



PennState Law

Center for Agricultural
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An Overview of U.S. Charitable Food Surplus Programs

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June 21, 2023, 12:00pm–1:00pm EDT

Presented in partnership with

The National Agricultural Law Center





“Food Surplus”

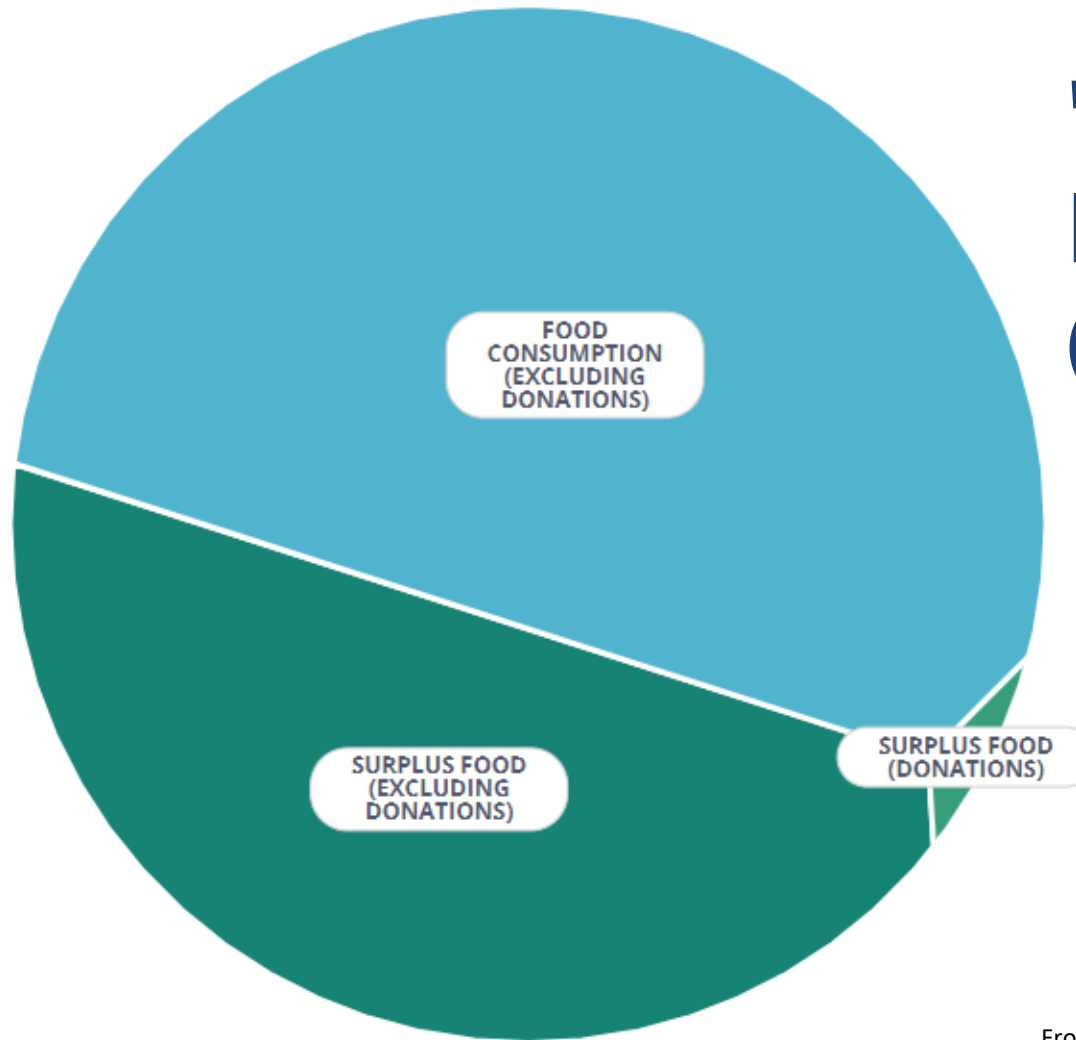
“[E]dible food that does not make it to people, due to barriers such as supply chain logistics, infrastructure, labor, or marketplace economics.”

Salvation Farms

<https://www.salvationfarms.org/our-work/#lamoille-valley-gleaning>

The U.S. generated 91 million tons of surplus food in 2021, which is 38% of total production

- Food Consumption (Excluding Donations)
150M Tons - 62.2%
- Surplus Food (Excluding Donations)
89.3M Tons - 37.1%
- Surplus Food (Donations)
1.76M Tons - 0.73%



"Food Surplus" =
Extra Commodities
(loss → waste)

"Charitable"
= Donation



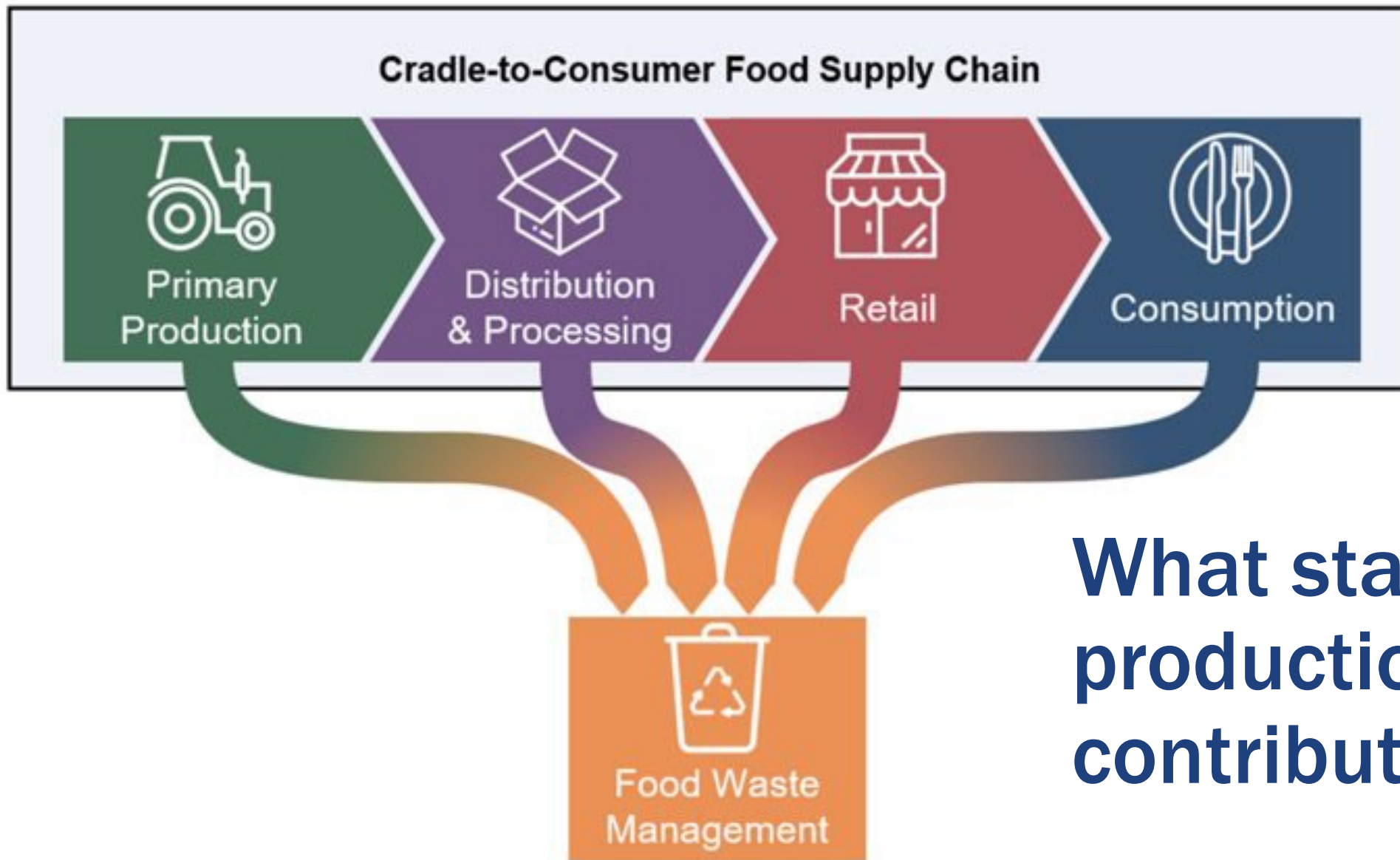
Food Loss and Waste in the United States

