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Docket Clerk  
U.S. Department of Agriculture  
Food Safety and Inspection Service  
1400 Independence Avenue SW  
Mailstop 3758  
Washington, DC 20250-3700

*Sent via electronic submissions on the Federal e-Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov)*

**Re: Docket No. FSIS-2024-0021; Comments on the FSIS and FDA’s Request for Information on Food Date Labeling**

To Whom It May Concern,

On behalf of the [Harvard Law School Food Law and Policy Clinic](#) (FLPC), we submit this comment in response to the U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), and the U.S. Food and Drug Administration (FDA) Request for Information on Food Date Labeling.

FLPC is a dual advocacy and educational program focused on furthering policy that supports strong and healthy food systems, while providing students the opportunity to engage in substantive food law and policy work with and on behalf of clients and community partners. Food waste and recovery is one of FLPC’s primary focus areas, and we have a long history of working to reduce food waste and improve diversion of food for donation and other beneficial uses. Our food waste portfolio includes conducting legal and policy research and analysis, developing educational materials, leading food waste advocacy efforts, and supporting food recovery efforts at the local, state, regional, national, and international levels. FLPC’s food loss and waste research is informed by our connections to industry partners, food recovery organizations, educational institutions, and government representatives at all levels. Through our Global Food Donation Atlas, we have provided comprehensive food waste reduction and food recovery policy guidance in 26 different countries and counting. Domestically, FLPC helped to launch the Zero Food Waste Coalition, which has grown in membership to now comprise more than 250 businesses and organizations across all 50 states. Our strong connections to partners and alongside our cutting-edge legal and policy research establish FLPC as a global leader in the field of food waste and recovery and uniquely position us to provide data-driven recommendations and guidance.

We are glad to see the USDA, through FSIS, and the FDA working together to gather more information about the impacts of non-standardized date labels on consumers and on industry members. We have been heartened over the past 5 years to see the incredible interagency collaboration on reducing food waste, which was born out of the creation, in 2018, of the *Winning on Reducing Food Waste Initiative*,<sup>1</sup> bolstered by the 2019 *Federal Interagency Strategy to Reduce Food Waste*,<sup>2</sup> and has continued today as the Federal Interagency Collaboration to Reduce Food Loss and Waste.<sup>3</sup> In particular, FLPC was very supportive of the recently published *National Strategy for Reducing Food Loss and Waste and Recycling Organics*, which further established the strategies that the agencies would pursue jointly and independently to reduce food waste, including a renewed commitment to reducing confusion regarding date labels.<sup>4</sup> This commitment to date label education is essential, as our extensive research across all jurisdictions has proven that reforming food date labels and increasing consumer understanding of date labels is necessary to reducing food loss and waste and improving food donation efficiency.

To that end, **FLPC requests that FDA and USDA use their statutory authority to federally standardize U.S. food date labeling to allow voluntary application of *only one* of two label phrases: “BEST If Used By” as a quality label and “USE By” as a safety label. We also request that the agencies fund or facilitate national consumer education efforts to help establish widespread understanding of these standardized date label phrases.** In the first part of this comment, we will share research and data that demonstrate that state-by-state date label regulations, in the absence of a federal standard system, significantly contributes to food waste due to inconsistent messaging, supply chain issues, and consumer confusion. In the second part, we will address the numbered questions from the Request for Information, illuminating how state-specific date label laws impose financial burdens on businesses, food recovery groups, and food-insecure American families.

The research on this front is abundantly clear: federal date label standardization, coupled with investments in consumer education, will decrease food waste, support families in need, and reduce unnecessary expenses for companies, organizations, and consumers.

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<sup>1</sup> U.S. ENV'T PROT. AGENCY, U.S. FOOD & DRUG ADMIN. & U.S. DEP'T OF AGRIC., FORMAL AGREEMENT AMONG EPA, FDA, AND USDA RELATIVE TO COOPERATION AND COORDINATION ON FOOD LOSS AND WASTE (2018), <https://www.usda.gov/sites/default/files/documents/usda-fda-epa-formal-agreement.pdf>.

<sup>2</sup> U.S. DEP'T OF AGRIC., U.S. ENV'T PROT. AGENCY & U.S. FOOD & DRUG ADMIN., EPA 530-F-19-004, WINNING ON REDUCING FOOD WASTE: FY 2019-2020 FEDERAL INTERAGENCY STRATEGY (2019), <https://www.usda.gov/sites/default/files/documents/interagency-strategy-on-reducing-food-waste.pdf>.

<sup>3</sup> *Federal Interagency Collaboration to Reduce Food Loss and Waste*, U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/sustainable-management-food/federal-interagency-collaboration-reduce-food-loss-and-waste#partners> (last updated Jan. 29, 2025).

<sup>4</sup> THE WHITE HOUSE, NATIONAL STRATEGY FOR REDUCING FOOD LOSS AND WASTE AND RECYCLING ORGANICS (2024), <https://www.usda.gov/sites/default/files/documents/NATIONAL-STRATEGY-FOR-REDUCING-FOOD-LOSS-AND-WASTE-AND-RECYCLING-ORGANICS.pdf>.

## **I: Overview of Challenges, Opportunities, and Pathways to Change for US Date Labels**

In this section, we detail the inconsistencies and inefficiencies created by state-by-state food date labeling regulations and then explain how joint agency action can enact much-needed federal date label standardization in the United States.

### **A. Current Food Date Labeling Practices Confuse Consumers, Burden Industry, and Lead to Excessive Food Waste and Economic Losses**

#### **1. Concerns Over Date Labels Lead to Vast Amounts of Food Waste in the United States**

Each year, about 30-40% of the U.S. food supply goes unsold or uneaten,<sup>5</sup> costing the country \$382 billion in 2023 alone.<sup>6</sup> This means that close to 1.5% of the U.S. GDP is wasted each year to grow, process, transport, store, and sell food that goes uneaten.<sup>7</sup> While those resources are squandered and that food gets discarded, nearly 1 in 7 American households, or 18 million Americans, did not have enough money or resources to put food on the table.<sup>8</sup> For households with children, that proportion is even higher: according to the most recent estimate by USDA, nearly 1 in 5 households with children struggled with food insecurity in 2023.<sup>9</sup> Food insecurity for these households means that parents, children, or both were often feeling hungry, skipping meals, or not eating for a whole day to try and save some money.<sup>10</sup> A 2017 report found that redistributing just 30% of U.S. food waste could feed every food insecure American family their *total* diet.<sup>11</sup> Therefore, efforts to combat food waste, as initiated in the *Winning on Reducing Food Waste Initiative*, help to reduce spending on food that goes to waste and help to provide meals to food-insecure American families.

One critical source of food waste in the United States is inconsistent and confusing date labels on food packaging. In 2023 alone, 4.3 million tons of food were wasted in the U.S. due to concerns over date labels.<sup>12</sup> This equates to a \$22 billion loss, borne by businesses and households, stemming from one single cause.<sup>13</sup> Food date labels create this vast amount of food waste because they mislead both retailers and consumers to unnecessarily throw away safe, healthy, and edible food. On the supply side, date labels can force retailers and other food

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<sup>5</sup> *Why Should We Care About Food Waste?*, U.S. DEP'T OF AGRIC., <https://www.usda.gov/about-food/food-safety/food-loss-and-waste/why-should-we-care-about-food-waste> (last visited Mar. 3, 2025); *Food Waste: The Problem*, REFED, [https://refed.org/food-waste/the-problem/#what\\_is\\_food\\_waste](https://refed.org/food-waste/the-problem/#what_is_food_waste) (last updated Feb. 24, 2025).

<sup>6</sup> *Food Waste: The Problem*, REFED, [https://refed.org/food-waste/the-problem/#what\\_is\\_food\\_waste](https://refed.org/food-waste/the-problem/#what_is_food_waste) (last updated Feb. 24, 2025).

<sup>7</sup> U.S. BUREAU OF ECONOMIC ANALYSIS, "TABLE 1.1.5. GROSS DOMESTIC PRODUCT," <https://www.bea.gov/itable/national-gdp-and-personal-income> (open Interactive Data Tables; choose Section 1 – Gross Domestic Product and Income, then Table 1.1.5; modify to the Annual series) (last revised Feb. 27, 2025).

<sup>8</sup> MATTHEW P. RABBITT ET AL., USDA ECON. RSCH. SERV., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2023 8-9 (2024), <https://ers.usda.gov/sites/default/files/laserfiche/publications/109896/ERR-337.pdf?v=85017>.

<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Id.*

<sup>11</sup> NAT. RES. DEF. COUNCIL, WASTED: HOW AMERICA IS LOSING UP TO 40 PERCENT OF ITS FOOD FROM FARM TO FORK TO LANDFILL 4 (2nd ed. 2017), <https://www.nrdc.org/sites/default/files/wasted-2017-report.pdf>.

<sup>12</sup> *Food Waste Monitor*, REFED INSIGHTS ENGINE, [https://insights-engine.refed.org/food-waste-monitor?break\\_by=cause&indicator=tons-surplus&view=detail&year=2023](https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=tons-surplus&view=detail&year=2023) (displaying surplus food generated by all sectors according to cause of surplus) (last updated Feb. 24, 2025).

<sup>13</sup> *Food Waste Monitor*, REFED INSIGHTS ENGINE, [https://insights-engine.refed.org/food-waste-monitor?break\\_by=cause&indicator=us-dollars-surplus&view=detail&year=2023](https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=us-dollars-surplus&view=detail&year=2023) (displaying surplus food generated in dollars according to cause of surplus) (last updated Feb. 24, 2025).

businesses to empty their inventories of food products that are past their labeled date, even when that food is still safe to consume.<sup>14</sup> Unfortunately, the food products that do make it to consumers before their labeled date do not fare much better when that label date approaches. Consumers are often confused by the dozens of different date label options they see on the food products they purchase<sup>15</sup> but still often toss food based on those labels anyway.<sup>16</sup> Given that households are the largest food waste generating sector in the United States—responsible for 25.7 million tons of food waste, or about 41%, of wasted food in 2023<sup>17</sup>—all efforts to curb sources of household and consumer wastage will greatly reduce food waste nationally. The ubiquitous confusion over food date labels and the low cost of standardizing such labels makes solving this issue an extremely cost-effective opportunity.

## 2. State-by-State Regulations Are Inconsistent and Obstruct Industry Coordination

In the U.S., federal law does not mandate food date labels for any food products,<sup>18</sup> except for infant formula,<sup>19</sup> which is outside the scope of this RFI.<sup>20</sup> However, foods that do display date labels—whether voluntarily or due to state law—must adhere to a few federal formatting requirements. For instance, USDA Food Safety and Inspection Service (FSIS) regulations stipulate that date labels on meat, poultry, and egg products must include both the month and day, while shelf-stable and frozen items must also include the year.<sup>21</sup> A clarifying date label phrase, such as like “Sell By,” “Use Before,” or “Best if Used By,” must also be present.<sup>22</sup> The Food and Drug Administration (FDA), on the other hand, does not impose any specific requirements on the format or choice of phrase on date labels under its jurisdiction (except for on infant formula).

Importantly, food products regulated by FSIS must not display dates that are untruthful or misleading.<sup>23</sup> Similarly, the FDA mandates that foods under its oversight must not be misbranded with date labels that are false or misleading.<sup>24</sup> Although both FSIS and the FDA suggest that the food industry voluntarily use the term “Best if Used By” for products displaying

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<sup>14</sup> NAT. RES. DEF. COUNCIL, *supra* note 11, at 38.

<sup>15</sup> Twilight Greenaway, *Can Walmart's food labels make a dent in America's \$29bn food waste problem?*, THE GUARDIAN (June 26, 2016, 11:00 AM), <https://www.theguardian.com/sustainable-business/2016/jun/26/food-waste-walmart-date-labels>.

<sup>16</sup> RONI NEFF ET AL., CONSUMER PERCEPTIONS OF FOOD DATE LABELS: 2025 NATIONAL SURVEY 3 (2025), <https://chlp.org/resources/consumer-perceptions-of-food-date-labels-2025-national-survey> [hereinafter 2025 NATIONAL DATE LABEL SURVEY] (this study was led by researchers from Johns Hopkins Bloomberg School of Public Health, Harvard Law School Food Law and Policy Clinic, and ReFED). See APPENDIX A for full survey results.

<sup>17</sup> *Food Waste Monitor*, REFED INSIGHTS ENGINE, [https://insights-engine.refed.org/food-waste-monitor?break\\_by=sector&indicator=tons-waste&view=detail&year=2023](https://insights-engine.refed.org/food-waste-monitor?break_by=sector&indicator=tons-waste&view=detail&year=2023) (displaying tons of food waste according to sector in 2023) (last updated Feb. 24, 2025).

<sup>18</sup> *Food Product Dating*, FOOD SAFETY & INSPECTION SERV., <https://www.fsis.usda.gov/food-safety/safe-food-handling-and-preparation/food-safety-basics/food-product-dating>. *But see* 9 C.F.R. § 381.126 (2024) and § 431.2(e) (2024) (requiring a “pack date” for poultry products and thermally processed, commercially sterile products to help identify product lots and facilitate trace-back activities in the event of an outbreak of foodborne illness).

<sup>19</sup> Infant Formula Act of 1980, 21 U.S.C. § 350a; 21 C.F.R. § 107.20 (2024).

<sup>20</sup> Food Date Labeling, 89 Fed. Reg. 96205, 96206 (Dec. 4, 2024).

<sup>21</sup> 9 C.F.R. § 317.8(b)(32) (2024).

<sup>22</sup> *Id.*

<sup>23</sup> 9 C.F.R. 317.8(a) (2024); 9 C.F.R. 381.129(a) (2024); 9 C.F.R. 590.411(f) (2024).

<sup>24</sup> Food, Drug, and Cosmetic Act, 21 U.S.C. § 331 and § 343; Food Date Labeling, 89 Fed. Reg. 96205, 96206 (Dec. 4, 2024).

freshness or quality dates,<sup>25</sup> there are no standardized or universally applied date label terms in the U.S.<sup>26</sup> Additionally, there are no federal restrictions on using any particular date label phrase, provided it is truthful and not misleading.<sup>27</sup>

In the absence of federal standards, states have used their broad discretion to pass their own food date labeling laws, and this patchwork of date label regulations throughout the country leads to even more food waste. Every single state in the country that requires date labels has its own date label policy,<sup>28</sup> which makes it difficult for consumers and companies to understand what date labels are supposed to mean, especially as consumers and companies commute or operate between neighboring states with differing policies. As we explain in more detail below, states have widely inconsistent date label requirements and standards, ranging from some with minimal label requirements to others that require date labels on a large portion of their food supply.<sup>29</sup> In addition to requiring date labels on some or all food products, many states also have regulations in place that needlessly prohibit or restrict the sale or donation of any past-date food products, irrespective of the fact that current food date labels do not actually reflect any potential food safety risks. Without federal standardization, food products will continue to be regulated by this tricky and inconsistent state-by-state set of laws, and American businesses and families will continue to waste wholesome food for no good reason.

