Series: Local Laws

Box# 050278
Local Law 17

Labeling of perishable foods

1971
The open date bill was introduced by Messrs. Merola and Sharison and Mrs. Ryan. It was signed by the Mayor on April 23, 1971.

The law states that the Council recognizes the consumers' concern with the freshness of food, included but not limited to meat, poultry, fish, dairy products, eggs, fruit and baked goods. It also provides that it shall be unlawful to sell or offer for sale any perishable foods designated by the Commissioner of Consumer Affairs unless there is stamped or provided on the cover or printed panel of its container a statement indicating recommended conditions, methods of storage and the fact that it is not to be sold after a clearly specified date for human consumption as food.

It also provides that the commissioner is to make various rules and regulations with respect thereto.

It also sets forth the powers of the commissioner, and the penalties in the event there is a violation of any of the provisions of this article.

The consumer will benefit in that they will be certain that the food offered for sale is fresh, or that it will remain fresh for a reasonable period of time after it is purchased. It will protect him from purchasing food that is not fresh.

We have nothing in our file to indicate that any unions, or other organizations supported the bill.
INFORMATION FOR EDITORS

Consumer Affairs Commissioner Bess Myerson and City Council Majority Leader Thomas J. Cuite will visit a Brooklyn supermarket on Friday, March 10, to check compliance with the city's open dating regulation.

The inspection will take place at 10 a.m. at Bohack's Supermarket, Prospect Avenue and 11th Avenue.

Open dating lets the shopper know if eggs, baked goods and dairy products are fresh when she buys them and how long they will stay fresh when she gets them home.

All items covered by the regulation must be labeled with a date; an explanation of the date such as "good until," "fresh thru" or "last date of sale", and the recommended method of storage.

The regulation first took effect on September 10. Most companies were granted six-month extensions so that they could use up existing inventories and revise their labels. This grace period expires Friday.

The Department regulation implements the City's Open Dating Law, which was introduced by Councilmen Cuite, Mario Merola, Saul Charison, and Aileen Ryan, and adopted by the City Council. The Law was signed by Mayor Lindsay on April 23, 1971.

3/7/72

FOR INFORMATION: Jean Ende 566-5046 (office) or 260-2524 (home)

Henry J. Stern 566-5817 (office) or BU8-0750 (home)
LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1971

No. 17

Introduced by Messrs. Merola, Sharison and Mrs. Ryan—

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the labeling of perishable foods.

Be it enacted by the Council as follows:

Section 1. Title B of chapter 36 of the administrative code of the city of New York is hereby amended by adding thereto a new article 12 to read as follows:

CHAPTER 36
Article 12
PERISHABLE FOODS

§ B36-120.1 Legislative intent.—The Council finds that consumers cannot be certain that food offered for sale is fresh or that it will remain fresh for a reasonable period of time after it is purchased. The council particularly recognizes consumer concern with the freshness of foods including, but not limited to, meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods. The Council further finds that the food industry's practice of controlling food freshness through coded dates has proven inadequate for protection of the public. The council has concluded that a mandatory system of clear and legible dating accompanied by a statement of recommended conditions of storage is the best way to assure consumers of the freshness of the foods that they buy in stores.

§ B36-120.2 Perishable foods.—It shall be unlawful to sell or offer for sale any perishable food designated by the commissioner of consumer affairs in accordance with §B36-120.3 hereof unless there is stamped printed or otherwise plainly and conspicuously marked on the top cover or principal panel of its container or any label affixed thereto the statements indicating recommended conditions and methods of storage, and the fact that it is not to be sold after a clearly specified date for human consumption as food.

§ B36-120.3 Regulations.—(a) The commissioner of Consumer Affairs shall promulgate regulations designating those perishable foods which shall come within the scope of §B36-120.2 wherever the commissioner shall find that because of the nature of the commodity, the mode of packaging or other consideration, such information about the commodity shall be necessary and proper to provide adequate information to the consumer as to the perishable nature of such commodity and conditions of storage.

