

Attachment 3



LAW

OLSSON FRANK WEEDA TERMAN MATZ PC

Open Date Labeling Revisions for Food Appear To Be on the Horizon

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Contributor: [Michael J. O'Flaherty](#)

Over 30 years ago, the National Conference on Weights and Measures (NCWM) collaborated with the Association of Food and Drug Officials to establish an initial open dating regulation. This regulation -- now the [Uniform Open Dating Regulation](#) (UODR), published by the National Institute of Standards and Technology within the U.S. Department of Commerce -- is intended to facilitate providing consumers with information about the shelf life of foods at the time of purchase. It defines "perishable food," "semi perishable food," and "long shelf life food," and prescribes how to determine and express a "sell by" date or a "best if used by" date, as applicable, on the label of such a prepackaged food. A version of the UODR reportedly has been adopted by 19 States.

Nevertheless, a September 2013 report of the Natural Resources Defense Council (NRDC) and the Harvard Food Law and Policy Clinic (HFLPC), coupled with the September 2015 adoption at the United Nations (UN) General Assembly of a Sustainable Development Goal (SDG) -- both addressing food waste -- presently are prompting a questioning of the continued utility of the UODR.

The NRDC/HFLPC's report, [The Dating Game: How Confusing Food Date Labels Lead to Food Waste in America](#), describes the consumer confusion caused by current open date labeling practices (mandatory and voluntary), and how such confusion over whether to consume or discard foods engenders food waste and unsafe food consumption practices. The report advises:

The lack of binding federal standards, and the resultant state and local regulatory variability in date labeling rules, has led to a proliferation of diverse and inconsistent date labeling practices in the food industry. Open dates can come in a dizzying variety of forms, none of which are strictly defined or regulated at the federal level. This haphazard system is not serving its purpose well.

It recommends that “sell by” dates (used essentially by retailers for stock management purposes) be removed from food labels; that both quality- and safety-based dates be established for use on food labels; and that more information about handling food safely be declared on food labels.

The UN's [SDG 12](#) seeks to “[e]nsure sustainable consumption and production patterns.” The third target under this goal (SDG 12.3) calls for:

By 2030, halve per capita global food waste at the retail and consumer levels and reduce food losses along production and supply chains, including post-harvest losses.

With these reports and targets as background, the [Consumer Goods Forum](#) and [Champions 12.3](#) recently issued a [landmark call](#) to standardize food date labels worldwide by 2020. The Call to Action says retailers and food producers should take three important steps to simplify date labels and reduce food waste by 2020:

- “1. Only one label at a time.
2. Choice of two labels: one expiration date for perishable items (e.g., “Use by”) and one food quality indicator for non-perishable items (e.g., “Best if used by”). The exact wording will be tailored to regional context.
3. Consumer education to better understand what date labels mean.”

This global open date labeling initiative mirrors an initiative spearheaded in February 2017 by the Grocery Manufacturers Association (GMA) and the Food Marketing Institute (FMI) for the US food industry. A [press release](#) explained:

The new voluntary initiative streamlines the myriad date labels on consumer products packaging down to just two standard phrases. “BEST If Used By” describes product quality, where the product may not taste or perform as expected but is safe to use or consume. “USE By” applies to the few products that are highly perishable and/or have a food safety concern over time; these products should be consumed by the date listed on the package – and disposed of after that date.

While these open date labeling initiatives will **not** displace the UODR in jurisdictions where it is legally adopted, they almost certainly will prompt a re-evaluation of best practices. We recommend that food manufacturers and distributors monitor developments or, more proactively, solicit the NCWM to revise the UODR in accordance with the GMA/FMI initiative.

Categories: [FDA](#), [Public Policy](#)

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The Watergate | 600 New Hampshire Avenue, NW, Suite 500 | Washington, DC 20037 | Phone: [\(202\) 789-1212](#) | Fax: (202) 234-3550