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Uniform Date Labeling of Food May Address Food Waste

In the United States, 30%-40% of the food that is produced is unsold and uneaten, according to the U.S. Department of Agriculture (USDA). Confusion regarding how consumers interpret food date labels is believed to result in food being thrown away that may have been safely consumed or donated. Waste due to date labeling confusion is estimated to contribute to about 7% of all food waste in the United States. Legislation addressing food loss and waste includes proposals to modify food date labeling requirements to establish federal requirements for food quality and discard dates on product labels. For background on other food loss and waste legislative proposals, see CRS In Focus IF10317, *Policy Issues Involving Food Loss and Waste*.

Food Date Labeling in the United States

Food date labeling consists of a calendar date on a food label with an accompanying explanatory phrase (referred to as open date or product code labeling; see **text box**). The Food Marketing Institute (FMI) claims more than 10 different date label explanatory phrases are used on food products packaging. These include *sell by*, *use by*, *best by*, *fresh until*, *use or freeze by*, *enjoy before*, and *expires on*, among others.

Food date labeling is intended to convey information to retailers and consumers regarding a product's shelf life and optimum quality as well as for in-store stock rotation. These dates (sometimes coded) primarily convey information regarding food product quality and generally are not critical to food safety. Date labeling is generally not required by federal regulation, and the regulatory requirements and guidance varies by state and globally. The terminology that manufacturers use on food product packaging also varies.

Some contend that the current array of different date labeling phrases on food product packages causes consumer confusion about the meaning of these date labels. They claim consumers mistake date labels as food expiration dates meaning that past-date foods are unsuitable for consumption, resulting in food being discarded prematurely. Research suggests that more than 80% of consumers discard food near the package date at least occasionally. Many consumers perceive food date labels as communicating information about the product's safety and believe eating food past its sell by date would pose a health risk. Other research suggests it may be the label date and not the phrasing on the labels that influences consumer decisions to discard food. Surveys conducted by the Consumer Brands Association (formerly the Grocery Manufacturers Association, GMA) found that the majority of Americans (85%) believe simplified date labels may be helpful, allowing them to feel confident and safe about the foods they eat and to throw away less food. ReFED (a national nonprofit organization) claims that roughly one-half of all food waste occurs at the consumer level, partly due to confusion over date labels found on food packages.

Researchers contend that uniform or standardized date labeling is among the leading options to prevent food waste and offers a cost-effective solution to divert food from being thrown away. ReFED claims that standardizing date labels nationally potentially could divert 582,000 tons of food waste per year and could provide \$2.41 billion in annual economic value—addressing an estimated 15% of preventable food waste. Estimates by the Harvard Law School's Center for Health Law and Policy Innovation (CHLPI) claim federally standardized date labels have the potential to divert an estimated 398,000 tons of food waste per year with a total economic value of \$1.8 billion.

Open Date Labeling Terminology

- **Sell by**—Date, determined by food manufacturers, by which the food at retail should be sold unless it is frozen prior to or upon reaching the date. The product may be usable beyond this date before the quality is less than the manufacturer's standards for consumer acceptance. About one-third of the product's shelf life remains typically after the sell by date for consumer use at home. Manufacturers may credit the store for the past-date product, especially if it is donated to food banks or food salvage stores.
- **Use by**—Date, determined by the product manufacturer, by which the product should be consumed. Retail packaging of certain reduced-oxygen packaged foods requires labeling with use by dates and time limits for refrigerated shelf life.
- **Best by, best if used by, best if used before, or best before**—Dates by which the product should be consumed for ideal quality. These may be combined with a freeze by statement (for example, *best if used by X or can be frozen but must be used within X days if taken from the freezer*), which is becoming commonly used with poultry and fish.
- **Other terms**—Other date phrases include *fresh until*, *use or freeze by*, *enjoy before*, and *expires on*, among others.

Source: CRS from the Institute of Food Technologists.

Current Food Date Labeling Laws

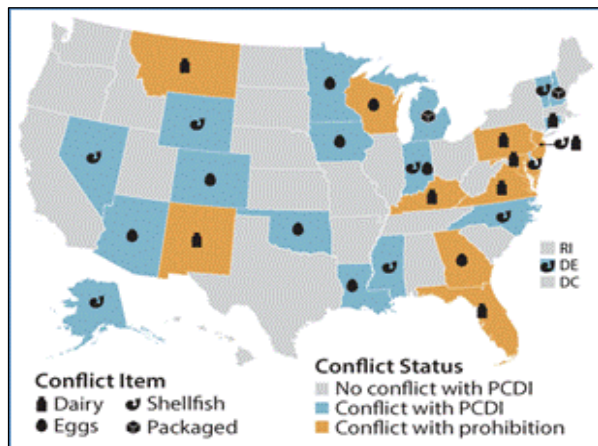
Except for infant formula, federal law does not require the federal food safety agencies to implement a national food dating system. Laws governing food regulation do not give the Food and Drug Administration (FDA) and USDA explicit authority to impose specific date labeling requirements for foods. Instead, date labeling information is largely at the discretion of the manufacturer. FDA does not require food manufacturers to put open dating terminology on food product labels, and laws governing FDA's food safety activities do not preclude the sale of food past the date on the label. FDA has expressed general support for the food industry's efforts to standardize labeling terms and consumer education efforts. Similarly, date labels are

generally not required on food products regulated by USDA's Food Safety and Inspection Service (FSIS).