Another serious issue that arises because of this state patchwork of date label laws is the set of impracticable obstacles it poses to food industry members who want to coordinate and simplify date labeling practices. The most influential effort to date by industry has been the voluntary Product Code Dating Initiative, launched in 2017 by the Food Marketing Institute (now known as FMI – The Food Industry Association) and the Grocery Manufacturers Association (now known as the Consumer Brands Association (CBA)), the two largest food industry trade groups in the U.S. The Product Code Dating Initiative encourages manufacturers and retailers to use standard date labels on consumer-facing food packages.<sup>30</sup> Participating companies would ensure their food products use only one of two standard phrases: “BEST If Used By” on food products for which the labels intend to communicate an estimation of a food’s peak quality and “USE By” on food products where they intend to communicate the date at which a high-risk food should be discarded.<sup>31</sup> Unfortunately, the Initiative is inconsistent with 27 different states’ date label laws for at least one food product.<sup>32</sup> This means that even with the

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<sup>25</sup> FOOD SAFETY & INSPECTION SERV., *supra* note 18; FRANK YIANNAS, LETTER TO ‘FOOD INDUSTRY’, U.S. FOOD & DRUG ADMIN. (May 23, 2019), <https://www.fda.gov/media/125114/download>.

<sup>26</sup> FOOD SAFETY & INSPECTION SERV., *supra* note 18.

<sup>27</sup> *Id.*; Food Date Labeling, 89 Fed. Reg. 96205, 96206 (Dec. 4, 2024).

<sup>28</sup> HARVARD L. SCH. FOOD L. & POL’Y CLINIC, DATE LABELS: THE CASE FOR FEDERAL REGULATION 3 (2019), [https://chlpi.org/wp-content/uploads/2013/12/date-labels-issue-brief\\_June-2019.pdf](https://chlpi.org/wp-content/uploads/2013/12/date-labels-issue-brief_June-2019.pdf) [hereinafter THE CASE FOR FEDERAL REGULATION]; *See also* HARVARD L. SCH. FOOD L. & POL’Y CLINIC & NAT. RES. DEF. COUNCIL, THE DATING GAME: HOW CONFUSING DATE LABELS LEAD TO FOOD WASTE IN AMERICA 12-15 (2013), <https://www.nrdc.org/sites/default/files/dating-game-report.pdf> [hereinafter THE DATING GAME].

<sup>29</sup> THE DATING GAME, *supra* note 28.

<sup>30</sup> FOOD MKTG. INST. & GROCERY MFRS. ASS’N, FMI – GMA PRODUCT CODE DATING INITIATIVE (2017), [https://www.fmi.org/docs/default-source/Industry-Topics-Doc/fact-sheet-product-code-dating-initiative.pdf?sfvrsn=59de6c6e\\_2](https://www.fmi.org/docs/default-source/Industry-Topics-Doc/fact-sheet-product-code-dating-initiative.pdf?sfvrsn=59de6c6e_2).

<sup>31</sup> *Id.*; *see also* CONSUMER BRANDS ASS’N, BEST IF CLEARLY LABELED: HOW THE CONSUMER PACKAGED GOODS INDUSTRY IS REDUCING CONFUSION AND FOOD WASTE 3 (2019), [https://consumerbrandsassociation.org/wp-content/uploads/2019/11/ConsumerBrands\\_ClearlyLabeled.pdf](https://consumerbrandsassociation.org/wp-content/uploads/2019/11/ConsumerBrands_ClearlyLabeled.pdf).

<sup>32</sup> THE CASE FOR FEDERAL REGULATION, *supra* note 28, at 11-13.

high rate of adoption of the Initiative or of other similar industry-led solutions, the confusing patchwork of state date label requirements will continue to obstruct full date label standardization.

### 3. Consumers Are Routinely Confused by Date Label Phrases

Recent research into the impact of date labels highlights the fact that consumers remain confused by the array of label phrases in use today, which often leads to unnecessary disposal of food and wasted money. The sheer number of different date label terms makes it difficult for consumers to understand their meanings and potential significance. For example, a representative survey that we recently coauthored and was published in February 2025 revealed that 49% of consumers incorrectly thought that “Use By” indicates quality, while 44% thought it signifies safety.<sup>33</sup> Furthermore, only 17% of participants correctly understood that federal regulations on date labels apply only to certain foods.<sup>34</sup> Despite this, 88% admitted to discarding food based on date labels at least occasionally.<sup>35</sup> These findings, along with additional research detailed in our responses below, demonstrate that consumer misunderstanding about the meaning of date labels, combined with their reliance on these dates, directly contributes to the excessive disposal of perfectly edible food products. Establishing a clear standardized date labeling system would supply consumers with accurate and trustworthy information, which research strongly suggests would lead to a significant reduction in food waste.

The absence of standardized federal date labels also poses health risks for consumers. Some consumers are aware that there are no federally mandated differences among the various date label terms on the market today.<sup>36</sup> Alarming, this awareness can lead consumers to disregard the labels altogether due to a lack of trust, understanding, or interest.<sup>37</sup> A survey conducted in 2021 revealed that even those who were aware that date labels are intended to indicate different things did not truly believe in these distinctions.<sup>38</sup> Respondents remarked that date labels “[a]ll mislead people into thinking good food has spoiled” and asserted that “[t]hey mean nothing, really.”<sup>39</sup> When consumers treat all date labels as identical or meaningless, they risk health and safety issues, particularly when labels actually indicate an expiration or safety date, as they crucially do with reduced oxygen packaging, in line with FDA Model Food Code recommendations adopted by most states,<sup>40</sup> or with deli meats which many food safety experts

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<sup>33</sup> 2025 NATIONAL DATE LABEL SURVEY, *supra* note 16, at 4-5.

<sup>34</sup> *Id.* at 3.

<sup>35</sup> *Id.*

<sup>36</sup> Debasmita Patra et al., *Understanding and addressing food waste from confusion in date labeling using a stakeholders’ survey*, J. AGRIC. & FOOD RSCH., June 2022, at 1, 3 (available at <https://doi.org/10.1016/j.jafr.2022.100295>).

<sup>37</sup> *See id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> U.S. FOOD & DRUG ADMIN., FOOD CODE: 2022 RECOMMENDATIONS OF THE UNITED STATES PUBLIC HEALTH SERVICE FOOD AND DRUG ADMINISTRATION Annex 3 – 143 (2023), <https://www.fda.gov/media/164194/download?attachment> [hereinafter 2022 FOOD CODE]; U.S. FOOD & DRUG ADMIN., ADOPTION OF THE FDA FOOD CODE BY STATE AND TERRITORIAL AGENCIES RESPONSIBLE FOR THE OVERSIGHT OF RESTAURANTS AND/OR RETAIL FOOD STORES 4 (2023), <https://www.fda.gov/media/107543/download?attachment>.

note increase in risk over time, even under refrigeration.<sup>41</sup> Our recent consumer survey highlighted this behavior by showing that older adults, who are more susceptible to foodborne illnesses, often rely on sensory cues rather than date labels and thus disregarded the specific label guidance, even for deli meats.<sup>42</sup> These risks persist due to the current inconsistent date labeling system. Until date labels are standardized, consumers will continue to unnecessarily discard food, waste money, and make potentially hazardous consumption choices.

## **B. Federal Date Label Standardization Creates Needed Efficiency and Consistency**

### 1. Standardization Reduces Cost Burdens and Food Waste

Because of the issues outlined above, **FLPC believes the best solution is date label standardization at the federal level, accompanied by concerted consumer education.** Standardization would eliminate all date label phrases from the market except for the following two standard phrases: “BEST If Used By” as a quality label or “USE By” as a safety label. Date label standardization should allow the application of date labels to be voluntary on all food products (aside from infant formula), merely requiring that if a company chooses to use a date label, they must use one of those two standard labels: food products under these new standards would either display a date label accompanied by one of the two standard phrases or display no date label at all. This decision to label a food product could no longer be regulated by individual states but instead left up to the discretion of the entities responsible for producing or manufacturing food products, so long as they applied one of the two standard labels.

Research shows that this kind of date label standardization would create a multitude of benefits for consumers, families, and food industry members. A standardized dual date label system with one quality label and one safety label would provide much more consistent and reliable information to consumers about how to handle their food. The “USE By” label should only be applied to food products with actual safety risks that increase over time, such as on deli meats, molluscan shellfish, or foods in reduced oxygen packaging.<sup>43</sup> The “BEST If Used By” label, on the other hand, would simply provide consumers with a general estimate on how long a food product is at its peak quality. With this information in hand, consumers could use their own judgment to decide what to do with their food products, with assurance that foods past the *quality* date pose no significant pathogenic safety risks that get more dangerous with time. Standardizing date labels would greatly reduce the \$7.7 billion loss incurred by U.S. households every year as they unnecessarily toss 3 billion pounds of food due to date label concerns.<sup>44</sup> Using conservative estimates, date label standardization would divert a minimum of 425,000 tons of

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<sup>41</sup> CTR. FOR FOOD SAFETY & APPLIED NUTRITION & FOOD SAFETY & INSPECTION SERV., QUANTITATIVE ASSESSMENT OF RELATIVE RISK TO PUBLIC HEALTH FROM FOODBORNE LISTERIA MONOCYTOGENES AMONG SELECTED CATEGORIES OF READY-TO-EAT FOODS (2003), <https://www.fda.gov/media/77947/download>.

<sup>42</sup> 2025 NATIONAL DATE LABEL SURVEY, *supra* note 16, at 6.

<sup>43</sup> Other food categories with safety-related concerns are outlined in FDA’s Model Food Code. 2022 FOOD CODE, *supra* note 40.

<sup>44</sup> *Food Waste Monitor*, REFED INSIGHTS ENGINE, [https://insights-engine.refed.org/food-waste-monitor?break\\_by=cause&indicator=us-dollars-surplus&sector=residential&view=detail&year=2023](https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=us-dollars-surplus&sector=residential&view=detail&year=2023) (displaying surplus food generated in the residential sector across all states in 2023 by the dollar amount) (last updated Feb. 24, 2025); 1.45 million tons displayed on the website is equivalent to 2.9 billion pounds of food wasted. *Food Waste Monitor*, REFED INSIGHTS ENGINE, [https://insights-engine.refed.org/food-waste-monitor?break\\_by=cause&indicator=tons-surplus&sector=residential&view=detail&year=2023](https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=tons-surplus&sector=residential&view=detail&year=2023) (displaying surplus food generated in the residential sector across all states in 2023 by cause of waste) (last updated Feb. 24, 2025).

food waste from going to landfill every year,<sup>45</sup> saving the equivalent of 708 million meals through standardization alone.<sup>46</sup>

## 2. Standardization Aligns with Global Norms and Best Practices

Federal standardization also would align domestic date labeling in the US more closely with global practices. Over the past five years, FLPC has led a global comparative law effort to analyze policies on food loss and waste and food donation across more than 26 countries and the EU.<sup>47</sup> Through our work on this project, we have found that the US is the only country thus studied that does not regulate date labels through a nationally standardized law or policy.<sup>48</sup> Looking first at our closest neighbors, Mexico established a dual-labeling system through a national law,<sup>49</sup> and Canada requires the application of a safety-related “expiration” date label on five categories of food and requires quality-related dates on other perishable foods.<sup>50</sup> Similarly, the European Union date labeling scheme distinguishes between safety-based and quality-based date labels: it requires manufacturers to affix a safety-based date, expressed as “use by,” only for foods that are considered “highly perishable” and no longer safe to consume after the date; for all other foods, manufacturers are required to affix a quality-based, “best before” date, after which food may still be perfectly safe to consume and donate.<sup>51</sup> Australia also has a strong date labeling policy: it has implemented a dual date labeling scheme on most food items (except for bread), expressed as the safety-based “Use By” only for food that could create health risks past the date and the quality-based “Best Before” for all other foods.<sup>52</sup> In South America, Colombia set forth Resolutions in 2004 and 2005 that introduce two date labels from which manufacturers may choose, a quality-based “minimum duration date” (“*fecha de duración mínima*”) and a safety-based “deadline for use” (“*fecha límite de utilización*”).<sup>53</sup>

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<sup>45</sup> *Solutions Database: Standardized Date Labels*, REFED INSIGHTS ENGINE, <https://insights-engine.refed.org/solution-database/standardized-date-labels> (last updated Feb. 24, 2025).

<sup>46</sup> The conversion from tons of food to meals recovered was calculated using ReFED’s estimation calculator. *Meals Recovered*, REFED INSIGHTS ENGINE DOCUMENTATION, [https://docs.refed.org/methodologies/impact\\_calculator/meals\\_recovered.html](https://docs.refed.org/methodologies/impact_calculator/meals_recovered.html).

<sup>47</sup> *The Global Food Donation Policy Atlas*, HARVARD L. SCH. FOOD L. & POL’Y CLINIC & THE GLOB. FOODBANKING NETWORK, <https://atlas.foodbanking.org/>.

<sup>48</sup> HARVARD L. SCH. FOOD L. & POL’Y CLINIC & THE GLOB. FOODBANKING NETWORK, PROMOTING FOOD DONATION: DATE LABELING LAW AND POLICY 4-5 (2021), <https://atlas.foodbanking.org/wp-content/uploads/2023/11/atlas-date-labeling-issue-brief.pdf> [hereinafter ATLAS DATE LABELING ISSUE BRIEF].

<sup>49</sup> HARVARD L. SCH. FOOD L. & POL’Y CLINIC & THE GLOB. FOODBANKING NETWORK, MEXICO LEGAL GUIDE: FOOD DONATION LAW AND POLICY 7 (2020), <https://atlas.foodbanking.org/wp-content/uploads/2023/11/Mexico-Legal-Guide.pdf>.

<sup>50</sup> HARVARD L. SCH. FOOD L. & POL’Y CLINIC & THE GLOB. FOODBANKING NETWORK, CANADA LEGAL GUIDE: FOOD DONATION LAW AND POLICY 7-8 (2020), <https://atlas.foodbanking.org/wp-content/uploads/2023/11/Canada-Legal-Guide.pdf>.

<sup>51</sup> ATLAS DATE LABELING ISSUE BRIEF, *supra* note 48, at 8; *see also* Alessio D’Amato et al., *True to type? EU-style date marking and the valuation of perishable food*, FOOD POLICY, Jan. 2023, at 1 (available at: <https://doi.org/10.1016/j.foodpol.2022.102381>).

