



March 5, 2025

*Submitted electronically via regulations.gov*

Attn: Rachel Edelstein - Assistant Administrator  
Office of Policy and Program Development, Food Safety Inspection Service  
U.S. Department of Agriculture  
1400 Independence Avenue SW, Washington, DC 20250

Attn: Peter Koufopoulos - Deputy Director for Animal Derived Food  
Human Foods Program, U.S. Food and Drug Administration  
U.S. Department of Health and Human Services  
5600 Fishers Lane, Rockville, MD 20852

**Re: Food Date Labeling; 89 FR 96205; FSIS-2024-0021, FDA-2024-Z-0025**

Dear Ms. Edelstein and Mr. Koufopoulos,

Thank you for the opportunity to comment on the Food Safety and Inspection Service (FSIS) and Food and Drug Administration (FDA) request for information (RFI) titled *Food Date Labeling*. As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain — from retailers that sell to consumers, to producers that supply food and other products, as well as the wide variety of companies providing critical services — to amplify the collective work of the industry. More information about our organization is available at [www.FMI.org](http://www.FMI.org).

FMI shares the Agencies' goals of providing consumers with clear information to assist in their food purchasing decisions and reducing consumer confusion and unnecessary consumer food waste. In 2017, FMI, along with the Consumer Brands Association (Formerly the Grocery Manufacturers Association), co-developed a voluntary standardized approach to guide the industry that uses a dual date labeling scheme: a quality-based date label ("BEST if Used By") and a safety-based date label ("USE or Freeze By"). We provide details about the rationale behind the standards and information about how manufacturers and producers determine how to use the standard for their products in our answers to the questions in the RFI below.



We strongly encourage the Agencies to maintain a voluntary approach to date labeling and date labeling schemes in any future actions or guidance. The food industry produces and distributes a diverse range of products, all with different ingredients, manufacturing processes, end uses, and paths through the supply chain. Companies have the best insight into how their products are distributed, used, and viewed by consumers, retailers, or other business partners and how best to communicate quality and safety information. These traits are highly individual by product, and there is no one-size-fits-all solution.

In addition to our specific efforts on date labeling, FMI has also undertaken initiatives and projects focused on reducing food waste and furthering consumer understanding of the life cycle of food products to promote both food waste reduction and food safety. This includes our participation in the Food Waste Reduction Alliance (FWRA) and our work with USDA and Cornell University on the FoodKeeper App. We appreciate the Agencies' efforts to consider the important topic of food waste as it gathers information on date labeling.

## **Industry Practices and Preferences for Date Labeling**

### **(1) Which products contain date labels, and which do not? Why do some products contain date labels and others do not?**

"Open" date labels first became common in the 1970s, largely due to consumer demand.<sup>1</sup> Open date labeling refers to formats that are easily readable to retail personnel and consumers (i.e. dates), as opposed to "closed" (code) date labels which are comprised of letters, numbers, or symbols that provide data about where and when the product was manufactured, usually used by the manufacturer for stock management and product tracing purposes. We will be referring to open date labels throughout our comments unless otherwise noted.

As you know, most food products are not subject to mandatory date labeling under state or federal law. Current state laws only mandate date labels for certain types of products including eggs, meat, shellfish, dairy products, and "perishable" goods (defined differently by state) and federal law only mandates date labeling for infant formula. Outside of these state mandates, the manufacturer or producer generally makes the

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<sup>1</sup> Rosetta Newsome, Chris G. Balestrini, Mitzi D. Baum, Joseph Corby, William Fisher, Kaarin Goodburn, Theodore P. Labuza, Gale Prince, Hilary S. Thesmar, Frank Yiannas, *Applications and Perceptions of Date Labeling of Food*. 13 *Comprehensive reviews in food science and food safety* 745 (2014), <https://doi.org/10.1111/1541-4337.12086>



determination of whether to include a date label on a particular product and what format to use.

