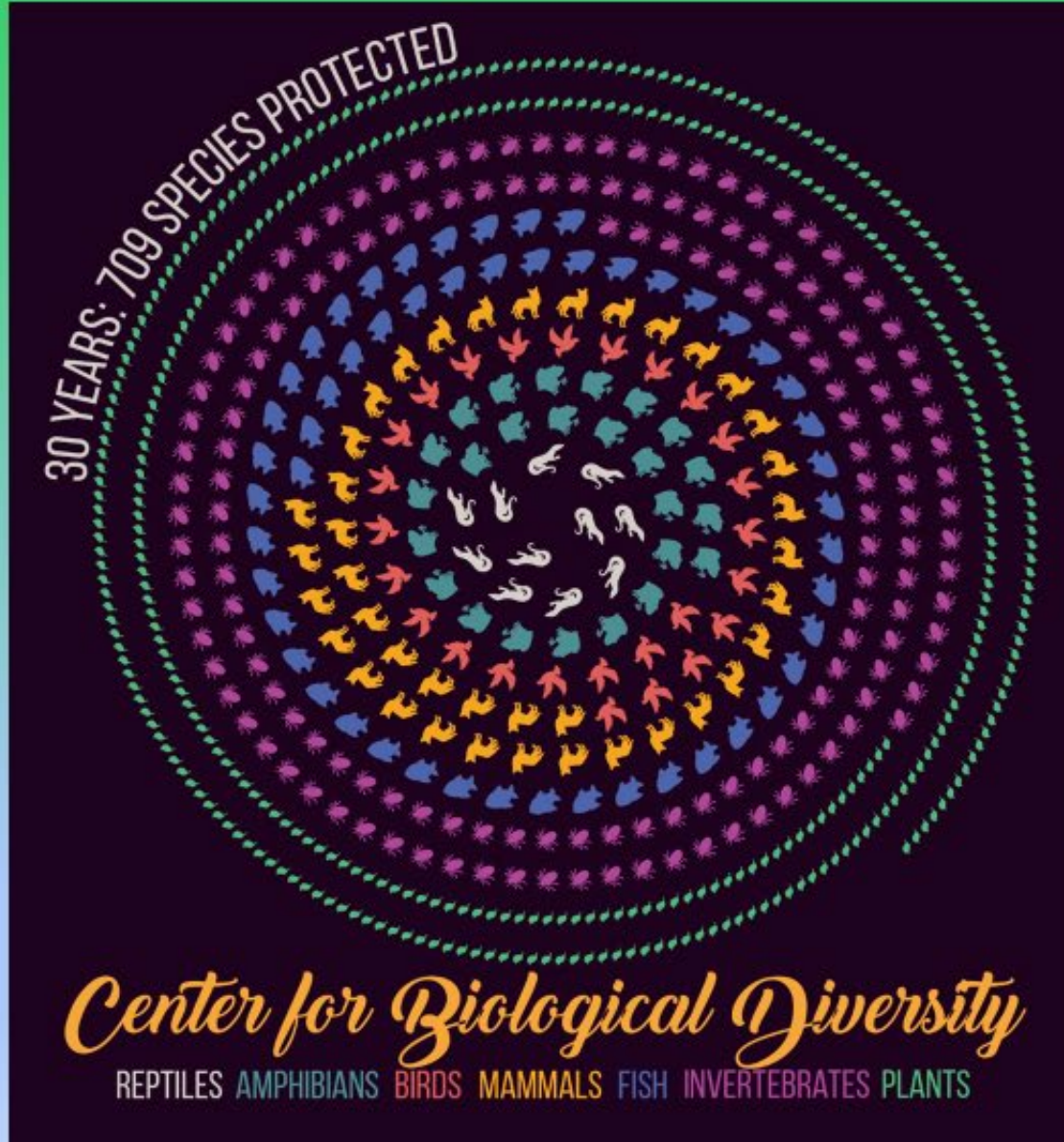


Reuse permissivity in federal and state food codes

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Center for Biological Diversity,
kdennings@biologicaldiversity.org

NERC - Nov 2025





- Carnivore Conservation
- Climate Law Institute
- Endangered Species
- Energy Justice
- Environmental Justice
- Environmental Health
- International
- Oceans
- Population & Sustainability
- Public Lands
- Urban Wildlands

How some restaurants are taking out single-use takeout containers

Burger King, Just Salad and Salvage Hausu are very different restaurants but they're all experimenting with reuse.

