 12.3 & Consumer Goods Forum, *Call to Action to Standardize Food Date Labels Worldwide by 2020* (2017), <https://champions123.org/sites/default/files/2020-09/champions-123-call-to-action-to-standardize-food-date-labels-worldwide-by-2020.pdf> [<https://perma.cc/477D-5C48>]. The call to action states that the “exact wording [of the date labels] will be tailored to [a] regional context and what is most understandable for the consumer”; Press Release, Consumer Goods Forum, *Companies Commit to Simplify Food Date Labels Worldwide by 2020, Reducing Food Waste* (Sept. 20, 2017), [https://www.theconsumergoodsforum.com/press\\_releases/companies-commit-to-simplify-food-date-labels-worldwide-by-2020-reducing-food-waste](https://www.theconsumergoodsforum.com/press_releases/companies-commit-to-simplify-food-date-labels-worldwide-by-2020-reducing-food-waste) [<https://perma.cc/KL9W-3WB8>]; see also Press Release, Champions 12.3, *RELEASE: Companies Commit to Simplify Food Date Labels Worldwide by 2020, Reducing Food Waste* (Sept. 20, 2017), <https://champions123.org/release-companies-commit-simplify-food-date-labels-worldwide-2020-reducing-food-waste> [<https://perma.cc/PT6X-QW28>].

<sup>46</sup> CODEX 2018 DATE LABELING STANDARD, *supra* note 35.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> FAO & WHO, *CODEX TEXTS* (2021), <http://www.fao.org/fao-who-codexalimentarius/codex-texts/en> [<https://perma.cc/22YN-9X5V>].

<sup>51</sup> FAO & WHO, *Codex Alimentarius Members*, <http://www.fao.org/fao-who-codexalimentarius/about-codex/members/en> (last visited, Oct. 22, 2021).

<sup>52</sup> EUR. COMM’N ET AL., *FOOD REDISTRIBUTION IN THE EU: MAPPING AND ANALYSIS OF EXISTING REGULATORY AND POLICY MEASURES IMPACTING FOOD REDISTRIBUTION FROM EU MEMBER STATES* (2020), <https://op.europa.eu/en/publication-detail/-/publication/189fa4cd-b755-11ea-bb7a-01aa75ed71a1> (last visited Oct. 22, 2021).

<sup>53</sup> See, e.g., Andrea Petersen, *A Little Secret About Bottled Water*, WALL ST. J. (Feb. 11, 2004), <https://www.wsj.com/articles/SB107646063079326366> [<https://perma.cc/5DGQ-83RF>].

<sup>54</sup> ATLAS SINGAPORE LEGAL GUIDE, *supra* note 29; THE DATING GAME, *supra* note 25; ATLAS ARGENTINA LEGAL GUIDE, *supra* note 23 (quoting Honorable Cámara de Diputados de la Nación Argentina, *Sesión Especial: Por Amplia Mayoría, Aprueban un Regimen para la Donación de Alimentos*, DISPUTADOS ARGENTINA (July 4, 2018), [https://www.diputados.gov.ar/prensa/noticias/2018/noticias\\_0633.html](https://www.diputados.gov.ar/prensa/noticias/2018/noticias_0633.html) [<https://perma.cc/X5Q8-B9AY>]. Deputy Elisa Carrió, sponsor of the bill introducing Article 9 to Law 25,989, explained that “in no way does this [provision] enable the donation of expired merchandise.”).

55 FLPC & GFN, *The Global Food Donation Policy Atlas*, *supra* note 7.

56 DEFRA, GUIDANCE ON THE APPLICATION OF DATE LABELS TO FOOD 6 (2011), <https://webarchive.nationalarchives.gov.uk/ukgwa/20130506075936/https://www.gov.uk/government/publications/guidance-on-the-application-of-date-labels-to-food> [<https://perma.cc/92NZ-7TY4>].

57 *ReFED Insights Engine: Standardized Date Labels*, *supra* note 43; *see also* REFED ROADMAP TO 2030, *supra* note 43.