(b) The commissioner may make and promulgate such other rules and regulations as may be necessary to carry out the purposes of §B36-120.2.
§ B36-120.4 Powers of the Commissioner.—(a) The commissioner shall receive and evaluate complaints and initiate his own investigations relating to these matters and take appropriate action related thereto including stop-sale and stop-removal orders where necessary and proper.

(b) The commissioner shall have the power after reasonable notice and hearing, to determine the reasonableness of any statement or representation as to the date and conditions of storage affixed pursuant to § B36-120.2 of this article.

§ B36-120.5 Penalties.—Any person, firm, corporation or association or agent or employee thereof, who shall violate any of the provisions of this Article or of the regulations promulgated pursuant to § B36-120.3 shall pay a civil penalty of not less than twenty-five dollars nor more than two hundred fifty dollars for each violation; and shall, upon conviction thereof, be punished by a fine of not less than twenty-five nor more than two hundred fifty dollars for each such violation.

§ 2. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on April 6, 1971 and approved by the Mayor on April 23, 1971.

HERMAN KATZ, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW SECTION 27

Pursuant to the provisions of Municipal Home Rule Law Section 27, I hereby certify that the enclosed local law (Local Law 17 of 1971, Council Int. No. 229-A), contains the correct text and:

Received the following vote at the meeting of the New York City Council on April 6, 1971: 36 for, none against, 1 not voting.

Was approved by the Mayor on April 23, 1971.

Was returned to the City Clerk on April 23, 1971.

J. LEE RANKIN, Corporation Counsel.
Brooklyn Councilman Thomas J. Cuite, Vice-Chairman and Majority Leader of the City Council, today marked the full implementation of open dating of perishable food products by inspecting a Brooklyn supermarket with Consumer Affairs Commissioner Reba Myerson.

The measure, passed 36-0 last April 6 by the City Council, covers meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods, among other items. It requires that all be marked with an expiration date, after which the perishable food item may not be displayed or sold for human consumption.

"The open dating law is one of many consumer-protection measures enacted by the City Council, and probably one of the most important," Cuite said. "Store managers have always been able to tell how old these food items are, through a secret distributor’s code. Our local law lets the shopper in on the secret, assuring fresher, more wholesome food and resulting in savings by eliminating waste."

"Shoppers have enough demands made on both their time and their money these days, and open dating will make life a little easier," Cuite said.
INFORMATION FOR EDITORS

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Open dating lets the shopper know if eggs, baked goods and dairy products are fresh when she buys them and how long they will stay fresh when she gets them home.

All items covered by the regulation must be labeled with a date; an explanation of the date such as "good until," "fresh thru" or "last date of sale", and the recommended method of storage.

The regulation first took effect on September 10. Most companies were granted six-month extensions so that they could use up existing inventories and revise their labels. This grace period expires Friday.

The Department regulation implements the City's Open Dating Law, which was introduced by Councilmen Cuite, Mario Merola, Saúl Charison, and Aileen Ryan, and adopted by the City Council. The Law was signed by Mayor Lindsay on April 23, 1971.

3/7/72

FOR INFORMATION: Jean Ende - 566-5046 (office) or 260-2524 (home)
Henry J. Stern - 566-5817 (office) or BU8-0750 (home)
Mayor John V. Lindsay joins with Consumer Affairs Commissioner Bess Myerson in a Brooklyn supermarket visit today to observe the implementation of the nation's first "Open Dating" regulation and to cite the third anniversary of the establishment of the city's Department of Consumer Affairs.

In a proclamation ceremony the Mayor marks today, September 10, as "Consumer Protection Day."

Open dating, signed into law by the Mayor on April 23, 1971, takes effect today. It requires merchants to indicate on each package of eggs, cheese and baked goods the recommended method of storage as well as the last day on which items should be sold. In the coming months the range of products will be expanded.

Mayor Lindsay said:

"The open dating law marks another significant advance by New York City in national consumer protection leadership. Through the development of progressive legislation, extensive retail monitoring, and detailed educational efforts New York's Department of Consumer Affairs has served as a unique example of concern in safeguarding the buyer's rights."