By [Deonna Anderson](#)

August 30, 2021



Salvage Hausu is among the vanguard of eateries and startups across the U.S. that are trying new approaches to reusable containers. Images courtesy of Just Salad and Mithi Studio.



BECOME A MEMBER

CIVIL EATS



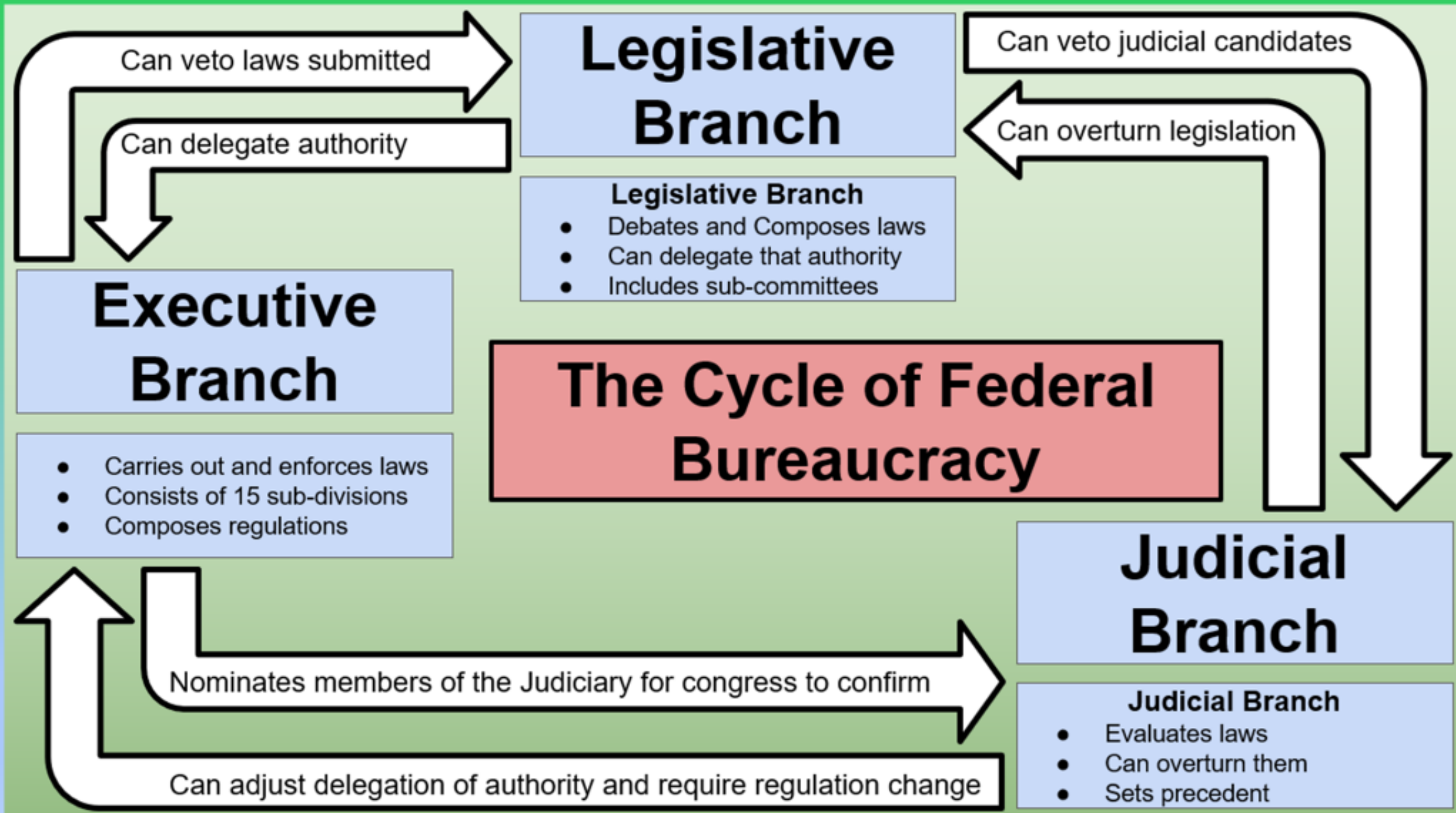
SIGN IN

US Supermarkets Are Doing Bulk Food All Wrong

Attempting to address our plastic waste crisis, grocery stores are primed to shift to zero-waste bulk shopping, but face a number of challenges.