58 WASTE & RES. ACTION PROGRAMME [WRAP] ET AL., LABELLING GUIDANCE: BEST PRACTICE ON FOOD DATE LABELLING AND STORAGE ADVICE 18 (2019), <https://wrap.org.uk/sites/default/files/2020-07/WRAP-Food-labelling-guidance.pdf> (last visited Oct. 25, 2021) [hereinafter WRAP LABELLING GUIDANCE BEST PRACTICE].

59 *Id.* at 19.

60 CODEX 2018 DATE LABELING STANDARD, *supra* note 35.

61 FLPC, THE GLOBAL FOOD DONATION POLICY ATLAS CHILE LEGAL GUIDE: FOOD DONATION LAW AND POLICY 7 (2021), <https://www.foodbanking.org/wp-content/uploads/2021/03/Chile-Legal-Guide.pdf> [<https://perma.cc/VE8F-9PQY>] (citing Decree No. 977, art. 106, Reglamento Sanitario de los Alimentos, Mayo 13, 1997, Diario Oficial [D.O.] (Chile)).

62 *Id.* The RSA defines the “minimum duration date,” which indicates the period in which the manufacturer guarantees that the product, while kept under certain conditions, maintains all significant qualities.

63 *Id.*

64 CODEX 2018 DATE LABELING STANDARD, *supra* note 35.

65 *Id.*

66 Certain foods are exempt from this date labeling requirement, such as table salt, herbs, produce, baked goods, and certain alcoholic beverages. Food Information Regulation 1169/2011 (EU) at art. 24 (defining highly perishable as “likely after a short period to constitute an immediate danger to human health.”).

67 Food Information Regulation 1169/2011 (EU) at art. 9, ¶ f.

68 FLPC, THE GLOBAL FOOD DONATION POLICY ATLAS UNITED KINGDOM LEGAL GUIDE: FOOD DONATION LAW AND POLICY 5 (2021), <https://www.foodbanking.org/wp-content/uploads/2021/04/UK-Legal-Guide-v2.pdf> [<https://perma.cc/EN6W-QWET>] [hereinafter ATLAS UK LEGAL GUIDE].

69 DEFRA, GUIDANCE ON THE APPLICATION OF DATE LABELS TO FOOD, *supra* note 56; WRAP LABELING GUIDANCE BEST PRACTICE, *supra* note 58, at 18.

70 ATLAS UK LEGAL GUIDE, *supra* note 68 at 8 (citing WRAP, FINAL REPORT: FOOD WASTE IN PRIMARY PRODUCTION IN THE UK (2019), <https://wrap.org.uk/sites/default/files/2020-07/WRAP-food-waste-in-primary-production-in-the-UK.pdf> (last visited Oct. 25, 2021); WRAP, FINAL REPORT: HOUSEHOLD FOOD AND DRINK WASTE IN THE UK 6 (2009), <https://wrap.org.uk/sites/default/files/2020-12/Household-Food-and-Drink-Waste-in-the-UK-2009.pdf> (last visited Oct. 25, 2021) (discussing that in 2008 consumers discarded about 22% of food due to confusion over labeling); *see also* WRAP ET AL., REDISTRIBUTION LABELLING GUIDE: DATE LABELS, STORAGE ADVICE AND FREEZING FOR FOOD SAFETY (2020), <https://wrap.org.uk/sites/default/files/2020-07/WRAP-surplus-food-redistribution-labelling-guide-May-2020.pdf> [hereinafter WRAP REDISTRIBUTION LABELLING GUIDE] (last visited Oct. 25, 2021) (discussing that avoidable food waste equates to £13 billion in value).

71 THE DATING GAME, *supra* note 25.

72 *See, e.g.,* ATLAS SINGAPORE LEGAL GUIDE, *supra* note 29.

73 FLPC & NRDC, DON’T WASTE, DONATE, *supra* note 4 at 6.

74 ATLAS SINGAPORE LEGAL GUIDE, *supra* note 29 (citing Food Regulations § 10A(b) & 10(2)); *see also Understanding Food Nutrition Labels*, SINGAPORE FOOD AGENCY, <https://www.sfa.gov.sg/food-information/labellingpackaging-information/understanding-food-nutrition-labels> [<https://perma.cc/UX5L-ZRA6>].

75 ATLAS SINGAPORE LEGAL GUIDE, *supra* note 29 (citing Food Regulations § 10A(b) & 10(2)); *see also Understanding Food Nutrition Labels*, *supra* note 74.

