



Legal Fact Sheet for Rhode Island Food Donation: Date Labeling Laws

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Date labels are the dates on food packaging that are accompanied by phrases such as “use by,” “best before,” “sell by,” “enjoy by,” and “expires on.” Date labels can lead to food waste because they are misleading to consumers and result in safe, wholesome food being needlessly thrown away.

Federal Law on Date Labels

There currently is no federal law regulating date labels.¹ Congress has, however, passed legislation delegating general authority to the FDA and the USDA to ensure food safety and protect consumers from deceptive or misleading food labeling.² Unfortunately, the FDA and the USDA have not interpreted this authority to allow them to regulate date labels, thus:

- The FDA does not require date labels on foods, other than infant formula.³
- The USDA does not require date labels on foods under its purview, including meats, poultry, and egg products.⁴ If, however, USDA-regulated foods are dated, either as required under state law (see below) or voluntarily, they must include: (1) a day and month (and year for frozen or shelf-stable products) and (2) an explanatory phrase, such as “sell by” or “use before.”⁵

Rhode Island State Law on Date Labels

Because federal law is so limited, states have broad discretion to regulate date labels. As a result, inconsistent date labeling laws exist across the country.⁶ What has been consistent, however, is food manufacturers’ practice of basing these dates on optimal food quality and freshness, not on food safety.⁷ Despite this fact, many consumers continue to believe date labels are related to food safety.⁸ However, no link has been shown between eating food after its labeled date and foodborne illness.⁹

Rhode Island requires date labels on shellfish and prepackaged bakery products. Shucked shellfish dealers are required to apply “Sell By” or “Best if Used By” date labels on all packages containing less than 64 ounces of shucked shellfish.¹⁰ The “Sell By” or “Best if Used By” date labels should be followed by the month and date when the product is expected to reach the end of its shelf life.¹¹ Shucked shellfish dealers are also required to apply a “Sell By” date label for raw shucked shellfish packages with less than 1.89 liters (one half gallon) and the date shucked for raw shucked shellfish packages with 1.89 liters (one half gallon) or more.¹² Rhode Island does not explicitly prohibit the sale or donation of shellfish that is past-date. Prepackaged bakery products must be labeled with a “pull date, which is “the final date or day as established by the packer or manufacturer upon which a packaged bakery product may be sold.”¹³ Prepackaged bakery products may be sold or donated past their pull dates if the past-date products are separated from products which have not passed their pull date, and shelf markers or individual package labels clearly identify the products as being “past date.”¹⁴

Conclusion

Because there is no federal law on date labeling, regulation of these labels has been left largely to the states. Rhode Island requires date labels only for shucked shellfish and prepackaged bakery products, and does not explicitly prohibit the sale or donation of these items past this date.

¹ See *Food Product Dating*, U.S. DEP’T OF AGRIC. FOOD SAFETY & INSPECTION SERV., <http://www.fsis.usda.gov/wps/portal/ffsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/food-labeling/food-product-dating/food-product-dating> (last visited February 25, 2015).

² 21 U.S.C.A. § 331(b) (2016); 21 U.S.C.A. § 343 (2016); 21 U.S.C.A. § 463(a) (2016); 21 U.S.C.A. § 607(c)(2016); 21 U.S.C.A. § 1043 (2016).

³ *FDA Basics*, FOOD AND DRUG ADMIN., <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm210073.htm> (last updated Jun. 8, 2015); 21 C.F.R. § 107.20 (2016).

⁴ See *supra* note 1. The USDA does, however, require a “pack date” for poultry and a “lot number” or “pack date” for egg products certified by the USDA. HARVARD FOOD LAW & POLICY CLINIC AND NAT’L RES. DEF. COUNCIL, *THE DATING GAME: HOW CONFUSING FOOD DATE LABELS LEAD TO FOOD WASTE IN AMERICA* 11 (2013).

⁵ 9 C.F.R. §317.8(b)(32)(i) (2016); 9 C.F.R. § 317.8(b)(32)(2) (2016).

⁶ HARVARD FOOD LAW & POLICY CLINIC AND NAT’L RES. DEF. COUNCIL, *supra* note 4, at 14 fig. 4.

⁷ See *id.* at 17.

⁸ *Id.* at 19.

⁹ See *id.* at 19-20.

¹⁰ R.I. ADMIN. CODE 31-3-9:6.0, § 6.6.

¹¹ *Id.*

¹² R.I. ADMIN. CODE 31-3-11:3-202.17

¹³ 21 R.I. GEN. LAWS ANN. §§ 21-33-1, 21-33-2.

¹⁴ *Id.* § 21-33-3.