BY KAYNE VAWN • OCTOBER 28, 2019





Department of State

Department of
Transportation

Department of
Defense

Department of
Treasury

Department of
Education

Department of
Energy

Executive Branch

Department of
Agriculture

Department of
Commerce

Department of Health
and Human Services

Department of
Veterans Affairs

Department of
Homeland Security

Department of Housing
and Urban Development

Department of
Interior

Department of
Justice

Department of Labor

Health and Human Services

Consists of 11 operating divisions, most relevant to us:

- Office of the Secretary
 - Assistant Secretary for Health
 - Assistant Secretary for Legislation
 - Assistant Secretary for Planning and Evaluation
- Center for Disease Control
 - Fights disease and supports communities to do the same
- Food and Drug Administration
 - Protects public health and ensures the **safety** of the nation's food supply
- National Institutes of Health
 - Seeks knowledge about living systems and applies it to health

Agriculture

Consists of 18 agencies, most relevant to us:

- Economic Research Service
 - Conducts social science research and communicates the findings to policymakers
- Food Safety and Inspection Service
 - Protects the public from foodborne illness and **ensures products are safe and correctly packaged**

Commerce

Consists of 13 bureaus and 15 offices, most relevant to us:

- Bureau of Economic Analysis
 - A statistical agency that informs the decisions of policy-makers from the perspective of US industry
- National Institute of Standards and Technology
 - Researches technology, measurement, and standards from the perspective of economic advantage

The purpose of the Department of Health and Human Services is to enhance national health and wellbeing

The Food and Drug Administration

2. PHS MODEL CODES HISTORY, PURPOSE, AND AUTHORITY

The model Food Code is neither federal law nor federal regulation and is not preemptive. Rather, it represents FDA's best advice for a uniform system of regulation to ensure that food at retail is safe and properly protected and presented. Although not federal requirements (until adopted by federal bodies for use within federal jurisdictions), the model Food Code provisions are designed to be consistent with federal food laws and regulations, and are written for ease of legal adoption at all levels of government. A list of jurisdictions that have reported to FDA their status in adopting

Accordingly, the provisions of the Food Code provide a system of prevention and overlapping safeguards designed to minimize foodborne illness; ensure employee health, industry manager knowledge, safe food, nontoxic and cleanable equipment, and acceptable levels of sanitation on food establishment premises; and promote fair dealings with the consumer.

The FDA's overarching focus is the prevention of contamination and the outbreak of disease.

The FDA Food Code is a model and represents advice, not law; it **IS designed to be consistent with federal law, but makes no legal mandates.**

3. PUBLIC HEALTH AND CONSUMER EXPECTATIONS

It is a shared responsibility of the food industry and the government to ensure that food provided to the consumer is safe and does not become a vehicle in a disease outbreak or in the transmission of communicable disease. This shared responsibility extends to ensuring that consumer expectations are met and that food is unadulterated, prepared in a clean environment, and honestly presented.

Under FDA's 2012 Mission Statement the agency is responsible for:

Protecting the public health by assuring the safety of our nation's food supply...and for advancing the public health by helping the public get accurate, science-based information they need about foods to maintain and improve their health.

Federal Level

Congress passes laws, but often delegates regulatory authority

The Executive Branch delegates this authority to subdivisions like DHHS

DHHS then, with respect to public health, further refers to the **FDA**.



The FDA gives advice, based on its own research, to the **States**

We stop at the State level;
too much variation exists
below it for us to be effective

State Level

The **State's** own relevant agencies release regulations and laws and establish jurisdictions

