

E. Uniform Open Dating Regulation

as adopted by
The National Conference on Weights and Measures*

1. Background

Numerous state and local jurisdictions have provided for, or are considering, mandatory open dating of certain packaged commodities. Additionally, many commodities in the marketplace are now voluntarily open dated. Lack of uniformity between jurisdictions could impede the orderly flow of commerce.

In 1985, the National Conference on Weights and Measures (NCWM), in concert with the Association of Food and Drug Officials, wrote a new Uniform Regulation. It resolved the differences in the versions developed independently by the two organizations.

The regulation provides two options for implementation by the states. One requires open dating on all perishable foods and the other permits voluntary open dating of such foods. In the latter (voluntary) case, the open dating must then conform to the uniform regulation. Notes to Sections 1.1. Purpose and 3.1. “Sell By” Date indicate the alternate wording for the voluntary version of the Regulation.

2. Status of Promulgation

The table beginning on page 6 shows the status of adoption of the Uniform Open Dating Regulation.

**The National Conference on Weights and Measures (NCWM) is supported by the National Institute of Standards and Technology (NIST) in partial implementation of its statutory responsibility for “cooperation with the states in securing uniformity in weights and measures laws and methods of inspection.”*

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E. Uniform Open Dating Regulation ^[NOTE 1, page 159]

Section 1. Purpose, Scope, and Application

1.1. Purpose. ^[NOTE 1, page 159] – The purpose of this regulation is to prescribe mandatory uniform date labeling of prepackaged, perishable foods and to prescribe optional uniform date labeling that must be used whenever a packager elects to use date labeling on prepackaged foods that are not perishable. Open dating is intended for use and understanding by both distributors and consumers when judging food qualities.

NOTE 1: Alternatively, this regulation may be adopted to require uniformity of open dating of perishable foods whenever a packager voluntarily elects to use date labeling. In such instances Sections 1.1. Purpose and 3.1. “Sell By” Date are reworded in the following manner:

1.1. Purpose. – The purpose of this regulation is to prescribe uniform date labeling that must be used whenever a packager elects to use date labeling on a prepackaged food. Open date labeling is intended for use and understanding by both distributors and consumers when judging food qualities.

3.1. “Sell By” Date. – If a retail food establishment elects to sell or offer for sale a prepackaged perishable food identified with a “sell by” date, the “sell by” date used must be as prescribed by this regulation.

1.2. Scope and Application. – This regulation prescribes the manner of date labeling, the method of determining the appropriate date, required records, responsible persons, and the foods subject to this regulation. This regulation provides for the permissible sale of a regulated food after the expiration of the date on the label. This regulation does not apply to any food that is not prepackaged or is exempted by Section 8.

Section 2. Definitions

2.1. “Sell By” Date. – A recommended last date of sale that permits a subsequent period before deterioration of qualities described in 2.2. Perishable Food, 2.3. Semi Perishable Food, and 2.4. Long Shelf Life Food.

2.2. Perishable Food. – Any food having a significant risk of spoilage, loss of value, or loss of palatability within 60 days of the date of packaging.

2.3. Semi Perishable Food. – Any food for which a significant risk of spoilage, loss of value, or loss of palatability occurs only after a minimum of 60 days, but within 6 months, after the date of packaging.

2.4. Long Shelf Life Food. – Any food for which a significant risk of spoilage, loss of value, or loss of palatability does not occur sooner than 6 months after the date of packaging, including foods preserved by freezing, dehydrating, or being placed in a hermetically sealed container.

2.5. Prepackaged. – Food packaged prior to being displayed or offered for retail sale.

2.6. “Best If Used By” Date. – A date prior to deterioration of qualities described in 2.3. Semi Perishable Food and 2.4. Long Shelf Life Food.

2.7. Person. – An individual, partnership, association, or corporation.

Section 3. Sale of Perishable Food and Date Determination

3.1. “Sell By” Date. ^[NOTE 1, page 159] – A retail food establishment shall not sell or offer for sale a prepackaged perishable food unless it is identified with a “sell by” date as prescribed by this regulation.

3.2. Sale After Expiration of “Sell By” Date.

3.2.1. Advertisement. – Perishable food shall not be offered for sale after the “sell by” date unless it is wholesome and advertised in a conspicuous manner as being offered for sale after the recommended last date of sale. The placement of a sign, sticker, or tag is acceptable for such advertising if it is easily readable and clearly identifies the perishable food as having passed the recommended last date of sale.

3.2.2. Responsibility for Advertisement. – The retailer or final seller is responsible for the advertisement, described in Section 3.2.1. Advertisement, of a perishable food offered for sale after the recommended last date of sale.