Notwithstanding the lack of mandatory requirements for most food products, in our experience many packaged products do bear open date labels. If a product carries an increased food safety risk over time, date labels can be used to indicate to consumers when the product should be consumed by. For shelf stable products that do not carry an increased food safety risk over time, date labels can be used to indicate that a product may not taste or perform as expected after a certain time period. We will elaborate on this distinction further in future answers.

Furthering consumer understanding of a product is a top consideration when determining when and how to include a date label on products. Date labels are a way for companies to provide transparency about the quality of a product and, at times, communicate information about the safety of a product after a certain date. This can also include information regarding the appropriate use of the product and information addressing when the product should be discarded. We elaborate on this distinction further below.

Produce does not generally carry an open date label. In the case of bulk produce, there is no packaging to place a label on, and it would be unreasonably costly to do so. Produce is highly perishable, and freshness is largely dependent on how a consumer stores an item, meaning date labels would likely be inaccurate and generate consumer confusion. Consumers also have varied preferences on the freshness of produce. For example, some may prefer their bananas to be underripe and green, while others may still enjoy them when they've developed brown spots.

**(2) What standards or criteria do manufacturers and producers consider when deciding which food date label phrase to use? Are different phrases used for different products or categories of products, and if so, why? Are there legal or trade requirements or marketing standards that impact which phrases are used (i.e., local or state requirements, industry best practice standards, etc.)? If so, please describe.**

Industry has been working to reduce the number of different date label phrases in the market. As stated above, FMI participated in the development of a voluntary standardized approach to date labeling. The approach utilizes two formats of date label nomenclature: "BEST If Used By" and "USE by". Each company is responsible for



determining which phrase best applies to each of its products based on what they intend to convey to the consumer.

The phrase “BEST if Used By” is intended to be used as an indication of product *quality*. It lets the consumer know that a product may not taste or perform as expected after the date indicated, but remains safe for consumption. The use of the phrase is in alignment with USDA’s Food Product Dating resource page.<sup>2</sup> FDA sent a letter of support to FMI in 2019 endorsing the industry’s voluntary efforts to use the “Best if Used By” introductory phrase for a quality-based date label.

The phrases “USE By” or “USE or Freeze By” are used as an indication of product *safety* for a small segment of highly perishable products. The “USE By” nomenclature informs consumers that these products *should* be consumed on or before the date listed on the package for reasons related to food safety.

The Agencies have not addressed the use of the “USE by” product date label as an indicator of product safety, aside from its mandated use for infant formula. We encourage the Agencies to consider supporting the use of the “USE by” terminology, as it can be used to make an important distinction to consumers about the meaning of the date label and is an important risk reduction tool. A product with a “BEST by” date may be consumed after the date has passed and, though quality may have decreased, the food will still be safe to eat. In contrast, “USE by” should put consumers on alert that the food has a limited shelf life and may be time and temperature sensitive with possible food safety implications past a certain date. The “USE by” window is intended to be heeded more carefully by the consumer than the “BEST by” window. Allowing for this distinction is essential for purposes of food safety and enables companies to communicate information about the nature of a product with consumers. Examples of products that may bear a “USE by” date include cut cantaloupe, ready-to-eat foods, deli meats, and items that use reduced oxygen packaging or modified atmosphere packaging. While non-perishable products do not generally contain a “USE by” date, companies may elect to use the phrase on their product to communicate that the product has a limited shelf life and there may be degradation of essential properties that are necessary to communicate to the consumer.

A key element of the recommended language is the capitalization of “BEST” and “USE” in all variations to emphasize the differentiation between the two labels for consumers

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<sup>2</sup> USDA, *Food Product Dating*, <https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/food-product-dating/food-product-dating>.



and consumer education. Studies show that “BEST if Used by” and “BEST by” are perceived to be indicators of quality at an almost equal rate.<sup>3</sup> Therefore, variations like “BEST if used by” or “BEST if used or frozen by” are also acceptable and effective at communicating the intended message with consumers because they maintain the first and key word “BEST”. The truncated versions of “BEST By” or “BEST” or “BB” and “USE” or “UB” when necessary due to package size, shape, or equipment constraints should be allowed. We will detail why it is essential that truncated versions of “BEST if Used By” and “USE by” be allowed in later answers.

