

## [Updates](#)

December 13, 2024

### FDA and USDA Seek Comments on Standardizing Food Date Labeling



The U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) and the U.S. Food and Drug Administration (FDA) recently published a joint [Request for Information](#) (RFI) seeking stakeholder input related to standardizing food date labeling. The RFI seeks information on current industry practices and preferences, research results on consumer perception of food date labeling, and any impact date labels may have on food waste. Comments are due by February 3, 2025. Notably, the FDA-USDA RFI comes on the heels of California's passage of the nation's first mandatory food date labeling legislation.

#### **Current Federal Approach to Food Date Labeling**

USDA and FDA do not broadly impose any standardized food date labeling requirements. With the exception of infant formula, FDA does not require food companies to place "expired by," "use by," "best before," or any variation thereof on food product labels. Such information is affixed to food product labels entirely at the discretion of the manufacturer.

USDA's FSIS regulates the labeling of meat, poultry, and certain egg products and takes a similar approach to FDA in the realm of date labeling. That is, USDA does not require date labels on USDA-regulated foods. Unlike FDA, however, FSIS has issued guidance regarding date labeling. In December 2016, [FSIS issued updated guidance](#) encouraging manufacturers and retailers of meat, poultry, and eggs to use one universal "Best if Used By" date label on their products. FSIS premises its recommendation to employ the phrase "Best if Used By" on research showing that this phrase is easily understood by consumers as an indicator of quality, rather than safety.

#### **Unpacking the RFI**

The RFI stems from the Biden-Harris [National Strategy for Reducing Food Loss and Waste and Recycling Organics](#) (National Strategy), published in June 2024. In response to the National Strategy, many stakeholders

encouraged FDA and USDA to standardize food date labeling.

Against this backdrop, FDA and USDA jointly published a RFI on December 4, 2024, requesting the following information:

- **Food industry practices and preferences.** Questions 1–7 seek information about (1) which products bear date labels, which do not, and why; (2) what standards or criteria manufacturers and producers consider when deciding which food date label phrase to use; (3) the reason for using different phrases for different products or categories; (4) the standards or criteria manufacturers and producers consider when deciding what date to use; (5) whether a particular product would have a different date depending on the phrase used (*e.g.*, Would the date be the same or different if the phrase were “Best if Used By” versus “Use By” or “Freeze By”?); (6) the challenges or limitations manufacturers face when establishing or changing food date labels; (7) the costs associated with changing the date label phrase or date used in addition to the costs associated with any label change; and (8) how retailers determine when food is no longer sellable.
- **Research results on consumers’ perceptions.** Questions 8–10 seek information on (1) what data or studies are available on consumer understanding of current date labeling on food that FSIS and FDA regulate; (2) 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; and (3) what studies exist on the factors that should be considered to ameliorate consumer confusion on food date labels.
- **Impact of food date label on food waste.** Questions 11–13 seek information on (1) what studies detail the effects of food date labels on food waste; (2) what factors the industry and individuals consider when discarding or donating food; and (3) what estimates are available of the value of food discarded due to food date labels.

## CA Enacts New Law To Standardize Food Date Labels

On September 28, 2024, Governor Gavin Newsom signed California’s [AB 660](#) into law, which will standardize food date labels in that state. More specifically, under AB 660, effective July 1, 2026, food items for human consumption manufactured on or after that date may not be labeled with the phrase “Sell By.” Where date labeling is used, AB 660 requires the phrase “Best if Used By” to indicate a quality date and “Use By” to indicate the safety date of the food item.

Notably, AB 660 aligns with the Food Marketing Institute’s [voluntary product label guidance](#) for date labeling.

## Looking Ahead

This RFI lays the groundwork for potential future FDA and FSIS action to standardize food date labeling at the federal level. In light of the new California food date labeling legislation and with the incoming Trump administration ostensibly laser-focused on the food industry from early indications, this topic bears monitoring. As a known leader in food regulatory and litigation matters, Perkins Coie will continue to keep a close eye on the breadth of policy issues across the food industry, including food date labeling.

If you have any questions concerning the developments discussed in this Update, please contact members of Perkins Coie’s Food Regulatory team.

## Authors

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