3.3. Determination of “Sell By” Date.

3.3.1. Reasonable Period for Consumption. – A manufacturer, processor, packer, re-packer, retailer, or other person who prepackages perishable food, shall determine a date that allows a reasonable period after sale for consumption of the food without physical spoilage, loss of value, or loss of palatability. A reasonable period for consumption shall consist of at least one third of the approximate total shelf life of the perishable food.

3.3.2. Responsibility for “Sell By” Date. – A retailer who purchases prepackaged perishable food may upon written agreement with the person prepackaging such food determine, identify, and be responsible for the “sell by” date placed on or attached to each package of such food.

3.4. Manner of Expressing Date.

3.4.1. Month and Day, or Day of Week. – A person described in Section 3.3.1. Reasonable Period for Consumption or 3.3.2. Responsibility for “Sell By” Date shall place or attach to each package of perishable food a date by month and day. However, bakery products with a shelf life of not more than seven days may be dated with the day of the week representing the last recommended day of sale.

3.4.2. The term “Sell By.” – The “sell by” date shall be displayed with the term “sell by” or words of similar import immediately preceding or immediately over the designated date unless a prominent notice is on the label describing the date as a “sell by” date and indicating the location of the date.

3.4.3. Abbreviation of Weekday. – If the day of the week is solely designated as provided in Section 3.4.1. Month and Day, or Day of Week the name of the day may be abbreviated by the use of either the first two or first three letters of the name of the day.

3.4.4. Expression of Month and Day. – Except as provided for in Section 3.4.1. Month and Day, or Day of Week the date shall be designated by:

- (a) the first three letters of the month, preceded or followed by a numeral indicating the calendar day; or
- (b) the month represented numerically followed by a numeral designation of the calendar day.

The month and day designation shall be separated by a period, slash, dash, or spacing. When a numeral designation of the first nine days of the month is used, the number shall include a zero as the first digit; for example, 01 or 03.

(Amended 1987)

3.4.5. Expression of the Year. – The “sell by” date may include the year following the day if such year is expressed as a two or four-digit number separated as described in Section 3.4.4. Expression of Month and Day.

Section 4. Sale of Semi Perishable and Long Shelf Life Food

4.1. “Best If Used By” Date. – A manufacturer, processor, packer, re-packer, or other person who prepackages semi perishable or long shelf life food may place upon or attach to the package an open date providing it is designated by the “best if used by” date.

4.2. Sale After Expiration of “Best If Used By” Date. – A retail food establishment may sell or offer for sale food beyond the designated “best if used by” date provided the food is wholesome and the sensory physical quality standards for that food have not significantly diminished.

4.3. Manner of Expressing Date. – The “best if used by” date as required by Section 4.1. “Best If Used By” Date shall be placed upon or attached to each container or package and be limited to the terms “best if used by” or words of similar import followed by or immediately over the date designated by the month and year unless a prominent notice is on the label describing the date as a “best if used by” date and indicating the location of the date. The date shall be designated by the first three letters of the month followed by a numeral indicating the year. The use of the day of the month is permissible provided that the day of the month is placed prior to the month; for example, 30 Jun 81.

Section 5. Placement of the Date

The date, whether “sell by” or “best if used by,” shall be printed, stamped, embossed, perforated, or otherwise shown on the package, label on the package, or tag attached to the package in a manner that is easily readable and separate from other information, graphics, or lettering so as to be clearly visible to a prospective purchaser. The date shall not be superimposed on other required information or obscured by other information, graphics, or pricing. Regardless of the type size used, the date shall be easily readable. These requirements do not preclude a supplemental notice elsewhere on a package describing and/or indicating the location of the date.

Section 6. Factors for the Date Determination

A person who, as provided for in this regulation, places either the “sell by” date or “best if used by” date on a package shall determine the date by taking into consideration the food quality, characteristics, formulation, processing impact, packaging or container and other protective wrapping or coating, customary transportation, and storage and display conditions. For purposes of calculating this date, home storage conditions shall be considered to be similar to those in the usual retail store except that the date for refrigerated food may be calculated by using a home storage temperature standard of 40 °F (4.4 °C).

Section 7. Records

A person who is responsible for establishing the date for perishable, semi perishable, and long shelf life food shall keep a record of the method used to determine the date. A record revision is necessary whenever a factor affecting date determination is altered. Such record shall be retained for not less than six months after the most recent “sell by” or “best if used by” date and shall be available during normal business hours for examination upon request by _____ (agency name).

Section 8. Exemptions

8.1. This regulation does not apply to perishable fruits or vegetables in a container permitting sensory examination.

8.2. This regulation does not apply to prepackaged perishable foods open dated according to requirements of federal law or regulation.

Section 9. Preemption of Local, County, and Municipal Ordinance

A municipality or county shall not adopt or impose standards or requirements other than those provided for in this regulation.

Section 10. Effective Date

This regulation shall become effective on and after _____.