<sup>52</sup> HARVARD L. SCH. FOOD L. & POL’Y CLINIC & THE GLOB. FOODBANKING NETWORK, AUSTRALIA LEGAL GUIDE: FOOD DONATION LAW AND POLICY 9 (2022), <https://atlas.foodbanking.org/wp-content/uploads/2023/11/Australia-Legal-Guide-6.22.22.pdf>.

<sup>53</sup> HARVARD L. SCH. FOOD L. & POL’Y CLINIC & THE GLOB. FOODBANKING NETWORK, COLOMBIA LEGAL GUIDE: FOOD DONATION LAW AND POLICY 7-8 (2021), <https://atlas.foodbanking.org/wp-content/uploads/2023/11/Colombia-Legal-Guide.pdf>.

In addition to country-specific practices, the global food safety community and global trade community have similarly encouraged the use of standard date labels. For example, the *Codex Alimentarius*, voluntary food safety and labeling guidelines developed by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO), recommend that countries enact a dual labeling scheme that distinguishes between dates used to indicate safety and those used to indicate peak quality.<sup>54</sup> And, in 2017, the Consumer Goods Forum (CGF) Board of Directors—including the chief executive officers of Tesco, Kellogg’s, Walmart, Campbell’s, and Nestlé—partnered with Champions 12.3 to issue a Call to Action to simplify date labels through establishing a dual-date labeling system and providing consumer education.<sup>55</sup> While this was a step in the right direction, voluntary initiatives like this one (similar to the voluntary Product Code Dating Initiative, mentioned above) lack any enforcement mechanisms and are therefore limited in their ability to stop widespread inconsistency.<sup>56</sup> The date label standardization measures we suggest USDA and FDA adopt closely follow these voluntary labeling schemes and global norms, but establish them as national law, preempting individual states from creating other unreasonable labeling requirements or restrictions.<sup>57</sup> Through federal standardization, the United States could establish a simple, consistent, and comprehensive system that is supported by industry leaders, international organizations, and consumer groups.

However, just establishing a national date label law does not go far enough, as our global comparative research shows that even countries with established date labeling laws are still missing important pieces within their policies.<sup>58</sup> For example, Canada’s current policies create a system of *both* mandatory *and* voluntary date labels, which still leads to inconsistencies;<sup>59</sup> and while Mexico has established a dual-labeling system, it has not committed to any consumer education efforts, which has maintained some confusion among stakeholders in the country.<sup>60</sup>

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<sup>54</sup> The *Codex* states that for prepackaged foods going to consumers, the “Use-by Date” (or “Expiration Date”) shall be declared when a food must be consumed before a certain date to ensure its safety, and the “Best[-Quality] Before Date” shall be declared when the “Use-by Date” is not required. JOINT FAO/WHO CODEX COMMISSION, GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS CXS 1-1985 2 & 4.7.1 (revised 2024), [https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS\\_001e.pdf](https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf).

<sup>55</sup> CHAMPIONS 12.3 & CONSUMER GOODS FORUM, CALL TO ACTION TO STANDARDIZE FOOD DATE LABELS WORLDWIDE BY 2020 (2017), <https://champions123.org/sites/default/files/2020-09/champions-123-call-to-action-to-standardize-food-date-labels-worldwide-by-2020.pdf>. The call to action states that the “exact wording [of the date labels] will be tailored to [a] regional context and what is most understandable for the consumer.” *Companies Commit to Simplify Food Date Labels Worldwide by 2020*, THE CONSUMER GOODS FORUM (Sep. 20, 2017), [https://www.theconsumergoodsforum.com/press\\_releases/companies-commit-to-simplify-food-date-labels-worldwide-by-2020-reducing-food-waste/](https://www.theconsumergoodsforum.com/press_releases/companies-commit-to-simplify-food-date-labels-worldwide-by-2020-reducing-food-waste/); see also *RELEASE: Companies Commit to Simplify Food Date Labels Worldwide by 2020*, CHAMPIONS 12.3 (Sept. 20, 2017), <https://champions123.org/release-companies-commit-simplify-food-date-labels-worldwide-2020-reducing-food-waste>.

<sup>56</sup> ATLAS DATE LABELING ISSUE BRIEF, *supra* note 48, at 5.

<sup>57</sup> See THE CASE FOR FEDERAL REGULATION, *supra* note 28, at 2.

<sup>58</sup> ATLAS DATE LABELING ISSUE BRIEF, *supra* note 48, at 4-5.

<sup>59</sup> HARVARD L. SCH. FOOD L. & POL’Y CLINIC & THE GLOB. FOODBANKING NETWORK, CANADA FOOD DONATION LAW AND POLICY RECOMMENDATIONS 5 (June 2020), <https://atlas.foodbanking.org/wp-content/uploads/2023/11/Canada-Recommendations.pdf>.

<sup>60</sup> HARVARD L. SCH. FOOD L. & POL’Y CLINIC & THE GLOB. FOODBANKING NETWORK, MEXICO FOOD DONATION LAW AND POLICY RECOMMENDATIONS 7 (June 2020), <https://www.foodbanking.org/wp-content/uploads/2023/01/Mexico-Recommendations.pdf>.

Policies like these are good starts, but are not comprehensive enough to avoid the issues that lead to large amounts of unnecessary food waste.<sup>61</sup> A robust date label policy would ensure all three of the following provisions are established as law: first, date labels should be standardized to a dual date labeling scheme, clearly differentiating between a quality-based and a safety-based label; next, date labeling policies or laws should expressly permit the sale and donation of food past the quality date and should make clear to consumers that they can safely consume food past the quality date; and finally, governments should provide education and awareness campaigns in partnership with the private sector to maximize the effectiveness of the date labeling scheme.<sup>62</sup>

The necessity for consumer education in date labeling policy change cannot be understated. ReFED calculates that date label standardization alone would create a \$1.8 billion financial benefit, mostly for consumers;<sup>63</sup> consumer education, on the other hand, has the potential to provide a further \$9 billion benefit to consumers.<sup>64</sup> To ensure that date label standardization reduces industry and consumer food waste, the federal government should also engage in comprehensive consumer and industry education. A preeminent example of this kind of campaign abroad is in the UK, where close to 20% of avoidable household food waste was once due to date label confusion.<sup>65</sup> The UK-based NGO Waste and Resources Action Programme (WRAP) worked in partnership with the UK government to deploy quite a few strategies to help tackle the country’s high level of household and consumer food waste.<sup>66</sup> These strategies have included their nation-wide “Love Food, Hate Waste” campaign, which encourages consumers to consume food products past the quality date.<sup>67</sup> WRAP has also collaborated with the national government to publish date labelling guidance that clarifies the meanings of date labels and how food products can be handled past their labeled date.<sup>68</sup> WRAP’s strategies have helped reduce household food waste by 11% in just three years.<sup>69</sup>

Another influential education campaign was the UK-based “Look, Smell, Taste, Don’t Waste” campaign launched by Too Good To Go, a food waste technology company, in partnership with 25 other food companies.<sup>70</sup> The campaign saw brands switching products from “Use By” to “Best Before” labels where appropriate, as well as giving on-pack reminders to

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<sup>61</sup> ATLAS DATE LABELING ISSUE BRIEF, *supra* note 48, at 5.

<sup>62</sup> *Id.* at 7-11.

<sup>63</sup> *Solutions Database: Standardized Date Labels*, REFED INSIGHTS ENGINE, <https://insights-engine.refed.org/solution-database/standardized-date-labels> (last updated Feb. 24, 2025).

<sup>64</sup> *Solutions Database: Consumer Behavior Change Campaigns*, REFED INSIGHTS ENGINE <https://insights-engine.refed.org/solution-database/consumer-behavior-change-campaigns> (last updated Feb. 24, 2025).

<sup>65</sup> WRAP, HOUSEHOLD FOOD AND DRINK WASTE IN THE UNITED KINGDOM 2021/22 24 (2023), [WRAP-Household-Food-and-Drink-Waste-in-the-United-Kingdom-2021-22-v6.1.pdf](https://www.wrap.org.uk/assets/downloads/doc_attachments/WRAP-Household-Food-and-Drink-Waste-in-the-United-Kingdom-2021-22-v6.1.pdf).

<sup>66</sup> HARVARD L. SCH. FOOD L. & POL’Y CLINIC & THE GLOB. FOODBANKING NETWORK, UNITED KINGDOM LEGAL GUIDE: FOOD DONATION LAW AND POLICY 9 (2021), <https://atlas.foodbanking.org/wp-content/uploads/2023/11/UK-Legal-Guide-v2-1.pdf>; See WRAP, <https://www.wrap.org/>.

<sup>67</sup> LOVE FOOD, HATE WASTE, <https://lovefoodhatewaste.com>.

<sup>68</sup> WRAP, FOOD STANDARDS AGENCY & THE DEP’T FOR ENV’T, FOOD, & RURAL AFFS., REDISTRIBUTION LABELLING GUIDE (2020), <https://www.wrap.org/sites/default/files/2020-07/WRAP-surplus-food-redistribution-labelling-guide-May-2020.pdf>.

<sup>69</sup> Yvette Cabrera, *The UK Is Winning on Food Waste. Are We?*, NAT. RES. DEF. COUNCIL (Jul. 30, 2020), <https://www.nrdc.org/bio/yvette-cabrera/uk-winning-food-waste-are-we>; see WRAP, COURTAULD COMMITMENT 2025 MILESTONE PROGRESS REPORT 8-21 (2020), <https://www.wrap.org/sites/default/files/2020-08/Courtauld-Commitment-2025-Milestone-Progress-Report.pdf>.

<sup>70</sup> *Too Good To Go tackles Best Before food waste in partnership with nation’s favourite brands*, TOO GOOD TO GO (Jan. 25, 2021), <https://www.toogoodtogo.com/press/look-smell-taste>.

consumers to use their senses to decide whether to eat food past its Best Before date.<sup>71</sup> The on-pack reminder established by Too Good To Go for this campaign has been used widely and tested for its efficacy in research studies.<sup>72</sup> An industry and consumer education program in the U.S. focused on date labels can utilize similar strategies, such as publishing more targeted date label guidance, partnering with industry at all levels, and providing clear education to consumers. Successful consumer education campaigns on food waste prevention strategies such as better understanding of food date labels have the potential to provide consumers with a net financial benefit of \$9 billion per year.<sup>73</sup>

### 3. Pathways to Standardization

In pursuit of these numerous potential benefits for consumers, industry, and the country as a whole, FLPC fully supports federal date label standardization. **For more than a decade, FLPC has led the charge to elucidate the connection between date labels and food waste and has worked with partners on a variety of strategies to highlight the need for federal standardization, including publishing comprehensive reports,<sup>74</sup> conducting representative national surveys,<sup>75</sup> authoring issue briefs,<sup>76</sup> and even releasing an award-winning film on the subject.<sup>77</sup>** Through our work supporting numerous clients and partners around the country, and through our leadership in the [Zero Food Waste Coalition](#), we have consistently found broad support in our advocacy for food date label standardization. Not only does this indicate the ubiquity of the problem that date labels pose across the food system, but it also proves that standardizing date labels at the federal level would provide better outcomes to stakeholders at every level of the food system.

One path toward date label standardization is through Congress, and FLPC has supported new and innovative date label legislation by providing education and technical assistance to Congressional offices working on this issue.<sup>78</sup> One bill that we have enthusiastically supported each time it has been reintroduced is the Food Date Labeling Act (FDLA).<sup>79</sup> The most recent

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<sup>71</sup> *Id.*

<sup>72</sup> Most recently, the icons were tested in our published 2025 consumer date label survey. 2025 NATIONAL DATE LABEL SURVEY, *supra* note 16, at 4 (testing the traditional “best if used by” label in comparison with the same label phrase accompanied by the LOOK, SMELL, TASTE icon).

<sup>73</sup> *Solutions Database: Consumer Behavior Change Campaigns*, REFED INSIGHTS ENGINE <https://insights-engine.refed.org/solution-database/consumer-behavior-change-campaigns> (last updated Feb. 24, 2025).

<sup>74</sup> *See, e.g.*, THE DATING GAME, *supra* note 28.

<sup>75</sup> *See, e.g.*, 2025 NATIONAL DATE LABEL SURVEY, *supra* note 16; *see also* Roni Neff et al., *Misunderstood food date labels and reported food discards: A survey of U.S. consumer attitudes and behaviors*, 86 WASTE MGMT. 123 (2019).

<sup>76</sup> *See for example* THE CASE FOR FEDERAL REGULATION, *supra* note 28, for our domestic date labeling legal research and *see* ATLAS DATE LABELING ISSUE BRIEF, *supra* note 48, for our international research.

<sup>77</sup> Harvard. L. Sch. Food L. & Pol’y Clinic, *Expired? Date Labels and Food Waste in America*, NOT REALLY EXPIRED, <https://notreallyexpired.com>.

<sup>78</sup> *See, e.g.*, *Representatives Pingree and Newhouse Introduce Legislation to Standardize Food Date Labels*, HARVARD LAW SCHOOL (Aug. 6, 2019), <https://hls.harvard.edu/clinic-stories/legal-policy-work/representatives-pingree-and-newhouse-introduce-legislation-to-standardize-food-date-labels/>.

