

DURABILITY IN THE USA

In the United States of America, food durability may be indicated as follows:

- “OPEN DATING”: on the product there is the indication of a date and not a code
- “CLOSED or CODED DATING”: long life products, packaged in jars, cans and boxes, have a code which, is understandable mainly just to insiders.

A principle of food law in the US Federal legislation requires that food sold in the US must be safe from a hygienic and sanitary point of view and therefore must be suitable for consumption. The presence of the indications such as “best by”, “use by”, does not exempt from this obligation/responsibility. A product considered dangerous to the health of the consumer, may be subject to actions by the US Food and Drug Administration (first of all, its withdrawal from the market), regardless of the presence of any date printed on the label.

US federal legislation on food labeling does not provide for mandatory instructions to indicate their durability. An exception is “infant formula” for which is required to indicate the “use by date” (month and year). This date is chosen at the discretion of the manufacturer, the packer or the distributor on the basis of tests or other information showing that, by that date, if the conditions of handling, storage, preparation and use indicated on the label are met:

1. when consumed the food contains at least the amount of each nutrient in the quantity given in the table of nutritional values on the label,
2. it presents qualitative characteristics at least acceptable (e.g. it passes easily through the hole of the teat of the baby bottle).

While this regulatory system may sound of “common sense” (it sensitizes consumers on the actual characteristics of the food they are about to consume and not to rely solely on a date printed on the package), on the other hand, recent studies have shown that the lack of clear and uniform rules throughout the USA has given rise to great confusion among consumers and has been one of the causes of large food waste (it is estimated that about 40% of the food in the United States is thrown away, and that the average American consumer wastes 10 times more than the average consumer of Southeast Asia).

This is due to the fact that on the theme of food durability have intervened, in various ways, different subjects (federal government, state government, local governments and manufacturers) issuing both guidelines and mandatory standards.

As mentioned above, the federal government has not regulated the methods of indication of the durability of the food, but it has provided voluntary indications on this topic.

For example, the National Institute of Standards and Technology (NIST), noting that the lack of uniform regulation between state jurisdictions may impede interstate commerce, has developed guidelines (Uniform Open Dating Regulation). The model developed, which will hopefully be adopted by all state and local jurisdictions, provides for the following expressions:

- “sell by”: for prepackaged perishable food;
- “best if used by”: for food not so easily perishable or having a shelf life extended in time.

These guidelines state that all foods can be sold after the date indicated on the label, as long as they still have quality characteristics suitable for consumption and, for perishable food, it is clearly indicated that they are sold after that date.

So far, however, only five States (Arkansas, Connecticut, Nevada, Oklahoma and West Virginia) have adopted the 2013 edition of the guidelines set by NIST, while three States (Michigan, South Dakota and Washington) and the US Virgin Islands have adopted in whole or in part a previous version of the NIST Handbook.

Although these guidelines help to standardize the indication of the durability of food, they are not exempt from criticisms: using the phrase "sell by" can help increase consumers' confusion about its real meaning and, therefore, food waste.

Another example of federal guidelines are those contained in the FDA Food Code whose adoption, like those of the NIST, is voluntary. Many States have chosen to adopt them because they reflect the experience of many experts in the field of food safety. The latest version of the FDA Food Code was published in 2009.

In the absence of a mandatory federal regulation, United States have extreme discretion in regulating the durability of food.

In particular, a recent study conducted in the 50 States, showed that four cases can be identified:

- States that have regulated the information on the durability of certain foods, but do not have regulated the sale of these products after the period of durability;
- States that do not have established rules on the information on the durability of the food, but that have regulated the sale after the period of durability;
- States that have regulated the information relating to the durability of the food and, in general, the sale of foodstuffs exceeded the durability period;
- States that do not have any regulation on the durability of food.

The durability of a food may also be regulated at the local level: the city of Baltimore, for example, forbids the sale of any perishable food beyond its expiry date, while the state of Maryland no.

In this context, producers are free to choose on what foods and in which way indicate the durability.

Some trade associations in the food sector have created guidelines to fill this regulatory gap. Guidelines have also been adopted by large retail chains. For example, since 2004, some of them have begun to ask their suppliers to include the phrase "best if used by" on all food products, in an effort to guarantee consumers the freshness of food.

RELEVANT LEGISLATION

Food, Drug and Cosmetic Act (2012)

Uniform Open Dating Regulation

FDA Food Code