



## Uniform Date Labeling of Food May Address Food Waste

Several bills addressing food waste have been introduced in the 114<sup>th</sup> Congress. Comprehensive food waste and recovery legislation has been introduced in both the House (H.R. 4184) and Senate (S. 3108). These bills would expand the mission and funding for several existing federal programs to cover a range of food waste efforts, including the additional funding for loans and grants to expand use of composting and energy projects, among other provisions. These bills also include a proposal to modify federal food date labeling requirements. Federal food date labeling is further addressed in more detail within two other bills (H.R. 5298; S. 2947). In addition, congressional appropriators have expressed their concern about food waste and have included language to the House FY2017 Agriculture Appropriations committee report (H.Rept. 114-531) that would require the Food and Drug Administration (FDA) to study current and potential labeling language and determine what language and/or format might be most effective to reduce consumer confusion regarding food date labeling.

### Food Date Labeling in the United States

Food date labeling consists of a calendar date on a food label with an accompanying explanatory phrase such as “sell by,” “use by” or “best by” (referred to as open date labeling; see text box). Date labeling is intended to convey information to food retailers and consumers regarding a product’s shelf life and optimum quality as well as for stock rotation in-store. These dates (sometimes coded) primarily convey information regarding food product quality and are generally not critical to food safety. Food date labeling is generally not required by federal regulation, and the regulatory requirements and guidance varies considerably by state and also globally. There is also considerable variation in the terminology that manufacturers use on food product packaging.

Some attribute the absence of standardized food date labeling and the current array of best-if-used-by, expiration, packing, or pull dates with consumer confusion about the meaning of the different food date labels. Consumers often mistakenly believe that past-date foods are unsuitable for consumption, causing them to discard food prematurely. A 2011 study by the Food Marketing Institute found that nearly 40% of consumers reported that they always discard food when it is past its use by date and about 25% reported that they discard food when it is past its sell by date. More than 10% of consumers reported that they believe eating food past its sell by date would pose a serious health risk.

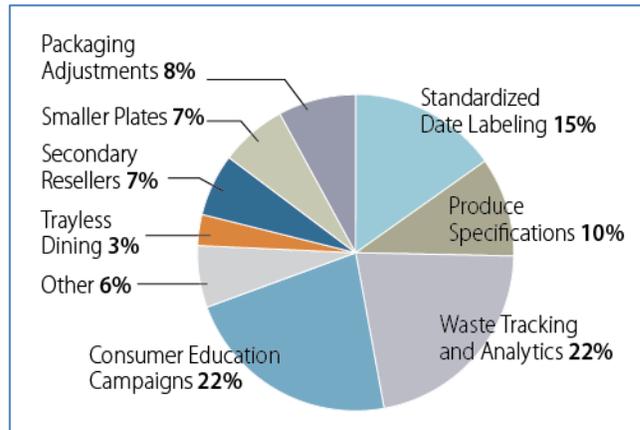
A 2016 study by ReFED (a group of business, nonprofit, and government leaders) reports that uniform date labeling is among the top solutions to prevent food waste (based on diversion potential to reduce waste) and could help address an estimated 15% of preventable food waste (**Figure 1**). The study’s researchers claim uniform that date labeling may be the most cost-effective way to address waste.

### 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. Some recommend discarding product after the use by date.
- **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.

**Source:** CRS from 2014 study by the Institute of Food Technologists. Other terms may include “expires on,” “enjoy by,” and terms listed in **Table 1**.

**Figure 1. Ways to Prevent Food Waste**



**Source:** CRS from data in the 2016 ReFED report, *A Roadmap to Reduce U.S. Food Waste by 20 Percent*. Based on diversion potential or waste reduction potential from preventive solutions (not including diversion potential from recovery or recycling solutions).

