

## Food Date Labeling Act—Key Facts

The purpose of this legislation is to modernize our nation's food date labeling regime by standardizing food date labels across food products and throughout the country. Currently, no national uniform system for date labeling exists. This lack of uniform regulation has led companies to use a dizzying array of different labels, including "sell by," "use by," "best by," and "expires on." These labels are generally chosen by the manufacturer to indicate quality and to protect the consumer's experience of the product. The vast majority of these date labels bear no relation to food safety. However, consumers mistakenly believe that these dates are indicators of safety, and 90% of Americans have reported throwing food away on the expiration date due to fear of safety risks. At the same time, for a very small set of foods, there is some safety risk if they are consumed after the date, yet that risk is not communicated clearly to consumers.

In the absence of federal law, states enforce a variety of inconsistent date label regulations. Forty-one states require date labels on certain food products, though they do not distinguish between quality and safety, and generally do not require consistency in the language used. More troubling, 20 states restrict or ban the sale or donation of food after the date, leading to wasted food throughout the supply chain. These laws harm companies, who are sometimes required to use different date labels in different states, and may be subject to citations or fines if they leave food on the shelves after the date in a state which bans this practice.

This bill proposes establishment of a uniform national system for date labeling in order to clearly distinguish between quality and safety dates, thus reducing consumer confusion; simplify regulatory compliance; and cut food waste across the supply chain and in consumers' homes. To accomplish these goals, this bill will:

- **Require that manufacturers or retailers who choose to utilize a date label for quality reasons use the standard language "best if used by".** Manufacturers who choose to include a date indicating a food product's quality will use the standard label "best if used by." National research conducted by Wal-Mart has shown that "best if used by" is the phrase most easily understood by consumers as a quality indicator. Because not all foods deteriorate in quality over time, use of quality dates will be optional.
- **Require the separate standard language, "expires on," for safety dates on high-risk foods.** This legislation will require that FDA, in coordination with the Department of Agriculture, identify ready-to-eat foods that have a risk of microbial contamination if not consumed after a certain date, such as those classified as "very high risk" or as "high risk" for *Listeria monocytogenes*. These foods will be required to use a standard "expires on" label in lieu of the "best if used by" label. Preliminary research conducted by the Johns Hopkins Center for Livable Future found that the phrase "expires on" most clearly communicated safety to consumers.
- **Allow for the sale or donation of foods after the quality date.** Currently, 20 states restrict sale or donation of past-date food, even though that date, is generally intended to indicate quality rather than safety. Since quality, being based on taste, is subjective, this legislation will bar states and other authorities from prohibiting the sale or donation of food because it is past the "best if used by" date. However, states and other authorities may prohibit the sale or donation of high-risk foods bearing the "expires on" date label.
- **Educate consumers about the meaning of new labels.** This legislation will require that FDA undertake an educational campaign designed to inform consumers about the meaning of the "expires on" and "best if used by" labels. Because date labels have long remained unregulated, this education can ensure consumers understand the meaning of the new labels. As a trusted government agency charged with protecting consumers, FDA is in a unique position to reduce confusion posed by date labels
- **Require the FDA and USDA to coordinate standardization of date labels across products.** In order to ensure that the new date labels are standard nationally and can be easily understood by consumers, FDA will coordinate with USDA in making these changes across the food supply. A uniform date labeling system should apply to all food products, regardless of which agency has jurisdiction over that product. A uniform regime across all foods will reduce consumer confusion by creating clear expectations on which consumers can rely, even if they do not know whether FDA or USDA regulates a particular food product.