In addition to the two standard phrases, secondary shelf-life phrases, such as “Use within 7 days of opening” may be included in product packaging as long as they do not supersede or distract from the primary product date labels. This piece of information can be important to communicate to consumers, as the original “BEST by” date often only refers to the shelf life of an item before it is opened.

Regardless of the date label used, the goal of industry is for the consumer to have a positive and safe experience with the product. Date labels are not intended to prompt consumers to throw away products prematurely. Companies take great care in calculating the dates for date labels. We will discuss the process for calculating dates further in our responses to later RFI questions.

Superseding any industry-led voluntary efforts on date labeling is a patchwork of state regulations requiring date labeling, particularly for highly perishable foods. These regulations largely address certain categories of products including meat and poultry, perishables, eggs, milk, and some shellfish and other seafood. The most comprehensive state requirement currently enacted is California AB 660<sup>4</sup>, which was signed into law in September 2024 and goes into effect for products manufactured on or after July 1, 2026. The law requires all products that bear date labels to use one of the following two terms: “BEST if Used by” or “BEST if Used or Frozen” to indicate the quality date of the food item OR “USE by” or “USE by or Freeze by” to indicate the safety date of the food item. Certain products, including beverages subject to the state’s bottle deposit law and small food items unable to accommodate the full phrases noted above, may use the shortened phrases “BB” or “UB.” The legislation specifically prohibits the use of the phrase “Sell by”. We expect that the California law conflicts with existing state laws that

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<sup>3</sup> Emily Broad Leib, Christina Rice, Roni Neff, Marie Spiker, Ali Schklair, Sally Greenberg, *Consumer Perceptions of Date Labels: National Survey*, (2016), [https://chlpi.org/wp-content/uploads/2013/12/Consumer-Perceptions-on-Date-Labels\\_May-2016.pdf](https://chlpi.org/wp-content/uploads/2013/12/Consumer-Perceptions-on-Date-Labels_May-2016.pdf)

<sup>4</sup> A.B. 660, 2023-2024 Leg. Sess. (Ca. 2024)



require Sell by labeling for certain highly perishable foods<sup>5</sup>. This patchwork of state laws mandating conflicting labeling schemes is incredibly challenging and costly for the food supply chain, not to mention confusing for consumers.

Other states, such as New Jersey, Maryland, Massachusetts, South Carolina, and Oregon, have considered legislation to standardize date labeling terminology, but have not yet enacted new laws. If additional states enact date labeling laws that conflict with California's law, it would create an increasingly confusing environment for consumers and significant compliance challenges and costs for manufacturers and supply chain partners. In general, food products are labeled on a national basis, rather than bearing unique labels for different states. National and regional manufacturers have indicated that a patchwork could in many cases require a significant shift in supply chain channels to ensure that products with the correct date label are distributed to the correct state. Beyond adding unnecessary cost and complication, such an outcome could create increased food waste in, for example, a case where a pallet of product with one state's date label scheme was routed to a different state and a retailer was not able to accept perfectly good product because the date labels were not in compliance. In addition, a patchwork would result in additional consumer confusion as there would be multiple "standardized" frameworks in effect.