76 ATLAS SINGAPORE LEGAL GUIDE, *supra* note 29 (citing Food Regulations § 10A(b)).

77 *Id.* (citing Food Regulations § 10A(b), § 13(3)).

78 ATLAS ARGENTINA LEGAL GUIDE, *supra* note 23.

79 *Id.*

80 FLPC, DATE LABELS: THE CASE FOR FEDERAL LEGISLATION 9 (2019), [https://www.chlpi.org/wp-content/uploads/2013/12/date-labels-issue-brief\\_June-2019.pdf](https://www.chlpi.org/wp-content/uploads/2013/12/date-labels-issue-brief_June-2019.pdf) [<https://perma.cc/4LW7-UP9H>].

81 *See* Eur. Comm’n, Commission Notice: Information from European Union Institutions, Bodies, Office and Agencies: EU guidelines on food donation, 2017 O.J. (C 361/1), [https://ec.europa.eu/food/sites/food/files/safety/docs/fw\\_eu-actions\\_food-donation\\_eu-guidelines\\_en.pdf](https://ec.europa.eu/food/sites/food/files/safety/docs/fw_eu-actions_food-donation_eu-guidelines_en.pdf) [<https://perma.cc/BRX9-PNV7>] [hereinafter Eur. Comm’n EU Guidelines on Food Donation].

82 ATLAS UK LEGAL GUIDE, *supra* note 68 at 6 (citing Food Standards Act 1999, ch. 28 §§ 1, 6; Environment, Food, and Rural Affairs—Seventh Report, ch. 2, House of Commons (2005), <https://publications.parliament.uk/pa/cm200405/cmselect/cmenvfru/469/46905.htm> [<https://perma.cc/23TM-RJH6>]).

83 *Best before and use-by dates*, FOOD STANDARDS AGENCY (updated Mar. 19, 2021), <https://www.food.gov.uk/safety-hygiene/best-before-and-use-by-dates> [<https://perma.cc/V3ZV-SRWP>]; *see also Clearer date label guidance could cut food waste*, ZERO WASTE SCOT., (Nov. 29, 2017), <https://www.zerowastescotland.org.uk/press-release/clearer-date-label-guidance-could-cut-food-waste> [<https://perma.cc/L7A6-NZLC>].

84 ATLAS UK LEGAL GUIDE, *supra* note 68 at 3 (referring generally to *Department for Environment Food & Rural Affairs*, <https://www.gov.uk/government/organisations/department-for-environment-food-rural-affairs> (last visited Oct. 25, 2021)).

85 *Id.* at 9; *see also* WRAP REDISTRIBUTION LABELLING GUIDE, *supra* note 70; WRAP REDISTRIBUTION LABELLING GUIDE, *supra* note 70

86 ATLAS UK LEGAL GUIDE, *supra* note 68 at 9; *see also* WRAP REDISTRIBUTION LABELLING GUIDE, *supra* note 70.

87 ATLAS UK LEGAL GUIDE, *supra* note 68 at 9; *see also* WRAP REDISTRIBUTION LABELLING GUIDE, *supra* note 70.

88 Eur. Comm’n EU Guidelines on Food Donation, *supra* note 81 at 18 (citing Comparative Study on EU Member States’ legislation and practices on food donations, European and Economic Social Committee, 2014).

89 *Id.* (citing generally to Belgian food safety agency *Circulaire relative aux dispositions applicables aux banques alimentaires et associations*

*caritatives*, 8 February 2017; Italy — Manual of Good Practices for Charitable Organisations, Caritas Italiana, Fondazione Banco Alimentare Onlus, March 2016).