Commissioner Myerson noted:

"Open dating will not only guarantee that the food is fresh when the consumer buys it but will let her know how long it will stay fresh when she gets it home. Prior to this legislation such information was available only to the retailer."

During the tour Mayor Lindsay and Commissioner Grant are also inspecting the unit pricing system which took effect in New York City on June 1, 1971. It requires merchants to indicate the price per measure on specified items. With such a system the consumer can shop comparatively among different brands and different sizes among the same brand.

Commissioner Myerson noted that a consumer education program is continuing throughout the city. Through displays and information services the Department is attempting to demonstrate clearly to consumers the advantages of shopping with unit pricing and open dating.

In the past three years the Department of Consumer Affairs has uncovered fraudulent activities and recovered millions of dollars in refunds and cancellation of debts for city consumers under the Consumer Protection Act of 1969.

In addition to new unit pricing and open dating laws enabling the buyer to get the best value for his food dollar, the Department checks scales, weights and measures at 50,000 retail stores. It licenses and supervises the operation of 110 types of businesses and occupations to protect consumers from deceptive practices.
George W. Koch
President/Chief Executive Officer

June 7, 1971

Councilman Thomas J. Cuite
Council of The City of New York
City Hall
New York, New York 10007

Dear Councilman Cuite:

In the interests of the consumers of New York City, we urge that Local Law 17 of 1971 concerning labeling of foods be amended by the addition of a provision which would stay its execution until February 1, 1972.

This law requires date labeling of perishable foods and directs the Department of Consumer Affairs to develop implementing rules and regulations, some of which have already been proposed.

We have asked Commissioner Myerson to join us in this request for an amendment, and our comments to her on the subject and on the Department’s proposed regulations are enclosed.

The February 1, 1972, date will allow the Council and the Department an opportunity to review the results of research sponsored jointly by the U. S. Department of Agriculture and the Consumer Research Institute on the question of effective date labeling of foods.

The enclosed comments will show that the approach taken in the New York City law is only one of many being considered by public policy makers. The New York City law, the only proposal enacted, may or may not be the best approach. The USDA and CRI studies are aimed at determining the effectiveness of the various approaches and are designed to develop information by which public policy makers such as yourself can make a decision that is in the best interests of all consumers.
New York City has taken the lead in this important area, and it is our sincere hope that, in the interests of all consumers, the Council will exercise the prerogatives of leadership by providing sufficient time for its membership and the Department of Consumer Affairs to reflect upon the data that will soon be developed.

It is our fear that the law and regulations, as presently written, will result in greater consumer frustration by mandating misleading product information.

We therefore respectfully urge that you grant your immediate attention to this important question and review the enclosed material. We offer the City Council the same technical assistance offered to Commissioner Myerson in the comments.

A copy of this letter has been sent to all City Council Members.

Respectfully,

Grocery Manufacturers
of America, Inc.

George W. Koch, President

Enclosure
June 2, 1971

The Honorable Bess Myerson
Commissioner of Consumer Affairs
Department of Consumer Affairs
80 Lafayette Street
New York, New York 10013

Dear Commissioner Myerson:

Grocery Manufacturers of America, Inc., (GMA) takes this opportunity to comment on proposed Regulation 55 relating to the date labeling of perishable foods under mandate of Local Law 17 of 1971.

GMA's member companies, the nation's leading manufacturers of grocery products, support the goal of Local Law 17: "to prevent the unknowing purchase of foods which are no longer in fresh condition."

A GMA Task Force on Open Dating was formed in August of 1970 to evaluate whether voluntary or regulated actions similar to those proposed under Regulation 55 would meet the goal of preventing the sale of foods which do not meet the consumer's needs and expectations for "freshness."

After considerable Task Force study of available information, we still do not know whether such dating will improve the quality of American foods, whether any direct benefits will accrue to consumers, and what dates should appear on what foods to meet the industry's personal and legal commitments to informative, truthful labeling.

To resolve this issue, the GMA Board of Directors directed that necessary consumer research studies be initiated to determine the benefits of food dating.