While FMI has developed and encouraged standardized terms for date labels, it is essential that date labeling standards remain voluntary, as there is no one-size-fits-all approach to product date labeling. The process of determining which phrases and dates to use when communicating information about safety and quality to consumers is highly complex and product specific. Companies have the best insight into the unique considerations at play for particular products, including formulation details (such as whether any ingredients function as preservatives), packaging material, manufacturing process (including the extent to which the process may preserve the product as would be the case in pasteurization), quality and safety aspects, distribution cycles (including time and temperature), and consumer storage and use, among other things. Additionally, companies are best suited to determine whether alternative phrases such as "Packed on" may provide more relevant information for consumers. For example, ready-to-eat foods packaged in store, such as deli salads or prepared meals, may bear a "packed on" or "prepared on" date. Stores opt to use this format because they have found that, for those specific food products, customers want to know that the prepared food they are purchasing is fresh and packed on the day it was prepared (as it would be in a restaurant). The same is true for fresh bakery items: customers are looking for

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<sup>5</sup> Examples include: [Wash. Rev. Code Ann. § 15.130.300](#) (requires a "pull date"); [Mich. Comp. Laws § 289.8107](#) (requires perishable foods to display the last recommended date of sale); [Ohio Rev. Code Ann. § 3715.171](#) (requires a sale date for foods with a quality assurance period of less than 30 days).



labels like “Baked on” or “Thawed on” because they are seeking the freshest products when purchasing in that category. Consumers are purchasing these products with freshness as an expectation and understand that freshness comes with a highly perishable nature and therefore do not need to reference a “BEST if Used by” or “USE by” label because they likely intend to consume them quickly.

### **(3) What standards or criteria do manufacturers and producers consider when deciding what date to use?**

Communicating accurately with respect to food safety is the top priority in determining both which phrase to use as well as how dates are calculated. The “USE by” date is determined by a risk-based calculation using tools like microbial testing, the water activity (aw) of the food, challenge studies, etc. The date is not an on/off switch with the product being guaranteed to be unsafe after the identified date. Instead, the date is intended to communicate an increased food safety risk after that date. These dates are calculated through a rigorous analysis of the product throughout its life cycle based on factors like the potential harmful growth of pathogens if such pathogens were present.

The “BEST by” date is determined based on an assessment of how long a product will retain quality based on attributes important to the consumer such as taste, texture, and freshness; and nutrient content (taking into account, for example, potential degradation of certain nutrients throughout the labeled shelf-life, such as vitamin C, to ensure the accuracy of the Nutrition Facts panel). The date is calculated using tools like shelf-life evaluations and nutritional testing. Companies take great care in calculating date labels and have the best understanding of what the customer is expecting of their product. It is essential that there be sufficient flexibility for a company to determine the appropriate way to communicate with consumers about safety and quality based on the unique considerations at play for each product.

For ready-to-eat foods prepared in store, retailers generally refer to the FDA Food Code’s recommendations, though of course the FDA Food Code itself is non-binding unless it has been adopted in a particular state, and not all states have done so. The 2022 FDA Food Code recommends that ready-to-eat temperature-controlled foods be clearly marked to indicate the date by which the food should be consumed, sold, or discarded that should be set at a maximum of 7 days after preparation.<sup>6</sup>

Every product, even products within the same category, will have a different shelf life. There is no way to uniformly recommend a shelf life for a certain category of products.

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<sup>6</sup> 2022 FDA Food Code 3-501.17





For example, one Greek yogurt product made without fruit may have a longer shelf life than a Greek yogurt with a fruit compote added, some dressings or sauces are shelf stable while others need to be refrigerated and have a shorter shelf life, hard cheese has a much longer shelf life than a high moisture or fresh cheese, etc. Packaging also plays a factor in a product's shelf life. Chicken that is vacuum sealed will have a longer shelf life than chicken that is shrink wrapped. In mixed products, how different items interact with each other may affect the shelf life. An assembled sushi roll from the prepared foods section may have a shorter shelf life than a build your own sushi tray where the ingredients are sectioned off.

**(4) Would a particular product have a different date depending on the phrase used (e.g., would the date be the same or different if the phrase were "Best if Used By" versus "Use By" or "Freeze By")? If so, please explain.**

"BEST if USED By" and "USE By" are used on different types of products and are intended to communicate different information. As explained above, "BEST if Used By" is a quality date whose calculation is based off considerations like freshness, texture, or taste of a product. "BEST if Used By" is not intended to convey a food safety risk. A "USE By" date is intended for a select number of products that carry an increased food safety risk after a certain time period, therefore it is calculated with risk in mind. A phrase containing freezing instructions like "Freeze by" or "USE or Freeze By" can prompt consumers to extend the product's shelf life by freezing it. Firms may apply this label when they know that consumers often freeze their product or when they know that their product keeps well frozen and would like to communicate that information to consumers.