Each year, U.S. food loss and waste represents

- 140 million acres agricultural land
- 5.9 trillion gallons blue water
- 778 million pounds pesticides
- 14 billion pounds fertilizer
- 664 billion kWh energy
- 170 million MTCO₂e GHG emissions (excluding landfill emissions)

Enough to feed more 150 million people





What stages of food production contribute to waste?

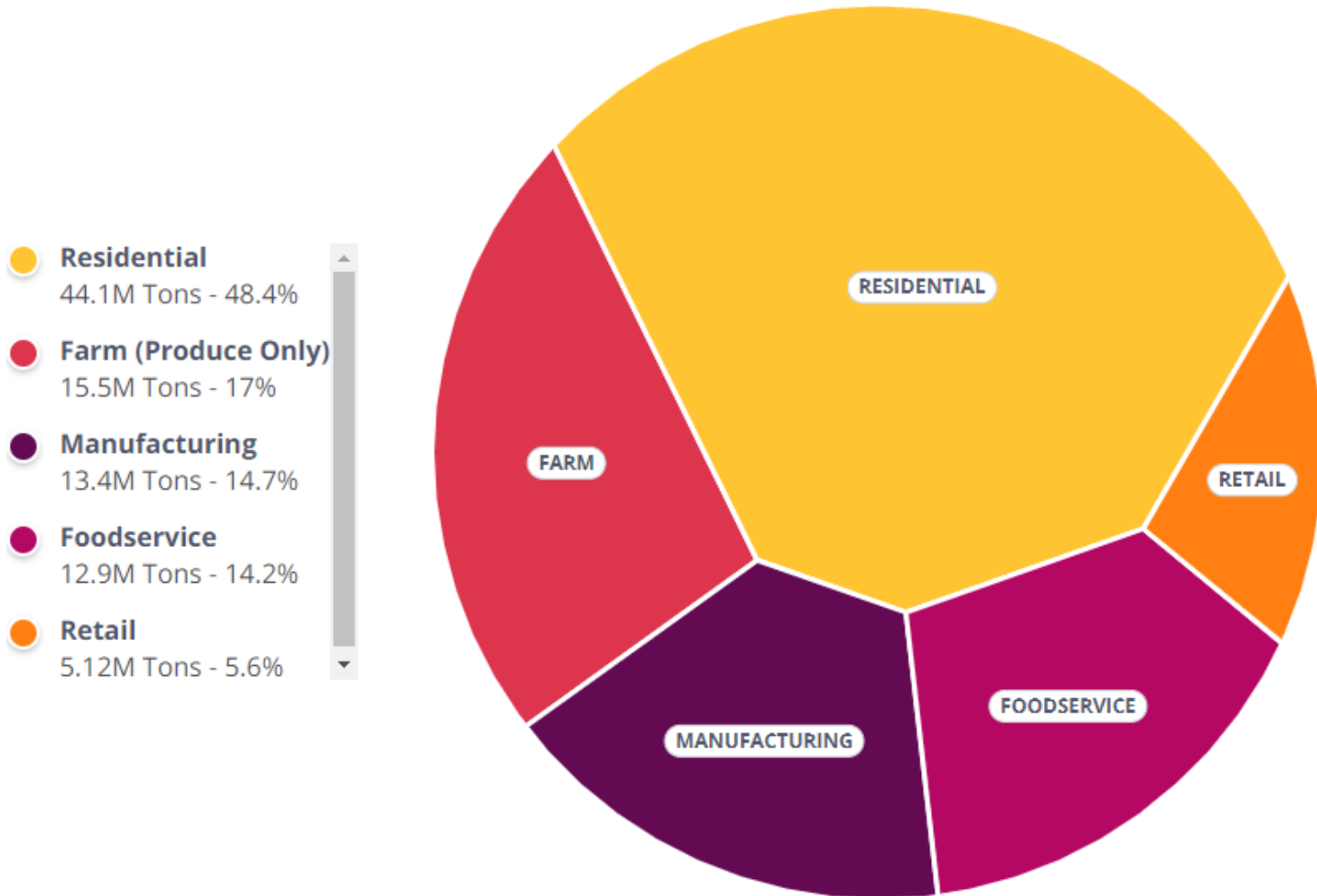
FIGURE 1-1. STAGES OF THE U.S. FOOD SUPPLY CHAIN

From Farm to Kitchen: The Environmental Impacts of U.S. Food Waste, EPA Office of Research and Development, 2 (November 2021) https://www.epa.gov/system/files/documents/2021-11/from-farm-to-kitchen-the-environmental-impacts-of-u.s.-food-waste_508-tagged.pdf

91 million Surplus Food Tons

were generated in **All Sectors** across **All States** in **2021**

Destinations Food Types Causes **Sectors**



How much surplus food is generated on-farm?

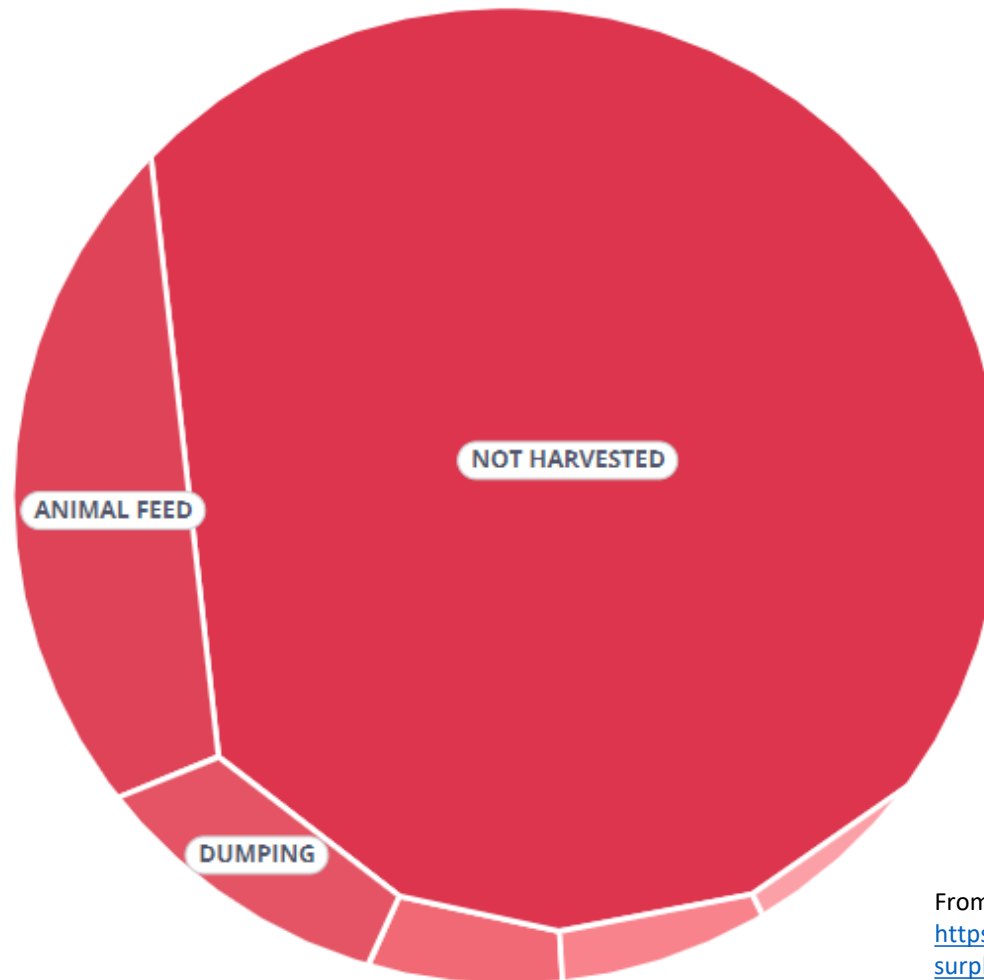
From ReFED Food Waste Monitor,
https://insights-engine.refed.org/food-waste-monitor?break_by=sector&indicator=tons-surplus&view=detail&year=2021

