

Granting Permission to Alter Date Marks

Guidance for Regulators

Introduction

The purpose of this guideline is to ensure consistency among regulators when considering requests to the alteration of date marks on food labels and to avoid duplication where product is sold in more than one jurisdiction.

The date marking applied by a food manufacturer is dependent on the temperature of storage. Once the storage conditions of the food is changed, the original date mark may no longer be appropriate.

The manufacturer of the food is best placed to apply for changes to date marks on food in situations where storage conditions have been altered. When seeking permission to change date marks, evidence of the continued safety and suitability of the food must be provided (e.g. shelf life information) to the relevant authority. Application to alter date marks on food products is not restricted to food manufacturers, for example retailers and distributors may also apply.

When granting permission to alter date marks, the relevant authority must have regard to the following overarching objectives, in priority order:

- the protection of public health and safety; and
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

Background

The Food Standards Code, Standard 1.1.1 states in clause 11:

11 Prohibition on altering labels

(1) Subject to subclause (2), the label on package of food must not be altered, removed, erased, obliterated or obscured except with the permission of the relevant authority.

(2) A package of food may be relabelled by placing a new label over the incorrect one provided that the new label is not able to be removed so that the incorrect information is visible.

As the relevant authority, this means you may be asked to grant permission to alter date marking on the label on a package of food. This document has been developed to provide guidance around granting permission to alter a date mark on a label on a package of food. Food with a use by date cannot be sold past this date and permission to alter a use by date needs careful consideration. Extending the use-by date mark of a product will require assessment of product safety, given that the basis of applying a use by date is that the product is considered by the manufacturer to be unsafe for consumption after this date. It is legal to sell food past its best before date, provided the ongoing safety and suitability of the food is not affected, therefore product can still be sold past its best before date without the need to apply for and change a best before date.

Guidance

- Date marks can only be altered with permission of the relevant authority

Required information

The applicant needs to complete the attached application form to provide the required information. It is expected that the applicant would typically be the person wishing to alter the label and may be the manufacturer, importer, distributor, retailer or any other person who is required to comply with the Australia New Zealand Food Standards Code.

Giving Permission

The relevant 'home' authority shall consider applications and seek further information from the applicant and other parties, as required. The relevant 'home' authority shall advise other relevant authorities of the outcome of applications, if product is intended to be sold in more than one jurisdiction.

Permission is given in writing and can specific to the lot/batch assessed, or to an ongoing practice.

Permission should include a note to the effect that where the new label/date mark is to be applied over the existing label, the new label is not able to be removed so that the incorrect information is visible.

Permission obtained in this way is able to be passed on to third parties e.g. retailers, importers or storage facilities. In granting an approval to alter a date mark where the date mark serves as lot identification, preserving lot identification is an important consideration should the product later be subject to recall.

In considering an application for label alteration, the applicant shall advise how unique lot identification will be maintained on the product with the new date mark.

For example, the applicant may use a unique best before date applying only to that lot of product, or apply a lot code along with the best before date to differentiate it from other product with the same best before date, but not from the affected lot. Any permission should include the requirement for the applicant to keep records of the lot identification of affected product.

Examples of date mark alteration preserving unique lot identification

Maintaining unique lot identification is required for product traceability. The following are examples of how this can be done in the instance where the date-mark to be altered serves the dual purpose of providing the lot identification:

Example 1:

Company XYZ packs powdered soup mix into sachets. They have obtained permission to alter the best before date on 500 sachets. These sachets were packed on 20 June 2007 and have a best before date of 20 June 2009. This Company uses the best before date as the lot code for product traceability, and does not apply a separate lot code.

The new best before date to be applied to the soup sachets is 30 September 2009. Company XYZ also packed soup mix on 30 September 2007 with a best before date of 30 September 2009. The Company can either print a unique lot code onto this product along with the best before date 30 September 2009, or they could use the best before date 29 September 2009, as they did not pack any soup mix on 29 September 2007, hence there is no other product with this best before date.

Example 2:

Company ABC packs lamingtons into cartons of a dozen individual lamingtons. There are 5,000 cartons made each day (batch size). Each carton is date marked with a best before Date of 10 days after the date of manufacture.

A consignment of 300 cartons of lamingtons was transported to a remote rural retailer servicing a small community. The lamingtons are stored in the retailer's commercial storage freezer and 10 boxes of lamingtons are thawed and displayed for sale at a time. The retailer has obtained permission to alter the best before date of lamingtons to a best before date of 4 days after thawing, providing the lamingtons are not in frozen storage for more than 30 days.

The manufacturer will continue to produce lamingtons on a daily basis, therefore unique lot codes need to be applied to thawed lamingtons for traceability. This could be achieved by:

- Marking each carton with the new best before date, which will change each day as product is thawed, plus apply a unique lot code
- Mark the carton with the new best before date plus the thawed-on date.

Disclaimer

The information presented here is distributed by Implementation Subcommittee for Food Regulation (ISFR) for and on behalf of the Food Regulation Standing Committee (FRSC) and is presented as an information source only. The information is provided solely on the basis that readers will be responsible for making their own assessment of the matters presented herein and are advised to verify all relevant representations, statements and information. The information does not constitute legal or professional advice and should not be relied upon as such. Formal advice from appropriate advisers should be sought in particular matters.

ISFR does not accept liability to any person for the information or advice provided in the document, or incorporated into it by reference or for loss or damages incurred as a result of reliance upon the material contained herein. In no event shall ISFR be liable (including liability for negligence) for any damages (including without limitation, direct, indirect, punitive, special or consequential) whatsoever arising out of a person's use of, access to or inability to use or access the document.