Variation in
legislation adoption

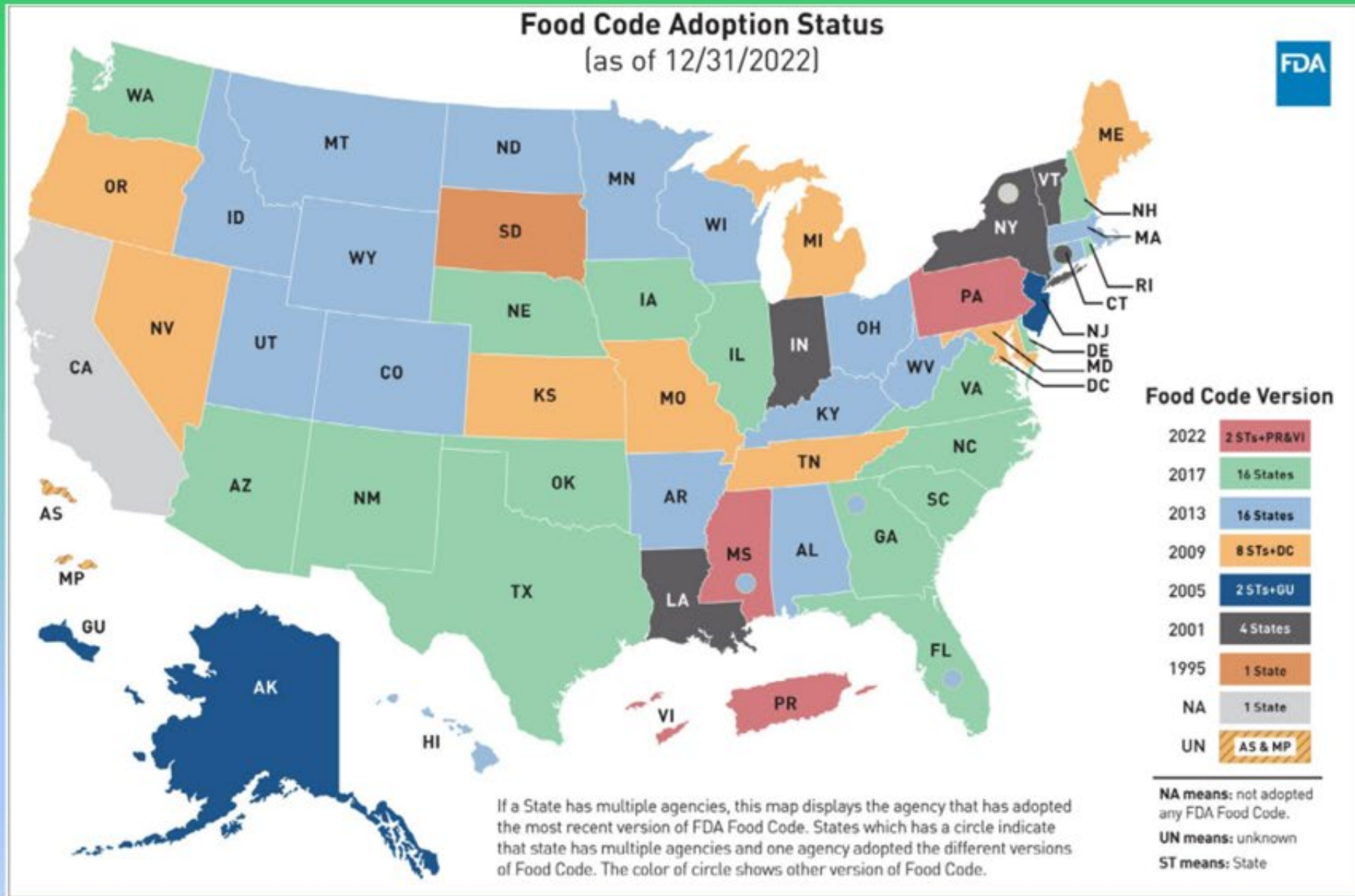
States vary in year /
form of code adoption
(or *forego it, entirely,*
in some cases)

States delegate the
food code to different
departments (or *split*
it between them)

