

Legal Fact Sheet for Tennessee Food Donation: Date Labeling Laws

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

Federal Law on Date Labels

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

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

Tennessee State Law on Date Labels

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

Tennessee is one of the few states that do not regulate date labels on food products and thus doesn’t unnecessarily restrict sale or donation of food products past the date.¹⁰ However, food manufacturers are still free to decide for themselves which food will and will not display a date label in the state of Tennessee.

Conclusion

Because there is no federal law on date labeling, regulation of these labels has been left largely to the states. However, Tennessee does not require food products to contain date labels. As a result, food manufacturers have the sole discretion to include date labels on food products in Tennessee.

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

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

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

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

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

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

⁷ See *id.* at 17.

⁸ *Id.* at 19.

⁹ See *id.* at 19-20.

¹⁰ *Id.* at 14, fig. 4.