OPEN DATING RESEARCH

GMA is actively supporting the design and funding of studies to be conducted by the U.S. Department of Agriculture (USDA) and the Consumer Research Institute (CRI) to determine how to date food products effectively.
The planned studies will evaluate the effectiveness of three dates in improving the freshness qualities of foods consumed by Americans:

1. The Packing (or Production) Date, which may include the --
   (a) Date of packaging,
   (b) Date of baking,
   (c) Date of pasteurization, or
   (d) Date of final processing;

2. The Pull Date, the date a product should be removed from the retailer's shelf;

3. The Expiration Date, the date after which a product shows --
   (a) Loss of package integrity (e.g., loss of sterilization),
   (b) Reduced palatability,
   (c) Reduced safety as a food,
   (d) Reduced nutritional value.

The USDA and CRI studies are designed to accomplish the following goals:

1. To determine the extent to which "unfresh" food is being sold in the United States;

2. If a significant amount of "unfresh" food is being sold, to determine which categories of foods are a problem;

3. To test the three major forms of food dating, to determine whether or not such dating would solve the problem of "unfresh" food;

4. To determine the cost of installing and maintaining a date labeling system;

5. To measure consumer uses and attitudes toward date labeling; and, finally,

6. To determine the most appropriate date to be employed in an effective date labeling system.

This research is expected to begin by August 1, 1971 and to be completed by December 1, 1971.
LEGISLATIVE PROPOSALS

A study of over 75 bills in 20 states clearly indicates that there is no agreement on how food products should be dated.

The packaging, pull, and expiration dates and their possible included variations, listed above as topics of the USDA and CRI studies, represent the major proposals now being considered at the state level.

Despite the introduction of the many federal, state and local bills to date label foods by public policy makers this year, only the New York City proposal was enacted.

The food industry is concerned that, should each jurisdiction enact requirements within the present vacuum, a multiplicity of varying dates will appear on food labels, thereby making a chaotic sham of the goal in which the governments of all jurisdictions and the food industry are united: improving the quality of American foods.

ACTION BY THE NEW YORK CITY COUNCIL

Without additional information, GMA -- or any other responsible group -- has little foundation either to support or oppose the general provisions of proposed Regulation 55 and its enabling legislation, Local Law 17 of 1971.

For this reason, we have urged the New York City Council to amend Local Law 17 by postponing its effective date to February 1, 1972. This would enable the Council to review the material now being developed in the USDA and CRI studies.

A copy of our request to the City Council is appended to this statement.

ACTION BY THE DEPARTMENT OF CONSUMER AFFAIRS

In the interests of consumers, we urge that your Department join us in this request to the City Council, or, in the alternative, we respectfully request that the effective date of the regulations under Local Law 17 be set at a point in time which is sufficient to enable you to review the material developed by the USDA and CRI studies prior to the effective date of the City regulations.

If, for example, these studies show that the only meaningful date to consumers is the date of manufacture or the date at which a food deteriorates in the home, you might wish to petition the City Council for an amendment to Local Law 17.

If, on the other hand, you decide to promulgate the regulations immediately after the comment period, you are urged to attempt to overcome administratively some of the technical prob-
lems inherent in the law and, because of these problems, in the proposed regulations.

SPECIFIC COMMENTS ON THE REGULATIONS

The law, and therefore the regulations, contain several significant inadequacies that could result in a detriment to consumers.

1. Who Does the Labeling?

Since a manufacturer has no control over the storage facilities of his distributors, and since these storage facilities must be taken into account in computing a freshness date that has even remote meaning, we must assume that retailers must affix a date to the products after receiving preliminary information from manufacturers.

Were it otherwise so, manufacturers would be forced to make an affirmative statement concerning a date that could be totally misleading, and hence a knowing deception of consumers. A sale (or pull) date under New York City Local Law 17 will, of necessity, have to vary from store to store on identical products. Ultra-efficient storage equipment in one store will result in a longer shelf life than average efficiency equipment in another store. And in either case, the consumer will have no knowledge as to the time period in which she and her family should consume the product to gain the full value of it.