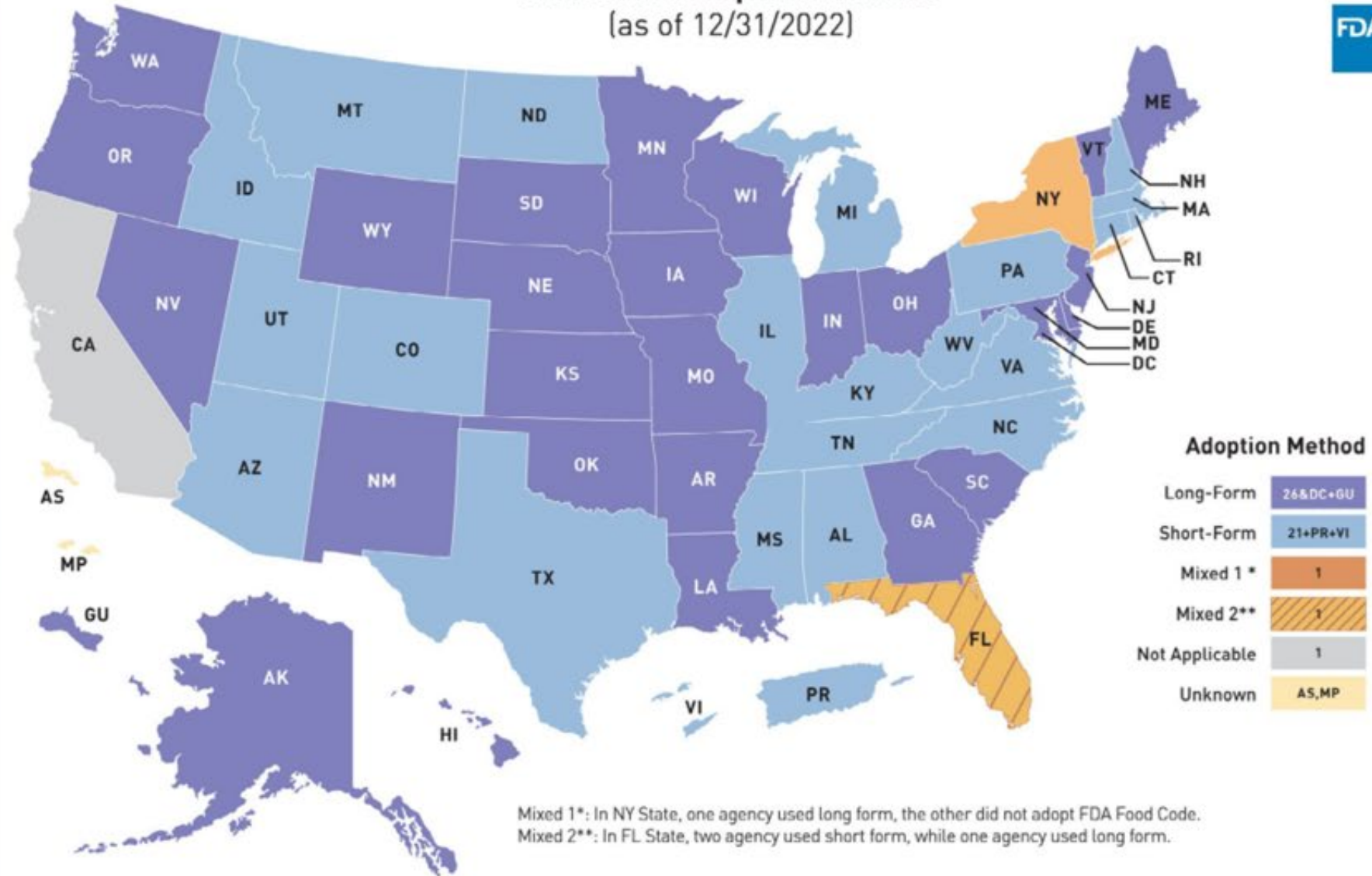
Variation in
legislation
delegation

Variation in
legislation degree
(and **variances** to
legislation)

States may further
delegate to sublevels
of local governance
or grant exceptions



Food Code Adoption Methods (as of 12/31/2022)



Research Questions: *In general...*

Answers

Can consumers use their own personal thermoses or containers for beverage refills?

Can consumers use their own personal container for food refills?

Can consumers put leftover food in their own personal take-out containers that they've brought, themselves, with no affiliation to the establishment?

Can establishments use their own (that they've provided to consumers) take-home thermoses / containers for beverage / hot liquid refills?

Can establishments clean their own (that they've provided) take-home reusable containers to consumers with their own equipment?

Can establishments have third parties provide the cleaning service for their (that they've provided) reusable take-out containers?