<sup>79</sup> *See* Food Date Labeling Act of 2023, S. 1484, 118th Cong. (2023); Food Date Labeling Act of 2023, H.R. 3159, 118th Cong. (2023); Food Date Labeling Act of 2021, S. 3324, 117th Cong. (2021); Food Date Labeling Act of 2021, H.R. 6167, 117th Cong. (2021); Food Date Labeling Act of 2019, S. 2337, 116th Cong. (2019); Food Date Labeling Act of 2019, H.R. 3981, 116th Cong. (2019); Food Date Labeling Act of 2016, S. 2947, 114th Cong. (2016); Food Date Labeling Act of 2016, H.R. 5298, 114th Cong. (2016).

iteration of the FDLA proposed that if businesses choose to apply a date label, the label must use one of two standard phrases: the uniform quality date label phrase “BEST If Used By” or the uniform discard date label phrase “USE by.”<sup>80</sup> The FDLA would also prohibit states from restricting sale or donation of food after the passing of the quality-based “BEST If Used By” date, and would preempt conflicting state date labeling requirements. This approach to standardizing date labels has proven popular with FLPC’s partners across industry, food recovery organizations, NGOs, local and state governments, and across ZFWC’s membership, many of whom voiced this support in a recent sign-on letter.<sup>81</sup>

The other route to date label standardization is through agency action, and we believe this RFI could be a great first step for FDA and USDA to collaborate to standardize date labels under their existing authority.<sup>82</sup> Under the Food, Drug and Cosmetic Act, the FDA has the statutory authority to regulate misbranded foods and misleading labels.<sup>83</sup> Under this provision, food “shall be deemed to be misbranded...if its labeling is false or misleading in any particular.”<sup>84</sup> USDA has complementary statutory authority to promulgate regulations and to ensure no food products are misbranded, false, or misleading.<sup>85</sup> A product under USDA could be deemed misbranded if its labeling “is false or misleading in any particular.”<sup>86</sup> Also, USDA requires FSIS to approve labeling of meat and poultry products to ensure the labels do not put consumers at risk.<sup>87</sup> Since the two agencies have jurisdiction over different food products—USDA has authority to regulate meat, poultry, and some egg products, while FDA has authority to regulate safety and labeling for all other food products—both agencies would need to collaborate to take action on food date labeling, as they have done in the past.<sup>88</sup>

There is a plethora of research, data, and evidence that clearly illustrate how consumers are constantly confused and misled by food date labels into tossing food too early, unsafely eating past-date time-sensitive foods, not donating safe, healthy, edible foods, and wasting their time, effort, and money procuring food that unnecessarily goes to waste (see our response to Questions #8, #12, and #13 below). To protect consumers from the harms caused by misleading date labels, FDA and USDA should utilize their existing authority to take action. They can find that food date labels, as they function in the market now, are false and misleading, because they currently do not provide consumers with truthful information about either the quality or the safety of food products, they continue to confuse consumers (as our evidence described below shows, consumers are in fact confused by the meaning of the labels and whether they are

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<sup>80</sup> Food Date Labeling Act of 2023, S. 1484, 118th Cong. (2023); Food Date Labeling Act of 2023, H.R. 3159, 118th Cong. (2023).

<sup>81</sup> *FDLA Sign-On Letter*, ZERO FOOD WASTE COALITION (Feb. 13, 2024),

<https://cdn.sanity.io/files/34qvzoil/production/a2e6d10f036757cb319ff4ad9652ff1cc698317c.pdf>.

<sup>82</sup> 21 U.S.C. § 331(b); A label may be deemed misleading under the FD&CA not only if its language makes misleading representations, but also if the label fails to reveal important information to the consumer. *Id.* § 321(n); *id.* § 463(a); *id.* § 607(c); *id.* at part (e); *id.* § 1043.

<sup>83</sup> *Id.* § 331(b).

<sup>84</sup> *Id.* § 331(b)(1).

<sup>85</sup> *Id.* § 463(a); *id.* § 607(c); *id.* § 1043. Under the Perishable Agricultural Commodities Act of 1930, USDA may also promulgate regulations. 7 U.S.C. § 499(o).

<sup>86</sup> 21 U.S.C. § 453(h)(1) (regulating poultry products); *id.* § 607(e) (regulating meat products); similar language is used for egg products, which may not have “labeling or [a] container...if it is false or misleading...” *Id.* § 1036(b).

<sup>87</sup> 9 C.F.R. § 317.4 (2024).

<sup>88</sup> For an example of when USDA and FDA have collaborated to ensure that expiration dates on egg products were not misleading to consumers, see *Salmonella Enteritidis in Eggs*, 63 Fed. Reg. 27502, 27507 (May 19, 1998).

federally-regulated), *and* they influence consumers to make decisions based upon the imprecise information displayed. Without any additional action on the part of Congress, FDA and USDA could collaborate to establish a standardized federal date labeling system that encompasses all food products in the U.S. By doing so, they would be fulfilling their duties to protect consumers from misbranded food products while also improving the landscape for companies to have more clear and consistent date label standards to follow nationally.

## **II: Responses to Select USDA-FDA RFI Questions**

In this section, we provide our responses to select questions posed by USDA-FSIS and FDA in this joint Request for Information. We have gathered below relevant research to provide specific data points on the impacts of non-standardized date labels on consumers, businesses, and food recovery organizations. Our responses highlight the fact that the simple act of standardizing date labels and investing in consumer education can significantly reduce food waste in the U.S. and ease financial burdens for stakeholders all across the food system.

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

Except for infant formula, which is federally mandated to have date labels<sup>89</sup> and falls outside the scope of this RFI, there are no federal mandates for date labels on other food products. According to federal law, the use of date labels on food items is optional.<sup>90</sup> However, where voluntary date labels are applied, the USDA sets specific requirements. For instance, according to FSIS guidelines, date labels on meat, poultry, and egg products must include the month and day of the month, and for shelf-stable and frozen items, the year must also be shown. Additionally, a phrase explaining the date's significance, such as “Best if Used By,” must be placed adjacent to the date.<sup>91</sup> Furthermore, products under FSIS oversight must not carry misleading or false date labels.<sup>92</sup> The FDA and USDA both recommend using the term “Best if used by” to indicate a product's quality or freshness.<sup>93</sup> Federal guidance also encourages states to require date labels on certain food products, like those in reduced oxygen packaging, following the FDA Food Code’s model language.<sup>94</sup> However, this guidance does not mandate or suggest any specific date label term.

While federal law has almost no date labeling requirements, many states do have date labeling requirements on very specific food products. Because nearly every state has adopted some version of the FDA Food Code, many states require date labels on food products like molluscan shellfish and reduced-oxygen packaged foods; however, since the Food Code itself is not encoded in any federal law, states may adopt only some portions of it, or may not have updated their Food Code adoption to the most recent version. Along with these Food Code

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<sup>89</sup> Infant Formula Act of 1980, 21 U.S.C. § 350a; 21 C.F.R. § 107.20 (2024).

<sup>90</sup> While the U.S. Department of Agriculture (USDA) does not require quality or food safety date labels for products under its purview, it does require a “pack date” for poultry products and thermally processed, commercially sterile products to help identify product lots and facilitate trace-back activities in the event of an outbreak of foodborne illness. 9 C.F.R. § 431.2(e) (2024).

<sup>91</sup> *Id.* § 317.8(b)(32) (2024); *id.* § 590.411 (2024).

<sup>92</sup> *Id.* § 317.8 (2024); *id.* § 381.129 (2024).

<sup>93</sup> FOOD SAFETY & INSPECTION SERV., *supra* note 18; FRANK YIANNAS, *supra* note 25.

<sup>94</sup> 2022 FOOD CODE, *supra* note 40, at 140.

adoptions, which already vary state by state, there are a number of other differences among even neighboring states' labeling requirements.<sup>95</sup> For example, while New York does not require date labels on any dairy products (or any other food products, except the very limited number of foods recommended under the FDA's Food Code provisions), its neighboring states Pennsylvania, New Jersey, and Connecticut all have their own unique dairy product date label requirements.<sup>96</sup> Meanwhile, nearby Massachusetts also has no date label requirement on dairy products but does require date labels on pre-packaged perishable foods and restricts sale of food past the labeled date.<sup>97</sup> With these different requirements at the state level, the current patchwork of state laws is difficult to navigate for food manufacturers and retailers.

Date labels can become even more complex at the local level, as counties and cities have the authority to enact ordinances with specific date labeling mandates, as referenced in the FDA model Food Code. For instance, while the state of Maryland does not prohibit the sale of perishable foods past their expiration dates, the city of Baltimore established such a restriction.<sup>98</sup> Consequently, food manufacturers or retailers often apply date labels to better comply with varying state or local requirements. However, these **differing mandates and the language used to describe them create a jurisdiction-by-jurisdiction patchwork of laws that are challenging for food manufacturers and retailers to navigate.**

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.

There is a range of date label phrases currently found on US products, including “Best By,” “Sell By,” “Expires On,” “Enjoy By,” “Use By,” “Freshest By,” or sometimes just a date without any accompanying phrase, and manufacturers consider several criteria in deciding which of these phrases to use. One factor to consider is guidance from industry and the federal government. As mentioned above, both industry trade groups and federal agencies recommend the use of specific phrases to increase clarity.<sup>99</sup>

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<sup>95</sup> THE DATING GAME, *supra* note 28; *Date Labeling*, REFED U.S. FOOD WASTE POLICY FINDER, <https://policyfinder.refed.org/?category=prevention&key=date-labeling> (displaying ‘Date Labeling’ policies by state) (last updated Oct. 29, 2024).

<sup>96</sup> 3 PA. CONS. STAT. § 5743 (2024); N.J. REV. STAT. § 24:10-57.23 (2024); CONN. GEN. STAT. ANN. § 22-197B (2024); *see also Date Labeling*, REFED U.S. FOOD WASTE POLICY FINDER, <https://policyfinder.refed.org/?category=prevention&key=date-labeling> (displaying ‘Date Labeling’ policies by state) (last updated Oct. 29, 2024).

<sup>97</sup> 105 MASS. CODE REGS. 500.006 (2024); *see also Massachusetts Food Waste Policy: Date Labeling Regulations*, REFED U.S. FOOD WASTE POLICY FINDER, <https://policyfinder.refed.org/massachusetts/#date-labeling> (last updated Oct. 29, 2024) (displaying date label requirements and date label-based sale and donation restrictions in the state).

<sup>98</sup> BALTIMORE, MD., HEALTH CODE § 6-505.1 (2024) (available at: [https://legislative.reference.baltimorecity.gov/sites/default/files/Art%20000%20-%20Health%20\(rev%2023DEC24\).pdf](https://legislative.reference.baltimorecity.gov/sites/default/files/Art%20000%20-%20Health%20(rev%2023DEC24).pdf))

<sup>99</sup> *See* FOOD MKTG. INST. & GROCERY MFRS. ASS’N, *supra* note 30, for industry guidance; *see* FOOD SAFETY & INSPECTION SERV., *supra* note 18, and FRANK YIANNAS, *supra* note 25, for government guidance.

In states with applicable law, manufacturers must consider state and local requirements in deciding which phrases to use. For example, New Hampshire law mandates pre-wrapped sandwiches contain the label phrases “expiration date” or “sell by.”<sup>100</sup> Sometimes, state law does not require a specific phrase at all—these laws simply require a date label, or they might provide a list of allowable label phrases. In Georgia, for example, manufacturers are required to label eggs with either a packing date or an expiration date.<sup>101</sup> While the packing date is required to have “no words, numbers, or letter preceding or following” it (ex: JUN 10), the expiration date must use one of the following phrases: “Exp.,” “Sell By,” “Best Before,” “Not to be Sold After,” or any “words of similar import,” which allows manufacturers wide berth in choosing an “expiration date” phrase.<sup>102</sup>

Notably, because there are no universal, uniform requirements on date labeling, manufacturers and retailers technically have the freedom to use any phrase they want on most food products. Beyond industry and federal guidance and state and local laws, manufacturers and retailers can consider a variety of business factors in deciding which label to use, including the audience (e.g., “Sell By” is intended as inventory guidance for retail stores, not the consumer<sup>103</sup>) and how quickly a food product typically goes bad.

#### 5. What challenges or limitations do food manufacturers have when establishing or changing food date labels?

Food manufacturers must navigate a web of conflicting and complex laws and guidance when establishing or changing food date labels. For example, several states have intricate standards for certain perishable products like dairy, eggs, or even pre-wrapped sandwiches,<sup>104</sup> which manufacturers must carefully track and adhere to in order to avoid fines. These differing standards across state lines create difficult obstacles for manufacturers to maneuver around as they establish food date labels or attempt to change their labeling practices.

One example of this impediment is the fact that some state laws conflict with guidance on best practices in date labeling. As mentioned above, the Product Code Dating Initiative is inconsistent with 27 state label laws for at least one food product.<sup>105</sup> Similar guidance from the federal government also conflicts with state law. USDA FSIS and FDA both recommend that industry actors use “Best if Used By” to indicate quality, which “aims to lessen consumer confusion and reduces food waste.”<sup>106</sup> However, in states that require different label language other than “Best if Used By,” companies face obstacles in implementing informed recommendations aimed at reaching the national food waste goals set by the Presidential Administration in 2019.<sup>107</sup> That is, companies operating in applicable states can follow best practices, or they can follow the law, but they cannot follow both.

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<sup>100</sup> N.H. CODE ADMIN. R. ANN. AGR 1412.04 (2024).

<sup>101</sup> GA. COMP. R. & REGS. 40-3-1.01 (2024).

<sup>102</sup> GA. COMP. R. & REGS. 40-3-1.01 (2024).

<sup>103</sup> FOOD SAFETY & INSPECTION SERV., *supra* note 18.

<sup>104</sup> N.H. REV. STAT. ANN. § 438:26-b (2024).

<sup>105</sup> THE CASE FOR FEDERAL REGULATION, *supra* note 28, at 11-13.

<sup>106</sup> FOOD SAFETY & INSPECTION SERV., *supra* note 18; FRANK YIANNAS, *supra* note 25.

<sup>106</sup> 2022 FOOD CODE, *supra* note 40, at 140.

<sup>107</sup> See U.S. DEP’T OF AGRIC., U.S. ENV’T PROT. AGENCY & U.S. FOOD & DRUG ADMIN, *supra* note 2.

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?

Companies will not incur significant costs above those associated with any label change. Instead, a standardized label requirement should in fact *reduce* costs for manufacturers, retailers, and consumers.

The lack of a standard label in the US has burdened manufacturers with unnecessary production and compliance costs. Indeed, no two states that require date labels have the same date label laws, so companies conducting business across state lines must ensure compliance with up to 42 different date label standards.<sup>108</sup> And, these standards continue to change: several states have proposed or recently enacted legislation with label requirements that conflict with each other. For example, California’s AB 660 requires food manufacturers, processors, and retailers to only use “BEST if Used by” or “BEST if Used or Frozen by” (for quality) and “USE by” or “USE or Freeze by” (for safety) by July 1, 2026.<sup>109</sup> Conversely, Massachusetts’ Senate Bill SD.482, proposed in the current session, would require the same system as California except “expires on” instead of “USE by.”<sup>110</sup> Compliance with these differing laws would generate costs along the production process—costs that could be avoided by implementing a standardized date label at the federal level.

The lack of a standardized label requirement also generates unnecessary financial burdens for retailers. When a food product passes the date on its date label before it is sold, it is much harder for a retailer to sell it, due to consumer misconceptions on the meaning of date labels<sup>111</sup> and specific state laws that may ban such sales.<sup>112</sup> As a result, these products are often simply wasted.<sup>113</sup> A 2001 assessment estimated that \$900 million worth of inventory was unnecessarily lost from the supply chain due to date code expiration and identified a lack of standardization of date coding as one of the most important factors driving these significant supply chain losses.<sup>114</sup> As more states have joined the patchwork system of date label requirements in the past 25 years, and as consumers continue to receive little to no education on the meaning of these labels, it is likely that this leakage has held steady or even grown since. Ultimately, these costs, representing potentially billions in business waste, are often passed onto consumers in the form of increased prices.