A major concern in the selection of a date is our knowledge that freshness of foods is influenced more by temperature than by time. For example, reference to the keeping time in months of "semiperishable subsistences" developed by the Government's Natick Laboratories reveals that cookies stored in a carton will last for six, four and two months when stored at 40°, 70° and 90°F., respectively. What is an appropriate time for dating?

If average conditions are selected -- say 70°F -- and a pull date is utilized, the cookie package would be dated for three months from the time of production thereby providing for a useful shelf life of at least one month within the home. However, if the cookie is stored at elevated temperatures -- for example, as will be found in the thousands of unairconditioned stores in New York City in the summer -- the cookie will not have the expected organoleptic properties at the pull date and may actually be beyond its freshness peak. When a product is purchased under these conditions, the product date will mislead rather than assist the consumer.

Conversely, if a date is selected which will ensure the freshness of foods when stored under adverse conditions, dating will result in the loss of large amounts of fresh food which has not been purchased within the arbitrary date.
This is not to say that manufacturers could not perform the labeling requirements of Local Law 17. They could do so, but at no apparent benefit to consumers.

For example, to avoid charges of misrepresentation under federal laws, or to prevent the creation of a warranty under the Uniform Commercial Code, a manufacturer might state the recommended storage conditions and the required sale date, after which he might add:

"This date is required by law and is based upon estimated conditions of transportation and storage. If these conditions were not met in relation to this product, please disregard this date."

There appears to be nothing in the law or regulation that would prohibit such a negative declaration. But what good does it do for consumers?

2. What is perishable?

The proposed Regulation sets forth no definition for what is meant by perishable. This lack of definition is a deficiency since all foods are perishable. However, in practice, many foods have shelf lives which exceed the usual consumption period and for all practical purposes can be considered non-perishable. Whereas bread would be considered as a perishable product by most consumers, such items as crackers, cookies, macaroons, dry toasts, breadsticks, etc., have a shelf life which exceeds the usual consumption period.

Attempting to classify arbitrarily all examples of a class (as, for example, cookies or crackers) as perishable is likely to meet with resistance. How a food product is formulated, processed, packaged, and stored markedly influence the shelf life of the food.

3. Label Space

The proposed Regulation requires that both the printed date and the recommended conditions and methods of storage shall "be clearly indicated on each and every package or item and shall be clearly indicated on the top cover or principal panel of its container or any label affixed thereto." For some products the present size of labels cannot accommodate the required information.

Under the Federal Fair Packaging and Labeling Act, the label must include the following information: identity of product; name and place of business of manufacturer, packager or distributor; net quantity of contents in two forms; and, the net quantity of a serving when the number of servings is represented. The Federal Food, Drug and Cosmetic Act also requires the listing of ingredients for all non-standardized foods which include the majority of foods in the marketplace. Special laws and regulations governing particular types of foods add additional requirements.
Consideration should be given to whether the City Council should be urged to provide an additional alternative in light of the increasingly crowded nature of food labels: Placing the date on shelf labels or, where this would be inappropriate, on lists nearby the products.

4. Time Factors

If it is not intended that retailers tag or label products, the proposed Regulation does not provide for orderly utilization of current stock. If the Regulation takes effect on July 28, 1971, or shortly thereafter as proposed, large quantities of wholesome food will have to be removed from sale because their labels are not in compliance with the proposed Regulation.

In addition, many products will not be available for sale in New York City because manufacturers will not have had time to redesign their labels in order to comply with the proposed Regulation. The lead time in label changes is often overlooked. To comply with the Federal Fair Packaging and Labeling Act, over two and one-half years were required to complete the necessary label changes, at a cost of well over 500 million dollars.

5. Cost Factors

No attempt can be made at this time to predict the increase in the cost of food products as a result of date labeling. Retail store labeling time or redesigning of labels to comply with the proposed Regulation could be major expenses. In addition, foods not sold by the date on the label will be a burden on the retailer. The financial loss of these goods will have to be borne by consumers. Hence, rises in the prices of eggs, dairy products and baked goods may occur following implementation of the proposed Regulation.