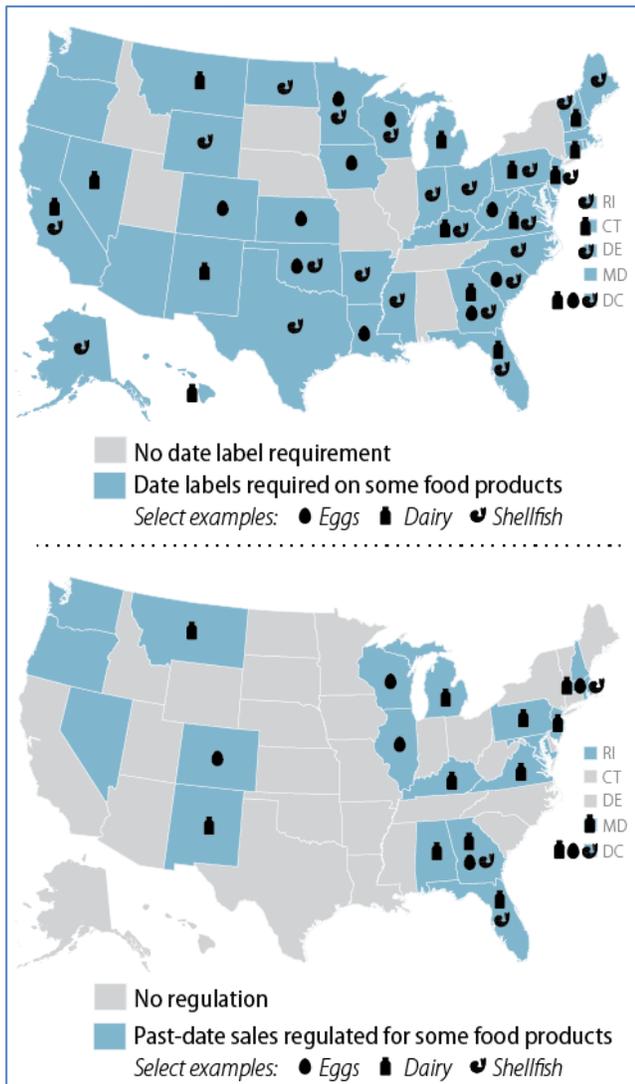
### Current Law on Food Date Labeling

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 at FDA and the Food Safety and Inspection Service (FSIS) at the U.S. Department of Agriculture do not give these agencies 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 expiration date on the label. Similarly, date labels are generally not required on FSIS-regulated food products. FSIS is required to put a pack date 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).

However, food date labeling is regulated at the state and local levels, and the requirements often vary widely. A 2013 study by the Harvard Food Law and Policy Clinic and the Natural Resources Defense Council (“Harvard/NRDC”) documents regulations in each state by product category, highlighting the extent that states differ in how they have implemented their own open date labeling system for foods. **Figure 2** shows the 41 states and the District of Columbia that require date labels on at least some foods. Nine states do not require such labels on any foods.

**Figure 2. Regulating Foods Past Some Label Dates**



**Source:** Harvard/NRDC, *The Dating Game: How Confusing Food Date Labels Lead to Food Waste in America*, Sept. 2013.

These graphics mask the often wide variation among states in terms of regulatory stringency. **Figure 2** also shows the 20 states and the District of Columbia that regulate the sale of food products after the expiration of some label dates. Thirty states do not impose such restrictions. States also differ widely in the kinds of foods they require to bear date labels and in the types of date labels that are required. In some jurisdictions, retailers risk criminal prosecution.

A 2014 study by the Institute of Food Technologists (IFT) further illustrates that food date labels differ by country.

**Policy Recommendations**

Researchers have recommended several policy options to address challenges faced by food manufacturers and retailers, as well as by consumers and other stakeholders under the current food date labeling system. For example, the IFT and Harvard/NRDC studies broadly recommend:

1. Establish and convert to a uniform food date labeling system nationwide for both quality-based and safety-based date labels on foods;
2. Educate consumers on the meaning of date labeling regarding food quality and provide more safe food handling information;
3. Coordinate state and federal resources related to regulatory enforcement (e.g., to focus on food safety concerns rather than quality); and
4. Develop and advance technologies to indicate when foods no longer meet quality or safety-related criteria (e.g., time and temperature requirements to ensure food safety; freeze by dates and freezing information, if applicable).

These studies further emphasize the importance of ensuring that any food date label is visible to consumers and that the terminology is standardized and easily understood. A 2014 survey of Wal-Mart consumers reported that 87% of customers surveyed preferred the terminology “best if used by” to convey information about food quality; other preferred terms were also noted (**Table 1**). Finally, some countries are considering removing date labels on shelf-stable foods, such as rice, noodles, coffee, vinegar, and salt.

**Table 1. Wal-Mart Customer Survey Results (2014)**

Top Preferred Quality Labeling Choices	Ranking
“Best If Used By”	87%
“At Best Quality Before”	47%
“Max Freshness By”	47%
“Use or Freeze By”	40%
“Best By”	40%
“At Best Quality Before”	33%

**Source:** Comments by Frank Yiannis, Vice President of Food Safety, Wal-Mart, at the National Academies of Science, October 20, 2015.

For other background information, see CRS In Focus IF10317, *Policy Issues Involving Food Loss and Waste*.

**Renée Johnson**, rjohnson@crs.loc.gov, 7-9588