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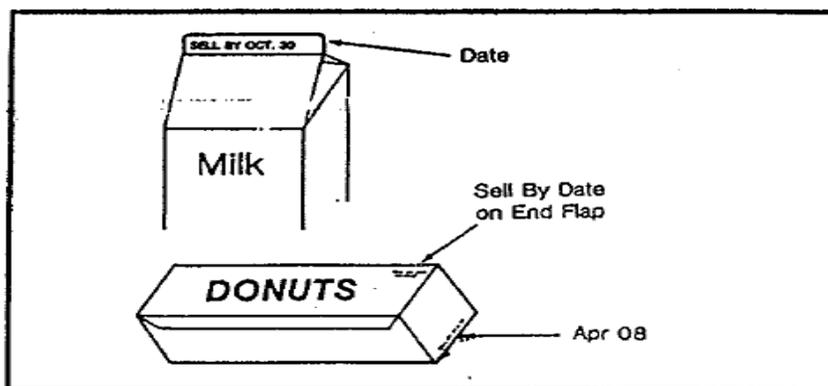
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Uniform Open Dating Regulation

West Virginia adopted mandatory open dating for perishable foods and voluntary open dating of “semi-perishable” or “long shelf-life” commodities on March 9, 1994. West Virginia Code 47-1-9.

The open date is not a date by which a package must be opened by the user to ensure its freshness and other qualities. The date reflects, usually indirectly, the date when the product may begin to lose its freshness etc., if stored and used under normal circumstances. In general the “sell-by” or “Best If Used By date” on a package indicates to the consumer or distributor when the package should be used to ensure its qualities of freshness, value and palatability.

Open-dating should be clear and informative in terms of the specific needs of both consumer and retailer. The regulation applies generally to prepackaged commodities and requires that a “Sell By” date must be displayed on perishable foods. When provided on Semi-perishable or long shelf-life foods, a “Best If Used By” date must be used. Mandatory open-dating is required only on perishable commodities but the regulation prescribes uniform labeling practices wherever open-dating is used (i.e. for semi-perishable or long shelf-life commodities when voluntarily open-dated).



Basic differences between dates designated by the terms “Sell By” and “Best If Used By” is that a “Sell By” date must include provision for a reasonable period of time (equal to at least one-third of the approximate shelf-life of the product) after the package is sold for consumption before spoilage, loss of value, or loss of palatability occurs. Thus, if a product has an approximate shelf-life of 30 days, the “Sell By” date must be at least 10 days before spoilage, loss of value, etc., is expected to begin. A “Best If Used By” date is not required to make such a provision.

The consumer may assume a product marked with a “Best If Used By” date will retain highest quality at least until that date; a product marked with a “Sell By” date should retain its qualities for an additional amount of time after the date. Neither date indicates spoilage will occur immediately after that date, many products may be useable and wholesome for some additional period of time.

It is generally the responsibility of the packer to determine the “shelf-life” and the classification of the product. However, a retailer who purchases prepackaged food products is permitted to assume responsibility for determining the date, provided that he has a written agreement with the prepackager stating that he may do so. It must be noted that the retailer is responsible for ensuring that products are not sold unless correctly marked. Retailers often refer to the open date as the “pull date”.

The regulation does not specify shelf-life for any product, but provides guidelines to be followed in making these determinations. The regulation states that the person determining the open date must consider the following factors: “food quality, characteristics, formulation, processing impact, packaging or container, and other protective wrapping or coating, customary transportation, and storage and display conditions.” In addition, packers of perishable foods must also consider home storage conditions in order to determine a reasonable period for consumption.

The amount of time a particular food product can be stored after being packaged before its quality deteriorates significantly depends upon its chemical composition, how it was processed, how it was packaged, and how it is stored. This is commonly referred to as the “shelf-life” of the product.

PURPOSE:

The purpose of the Uniform Open Dating Regulation (UODR) is to prescribe mandatory uniform date labeling of prepackaged, perishable foods, and optional uniform date labeling that must be used whenever a packager elects to use date labeling on prepackaged nonperishable foods. It provides both the distributor and consumer information for use in making informed decisions regarding food quality. Open dating means “understandable” or “un-coded” and reflects when a product may begin to lose “qualities of freshness” when stored under normal conditions.

The regulation only requires that correct open dating be provided, not that products be removed from sale on or after the designated date. It permits the sale of perishable food products after the expiration date, provided that:

- a. The food is wholesome, and
- b. It is advertised in a conspicuous manner as being offered for sale after the date recommended by the packager, and
- c. It is segregated from like product which does not have an expired date.

This regulation does not apply to any food that is not prepackaged or to perishable fruits or vegetables in a container permitting sensory examination, or perishable foods open dated under federal regulation.

DEFINITIONS:

“Sell By” Date. – “Sell By” date means a recommended last date of sale that permits a subsequent period before deterioration of qualities. It applies to Perishable Foods such as bakery, dairy, meat, produce that have a shelf-life less than 60 days.

“Best If Used By” Date. – “Best If Used By” date means a date prior to deterioration of qualities. It applies to Semi-Perishable Foods such as snack foods, cheeses which have a shelf-life 60 days - 6 months and Long Shelf-Life Foods - vacuum-packed or frozen, baking products with a shelf-life of more than 6 months.