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<sup>108</sup> THE CASE FOR FEDERAL REGULATION, *supra* note 28, at 3.

<sup>109</sup> Cal. Assemb. B. 660, 2023-2024 Leg., Reg. Sess. (Cal. 2024) (enacted).

<sup>110</sup> SD.482, 194th Gen. Ct. (Ma. 2025). A similar bill in the House proposes using “use by,” not “expires on.” HD.197, 194th Gen. Ct. (Ma. 2025).

<sup>111</sup> See 2025 NATIONAL DATE LABEL SURVEY, *supra* note 16; Neff et al., *supra* note 75; Melissa Kavanaugh & Jennifer J. Quinlan, *Consumer Knowledge and Behaviors Regarding Food Date Labels and Food Waste*, FOOD CONTROL, Sept. 2020, at 1 (available at: <https://doi.org/10.1016/j.foodcont.2020.107285>).

<sup>112</sup> See *Date Labeling*, REFED U.S. FOOD WASTE POLICY FINDER, <https://policyfinder.refed.org/?category=prevention&key=date-labeling> (displaying ‘Date Labeling’ policies by state) (last updated Oct. 29, 2024).

<sup>113</sup> THE DATING GAME, *supra* note 28, at 22.

<sup>114</sup> RAFTERY RESOURCE NETWORK, INC., EXPIRED PRODUCT PROJECT 2 (2003), <https://studylib.net/doc/18546832/expired-product-project---grocery-manufacturers-association> (not the official or original link) (developed for the Joint Industry Unsaleables Steering Committee of Grocery Manufacturers of America & Food Marketing Institute).

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?

One consideration for grocery retailers in determining that a food item is no longer sellable is state law. Generally, state labeling laws introduce restrictions on the sale of items past their date label, especially for food in reduced oxygen packaging and foods that require time and temperature control for safety, which may no longer be safe to consume once past-date.<sup>115</sup> However, many states also restrict the sale of past-date foods regardless of whether the date label is connected to safety: for example, although milk is generally safe and tasty to drink for weeks after pasteurization,<sup>116</sup> state law in Montana prevents grocers from selling milk past the twelve-day mark.<sup>117</sup> Additionally, at least five states (Colorado, Illinois, Georgia, Oregon, and Wisconsin) restrict the sale of past-date eggs based on differing criteria (e.g., the packing date, the candling date, the packagers' recommendations) that may not be connected to whether the eggs are fundamentally safe to eat.<sup>118</sup> In Massachusetts and Oregon, grocers are only allowed to sell past-date "perishable" foods (as defined by state law) if they are placed in a separate location and relabeled as such.<sup>119</sup>

Another consideration for grocers is whether a product has a label instructing removal from shelving after a certain date. Absent state law requiring such removal, it is generally up to the retailer whether to pull such items after the stated date, but perceptions from consumers and health officials may play a role in that decision. Notably, grocers could even receive citations from state and local food inspectors for having past-date food for sale, even if the sale of such food is allowed.<sup>120</sup> For this reason, consumer and industry education on the difference between quality and safety date indicators could reduce unnecessary waste.

8. What studies or data are available on consumer understanding of current date labeling on food that FSIS and FDA regulate, and why are these studies or data important for FSIS and FDA to consider? Are there data and studies that demonstrate that consumers are confused by date labels and believe the dates determine whether food is safe? Are there any available studies or data on whether and how consumers consider food date labels when grocery shopping or when deciding to discard food at the home?

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<sup>115</sup> *Date Labeling*, REFED U.S. FOOD WASTE POLICY FINDER, <https://policyfinder.refed.org/?category=prevention&key=date-labeling> (displaying 'Date Labeling' policies by state) (last updated Oct. 29, 2024); U.S. FOOD & DRUG ADMIN., ADOPTION OF THE FDA FOOD CODE BY STATE AND TERRITORIAL AGENCIES RESPONSIBLE FOR THE OVERSIGHT OF RESTAURANTS AND/OR RETAIL FOOD STORES 4 (2023), <https://www.fda.gov/media/107543/download?attachment>.

<sup>116</sup> Tibor Deák, *Food Technologies: Pasteurization*, in 3 ENCYCLOPEDIA OF FOOD SAFETY 219, 223 (Yasmine Motarjemi, Gerald Moy & Ewen Todd eds., 2014) (stating that HTST pasteurized milk is typically safe to consume for 2-3 weeks).

<sup>117</sup> MONT. ADMIN. R. 32.8.202 (2024).

<sup>118</sup> 8 COLO. CODE REGS. § 1202-10:3.0-4.0 (2024); ILL. ADMIN. CODE TIT. 8, § 65.30 (2024); GA. COMP. R. & REGS. 40-3-1.01 (2024); OR. REV. STAT. § 616.815 (2024); WIS. ADMIN. CODE ATCP § 88.34 (2024).

<sup>119</sup> 105 MASS. CODE REGS. 500.006 (2024); OR. REV. STAT. § 616.825 (2024).

<sup>120</sup> THE DATING GAME, *supra* note 28, at 22.

FSIS and FDA should consider the following studies for the reasons expressed below:

- Roni Neff et al., *Misunderstood food date labels and reported food discards: A survey of U.S. consumer attitudes and behaviors*, 86 WASTE MGMT. 123 (2019);
- RONI NEFF ET AL., CONSUMER PERCEPTIONS OF FOOD DATE LABELS: 2025 NATIONAL SURVEY (2025) – See APPENDIX A for full survey results;
- Melissa Kavanaugh & Jennifer J. Quinlan, *Consumer Knowledge and Behaviors Regarding Food Date Labels and Food Waste*, 115 FOOD CONTROL 107285 (2020); and
- Debasmita Patra et al., *Understanding and addressing food waste from confusion in date labeling using a stakeholders' survey*, 8 J. AGRIC. & FOOD RSCH. 100295 (2022).

There are multiple published studies on consumer perceptions date labeling, and they all indicate that consumers are consistently confused about the meaning of date labels and have trouble figuring out how to use the date label to decide whether or not to consume or to toss their food. Here, we will provide findings from three recent studies to underscore the similarities between their findings and to share a few unique findings from each.

In *Misunderstood food date labels and reported food discards: A survey of U.S. consumer attitudes and behaviors*, the authors surveyed a representative sample of 1,029 U.S. adults in April 2016 to better understand whether consumers knew the differences among date label phrases and to learn about how those differences in understanding impacted how they made decisions about which food to discard.<sup>121</sup> The results showed that 84% of consumers reported at least occasionally discarding food close to or past the date on its package, and one-third of consumers report they always do so.<sup>122</sup> The study found some differences in how consumers interpret different label phrases: consumers generally understood some phrases—such as “best if used by” (70%) “best by” (67%) and “freshest by” (62%)—to be quality labels; other phrases—such as “expires on” (54%) and “use by” (42%)—were more associated with safety.<sup>123</sup> “Sell by” was correctly understood by a majority of participants (81%) to not be a customer-facing label, but instead a label to recommend to a retailer when to remove a product from its shelf.<sup>124</sup> Participants were most confused by the phrase “use by”: 40% surveyed believed it was a quality label (which is consistent with past use), while 42% thought it was a safety label.<sup>125</sup> More than a third of those surveyed believed that date labels are federally regulated, while almost another third said they were unsure about that;<sup>126</sup> importantly, the survey found that respondents who believed date labels are federally regulated more frequently discarded food close to the label date than those who thought they were not federally regulated.<sup>127</sup>

We recently conducted a follow-up to our previous survey to get more current data on consumer perceptions of date labels and whether there have been any differences from 2016 to 2025. The new survey was conducted between January 10-14, 2025 included 2,069 U.S. adults,

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<sup>121</sup> Roni Neff et al., *Misunderstood food date labels and reported food discards: A survey of U.S. consumer attitudes and behaviors*, 86 WASTE MGMT. 123 (2019).

<sup>122</sup> *Id.* at 126.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 127.

<sup>127</sup> *Id.*

which is more twice as many respondents as the original survey.<sup>128</sup> The results of the 2025 survey showed that 43% of consumers also or usually discard food past the date, and 88% of respondents do so occasionally, up from 37% and 84% in 2016.<sup>129</sup> A larger portion of respondents in this survey also mistakenly thought the federal government regulates all date labels, up to 44% from the original 36%.<sup>130</sup> When asked about their knowledge of the meanings of the eight tested date labels (“Best if used by,” “Expires on,” “Use by,” “Best by,” “Sell by,” “Use by [with an icon],” “Best if used by [with an icon],” and a date with no label), an average of 87% answered that they knew the labels’ meanings, but when tested only an average of 53% of respondents were able to give the labels’ correct meaning across all labels; 39% of all respondents assumed they knew the meanings but were actually incorrect.<sup>131</sup> Across multiple analyses, young adults and households with children were found to be most often prone to date label misinformation;<sup>132</sup> Hispanic and Black respondents and respondents in the lowest income and education groups were also likelier to discard food based on the date label.<sup>133</sup> Our full survey results can be found below, in APPENDIX A.

*Consumer knowledge and behaviors regarding food date labels and food waste* publishes results of a demographically representative survey of 1,042 U.S. adults in 2019 to also show how consumers understood the meanings of common date label phrases.<sup>134</sup> This survey questioned participants about how they identified the quality of their foods, their practices to determine edibility, and then their reasons for throwing food away.<sup>135</sup> The results of this survey found that 81.6% of respondents said they often or always check food date labels, and 71.6% reported using those labels to assess the edibility of food products.<sup>136</sup> Despite their consistent use of date labels to make decisions, only 37.2% of respondents correctly identified knew the meaning of all three tested date labels.<sup>137</sup> Interestingly, respondents who understood the difference between quality date labels and safety date labels were found to waste less food.<sup>138</sup>

A fourth survey, as published in *Understanding and addressing food waste from confusion in date labeling using a stakeholders’ survey*, studied the connection between date label confusion and consumer purchasing and wasting behaviors.<sup>139</sup> This smaller survey of 123 subjects sought respondents from the food industry and comprised half its respondent pool with farmers, policy makers, retailers, scientists, and food industry stakeholders, with the other half self-identifying as consumers.<sup>140</sup> The results of this study showed that 34% of these respondents

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<sup>128</sup> 2025 NATIONAL DATE LABEL SURVEY, *supra* note 16, at 2.

<sup>129</sup> *Id.* at 3.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.* at 4.

<sup>132</sup> *Id.* at 6.

<sup>133</sup> *Id.*

<sup>134</sup> Melissa Kavanaugh & Jennifer J. Quinlan, *Consumer Knowledge and Behaviors Regarding Food Date Labels and Food Waste*, FOOD CONTROL, Sept. 2020, at 1 (available at: <https://doi.org/10.1016/j.foodcont.2020.107285>).

<sup>135</sup> *Id.* at 2.

<sup>136</sup> *Id.* at 2-3.

<sup>137</sup> *Id.* at 3.

<sup>138</sup> *Id.*

<sup>139</sup> Debasmitta Patra et al., *Understanding and addressing food waste from confusion in date labeling using a stakeholders’ survey*, J. AGRIC. & FOOD RSCH., June 2022, at 1 (available at <https://doi.org/10.1016/j.jafr.2022.100295>).

<sup>140</sup> *Id.* at 2.

thought that all the date label options provided were the same;<sup>141</sup> and even among the 66% who knew there were some differences between label phrases, their qualitative responses showed that they were still confused (e.g. “They mean nothing, really...” and “All [date labels] mislead people...”).<sup>142</sup> 75% of the respondents affirmatively stated that they are either always or sometimes confused by food date labels.<sup>143</sup> Despite this confusion around date labels, 88% of respondents stated that food date labels are a determining factor when purchasing a food product.<sup>144</sup>

The FSIS and FDA should take into account the findings from these studies for several key reasons. Firstly, these independently conducted studies, which utilized varied question types and sampled different population segments, consistently show that consumers find date label phrases confusing or meaningless. Recent studies indicate that this issue is worsening. Secondly, the research confirms that the majority of consumers do check date labels and rely on them when making purchasing decisions both in stores and at home. Thirdly, all the studies suggest that increased uniformity in date labels, combined with better education on their meanings, would reduce consumer confusion. This would help differentiate between quality and safety labels, clarifying which products are labeled for freshness or taste and which pose increased risk over time. Such improvements would also decrease food waste associated with date labels, thereby lowering household food costs. Collectively, these studies emphasize the critical need for standardizing date labels.

#### 9. What data are available on the most effective ways for presenting food date labels on food items so that consumers can easily access and clearly understand the information?

Research indicates that the current approach to date labeling, which permits nearly any phrase on food products, leads to confusion and misinterpretation among consumers. This confusion is exemplified by the tendency of consumers to view date labels as interchangeable or as providing little valuable information.<sup>145</sup> However, a majority of respondents in multiple surveys understood that “Best if used by” signifies a quality date label.<sup>146</sup> Those who could differentiate between the meanings of quality and safety date labels tended to generate less food waste than those unable to make the distinction.<sup>147</sup> These findings suggest that the most effective strategy for presenting food date labels is to implement standardized labels that clearly and distinctly designate either a quality-based date or a safety/discard date.

Our recent 2025 survey described above also tested the use of icons alongside the “Best if used by” and “Use by” date labels to determine whether these visual cues would increase respondents’ understanding of those date label phrases.<sup>148</sup> Both of these date label phrases were tested with and without an accompanying icon, to compare the results. The “Best if used by” date label icon contained images of an eye, nose, and tongue, and stated “Best if used by XX/XX,

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 3.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*; Neff et al., *supra* note 121, at 126.

<sup>146</sup> 2025 NATIONAL DATE LABEL SURVEY, *supra* note 16, at 4; Neff et al., *supra* note 121, at 126.

<sup>147</sup> Kavanaugh & Quinlan, *supra* note 134, at 3.