15.5 million Surplus Food Tons

were generated in **Farm (produce only)** across **All States** in **2021**

Destinations Food Types Causes

- Not Harvested**
12.7M Tons - 82%
- Animal Feed**
1.73M Tons - 11.2%
- Dumping**
612k Tons - 3.9%
- Donations**
250k Tons - 1.6%
- Landfill**
178k Tons - 1.1%
- Incineration**
15.1k Tons - 0.097%



Why is there surplus food on farms?

From ReFED Food Waste Monitor,
https://insights-engine.refed.org/food-waste-monitor?break_by=destination&indicator=tons-surplus§or=farm&view=detail&year=2021

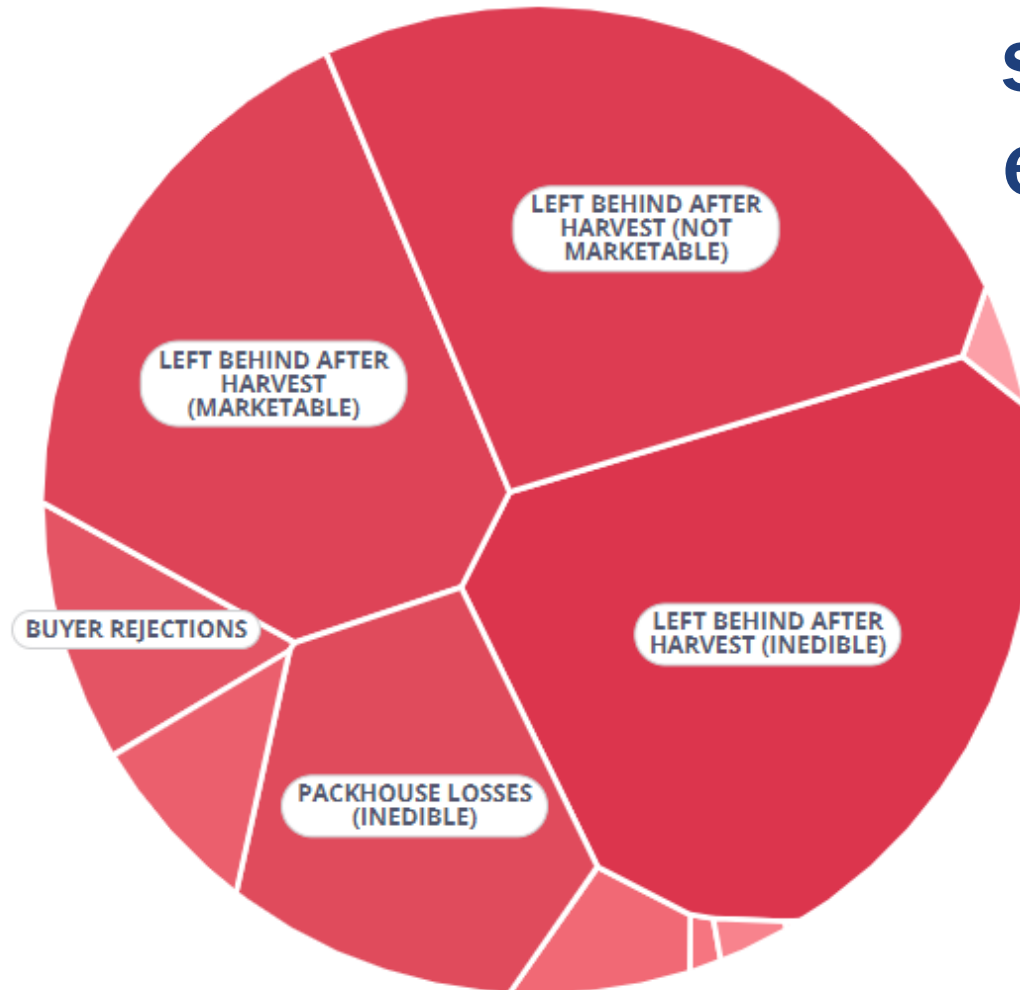
15.5 million Surplus Food Tons

were generated in **Farm (produce only)** across **All States** in **2021**

Destinations Food Types **Causes**

How much farm surplus food is edible?

- **Left Behind After Harvest (Inedible)**
4.51M Tons - 29.1%
- **Left Behind After Harvest (Not Marketable)**
4.16M Tons - 26.8%
- **Left Behind After Harvest (Marketable)**
3.51M Tons - 22.6%
- **Packhouse Losses (Inedible)**
1.89M Tons - 12.2%
- **Buyer Rejections**
579k Tons - 3.7%
- **Fields Never Harvested (Bad Weather)**
497k Tons - 3.2%