The UODR defines three broad classes of foods based upon their shelf-life.

Perishable Foods – Bakery, Dairy, Meat, Produce = |————| Shelf life less than 60-days

Semi-Perishable Foods – Snack Foods, Cheeses = |—————| Shelf life 60-days to 6-months

Long Shelf-Life Foods – Vacuum-Packed or Frozen, Baking Products = |———— - - - - ->▶
Shelf life more than 6-months

“Perishable Foods”- means any food having a significant risk of spoilage, loss of value or loss of palatability within 60 days of the date of packaging.

“Semi-Perishable Foods” – means any food having a significant risk of spoilage loss of value or loss of palatability within 60-days of the date of packaging.

“Long Shelf-Life Foods” – means any food for which a significant risk of spoilage, loss of value, or loss of palatability does not occur sooner than 6-months after the date of packaging including foods reserved by freezing, dehydrating, or being placed in a hermetically sealed container.

THE PERISHABLE FOODS REQUIREMENTS:

The responsibility for the determination of the “Sell By” date rests with the person who prepackages the perishable food product. (Section 3.3.1)

- a. A manufacturer, processor, packer, repacker, retailer, or other person who prepackages perishable food, shall determine a date that allows a reasonable period after sale for consumption of the food without physical spoilage, loss of value or loss of palatability. This shall consist of at least one-third of the approximate total shelf-life of the food product.
- b. A retailer with a written agreement with the prepackager may determine and be responsible for this date. (Section 3.3.2.)
- c. The person responsible for the establishment of the “sell-by” date will keep a record of the method used to determine that date. A record revision is necessary whenever any factor affecting date determination is changed. Records shall be maintained for not less than six (6) months after the most recent date, and be available for examination by a weights and measures inspector. (Sections 6 and 7.)

SALE POLICY:

A retail food establishment shall not sell or offer for sale a prepackaged perishable food unless it is identified with a “Sell By” date as required by this regulation. (Section 3.1.)

- a. Perishable food shall not be offered for sale after the “Sell By” date unless it is wholesome.
- b. Perishable food may be sold after the expiration of the “Sell By” date provided:
 1. It is segregated from like packages that are not expired, and
 2. It is advertised in a conspicuous manner that it is offered for sale after the recommended last date of sale. The placement of a sign is acceptable if it is easily readable and clearly identifies the food as having passed the recommended last date of sale.
 - (a). The retailer, or final seller is responsible for the advertisement.

SEMI-PERISHABLE AND LONG SHELF-LIFE FOOD REQUIREMENTS:

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

Open dating semi-perishable and long shelf-life foods are similar, though in some ways less stringent. In summary:

- a. If an open date is provided it must be a “Best If Used By” date.
- b. Sale after expiration of the open date is permitted without advertising the fact that the date has expired. However, the food must be wholesome and its sensory physical qualities not significantly diminished.
- c. The words “Best If Used By” or words of similar import must precede the date, unless a prominent notice elsewhere on the package uses these words and refers explicitly to the location of the date (e.g., “For maximum freshness, use by date indicated on top of box”).
- d. The date must be designated by the first three letters of the month and a numeral indicating the year. A day of the month may be indicated, provided that it is placed before the letters designation the month. (e.g., 30 JUN 89).



MANNER OF EXPRESSING “SELL BY” DATE.

The open date must be displayed on the package, or on a tag attached to the package, and must be readable and sufficiently separated from other printed or graphic information to be conspicuous at the time of sale. Printing, stamping, embossing, or perforation of the date are permitted.

3.4.1. Month and day, or day of week. - A person described in §3.3.1. or §3.3.2. shall place or attach to each package of perishable food a date by month and day. However, bakery products with a shelf-life of not more than 7 days may be dated with the day of the week representing the last recommended day of sale.

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

3.4.3 Abbreviation of weekday. - If the day of the week is solely designated as provided in §3.4.1., the name of the day may be abbreviated by the use of either the first two or first three letters of the name of the day.

3.4.4 Expression of month and day. - Except as provided for in §3.4.1., the date shall be designated by:

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

The month and day designation shall be separated by a period, slash, dash, or spacing. When a numeral designation of the first nine days of the month is used, the number shall include a zero as the first digit; for example, 01 or 03. (Amended 1987)

3.4.5. Expression of the year. - The “Sell By” date may include the year following the day if such year is expressed as a two or four digit number separated as described in §3.4.4.

MANNER OF EXPRESSING “BEST IF USED BY” DATE.

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

Records

A person responsible for establishing the date for perishable, semi-perishable, and long shelf-life food shall keep a record of the method used for the determination of that date. A record revision is necessary whenever a factor affecting date determination is altered. Such record shall be retained for not less than 6 months after the most recent "Sell By" or "Best If Used By" date and be available during normal business hours for examination upon request by (insert agency name).

EXEMPTIONS:

Perishable fruits and vegetables packaged in containers which permit sensory examination are exempted from this regulation (i.e. oranges or potatoes sold in mesh bags). Also commodities which are required to display open dates by Federal law or regulation, such as infant formula, are exempt. This means they do not have to display a separate date.

All references are to National Institute for Standards and Technology Handbook 130, 1995, "Uniform Laws and Regulations" adopted by the West Virginia Legislature as Chapter 47-1-9 of the West Virginia Code.

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