<sup>148</sup> 2025 NATIONAL DATE LABEL SURVEY, *supra* note 16, at 4.

then simply: LOOK, SMELL, TASTE, DON'T WASTE," with each word written under its corresponding visual cue.<sup>149</sup> The "Use by" date label icon was a hand with all five fingers held up, gesturing to a viewer to stop.<sup>150</sup> No additional information or education was offered alongside these icons. Based on respondents' perceived knowledge and responses to the meanings of the date labels, only the "Use by" icon led to any improvement in understanding. 97% of respondents believed that they knew what "Best if used by" without an icon meant, while only 79% of respondents believed they knew what "Best if used by" with an icon meant, indicating a loss of confidence due to the icon itself.<sup>151</sup> Further, 83% of respondents correctly answered the meaning of "Best if used by," but only 65% answered correctly when shown the icon as well, lining up well with respondents' confidence levels.<sup>152</sup> By contrast, for the "Use by" label, 95% of respondents stated that they knew its meaning, while only 82% thought they understood "Use by" with the icon.<sup>153</sup> Despite the drop in confidence, the icon improved actual correct responses, as only 47% of respondents provided the correct meaning of "Use by" on its own, while 61% of respondents correctly responded to the meaning of "Use by" with the icon.<sup>154</sup>

The survey results reveal two significant insights. Firstly, it identifies which icons are most intuitive for consumers. The use of a widely recognized hand gesture prompted respondents to reconsider the meaning of the date label, indicating that effective visual cues need to be instantly recognizable and easy for consumers to understand. Secondly, if a visual cue is not immediately clear, it can cause consumers to question their understanding of a date label. While most respondents felt confident about the "Best if used by" label and could correctly interpret it when asked, the presence of the visual icon actually lowered both their confidence and accuracy. This result further underscores the need for consumer education about date labels alongside standardization. With education, consumers will be more familiar with date label phrases and icons, and the two unique visual cues accompanying different labels will help consumers discern the differences between quality labels and safety labels.

10. What studies exist on the factors that should be considered in a national education campaign aimed at reducing consumer confusion about date labels? Please explain your reasoning as to why a study should be considered.

FSIS and FDA should consider the following study for the reasons expressed below:

- Catherine Turvey et al., *Impact of Messaging Strategy on Consumer Understanding of Food Date Labels*, 53 J. NUTRITION EDUC. & BEHAV. 389 (2021).

Given the widespread confusion surrounding date label meanings in the U.S., a national education campaign is undoubtedly necessary to inform consumers about the labels they frequently use to make food-related decisions. However, we believe that before any resources are allocated to such a campaign, date labels must first be standardized. Once standardized labels are established, an education campaign will be essential because many individuals mistakenly

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<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 5.

<sup>154</sup> *Id.*

believe they understand date labels but do not.<sup>155</sup> Along with the results of our 2025 national survey, the study titled *Impact of Messaging Strategy on Consumer Understanding of Food Date Labels* also demonstrated that respondents were often confident yet incorrect about their comprehension of date labels.<sup>156</sup> In this survey of over 2,500 respondents, 92.1% thought they understood the meaning of “Best if Used By,” but only 46.2% correctly identified its precise meaning;<sup>157</sup> similarly, 89.4% believed they knew what “Use By” meant, but only 24.3% accurately understood its specific meaning.<sup>158</sup>

This study also explored various factors that improved respondents’ understanding of date label phrases, further highlighting the need for enhanced education and offering valuable insights for designing an effective national education campaign. First, the study underscores that such a campaign must engage its audience since many consumers assume they already know the meanings of new date label phrases and might quickly lose interest.<sup>159</sup> Second, the research showed that the method of education among the seven tactics tested did not significantly impact what each focus group learned.<sup>160</sup> This suggests that regardless of tactic, strategy, or medium, effective messages should be engaging and incorporate intuitive and appealing visuals, rather than appearing didactic.<sup>161</sup> Lastly, the study revealed that consumers most concerned with food safety often misinterpret quality date labels, assuming all date labels indicate safety.<sup>162</sup> Therefore, a successful national education campaign should guide consumers in recognizing the causes and signs of food spoilage.<sup>163</sup> This would help alleviate their concerns and build confidence in their own judgment and, eventually, improve their understanding of quality-based date labels.<sup>164</sup>

#### 11. What studies detailing the effects of date labeling on food waste should FSIS and FDA consider and why?

Along with the 4 studies cited above, FSIS and FDA should also consider the following studies:

- MITRE & GALLUP, THE STATE OF FOOD WASTE IN AMERICA (2023);
- Aishwarya Badiger et al., *When considering whether to waste food, consumers focus attention on food label dates rather than phrases*, 168 WASTE MGMT. 230 (2023).

The studies referenced in this commentary link the inconsistencies in the current date labeling system to increased food waste. As detailed earlier, several studies reveal that respondents often misinterpret date label phrases yet still dispose of food based on these labels. Specifically, the study by Kavanaugh and Quinlan highlighted a negative correlation between

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<sup>155</sup> See *id.* at 4-5.

<sup>156</sup> Catherine Turvey et al., *Impact of Messaging Strategy on Consumer Understanding of Food Date Labels*, 53 J. NUTRITION EDUC. & BEHAV. 389, 396 (2021) (available at: <https://doi.org/10.1016/j.jneb.2021.03.007>).

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 398.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

understanding date labels and food waste: **participants with a better grasp of date label meanings were less likely to discard safe, edible food.**<sup>165</sup>

A 2023 national study by MITRE Corporation and Gallup on actual food waste habits found that date labels contribute significantly to household food waste.<sup>166</sup> Their analysis of 9,000 U.S. households reported an average food waste of 6.2 cups per week,<sup>167</sup> identifying overreliance on date labels as one of the two main causes of household food waste (the other being leftover waste/spoilage).<sup>168</sup> In part, this is because households that frequently discard food that has passed its date label waste over twice as much food as those that rarely throw away past-date food.<sup>169</sup>

Finally, a recent study revealed that the printed date on food products may influence consumers' decisions to waste food more than the date label phrase itself.<sup>170</sup> In this smaller study of 68 participants, eye-tracking technology assessed which part of a date label participants focused on before deciding to discard milk.<sup>171</sup> The findings showed that participants spent more time and paid more attention to the package date, rather than the date label phrase, irrespective of what that phrase was.<sup>172</sup> The absence of standardization plays a significant role in this outcome. Participants in the study by Debasmita et al. noted that the variety in date label options and lack of federal standards cause them to perceive date labels as interchangeable, misleading, and even meaningless.<sup>173</sup> Thus, the fact that consumers in the eye-tracking study prioritized the printed date over label phrases further emphasizes the need for date label standardization and consumer education. Respondents did consider the date label phrases, but due to continuing confusion with the labels' meanings, respondents based their decision to toss the milk primarily on the printed date, which was the only clear and understandable piece of information available to them.<sup>174</sup> Standardizing date labels and enhancing consumer education would help to restore the significance and utility of food date labels; once consumers can trust date labels to consistently deliver more accurate information, they will be better equipped to make informed decisions about whether to consume or discard food.

These studies collectively indicate that date labels play a crucial role in consumers' decisions about purchasing and discarding food products. The FSIS and FDA should take these findings into account, as they clearly demonstrate how consumer confusion regarding the meaning of date labels significantly impacts decisions related to food handling. The studies also show a direct link between this lack of understanding and the volume of food that consumers waste. Implementing a standardized date label system, coupled with a strategic national education campaign, would enable consumers to distinguish between labels indicating quality

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<sup>165</sup> Kavanaugh & Quinlan, *supra* note 134, at 3.

<sup>166</sup> MITRE & GALLUP, THE STATE OF FOOD WASTE IN AMERICA 25 (2023), <https://sites.mitre.org/household-food-waste/wp-content/uploads/sites/41/2023/11/The-State-of-Food-Waste-in-America-11-14-23.pdf>.

<sup>167</sup> *Id.* at 17.

<sup>168</sup> *Id.* at 25.

<sup>169</sup> *Id.* at 15.

<sup>170</sup> Aishwarya Badiger et al., *When considering whether to waste food, consumers focus attention on food label dates rather than phrases*, 168 WASTE MGMT. 230, 233-4 (2023) (available at: <https://doi.org/10.1016/j.wasman.2023.06.006>).

<sup>171</sup> *Id.* at 231.

<sup>172</sup> *Id.* at 233-4.

<sup>173</sup> Patra et al., *supra* note 139, at 2-3.

<sup>174</sup> Badiger et al., *supra* note 170.

and those indicating safety. This, in turn, would empower them to make more informed decisions and reduce unnecessary expenditures.

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.

Firms and individuals both use food date labels to inform decisions to donate or discard food items. In particular, many state date label laws limit the ability of firms and individuals to donate food that is past-date, even if it is still safe to eat.<sup>175</sup> For example, in Kentucky, state law requires a “use by” date to indicate quality on consumer packages of milk and dairy products.<sup>176</sup> However, the “use by” date seems to be an indicator of quality, not safety.<sup>177</sup> When the “use by” date goes by, state law requires the products be shipped back to their milk plant of origin “for destruction,”<sup>178</sup> taking away any chance retailers have to donate safe milk or dairy products. A standardized date label system would reduce the influence of restrictive date label laws like this on food donations, in part by distinguishing labels related to safety from those related to quality, so that states can continue regulating the donation of unsafe food and reduce restrictions on donation of past-*quality*-date food.

Another factor influencing the donation and discard of food is confusion over the meaning of various date labels. The aforementioned survey data indicate respondents, including food industry professionals, consistently misunderstand the meaning of date labels.<sup>179</sup> The data also show that respondents nonetheless use date labels to determine a food product’s edibility and safety.<sup>180</sup> These respondents are thus also likely to toss past-date food rather than donate it, given donor concerns about potential liability risks associated with donating unsafe food, despite legal protections from such liability by the federal Bill Emerson Good Samaritan Food Donation Act<sup>181</sup> and similar state laws.<sup>182</sup> These barriers to donation are compounded by state and local food inspectors who are overly cautious and interpret local health codes and food safety laws as preventing donation of past-date foods. For example, an inspector might equate a past-date food with spoiled or unsafe food, even though date labels are not reliable indicators of safety or wholesomeness.<sup>183</sup> Moreover, confusion over date labels and concerns about donation liability is likely to cause firms to toss food approaching its end date rather than rush it to a foodbank.

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<sup>175</sup> THE CASE FOR FEDERAL REGULATION, *supra* note 28, at 7.

<sup>176</sup> 902 KY. ADMIN. REGS. 50:010 § 1(26) (2024).

<sup>177</sup> “‘Use by’ means the date on a consumer package or container of Grade A pasteurized milk or milk products subsequent to the date of manufacturing, processing or packaging that represents the period of time the product will remain unspoiled and acceptable for consumption when transported, handled and stored under approved conditions. The terms ‘Sale by’ or ‘Best if used by’ shall have the same meaning as ‘use by’.” *Id.* Here, “use by” indicates when the product is “unspoiled” and “acceptable” and it is interchangeable with “best if used by,” which all indicate that it is being applied as a quality date and not as a safety date.

<sup>178</sup> 902 KY. ADMIN. REGS. 50:080 § 4(3) (2024).

<sup>179</sup> Patra et al., *supra* note 139, at 3.

<sup>180</sup> 2025 NATIONAL DATE LABEL SURVEY, *supra* note 16, at 2-3.

<sup>181</sup> 42 U.S.C. § 1791.

<sup>182</sup> THE DATING GAME, *supra* note 28, at 22.

<sup>183</sup> *Id.*

Through direct interviews with leaders at food banks and food recovery organizations, we have also found that many of the same disorienting effects created by date labels that plague retail stores and consumers also negative impact food banks.<sup>184</sup> Experts in food recovery and food waste management observe that staff in food banks and recovery programs frequently experience widespread confusion regarding the meaning of various date labels.<sup>185</sup> As a result, food safety officers within these organizations must dedicate significant time and resources to educating volunteers and employees about the date labeling system.<sup>186</sup> These workers are then responsible for informing clients and end-users when questions or concerns arise about the products they receive.<sup>187</sup> This confusion and uncertainty could be effectively addressed with clear, standardized labels that clearly differentiate between foods that become riskier past their date and those that remain safe, albeit possibly not at their peak quality.

13. What estimates are available concerning the value of food that is discarded due to date labels, including any studies regarding the value discarded due to confusion of date labels?

According to available estimates, concerns and confusions over date labels currently lead to billions of dollars of wasted food and lost economic opportunity annually. As described earlier, industry data from 2001 estimated \$900 million in inventory loss across the supply chain was driven in part by the lack of standardized date coding;<sup>188</sup> with no federal standardization since then, plus the impacts of rising inflation, this inventory loss is likely even higher today. Additionally, ReFED estimates that date label confusion leads to \$22 billion in U.S. food waste each year,<sup>189</sup> with at least \$7.7 billion of that value lost by consumers alone.<sup>190</sup>

Date label standardization can reduce this waste. It would create a system that is, according to research, easier to understand for consumers, who are a primary driver of waste due to date label confusion. Further, a standardized system would provide more streamlined information for industry actors to adhere to, clarifying which products can be kept, sold, or donated past the date on the label. As a result, consumers will waste less food and save more money, producers and retailers can sell more of their inventories, and food banks can receive and give out more food to families in need. According to ReFED, these outcomes would generate an immediate \$1.8 billion net financial benefit;<sup>191</sup> paired with consumer education and behavior change campaigns, date label standardization could secure almost \$11 billion in net financial benefit for American industry and consumers.<sup>192</sup>

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<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> RAFTERY RESOURCE NETWORK, INC., *supra* note 114.

<sup>189</sup> *Food Waste Monitor*, REFED INSIGHTS ENGINE, [https://insights-engine.refed.org/food-waste-monitor?break\\_by=cause&indicator=us-dollars-surplus&view=detail&year=2023](https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=us-dollars-surplus&view=detail&year=2023) (displaying surplus food generated in dollars according to cause of surplus) (last updated Feb. 24, 2025).

<sup>190</sup> *Food Waste Monitor*, REFED INSIGHTS ENGINE, [https://insights-engine.refed.org/food-waste-monitor?break\\_by=cause&indicator=us-dollars-surplus&sector=residential&view=detail&year=2023](https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=us-dollars-surplus&sector=residential&view=detail&year=2023) (displaying surplus food generated in the residential sector across all states in 2023 by the dollar) (last updated Feb. 24, 2025)

<sup>191</sup> *Solutions Database: Standardized Date Labels*, REFED INSIGHTS ENGINE, <https://insights-engine.refed.org/solution-database/standardized-date-labels> (last updated Feb. 24, 2025).

<sup>192</sup> *Solutions Database: Consumer Behavior Change Campaigns*, REFED INSIGHTS ENGINE <https://insights-engine.refed.org/solution-database/consumer-behavior-change-campaigns> (last updated Feb. 24, 2025).

## **Conclusion**

The Food Law and Policy Clinic is glad to see the agencies collecting information to better understand the impacts of the current date labeling system on industry, consumers, and on food waste in the U.S. We have seen countless examples in our work with client and partners at all levels of government and all across the nation that date labels pose an ongoing, wasteful, and senseless barrier to efforts to reduce food waste. Our comparative global work also shows that the US is out of alignment with the global norms moving towards standardized date labels; aligning with standardized date labels makes sense and would support food businesses operating in an increasingly global context. In summary, standardizing date labels would greatly contribute to the agencies' and the national goal to halve food waste by 2030, while reducing confusion and cost for consumers, businesses, and nonprofits operating in this space.