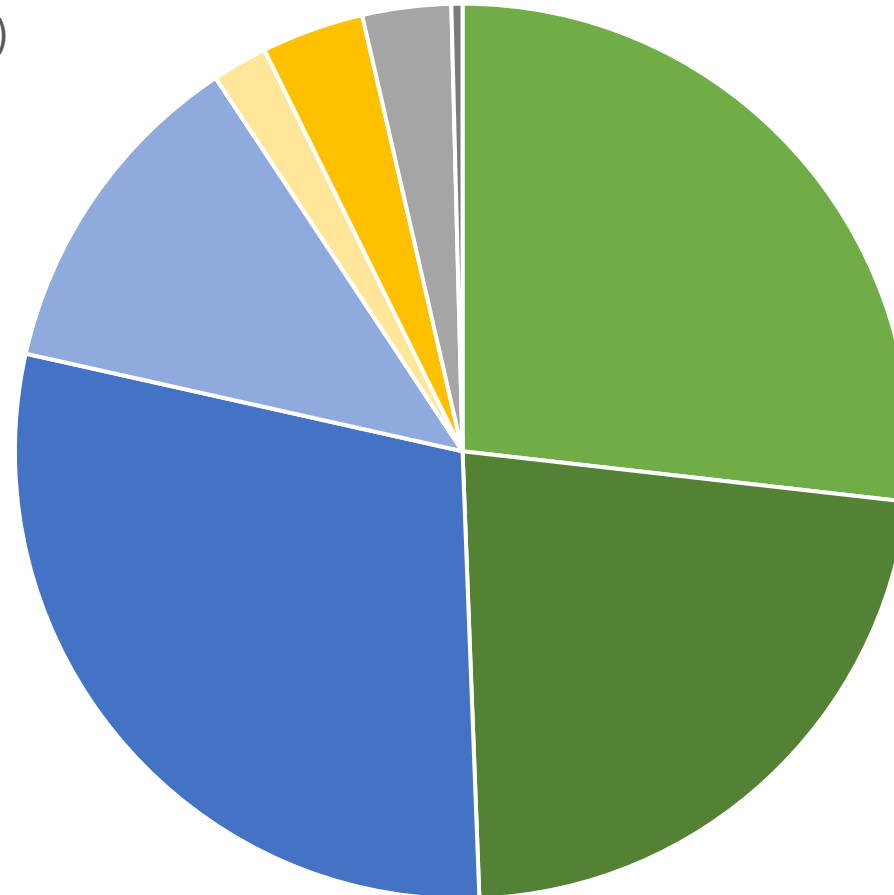
From ReFED Food Waste Monitor,
https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=tons-surplus§or=farm&view=detail&year=2021



How much farm surplus food is edible?

Farm Surplus (produce only) 2021

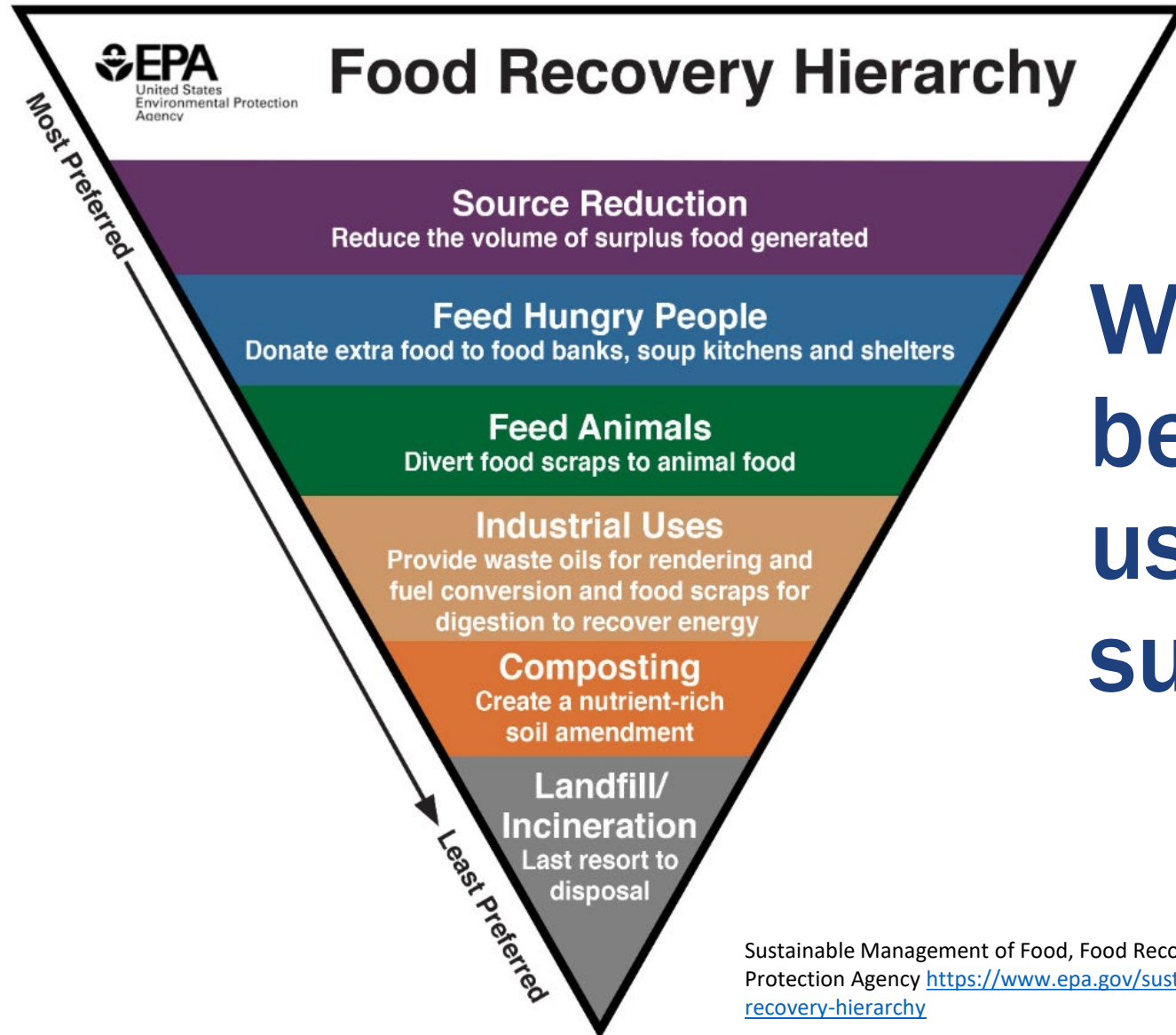
- Left Behind After Harvest (Not Marketable, Edible) 4.16M Tons, 26.8%
- Left Behind After Harvest (Marketable, Edible) 3.51M Tons, 22.6%
- Left Behind After Harvest (Inedible) 4.51M Tons, 29.1%
- Packhouse Losses (Inedible) 1.89M Tons, 12.2%
- Packhouse Losses (Not Marketable, Edible) 317k Tons, 2%
- Buyer Rejections 579k Tons, 3.7%
- Fields Never Harvested (Bad Weather) 497k Tons, 3.2%
- Fields Never Harvested (Other: pests/diseases, market dynamics, food safety) 99.65k, 0.4%



About 50%

Data from ReFED Food Waste Monitor,
https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=tons-surplus§or=farm&view=detail&year=2021
See also, Food Loss at the Farm Level, USDA (April 16, 2019)
<https://www.usda.gov/media/blog/2019/04/16/food-loss-farm-level>





What are the best ways to use/reduce surplus food?

Sustainable Management of Food, Food Recovery Hierarchy, U.S. Environmental Protection Agency <https://www.epa.gov/sustainable-management-food/food-recovery-hierarchy>





What Federal Policies/Laws Exist to Encourage Food Donation?