**(5) What challenges or limitations do food manufacturers have when establishing or changing food date labels?**

Food safety is always the first priority when manufacturers establish the "USE by" or other safety dates for a product. As discussed in questions above, manufacturers use scientific techniques like microbial testing and growth calculations to determine the date after which a product may present an increased food safety risk. A potential limitation is that manufacturers may not always have full visibility into typical or reasonable consumer behavior after a product is purchased. Manufacturers must consider factors such as improper storage, lengthy transportation times, and different refrigeration temperatures in their analysis. The food industry wants to provide consumers with the most accurate food date labeling information to maximize the time during which they know they can safely use the product. However, safety date labels are





an important risk reduction tool and must take all reasonably foreseeable circumstances into consideration.

Similarly, manufacturers must consider consumer behavior and preferences when determining the date for “BEST by” or other quality date labels. These factors can include likely storage practices after purchase and other environmental factors to which a product may be exposed, such as humidity. This is an area where consumer education on how to properly store products and how and when to determine the status of a product using sensory evaluation would be highly beneficial.

Another factor that manufacturers consider when establishing date labels is the secondary shelf life of a product. This is the shelf life after a product has been opened, and can be difficult to determine because, in many cases, it will vary widely depending on how a consumer stores the product and the type of environment to which the product is exposed. The “Best By” and “Use By” dates indicate the shelf life of a product before it has been opened, and do not provide information on secondary shelf life. It is important that manufacturers are permitted to communicate to consumers the timeframe during which a product may decrease in quality and safety after it is opened.

We elaborate on the challenges and costs of changing date labels in our answer to the next question.

**(6) Are there costs associated with changing the date label phrase or date used in addition to the costs associated with any label change? If so, please explain what those are. What data are available on the use of certain food date label phrases and cost to manufacturers, retailers, or consumers?**

Changing date labels can be challenging and expensive due to various factors. For example, communicating a new system throughout the supply chain can be difficult and changing labeling processes or investing in new or different equipment to accommodate new phrases is costly. Existing machines may have character limits, which is why a company may opt to use the format “BEST by” or “BB” when applicable instead of the full length “BEST if Used By”. The size, shape, or material of a package can also limit how a date label is applied and how much information can reasonably be included. Requiring the use of the longer version of the date labeling phrase may affect the speed at which a machine can generate labels, reducing production efficiency. On certain machines and packages, there is a risk that coding could become illegible if manufacturers are expected to have longer phrases. Changing date labels can also result in increased costs in the form of equipment updates like adding an inkjet or contending with limitations on scale labels.



It is essential to maintain flexibility in date label placement to allow manufacturers to continue to use existing equipment and processes. Any requirement that would require a date label to be placed in a specific location on the package would be incredibly costly and would force companies to change their packages and practices. One manufacturer estimated that the costs for a redesign could be up to \$12 million dollars with no true benefit to consumers. In addition, abbreviations, such as “BB” or “UB” must be allowed regardless of package size, as size, shape, material, and equipment all determine the feasibility and cost effectiveness of the coding style.

Changing date label phrases or dates would result in increased costs for manufacturers, retailers, and ultimately, consumers, especially in the case of an inflexible mandatory date labeling scheme that doesn’t account for the diversity of equipment, package sizes, and processes. Additionally, if a mandatory date labeling scheme did not allow for enough time to exhaust existing packaging inventory with pre-printed date label phrases, it would be costly to manufacturers. Any mandatory use of specific date label phrases should recognize the need to run through existing label inventory and provide a reasonable timeline for updating label artwork to minimize the cost of compliance and reduce food waste.