Thank you for your consideration of FLPC's comment and recommendations.

Sincerely,

A handwritten signature in black ink that reads "Emily Broad Leib". The signature is written in a cursive, flowing style.

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A handwritten signature in black ink that reads "Akif Khan". The signature is written in a cursive, flowing style.

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## **APPENDIX A:**

Consumer Perceptions of Food Date Labels  
2025 National Survey Results

# Consumer Perceptions of Food Date Labels

## 2025 National Survey

### Authors

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### Background

Each year, about a third of the United States food supply goes unsold or uneaten—valued at \$382 billion annually.<sup>1</sup> Households account for \$150 billion of that,<sup>2</sup> meaning consumers are wasting billions of dollars at the same time that food prices are at a record high.<sup>3</sup> One important reason for unnecessary food waste is consumer confusion about food date labels<sup>4</sup>—the dates printed on foods, usually with prefixes such as “sell by,” “best before,” “expires on,” and “use by.” ReFED estimates that confusion about date labels leads U.S. consumers to throw away about three billion pounds of food,<sup>5</sup> worth \$7 billion, every year.<sup>6</sup>

Consumers encounter a wide array of date labels on their food. Many throw away food once the date passes, because they mistakenly think the date indicates food safety rather than quality. In fact, most food remains wholesome and safe to eat long past the printed date, which typically reflects a manufacturer’s best guess of how long the product will stay at peak quality.

Contrary to the belief of many Americans, these labels are not federally regulated (other than for infant formula<sup>7</sup>), and state-level regulations vary widely.

In 2017, the food industry initiated a voluntary Product Code Dating Initiative, under which companies use “BEST If Used By” for quality, and “USE By” for safety (reserving the latter for the few foods where time significantly affects risk, such as deli meats and soft cheeses).<sup>8</sup> This voluntary standard was meant to be implemented by 2020,<sup>9</sup> and today several major food businesses use these labels on their products. Nonetheless, consumers cannot be certain of what a date label signifies, because other date label phrases still remain ubiquitous on retail shelves.

ReFED identifies standardizing date labels as one of the most cost-effective solutions for reducing food waste. Standardizing these labels would divert at least 425,000 tons of food waste from landfills annually, equivalent to 708 million meals.<sup>10</sup>

In the last decade, leaders have taken multiple approaches to reforming date labels beyond the above-noted voluntary Product Code Dating Initiative. Some states introduced or passed legislation to create standard date labels, including California, which will require standardized labels by 2026.<sup>11</sup> Federally, members of Congress introduced the Food Date Labeling Act, which would only allow two standard date label phrases on food packaging.<sup>12</sup> Most recently, the U.S. Food & Drug Administration and U.S. Department of Agriculture posted a request for public comments about food date labels.<sup>13</sup>

In response to this growing momentum, and to assess whether levels of confusion had changed, we reissued our 2016 survey about U.S. consumer perceptions of food date labels. This year's survey was fielded online by The Harris Poll via its Harris On Demand omnibus survey from January 10–14, 2025. The survey included 2,069 U.S. adults, selected to be demographically representative. Results were weighted to further improve representativeness. Our 2016 survey included 1,029 adults and was run through the CARAVAN survey by OREC International.<sup>14</sup> Each survey firm uses its own sampling approach, and there were small wording differences for questions described here, e.g., response option "Not at all sure" in 2025 vs "I don't know" in 2016.

## Take Home Messages

1

### **In 2025, Americans discard food near or past the label date even more often than they did in 2016.**

43% always or usually discard food near or past the date on the label, up from 37% in 2016. Further, 88% do so at least occasionally, up from 84% in 2016.

2

### **Many mistakenly think the federal government regulates food date labels.**

44% think the federal government oversees the phrases used on food date labels, increased from 36% in 2016. In fact, the only food product the federal government regulates is infant formula.

3

### **Consumers think they understand date labels but often misinterpret them.**

An average of 87% believed they knew the meanings of eight different labels, yet when quizzed, only an average of 53% answered correctly, across all of the labels.

4

### **Consumers use date labels differently depending on the food item.**

Date labels should guide discard decisions for foods that increase in risk after the date, such as deli meats. However, for deli meats, 40% of consumers instead said they wait for detectable changes in appearance, odor or taste before discarding. Older generations are more likely to do so than younger ones, despite their vulnerability to foodborne illness. For other foods we tested (pasteurized milk, raw chicken, bagged or boxed lettuce, and breakfast cereal), date labels generally indicate quality, not safety. However, on average, over half (54%) make overly precautionary decisions, leading to unnecessary waste.

5

### **Date label misinformation is common among groups that may face economic vulnerabilities.**

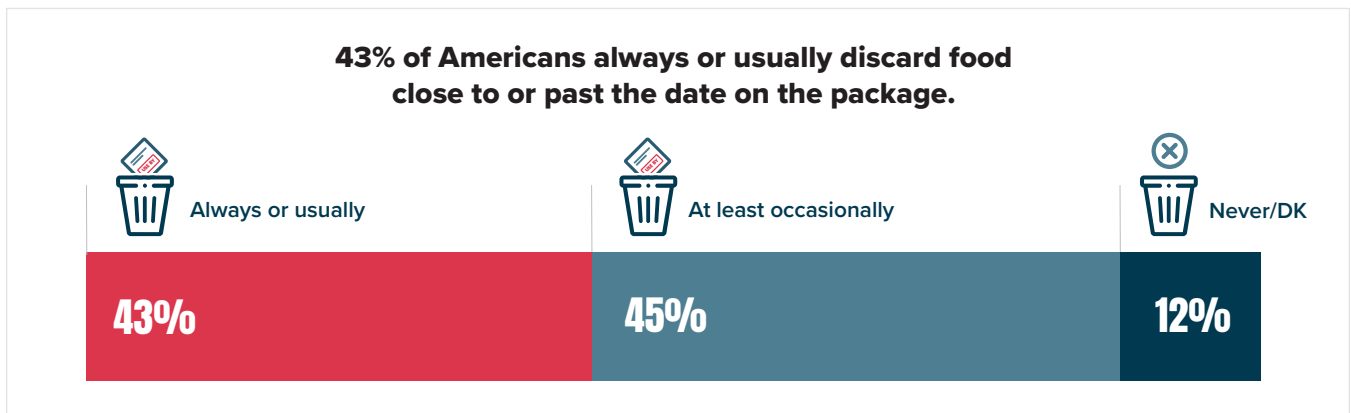
The groups most affected by date label-related confusion—including misinterpreting labels, thinking they are regulated, and discarding food unnecessarily based on dates—include young adults, parents with children under age 18, and in some cases Black and Hispanic consumers, as well as those with lower education levels.

# Detailed Findings

## 1 In 2025, Americans discard food near or past the label date even more often than they did in 2016.

In 2025, 43% of consumers reported always or usually throwing away food close to or past the package date, an increase from 37% in 2016 (using a different survey firm). Nearly 9 in 10 did so at least occasionally (88%, up from 84%) (Figure 1). Notably, Gen Z (ages 18-28) and Millennials (29-44) were more likely to always or usually discard food close to or past label dates (52% and 51%), while Baby Boomers (ages 61-79) were least likely (32%). Parents of children under 18 were also cautious; 53% always or usually discarded food based on date labels, compared to 39% of those without young children.

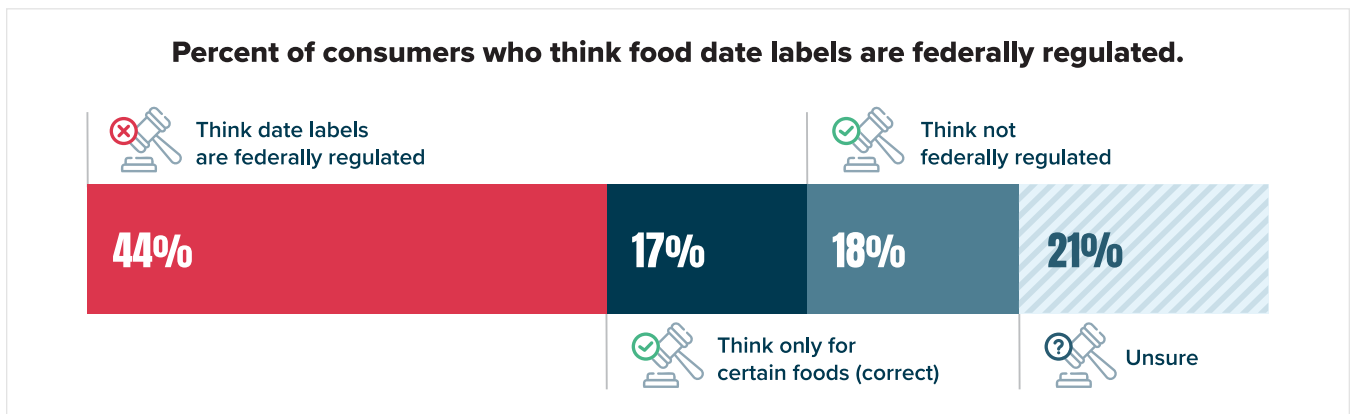
Figure 1



## 2 Many mistakenly think the federal government regulates food date labels.

In 2025, 44% of respondents incorrectly believed that phrases on food date labels are federally regulated (Figure 2), up from 36% in 2016. The percentage who were unsure declined from 26% to 21%. Only 17% gave the technically correct answer: the phrases are federally regulated only for specific foods, namely infant formula. (Note: In the absence of federal regulation, 41 states do regulate food date labels; however, most regulations only cover a single item, such as eggs. So even if respondents confused federal and state regulations, the correct response here would mostly be the same.<sup>15</sup>) The belief that food date labels are federally regulated was most common among those who are younger (18–34, 55%, vs. 40% for 35+), Black and Hispanic (52% and 59%, vs. White, 39%), and with children under 18 (50%, vs. 42% for others).

Figure 2



### 3

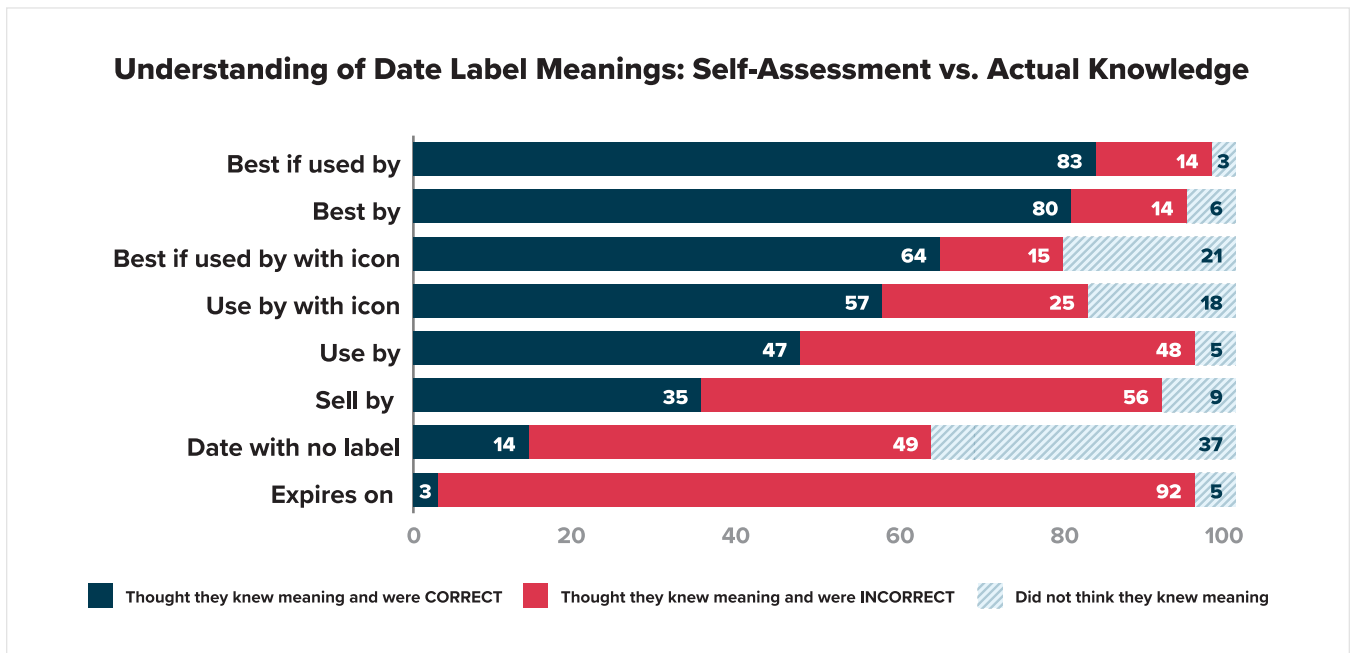
## Consumers think they understand date labels but often misinterpret them.

We examined perceptions of eight date labels, including the two recommended in the voluntary industry standard, “best if used by” and “use by,” plus versions of those two labels with icons, “best by,” “sell by,” “expires on,” and a date with no text (Figure 3). An average of 87% thought they understood these labels, however, only an average of 53% gave the correct meaning (Figure 4). Across labels, an average of two in five (39%) thought they knew the answer but responded incorrectly. Misinterpretations could lead, on one hand, to foodborne illness risk, and on the other, to discarding foods unnecessarily early.

Figure 3



Figure 4



**Note:** Answers were rated as correct if they matched the voluntary Product Code Dating Initiative labels, e.g., “best if used by” with or without icon and “best by” = quality; “use by” with or without icon = safety; all other labels = “something else.” We also accepted “something else” for “best if used by” and “use by,” since there is no mandatory standard.

### Quality Labels

Of the eight labels, consumers most often recognized “best if used by” as a quality label (79%, up from 70% in 2016), followed closely by “best by” (78%). We deemed these responses as “correct.” Since there is no mandatory standard, we also accepted “something else” as correct (6% for each of the two labels). Both labels were relatively unlikely to be misinterpreted as food safety labels (both 14%). However, misunderstanding remained: while 83% of respondents believed they knew the meaning of “best if used by” and were correct, 14% believed they knew the meaning but were incorrect.<sup>16</sup>

Adding an icon encouraging users to “look, smell, taste” to the quality date—which has been tested in other countries in hopes of increasing understanding—reduced correct understanding of “best if used by” to 65% as a quality label and reduced consumer confidence that they understood the meaning. While text-image pairings can support comprehension, they may require consumer education to be effective.