1. Limited liability protection for donors: The Bill Emerson Good Samaritan Food Donation Act of 1996
2. Enhanced federal tax deduction for food donation



The Bill Emerson Good Samaritan Food Donation Act of 1996

DOJ has interpreted to preempt state laws

Federal protection from criminal and civil liability for food donors

- Donation must be made “in good faith”
- Must donate to a nonprofit organization for “distribution to needy individuals”
- Must donate “at zero cost” or “good Samaritan reduced price”

42 U.S. Code § 1791 <https://www.law.cornell.edu/uscode/text/42/1791>

See also The Legal Guide to the Bill Emerson Good Samaritan Food Donation Act, James Haley, Univ. Ark. School Law, <http://media.law.uark.edu/arklawnotes/2013/08/08/the-legal-guide-to-the-bill-emerson-good-samaritan-food-donation-act/#note-1448-67>





The Bill Emerson Good Samaritan Food Donation Act of 1996

Food Donations:

- “Apparently wholesome food” and “apparently fit grocery items”
- Food must meet federal, state, and local **quality and labeling standards**
 - Even if food is not “readily marketable”
- Exception for donations where recipient is informed





The Bill Emerson Good Samaritan Food Donation Act of 1996

Provides protection for

- “Persons”
 - Individual
 - Farmer
 - Corporation
 - Partnership
 - Organization
 - Association
 - Retail distributor
 - Government entity
- “Gleaners”: persons who harvest for free distribution to needy persons
- “Nonprofit organizations”





The Bill Emerson Good Samaritan Food Donation Act of 1996

Does NOT cover injuries/claims arising from

- Gross negligence
- Intentional misconduct



42 U.S. Code § 1791 <https://www.law.cornell.edu/uscode/text/42/1791>

See also Frequently Asked Questions about the Bill Emerson Good Samaritan Food Donation Act, USDA <https://www.usda.gov/sites/default/files/documents/usda-good-samaritan-faqs.pdf>



Federal Enhanced Tax Deduction for Charitable Donations of “Food Inventory”—Taxpayer/Donee

- Applies to inventory from “trade or business”¹
- Donations of “apparently wholesome food”²
- Recipient
 - must be qualified 501(c)(3) nonprofit³
 - Recipient must use food for ill, needy, or infants⁴
- Donor must receive written documentation⁵

¹ 170(e)(3) [Internal Revenue Code, § 170. Charitable, Etc., Contributions And Gifts](#)

² I.R.C. § 170(e)(3)(C)(i)(II), (vi)

³ I.R.C. § 170(e)(3)(A)

⁴ I.R.C. § 170(e)(3)(A)(i)

⁵ 26 C.F.R. § 1.170A-4A(b)(4)





Federal Enhanced Tax Deduction for Charitable Donations of “Food Inventory”—Deductible Amount

- Allows donor to deduct lesser of
 - Basis (cost) + ½ FMV (Fair Market Value) or
 - Twice Basis ¹
- For producer operating on cash accounting:
 - Basis may be calculated as 25% of FMV ²
- FMV may be determined
 - “without regard to ... internal standards ... lack of market ... circumstances or ... exclusive purpose”
 - “by taking into account the price at which the same or substantially the same food items ... are sold by the taxpayer at the time of contribution” ³



¹ I.R.C. § 170(e)(3)(B)

² I.R.C. § 170(e)(3)(C)(iv)

³ I.R.C. § 170(e)(3)(C)(v)



Federal Enhanced Tax Deduction for Charitable Donations of “Food Inventory”—Examples 1

Example:

Farmer donates tomatoes with basis of \$200 and FMV of \$1000

- Basis (cost) + $\frac{1}{2}$ FMV (Fair Market Value)
 - $\$200 + \$500 = \$700$
- Twice Basis
 - $\$200 \times 2 = \400

But! May opt to use 25% FMV rule:

- $\$250 + \$500 = \$750$
- $\$250 \times 2 = \500

General deduction: basis only = \$200





Federal Enhanced Tax Deduction for Charitable Donations of “Food Inventory”—Examples 2

Example:

FMV may be determined

- “without regard to ... internal standards ... lack of market ... circumstances or ... exclusive purpose”
- “by taking into account the price at which the same or substantially the same food items ... are sold by the taxpayer at the time of contribution”
- Cranberries
 - Before Thanksgiving FMV = \$1000
 - After Thanksgiving FMV = \$1000
- Carrots
 - Straight “pretty” carrots FMV = \$500
 - Crooked “ugly” carrots FMV = \$500





Federal Enhanced Tax Deduction for Charitable Donations of “Food Inventory”—Limits

Limits

- C-corporations
 - up to 15% of **taxable income**
 - Regular limit for donations: 10%
- All other taxpayers
 - 15% of “taxpayer’s **aggregate net income** ... from *all trades or businesses from which such contributions were made*”
- May carry forward excess up to 5 years





Barriers to getting surplus commodities from the field to a food bank/consumer

- Labor/Time
 - Harvest
 - Packaging/processing (may be minimal)
 - Transportation
- Costs:
 - Materials (packaging)
 - Fuel for transportation



Surplus “Farm-to-Foodbank” Programs:

- Non-profit, national network/State-level
- Often run by food bank/pantry
- Four general types of program structures:
 - Gleaning Programs
 - Regular Donation
 - “Pick and Pack” fees
 - Purchase Programs



Surplus “Farm-to-Foodbank” Programs: **Gleaning Programs**

- “Hands off” for producers
- Volunteers harvest, pack, and transport
- Surplus commodity is tax-deductible donation
- National networks/examples:



Society of St. Andrew
GLEANING AMERICA'S FIELDS
FEEDING AMERICA'S HUNGRY



**ROLLING HARVEST
FOOD RESCUE**
Connecting local farmers with neighbors in need

CENTER FOR



**AGRICULTURE &
FOOD SYSTEMS**

**NATIONAL
GLEANING PROJECT**

Gleaning Projects



From National Gleaning Project, Univ. Vt. Law School Ctr. Agric. & Food Systems
https://nationalgleaningproject.org/gleaning-map/?fwp_gleaning_type=on-farm



Surplus “Farm-to-Foodbank” Programs: **Regular Donation**

- Producer may need to arrange for harvest, packaging, and/or transportation
 - Some programs/food banks may cover transportation
- Surplus commodity is tax-deductible donation
- National networks/examples:

**the
farmlink
project**

**FEEDING[®]
AMERICA**





Surplus “Farm-to-Foodbank” Programs: “Pick and Pack” fee

- Producer may receive reimbursement for harvesting, packaging, and/or transporting
- Surplus commodity is tax-deductible donation
- Programs may be State-run or non-profit:
 - Pennsylvania Agricultural Surplus System
 - Feeding Kentucky ‘Farms to Food Banks’ <https://feedingky.org/farms-to-food-banks/>
 - California Association of Food Banks ‘Farm to Family’ <https://www.cafoodbanks.org/what-we-do/farm-family/>



Surplus “Farm-to-Foodbank” Programs: **Purchase Programs**

- Producer may need to arrange for harvest, packaging, and/or transportation
- Producer receives lower-than market rate for produce
- May not truly be “surplus”
- Surplus commodity may not be tax-deductible donation
- Example programs:
 - Vermonters Feeding Vermonters <https://www.vtfoodbank.org/gather-food/vermonters-feeding-vermonters>
 - “The Foodbank and farmers agree upon a quantity, price, and delivery schedule prior to the growing season. During the harvest season, farmers provide regular deliveries to one of our three branches.”
 - Farms to Foodbanks (organized during pandemic) <https://farmstofoodbanks.org/>
 - Secondary Markets
 - Imperfect Foods/Misfits Market
 - Full Harvest <https://www.fullharvest.com/> - Marketplace for buyer/sellers



State-Level Agricultural Surplus Programs: **Pennsylvania Agricultural Surplus System (PASS)**

- Nov. 2010—“Pennsylvania Agricultural Surplus System Act” enacted
- Provided authority for Pa. Dept. Agriculture to operate PASS to supply food to Pennsylvania food banks
 - Must include “incentives” for producers to donate food, “including reimbursement for services provided.”
- Funded “to the extent ... available by the General Assembly.”