- <sup>90</sup> FLPC, GLOBAL FOOD DONATION POLICY ATLAS DOMINICAN REPUBLIC POLICY RECOMMENDATIONS 7 (2021), <https://www.foodbanking.org/wp-content/uploads/2021/03/Dominican-Republic-Recommendations-v2.pdf> [<https://perma.cc/2AAN-TM63>] (citing GERO VAAGT, PÉRDIDA DE ALIMENTOS EN REPÚBLICA DOMINICANA Y RECOMENDACIONES DE REDISTRIBUCIÓN, FAO 14, 15 (2014), [http://www.fao.org/fileadmin/user\\_upload/FAO-countries/Republica\\_Dominicana/docs/Presentacion\\_Final\\_Pérdida\\_Alimentos\\_RD\\_Octubre\\_2014.pdf](http://www.fao.org/fileadmin/user_upload/FAO-countries/Republica_Dominicana/docs/Presentacion_Final_Pérdida_Alimentos_RD_Octubre_2014.pdf) [<https://perma.cc/A98P-5UHM>]).
- <sup>91</sup> FLPC, GLOBAL FOOD DONATION POLICY ATLAS MEXICO POLICY RECOMMENDATIONS 6–7 (2020), <https://www.foodbanking.org/wp-content/uploads/2020/06/Mexico-Recommendations.pdf> [<https://perma.cc/FP5F-AR36>] (citing FLPC conducted a site visit to Mexico City to interview various stakeholders in October 2019).
- <sup>92</sup> See generally Food Banks Canada, *Our Work*, <https://www.foodbankscanada.ca/Our-Work.aspx> (last visited Aug. 20, 2021).
- <sup>93</sup> ATLAS CANADA LEGAL GUIDE, *supra* note 23, at 3 (citing COMM’N FOR ENV’ COOP., CHARACTERIZATION AND MANAGEMENT OF FOOD LOSS AND WASTE IN NORTH AMERICA: WHITE PAPER 55, 61 (2017), <http://www3.cec.org/islandora/en/item/11772-characterization-and-management-food-loss-and-waste-in-north-america-en.pdf> [<https://perma.cc/B72E-GDZR>]).
- <sup>94</sup> See *Food Labelling*, DEFRA (Apr. 3, 2013), <http://www.defra.gov.uk/food-farm/food/labelling>.
- <sup>95</sup> See *Best before and use-by dates*, *supra* note 83.
- <sup>96</sup> See *Clearer date label guidance could cut food waste*, *supra* note 83.
- <sup>97</sup> See *Guidance: Food labelling: giving food information to consumers*, DEFRA & FOOD STANDARDS AGENCY (updated Nov. 29, 2017), <https://www.gov.uk/guidance/food-labelling-giving-food-information-to-consumers> (last visited Oct. 31, 2021).
- <sup>98</sup> ATLAS UK LEGAL GUIDE, *supra* note 68 at 9.
- <sup>99</sup> WRAP, *Love Food Hate Waste*, <https://lovefoodhatewaste.com> [<https://perma.cc/PQN9-S2A4>].
- <sup>100</sup> *Past May Date? Look, Smell, Taste, Don’t Waste: Best Before Labels Are Causing Food Waste, Too Good to Go* INT’L (2020), <https://toogoodtogo.co.uk/en-gb/campaign/commitment> (last visited Oct. 25, 2021); Rebecca Smithers, *Cut food waste at home by sniffing and tasting, urges new campaign*, GUARDIAN (Jan. 23, 2021), <https://www.theguardian.com/environment/2021/jan/23/cut-food-waste-at-home-by-sniffing-and-tasting-urges-new-campaign> [<https://perma.cc/94QY-84X9>].
- <sup>101</sup> See, e.g., WRAP, FINAL REPORT: SURPLUS FOOD REDISTRIBUTION IN THE UK 2015 – 2020 (2021), <https://wrap.org.uk/sites/default/files/2021-06/WRAP-Surplus-food-redistribution-in-the-UK-2015-2020.pdf> (last visited Oct. 31, 2021).
- <sup>102</sup> WRAP, COURTAULD COMMITMENT 2025 MILESTONE PROGRESS REPORT 16 (2020), <https://wrap.org.uk/sites/default/files/2020-08/Courtauld-Commitment-2025-Milestone-Progress-Report.pdf> (last visited Oct. 25, 2021); see also Yvette Cabrera, *The UK Is Winning on Food Waste. Are We?* (Jul. 30, 2020), <https://www.nrdc.org/experts/yvette-cabrera/uk-winning-food-waste-are-we-0> [<https://perma.cc/DHR6-MD6L>].
- <sup>103</sup> COURTAULD COMMITMENT 2025 MILESTONE PROGRESS REPORT, *supra* note 102.

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