### Safety Labels

Despite its use as a safety label in the voluntary Product Code Dating Initiative, “use by” produced considerable confusion. Only 44% understood it as a safety label, while 49% incorrectly thought it was a quality indicator—which could lead to unsafe practices if the label is widely adopted without education. Additionally, 95% of consumers thought they knew the label meaning even while many were actually incorrect. Adding a “stop” hand icon to “use by” increased the perception that it was a safety label to 61%, but fewer said they understood the meaning (82%, compared to 95% without the icon). The label most frequently seen as connoting safety was “expires on” (66%), though that label has no adopted meaning under any law or the voluntary initiative, meaning those treating it as a safety label are likely wasting food.

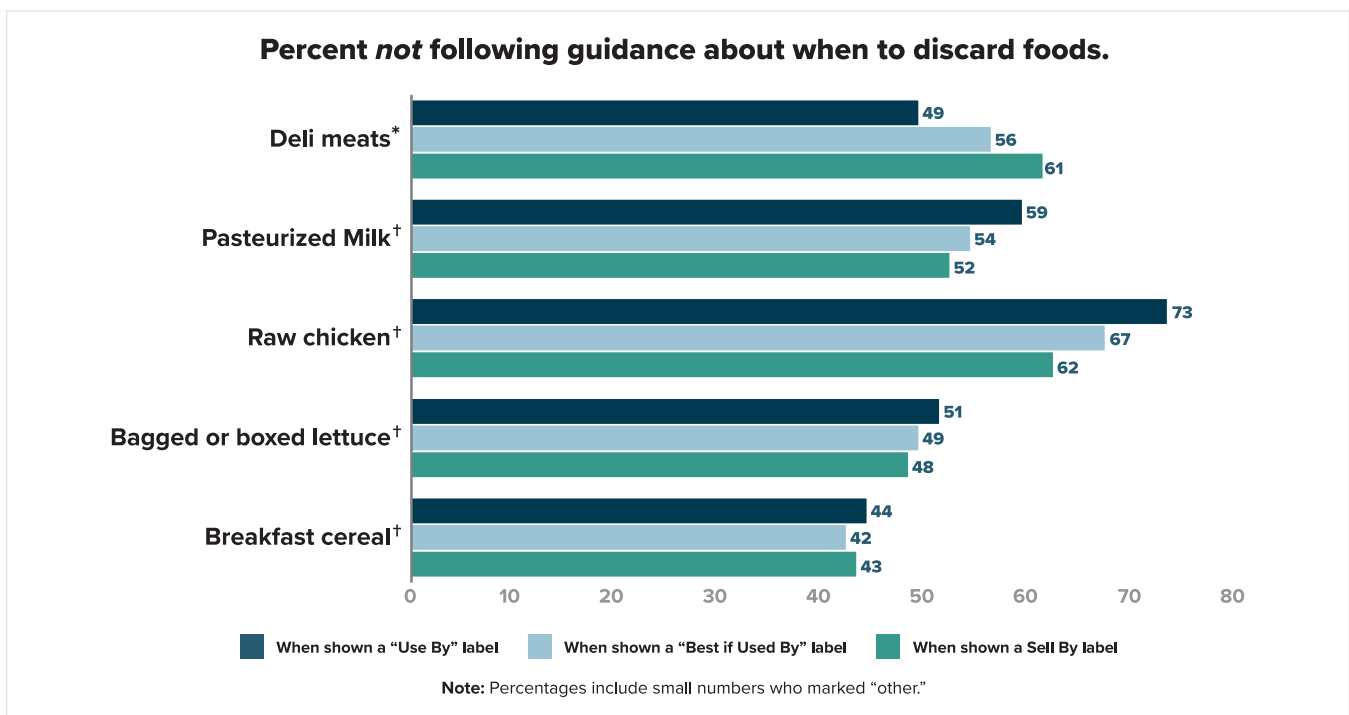
### Demographic Differences

Respondents aged 18–54 and parents of children under age 18 were more likely to describe most labels as safety indicators compared to those who were older and non-parents. While the specifics varied by label, groups often saying they did not know label meanings included young adults (18-34) versus different age groups, those in the lowest income group versus upper income tiers, those with a high school education versus others, and Hispanic respondents versus Whites.

## 4 Consumers use date labels differently depending on the food item, and misinformed choices lead to food safety risk and waste.

Consumer discard decisions vary by product type. Consumers generally take greater precautions for “use by” labels than for “best if used by” or “sell by” across different foods (Figure 5). Below, we summarize when consumers would throw out the following foods based on different date labels: deli meats, pasteurized milk, raw chicken, bagged or boxed lettuce, and breakfast cereal.

Figure 5



\*Guidance: Discard deli meat on or after the label date.

†Guidance: Discard these foods when they look, smell or taste “off.”

## When Caution is Needed

Deli meats should be discarded based strictly on the date label, for food safety reasons.<sup>17</sup> Despite the inconsistencies in label usage, the provided date is consumers' best available decision guide. However, only 65% of consumers said they would throw out deli meats before, on or just after [henceforth: based on] a "use by" label, dropping to 57% for a "best if used by" label, and 52% for "sell by." Older adults (65+) were more likely than those ages 18-54 to rely on sensory information instead of date labels, despite having greater vulnerability to foodborne illness.

## When Caution Leads to Waste

For most foods, consumers can detect signs of decay before they become unsafe. Therefore, consumers should make most discard decisions based on sensory cues that indicate spoilage (looking, smelling, or tasting when appropriate) rather than date labels. We asked consumers how they would decide when to discard four very different foods that do not require date-based discards: raw chicken (because cooking will kill harmful bacteria), pasteurized milk (because pasteurization has already killed harmful bacteria), lettuce (because foodborne illness risks in lettuce do not increase under refrigeration), and breakfast cereal (which is shelf-stable). Yet, averaging estimates across the "use by," "best if used by," and "sell by" labels, 54% would discard these four foods based on the dates (chicken: 67%, milk: 55%, lettuce: 49%, cereal: 43%), contributing to billions of pounds of unnecessary waste and financial costs for households.

- **Raw Chicken:** Of the studied foods (including deli meat), consumers took the most cautious approach to raw chicken. 58% would discard raw chicken based on presence of a "sell by" label, rising to 65% for "best if used by" and 71% for "use by."
- **Pasteurized Milk:** 49% would discard milk based on presence of a "sell by" label, 53% based on a "best if used by" date label, and 58% based on a "use by" label.
- **Bagged or Boxed Lettuce:** 45% would discard lettuce based on presence of a "sell by" label, 48% would rely on a "best if used by" date for discarding, and 50% would do so based on "use by."
- **Breakfast Cereal:** Though highly shelf-stable, 38% would discard breakfast cereal based on presence of a "sell by" date, 36% based on a "best if used by" date, and 37% based on a "use by" date.

Additionally, while no food needs to be discarded before the date on the label, 9–13% of respondents said they would do so for the five foods if they had "sell by" labels, 8–14% for "best if used by" labels, and 7–16% for "use by" labels. Groups that more often reported discarding food before the date included consumers aged 18–44 compared to the oldest age groups, those with incomes under \$50,000 compared to those with the highest incomes, those with a high school education or less compared to the most educated, Hispanic and Black respondents compared to Whites, and parents of children under 18 compared to others.

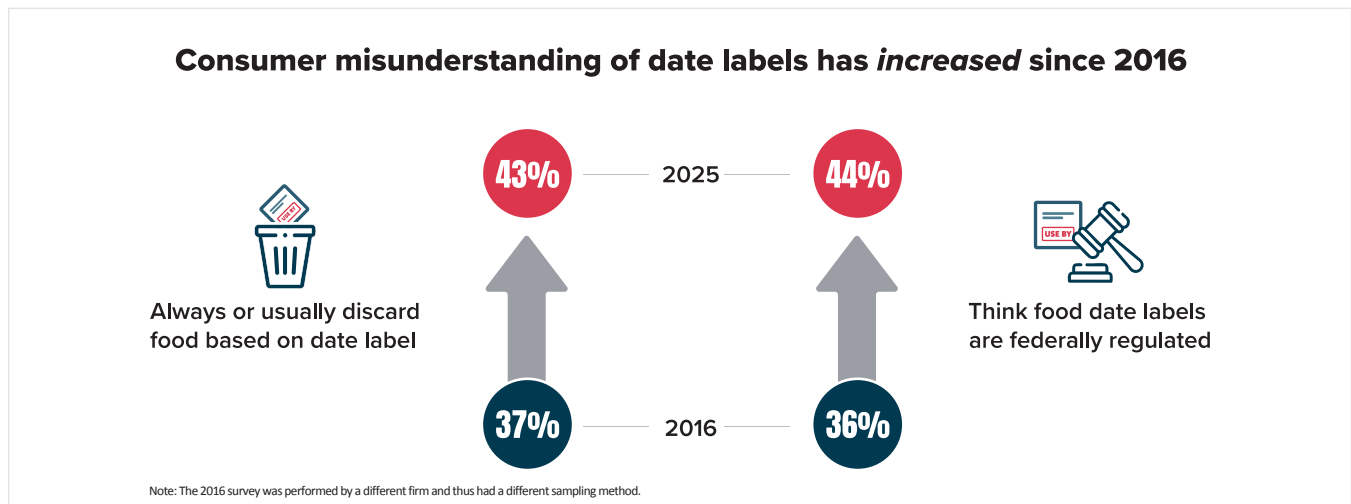
## 5

### Date label misinformation is common among groups that may face economic vulnerabilities.

Across the analyses in this survey, young adults and parents with children under 18 were more frequently found to have misinformation about food date labels and to report unnecessary label-based food discard decisions, compared to older adults and households without children. Other demographic groups that had elevated misinformation or unnecessary food discards based on date labels in some analyses include Hispanic and Black consumers compared to Whites, and those in the lowest income and education groups compared to those in some higher income and education groups.

By "generation," Gen Z and Millennials more often discard food based on date labels, think date labels are federally regulated, and view date labels as safety indicators. Baby Boomers and Gen X more often relied on sensory cues for nearly all foods compared to Gen X and Millennials, which sometimes reduced waste and sometimes increased their food safety risks.

Figure 6



## Conclusions

This national consumer survey gathered updated information about how consumers perceive food date labels, to provide accurate insights in a time of growing policy attention to this issue. The survey revealed widespread reliance on food date labels for decision-making, belief that the labels are federally regulated, and misinterpretation of what labels mean—all of which increased since our 2016 survey (which, as noted, was performed by a different firm). While some consumers feel confused, many believe they understand the meanings of food date labels. Unfortunately, nearly 40% of those who thought they knew the meanings of eight different food date labels were mistaken. We had expected that icons would improve label comprehension, however, in this survey the added “look-smell-taste” icon actually decreased comprehension compared to the “best if used by” text alone, while the added “stop” hand icon led to a small improvement in understanding over just the “use by” text. That said, these icons were unfamiliar, and no explanation was provided alongside them; further tests should explore whether accompanying education may improve the benefits.

Label misinterpretations were more common among young adults and parents with children, and in many cases also vary by socioeconomic status and race/ethnicity. As a result of label confusion, even in this time of economic pressures, U.S. households are discarding considerable amounts of food unnecessarily. Further, although most food can be donated and enjoyed well past the date on its label, belief that such food is unsafe or unpalatable can either prevent donations or create safety concerns or dignity issues for potential recipients. Meanwhile, older adults and others misconstrue labels that should deter them from eating unsafe food.

In sum, the food industry’s voluntary Product Code Dating Initiative, despite being a valuable start, apparently has not on its own improved how people use or interpret date labels. This study points to two urgent priorities: a federally regulated system of consistent food date labels people can trust, and consumer education that can break through people’s belief that they already understand the labels and teach them what the labels actually mean. This education should be tailored to the concerns and interests of different groups. Additionally, further research should explore why consumer understanding of food date labels has been moving in the wrong direction—contributing to persistently high, and even increasing, levels of food waste—though nearly a decade has passed since the U.S. set its goal of halving food waste by 2030.

## Acknowledgments

Roni Neff led survey updates, data collection, data analyses, and writing. Emily Broad Leib oversaw the project, contributed to survey updates and writing, and provided review. Akif Khan contributed to writing and provided input and review. Dana Gunders provided input and review. The 2025 survey results and related report review were provided by Joanna Allenza and Christina Lojek of The Harris Poll. Visual design and layout by Giada Creative. This project was funded by ReFED.

This survey was conducted online within the United States by The Harris Poll on behalf of Johns Hopkins School of Public Health from January 10-14, 2025, among 2,069 adults ages 18 and older. The sampling precision of Harris online polls is measured by using a Bayesian credible interval. For this study, the sample data is accurate to within +/- 2.5 percentage points using a 95% confidence level.

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- <sup>2</sup> *Id.*
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- <sup>5</sup> *Food Waste Monitor*, REFED INSIGHTS ENGINE, [https://insights-engine.refed.org/food-waste-monitor?break\\_by=cause&indicator=tons-surplus&sector=residential&view=detail&year=2023](https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=tons-surplus&sector=residential&view=detail&year=2023) (displaying surplus tons of food generated in the residential sector across all states in 2023 according to the cause of surplus).
- <sup>6</sup> *Food Waste Monitor*, REFED INSIGHTS ENGINE, [https://insights-engine.refed.org/food-waste-monitor?break\\_by=cause&indicator=us-dollars-surplus&sector=residential&view=detail&year=2023](https://insights-engine.refed.org/food-waste-monitor?break_by=cause&indicator=us-dollars-surplus&sector=residential&view=detail&year=2023) (displaying the dollar value of surplus food generated in the residential sector across all states in 2023 according to the cause of surplus).
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- <sup>15</sup> *The Dating Game*, *supra* note 4, at 12; see also *The Case for Federal Regulation*, *supra* note 4, at 3 (expanding on the findings of *The Dating Game*, *supra* note 4, to explain the necessity of federal date label standardization); *U.S. Food Waste Policy Finder*, REFED, <https://policyfinder.refed.org/?category=prevention&key=date-labeling> (displaying ‘Date Labeling’ policies by state).
- <sup>16</sup> Note: This 14% is slightly different from the above-mentioned 14% who saw “Best if used by” as a safety label. Here, we are including the portion of that 14% incorrect who thought they were correct, and also those who were unsure.
- <sup>17</sup> CTR. FOR FOOD SAFETY AND APPLIED NUTRITION & FOOD SAFETY AND INSPECT. SERV., QUANTITATIVE ASSESSMENT OF RELATIVE RISK TO PUBLIC HEALTH FROM FOODBORNE *Listeria monocytogenes* AMONG SELECTED CATEGORIES OF READY-TO-EAT FOODS (2003), <https://www.fda.gov/media/124721/download?attachment> [<https://perma.cc/8J3T-GB63>].