State-Level Agricultural Surplus Programs: **Pennsylvania Agricultural Surplus System (PASS)**

PASS Funding provided by Pennsylvania:

- 2015: \$1 million
- 2016: \$1 million
- 2017: \$1 million
- 2018: \$1.5 million
- 2019: \$1.5 million
- 2020: \$1.5 million
- 2021: \$2.5 million
- 2022: \$4.5 million





Pennsylvania Agricultural Surplus System (PASS)

Farmers work with PASS by

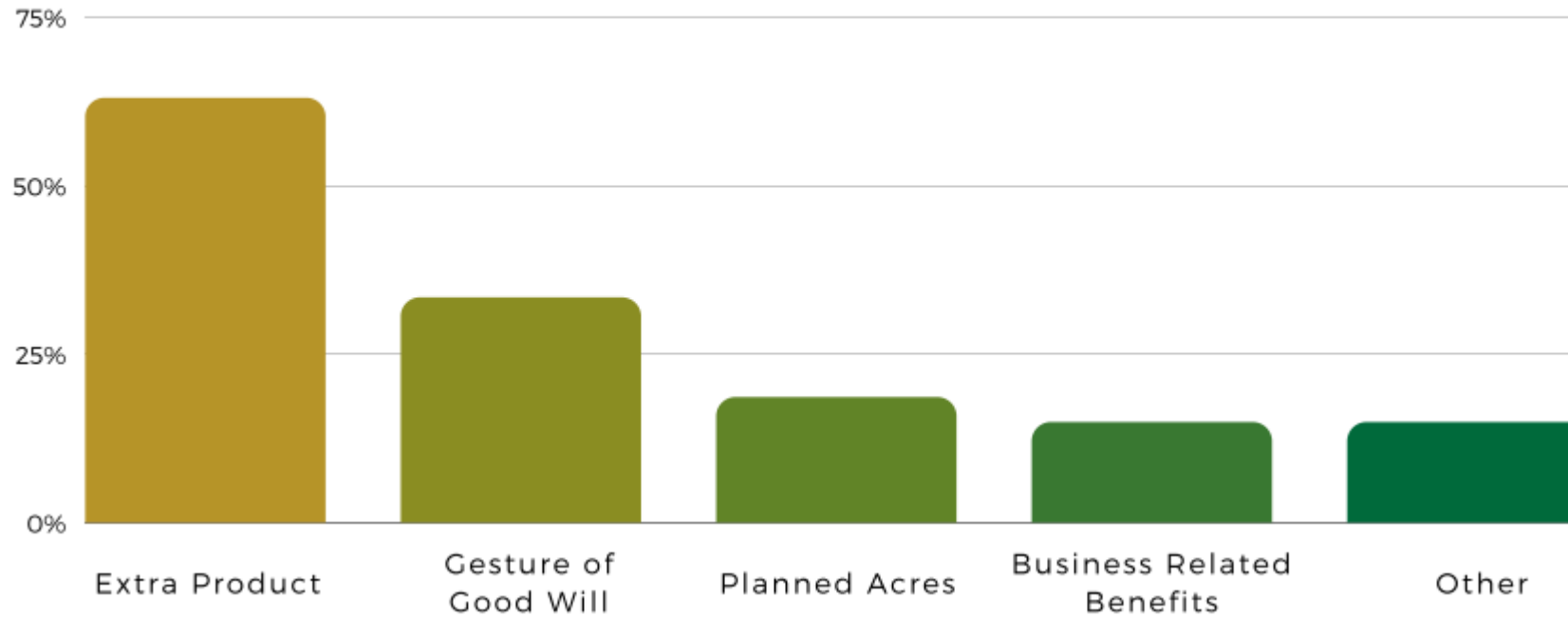
- Donating surplus produce/harvest
- Donating value-added products (meat, eggs, dairy, etc.)
- Contract planting

PASS reimburses producers for “Pick and Pack” costs



Pennsylvania Agricultural Surplus System (PASS)

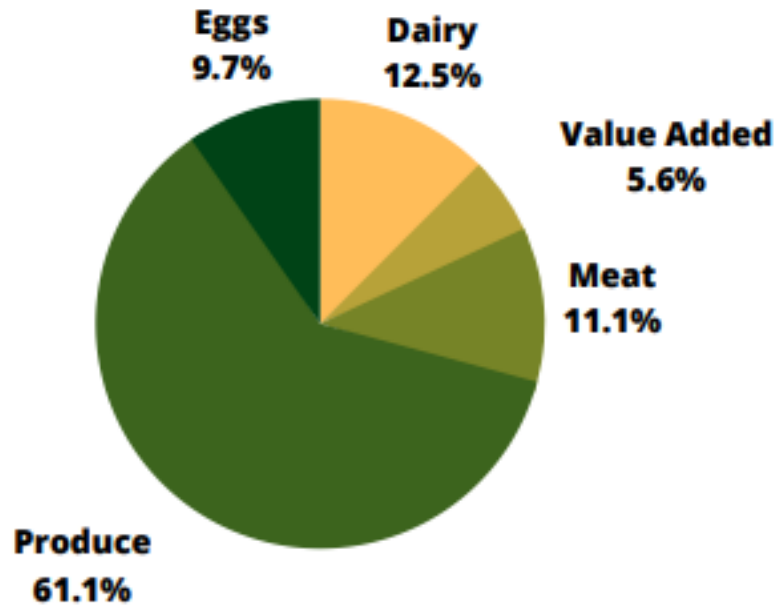
WHY DID YOU PARTICIPATE IN THE PASS PROGRAM?






PASS PENNSYLVANIA
AGRICULTURAL
FY 20-21 HIGHLIGHTS SURPLUS SYSTEM

PASS VENDORS



TOP ITEMS

<u>Product</u>	<u>lbs.</u>
Mixed Produce	284,660
Apples	248,578
Fluid Milk	145,660
Applesauce	125,268
Potatoes	118,330
Leafy Greens	113,914
Pork	91,052
Beef	41,270
Cheese	29,923



PASS PENNSYLVANIA
AGRICULTURAL
FY 20-21 HIGHLIGHTS SURPLUS SYSTEM

1.7 MILLION
POUNDS DISTRIBUTED
IN ALL 67 COUNTIES

70
VENDORS

F
R
O
M

33
COUNTIES

486,148
HOUSEHOLDS SERVED





Other states with similar programs to PASS

- Michigan
- Kentucky
- Texas
- Virginia

****Not comprehensive!!**



The Emergency Food Assistance Program (TEFAP) “Farm to Food Bank” Grants

- 1983—The Emergency Food Assistance Act
- 2018 Farm Bill amended Act to create “Farm to Food Bank” project grant program
 - Provided \$4 million each year for FY 2019–FY 2023
- States apply for grants, must
 - Partner with “emergency feeding organization” (EFO)
 - Provide matching funds