Broad Terms

Consumer
Employee

Premises
Variance

Physical Facilities
Temporary Food
Establishment
Food Establishment

Location Terms

Beverage

Food Contact
Surface

Key Terms

*From the 2017 Federal
Food Code*

Food Processing
Plant

Critical Control
Point

Servicing Area

Reuse Terms

Multiuse

Sanitization
Easily Cleanable
Warewashing

Time / Temperature
Control for Safety

Hazard

Health Terms

Key Passage

Permissive, Most Cases

Non-Permissive, Most Cases

2017 and 2013

Products and Summary of Outcomes

Key Sections: Reuse

3-304.16 Using Clean Tableware for Second Portions and Refills

(A) Except for refilling a CONSUMER'S drinking cup or container without contact between the pouring UTENSIL and the lip-contact area of the drinking cup or container, **FOOD EMPLOYEES may not use TABLEWARE**, including SINGLE-SERVICE ARTICLES, soiled by the CONSUMER, to provide second portions or refills.

(B) Except as specified in (C) of this section, self-service **CONSUMERS may not be allowed to use soiled TABLEWARE**, including SINGLE-SERVICE ARTICLES, to obtain additional FOOD from the display and serving EQUIPMENT.

(C) Drinking cups and containers may be reused by self-service CONSUMERS if refilling is a contamination-free process as specified under 4-204.13(A), (B), and (D).

ANNEX 3 -- 3-304.17 Refilling Returnables (main section, next page)

Food establishments may provide multi-use to-go containers to consumers with the intention that the containers are to be returned to the food establishment for refilling or reuse. These containers are likely to be soiled when the consumer returns the container to the food establishment. As a result, pathogens may be transferred to food by consumers or employees directly, or indirectly, from used take-home food containers. **The existing provisions in the Food Code, specifically the cleaning and sanitization provisions in Parts 4-6 and 4-7, if carried out properly upon return of a used container, are sufficient to ensure that the container is safe to refill or reuse if performed in conjunction with a visual inspection by a food employee to verify that the container still meets the intent of the provisions in Parts 4-1 and 4-2.** Reusing single-service and single-use articles is prohibited by the Food Code.

The **refilling of consumer-owned**, personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, by a consumer or food employee **introduces the possibility of contamination** of the filling equipment or product by improperly cleaned containers or the improper operation of the equipment. To prevent this contamination and possible health hazards to the consumer, **the refilling of consumer-owned, personal take-out beverage containers is limited to beverages that are not potentially hazardous (time/temperature control for safety) foods.** Equipment must be designed to prevent the contamination of the equipment and means must be provided to clean the containers at the facility.

2017 and 2013

Key Sections: Reuse *Products and Summary of Outcomes*

3-304.17 Refilling Returnables

(A) Except as specified in (B) - (E) of this section, empty containers returned to a FOOD ESTABLISHMENT for cleaning and refilling with FOOD shall be cleaned and refilled in a regulated FOOD PROCESSING PLANT.

(B) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with FOOD if the FOOD container is:

- (1) Designed and constructed for reuse and in accordance with the requirements specified under Part 4-1 and 4-2;
- (2) One that was initially provided by the FOOD ESTABLISHMENT to the CONSUMER, either empty or filled with FOOD by the FOOD ESTABLISHMENT, for the purpose of being returned for reuse;
- (3) Returned to the FOOD ESTABLISHMENT by the CONSUMER after use;
- (4) Subject to the following steps before being refilled with FOOD:
 - (a) Cleaned as specified under Part 4-6 of this Code,
 - (b) Sanitized as specified under Part 4-7 of this Code; and
 - (c) Visually inspected by a FOOD EMPLOYEE to verify that the container, as returned, meets the requirements specified under Part 4-1 and 4-2.

(C) A take-home FOOD container returned to a FOOD ESTABLISHMENT may be refilled at a FOOD ESTABLISHMENT with BEVERAGE if:

- (1) The BEVERAGE is not a TIME/TEMPERATURE CONTROL FOR SAFETY FOOD;
- (2) The design of the container and of the rinsing EQUIPMENT and the nature of the BEVERAGE, when considered together, allow effective cleaning at home or in the FOOD ESTABLISHMENT;
- (3) Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;
- (4) The CONSUMER-owned container returned to the FOOD ESTABLISHMENT for refilling is refilled for sale or service only to the same CONSUMER; and
- (5) The container is refilled by:
 - (a) An EMPLOYEE of the FOOD ESTABLISHMENT, or
 - (b) The owner of the container if the BEVERAGE system includes a contamination-free transfer process as specified under 4-204.13(A), (B), and (D) that cannot be bypassed by the container owner.