However, FSIS is required to put a pack date (reflecting the date that a product is packaged) on poultry products; also, if a date is shown on the label of an FSIS-regulated product, it must display the month, date, and year in addition to a phrase explaining the meaning of that date (such as the sell by or use before date). FSIS guidance (Directive 7020.1) is intended to facilitate food donation and reduce waste of USDA-regulated meat and poultry products (9 C.F.R. 317.8, 381.129, and 590.411).

Food date labeling is regulated at the state and local levels, and the requirements often vary widely. A 2019 CHLPI study highlights how the current "patchwork of state laws nationally is ineffective at achieving widespread consistency in date labeling." The study examined the extent that state level food date labeling compares to labeling under a voluntary industry initiative, the Product Code Dating Initiative (PCDI) established by the GMA and FMI. PCDI is intended to encourage manufacturers to use standardized date labeling language. CHLPI's study shows that PCDI is inconsistent with state laws in more than half of all U.S. states. Of the states with laws requiring or regulating the use of date labels, 27 states had date label laws that conflict with PCDI for at least one food product (**Figure 1**). Conflicts occurred most often for shellfish (nine states), eggs (nine states), and milk and dairy products (eight states). A previous study by Harvard Law School and the Natural Resources Defense Council noted 41 states and the District of Columbia require date labels on some foods. Nine states did not require such labels on any foods.

Figure 1. State-Level Conflicts with Industry Initiative



Source: CRS from Harvard Law School, Center for Health Law and Policy Innovation (CHLPI), *Date Labels: The Case for Federal Legislation* (Appendix), June 2019.

Notes: PCDI refers the Product Code Dating Initiative. The map indicates whether state laws conflict with the voluntary initiative developed by the food retail industry to encourage manufacturers to use standard date labeling language.

Researchers have noted that there is wide variation in terms of regulatory stringency across U.S. states. For example, while some states regulate the sale of food products after the expiration of some label dates, many states do not. States also differ widely in the kinds of foods they require to bear date labels and the types of date labels that are

required. In some jurisdictions, retailers risk criminal prosecution. In recent years, some states, including California, Massachusetts, and New Jersey, have introduced or enacted legislation to standardize food date labeling requirements to reduce waste and consumer confusion regarding food date labels.

Studies by the Institute of Food Technologists (IFT) further illustrate that food date labels vary by country and may cause consumer confusion globally. The United Nations (U.N.) reports that food date labels have been linked to food waste due to (1) misinterpretation by consumers and (2) how date markings are used by regulatory authorities and by food businesses to advise subsequent food chain operators on the appropriate shelf life of a food. The U.N. further notes the need to educate supply chain stakeholders on the difference between various food date markings. The Codex Alimentarius has developed international guidance on date markings such as *best before* date or *best quality before* date and also *use by* date or *expiration* date.

Considerations for Congress

A federal interagency strategy on food loss and waste has been developed by USDA, FDA, and the Environmental Protection Agency (EPA). Among the strategy's priorities is to "Clarify and Communicate Information on Food Safety, Food Date Labels, and Food Donations" (Priority Area 4). This stated goal seeks to establish and communicate how "clearer, coordinated voluntary guidance on food date labels and liability protection around food donation could help increase food recovery and lead to reductions in food waste and food insecurity." Standardizing federal date labels could include amendments to laws such as the Federal Meat Inspection Act (21 U.S.C. §601); the Poultry Products Inspection Act (21 U.S.C. §453); the Egg Products Inspection Act (21 U.S.C. §1033); and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§321 et seq.).

Jointly, USDA, FDA, and EPA have entered into formal agreements with both the Food Waste Reduction Alliance (composed of GMA, FMI, and the National Restaurant Association; MOU 225-19-033) and the nonprofit ReFED (in an agreement through 2024). These and other groups recommend streamlining and standardizing federal food date labels to two industry-endorsed phrases: (1) *BEST if used by* to indicate a food's peak quality and (2) *USE by* to indicate possible food safety risks. Aspects of this proposal are reflected in the Food Date Labeling Act of 2023 (H.R. 3519/S. 1484), which would establish both a *discard* and a *quality* date. The quality date would communicate that although the product's quality may begin to deteriorate, the product remains an *apparently wholesome food* (as defined in the Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C. §1791(b)). The Agriculture Resilience Act (H.R. 1840/S. 1016, Title VII) also proposes to standardize use of a *discard* and *quality* date as well as a *freeze by* date, among other terms. H.R. 1840/S. 1016 would further require that the Federal Trade Commission ensure such uniform phrasing be standardized across all food products (except for infant formula). H.R. 1840/S. 1016 also would broaden liability protections for food donation and food recovery to include food items with past quality date labels.

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