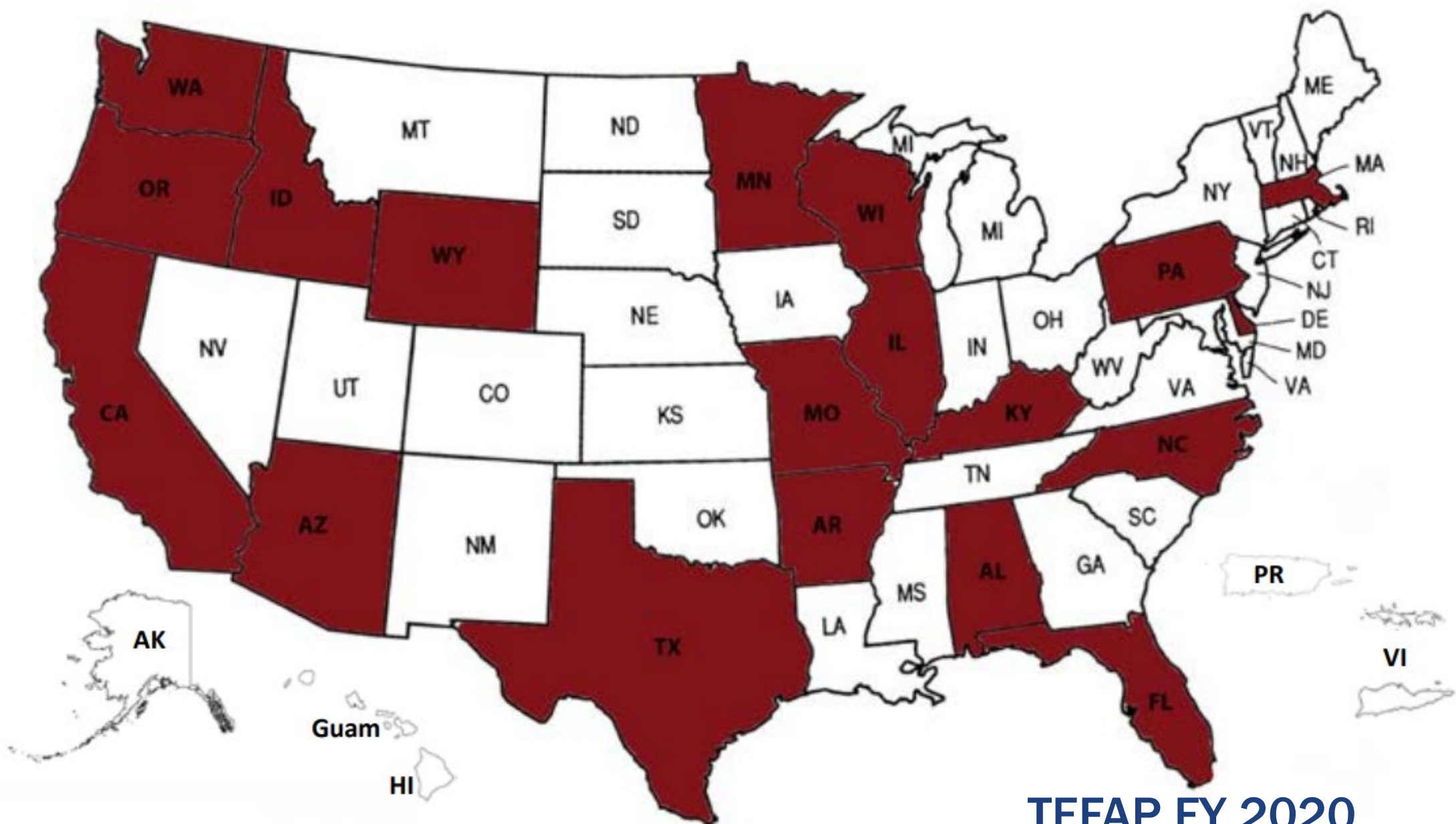


TEFAP “Farm to Food Bank” Grants

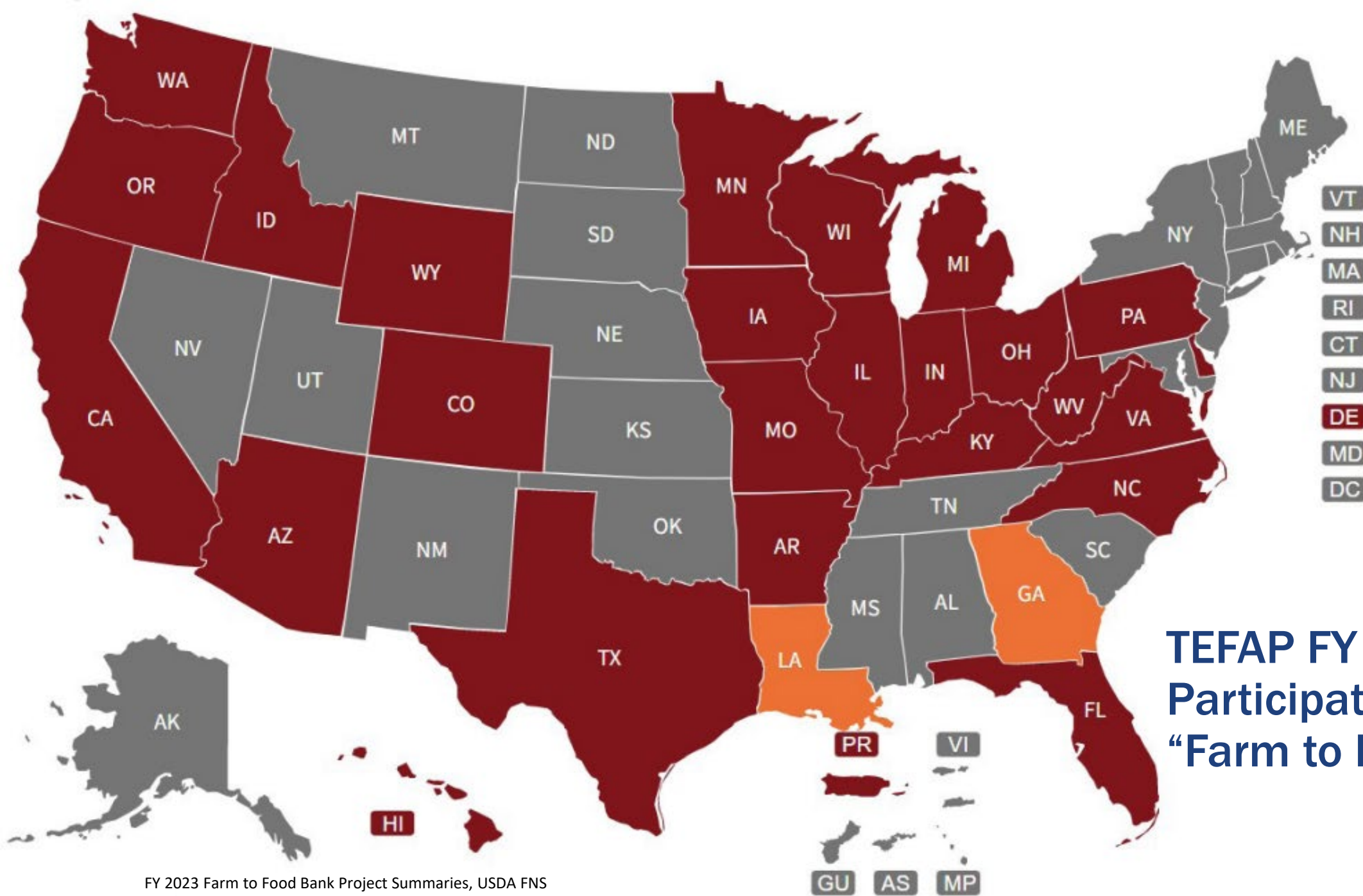
- Purposes of TEFAP Farm to Food Bank Grants:
 - “to **reduce food waste** at the agricultural production, processing, or distribution level through the donation of food;
 - to provide food to individuals in need; and
 - to build relationships between agricultural producers, processors, and distributors and emergency feeding organizations through the donation of food.”