(D) Consumer-owned, personal take-out BEVERAGE containers, such as thermally insulated bottles, nonspill coffee cups, and promotional BEVERAGE glasses, may be refilled by EMPLOYEES or the CONSUMER if refilling is a contamination-free process as specified under 4-204.13(A), (B), and (D).

(E) CONSUMER-owned containers that are not FOOD-specific may be filled at a water VENDING MACHINE or system.

Washington State

State	Washington State	BYO Beverage	Yes*	Notable Differences: • Positive Changes ◦ Includes explicit instructions on refilling both consumer-owned and establishment-owned containers and updates language for food establishments specifically regarding multiuse containers • Negative Changes ◦ N/A • Benign Changes ◦ N/A
Population	7,705,281	BYO Refill	Yes	
Form	Long	BYO Leftover	Yes**	
Base Year	2017	Establishment Beverage	Yes	
Rating	Permissive	Establishment Refill	Yes	
Rating	1.02	Third Party Cleaning	Yes	
Important details:				
Changed 4.35% of regulations and omitted 0% Changed 2.08% of definitions and omitted 4.17% Total Changes: 5.63%				
*Refilling must be a contamination-free process that cannot be bypassed by the owner of the container				
**Restaurant cannot interact with your container in any way and has no role in this process.				
Link	Washington State Food Code			

Recommendations to the FDA

Federal food code recommendations:

- Defined reusable container
- Added consumer owned container to the “refilling reusable container” section
 - *A consumer-owned container may be refilled by the same consumer with a gravity-fed, bulk dispensing or through a reduced risk transfer process.*
- Added process for food establishment or third-party reuse service provider containers
 - *Food establishments providing reusable containers supplied by the food establishment or a third-party reuse service provider for refilling with food shall make procedures available to the regulatory authority upon request that ensure compliance with the requirements of this code.*

TC: Time/Temp Controlled
Beverages: Anyone can
refill it, as long as there's
cleaning available on-site.

Can you refill it?

THIS INFORMATION only
applies to states marked
"Permissive", eg. 2017
and 2013 short-form states.

I am a Consumer

Is it a Thermos?

Yes

No

You may (for Non
TC Beverages)

Is it tupperware
you own?

Yes

No

You may, but the
restaurant cannot
touch it at all.

Does this specific
restaurant own it?

No

It must be returned to the original restaurant
for cleaning; you may not refill it.

I am a Restaurant

Did you distribute it?

Yes

No

Have you cleaned
it, yourself?

Yes

You may refill it.

You may not refill it.

No

Has it been returned,
clean, from a food
processing plant?

Yes

You may refill it.

No

You may not refill it.

Yes

REUSE Act

CONGRESS.GOV

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Co

Legislation

Examples: hr5, sres9, "health care"

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[Home](#) > [Legislation](#) > [119th Congress](#) > S.2110

Citation

S.2110 - REUSE Act of 2025

119th Congress (2025-2026) | [Get alerts](#)

BILL

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Sponsor:

[Sen. Merkley, Jeff \[D-OR\]](#) (Introduced 06/18/2025)

Committees:

Senate - Environment and Public Works

Latest Action:

Senate - 06/18/2025 Read twice and referred to the Committee on Environment and Public Works. [\(All Actions\)](#)

Tracker:

Introduced

Passed Senate

Passed House

To President

Became Law

Summary (0)

Text (1)

Actions (1)

Titles (3)

Amendments (0)

Cosponsors (1)

Committees (1)

Related Bills (0)

Titles: S.2110 — 119th Congress (2025-2026)

Short Titles

Short Titles - Senate

Short Title(s) as Introduced

REUSE Act of 2025

Research for Environmental Uses and Sustainable Economies Act of 2025

Next Steps

- Center/Coalition to create educational material for advocates and the public describing what is currently legal in relation to foodservice reuse
- Center/Coalition to support the update of state food codes to allow for reuse
- Center leading support for REUSE Act
- Center to facilitate a third-party washing facility built under a worker co-op model
- Estimated date for new federal food code to be released
- Evaluate adding non-toxic reuse to the food code

Questions, Comments, Ideas, Next steps?

Kelley Dennings

Center for Biological Diversity

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**Email me if you'd like to join our
monthly calls**