**(7) How do grocery retailers determine that a food item is no longer sellable? Do the considerations differ depending on the food item? Do the considerations take into account the phrase and/or date on the label, and if so, how?**

Because the phrase on the label communicates either a quality date or a safety date, retailers take into account which phrase is used. Retailers will not sell perishable products past or near their “USE by” or other safety date. They may sell shelf-stable items closer to their “BEST by” dates, combining the information the date provides with quality and sensory considerations and customer expectations of taste and freshness. This determination is product specific, and grocery retailers often have a “store matrix” or calculation system they have developed so their associates know when to pull items from the shelves. Retailers may use strategies like First In, First Out; First Expired, First Out; Shelf-life monitoring, or other rotation and inventory management practices to prioritize items for distribution and sale.

Date labels are not the only reason a food becomes unsellable. Other reasons include damage to a product’s packaging, product recalls (related to potentially unsafe product or misbranding, such as undeclared allergens), and market withdrawals (for example, due to quality issues, minor mislabeling issues, and other company decisions).



## **Research on Consumer Perception of Date Labeling**

We strongly encourage FDA to conduct quantitative and qualitative studies on consumer perceptions of date labels and consumer behavior surrounding date labels.

## **Food Loss and Waste Research**

FMI has participated in the Food Waste Reduction Alliance (FWRA) since 2011. The FWRA is an industry-led initiative focused on reducing food waste by increasing food donation and sending unavoidable food waste to productive use (energy, composting) and away from landfills. FWRA is comprised of FMI, Consumer Brands Association, and the National Restaurant Association, who focus on three main goals.

1. Reduce the amount of food waste generated;
2. Donate more safe, nutritious food to people in need; and
3. Recycle unavoidable food waste, diverting it from landfills.

FMI has worked with USDA and Cornell University to develop The FoodKeeper, a tool with information on how to safely store, handle, and prepare individual food items based on USDA data. We encourage the Agencies to continue promoting the use of the FoodKeeper App to help consumers better understand the life cycle of their food and reduce food waste.

**(12) What factors do firms (e.g., manufacturers, retailers, food banks) and individuals consider when determining which food items to donate or discard? Specifically, do firms or individuals use food date labels to inform decisions to donate or discard food items? Please provide supporting studies or data.**

In 2023, FMI members exceeded their goal of donating two billion meals as part of the White House Conference on Hunger, Nutrition, and Health.<sup>7</sup> Food donation remains important to our member companies as a means to both serve their communities and reduce food waste.

Safety, quality, legality, and acceptance criteria from food donation partners are all considerations when firms determine which food items to donate. Many states have laws prohibiting companies from donating product too near or past the quality of safety

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<sup>7</sup> FMI, *Power of Health & Well Being*, (2024)



date, so companies keep this, as well as food safety and quality considerations top of mind when making donations. Food banks also have criteria for donated product based on date labels and will not accept donated food within a certain timeframe from its indicated date. In addition to open date labels, firms may also use their own closed date labels or the manufacturing date of the product to determine if a product is eligible to donate.

Retailers may require a certain amount of shelf-life remaining in order to accept a product for sale due to factors like customer expectations and brand reputation. If a product is too late in its shelf-life to be accepted, but is still within its shelf-life, it could be a candidate for donation.

As you know, food donation is not a uniform process, as every day and situation brings different surplus products. While there are many different entities in both the food industry and the food recovery and donation community that are working towards developing strategies and programs to safely and effectively route food to those in need, challenges and limitations still exist within the current food donation infrastructure. Products that require hot and cold chain infrastructure for food safety reasons are particularly difficult to donate, as the infrastructure to keep those foods at the appropriate temperature for food safety is not always sufficient.

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FMI greatly appreciates the agency's work to reduce food waste and the opportunity to provide comments on the RFI. We look forward to further dialogue and collaboration with the agencies and would be pleased to provide any further information that would be helpful.

Sincerely,



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