May use grants to pay for “Pick and Pack” reimbursements





TEFAP FY 2020 Participating States “Farm to Food Bank”



TEFAP FY 2023 Participating States “Farm to Food Bank”



TEFAP “Farm to Food Bank” Grants

California	\$665,958
Texas	\$498,310
Florida	\$321,122
Pennsylvania	\$202,434
Illinois	\$193,180
Ohio	\$179,555
North Carolina	\$164,742
Georgia	\$163,093
Michigan	\$149,495
Puerto Rico	\$126,986
Arizona	\$111,280
Virginia	\$104,517

Washington	\$97,906
Louisiana	\$95,057
Indiana	\$88,766
Colorado	\$83,610
Missouri	\$82,797
Kentucky	\$74,240
Wisconsin	\$67,034
Minnesota	\$60,988
Oregon	\$59,167
Arkansas	\$48,440
Iowa	\$37,989
West Virginia	\$30,942
Hawaii	\$22,750
Idaho	\$20,859
Delaware	\$13,204
Wyoming	\$7,670

**Amounts states
received from
TEFAP, FY 2023**





TEFAP “Farm to Food Bank” Grants

California	\$665,958	CA Dept. Social Services	CA Association of Food Banks' Farm to Family Program
Texas	\$498,310	TX Dept. Agriculture	Texans Feeding Texans Surplus Agricultural Products Grant Program
Florida	\$321,122	FL Dept. Agriculture & Consumer Services	Society of St. Andrew and Christians Reaching to Society
Pennsylvania	\$202,434	PA Dept. Agriculture	PA Agricultural Surplus System (PASS)
Illinois	\$193,180	IL Dept. Human Services	Feeding Illinois
Ohio	\$179,555	OH Dept. of Job and Family Services	OH Association of Foodbanks
North Carolina	\$164,742	NC Dept. Agriculture & Consumer Services	(various)
Georgia	\$163,093	GA Dept. Human Services, GA Dept. Agriculture	Feeding Georgia, Inc.
Michigan	\$149,495	MI Dept. Education, Dept. Agriculture & Rural Dev.	Food Bank Council of MI & partner agencies
Puerto Rico	\$126,986	PR Dept. of the Family	Banco de Alimentos PR
Arizona	\$111,280	AZ Dept. of Economic Security	Community Food Bank of Southern Arizona
Virginia	\$104,517	VA Dept. Agriculture & Consumer Services	Federation of VA Food Banks
Washington	\$97,906	WA State Dept. Agriculture	Farm to Food Pantry Initiative, Harvest Against Hunger
Louisiana	\$95,057	LA Dept. Agric. & Forestry	Feeding Louisiana

<https://docs.google.com/spreadsheets/d/1QpLQXcQ2-7ImNWj3fpELZwdUxa3fgJAbhHnDOCiMM3E/edit?usp=sharing>



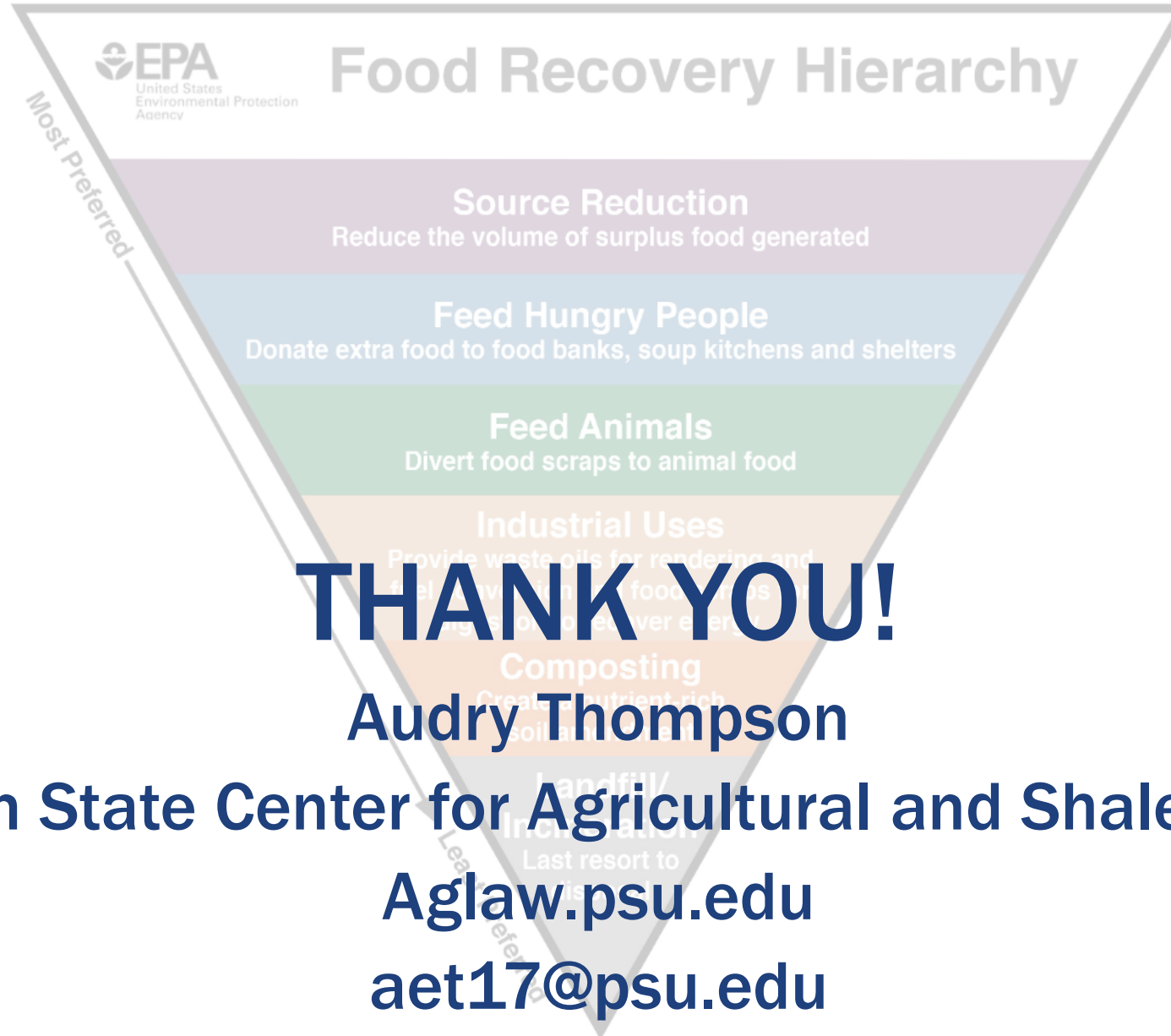


Summary:

An Overview of U.S. Charitable Food Surplus Programs

- Federal Policies:
 - Bill Emerson Good Samaritan Food Donation Act
 - Enhanced Tax Deductions for Food Inventory Donations
- Agricultural Surplus/Farm-to-Food Bank programs operated solely at state level, Four main structures:
 - Gleaning Programs
 - Regular Donation
 - “Pick and Pack” fees
 - Purchase Programs/Secondary Markets
- TEFAP “Farm to Food Bank” Program, funding for “Pick and Pack”:
 - Funded Through FY2023
 - Renew with upcoming Farm Bill?





THANK YOU!

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