CONCLUSION

These comments should not be interpreted as suggesting that it is impossible to date label foods. Rather, date labeling does not automatically guarantee the freshness of foods. If it is used to indicate fresh foods, it must do just that, and not add to the increasing frustration of consumers over the ineffectiveness of consumer protection laws.

GMA does not know whether dating would significantly increase the quality of foods eaten by Americans. However, the United States Department of Agriculture and Consumer Research Institute are currently sponsoring research which will provide needed answers. We urge your consideration of whether the need to date label foods is so great that New York City consumers cannot afford to await the conclusion and your review of these important studies.
In closing, we would like to emphasize that GMA stands ready to assist your office in resolving any technical questions arising from the implementation of date labeling. The members of the GMA Technical Committee for Food Protection are particularly qualified to aid members of your staff. We invite you to call upon Dr. Robert W. Harkins, GMA Director of Scientific Affairs, to coordinate assistance of the GMA Technical Committee.

Respectfully submitted,

Grocery Manufacturers of America, Inc.

George W. Koch, President

cc: Mr. Sol Renick  
    Director of Trade Relations  
    Deputy Commissioner

    Susan First, Esq.  
    Counsel
EXCERPT
OF
THE MEETING OF
THE CONSUMER AFFAIRS COMMITTEE
OF
THE CITY COUNCIL OF THE CITY OF NEW YORK

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Held at City Hall, New York,
New York, March 4, 1971, commencing at 11:15 a.m.

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HON. DAVID FRIEDLAND, CHAIRMAN, PRESIDING

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RE INTRODUCTORY NO. 229A

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(The following is an excerpt of the meeting of the Consumer Affairs Committee.)

THE CHAIRMAN: The first bill to be considered is Introductory No. 229A, which is an amended version of #390 and #231. Any report that you have on 390 will hold true of 229A.

We will first hear from Commissioner Stern.

COMMISSIONER STERN: Mr. Friedland, members of the Council Committee on Consumer Affairs: I am Henry J. Stern, First Deputy Commissioner of the New York City Department of Consumer Affairs. Testifying with me today is Miss Susan Furst, General Counsel for the Department of Consumer Affairs.

Introductory 229A, which is an amended bill, would require the labeling of perishable goods by an intelligible code. It is an extremely important consumer protection. It would make New York City the first city in the country to enact that kind of legislation and provide full protection to consumers
who buy perishable foods in retail stores.
The question of dating of food, and particularly the use of codes and secret dating by various companies has been the subject of considerable concern in recent months. An article in the "New York" magazine of December, 1970 issue devotes some ten pages attacking the supermarket codes and shows the considerable frustration that New Yorkers have suffered as a result of secret codes food companies put on their packages in which they are preparing them, with the benefit to the retailers but cause great difficulty to the consumer.

Such tricks as running numbers together, use of fictitious numbers, or meaningless numbers, the use of letters for numbers, such symbols as "HOUO70295", "LHTLK" for Tuesday, "L25" and similar codes have been used indeed in the past by manufacturers. One code, for example, used by Arnold's Bread had six letters comprising one letter standing for each of the six different days of the week, for Monday through Saturday.
Except, just in case someone might figure this out, they reversed the letters so that they had to be read backwards.

Using the letters in the name "Arnold," "D" in "Arnold" stood for Monday, "L" stood for Tuesday. Such are the length to which some of the manufacturers and processors of food have gone to conceal to the public just how fresh their product is.

We think it is outrageous to play that kind of a guessing game, and that is why we support this legislature introduced by Councilmen Sharison, Merola and Mrs. Ryan, and submit to the Committee of Consumer Affairs to provide for public open-dating of perishable products. People cannot be sure today that the food offered for sale is fresh. When it is old, or remains fresh for a reasonable time of period, the consumer should know.

We have milk-dating required by law, and the history of milk-dating is very interesting as an example of the type of pressure that was exerted, certainly by the producers
first in trying to nullify the law and, then, finally, under compulsion, to agreed to reinstate it.

As you know, the milk-dating law has been changed over what it first was when it went into effect some 20 years ago. Originally, milk-dating was, when I was a small boy and sent down to the store, my mother sent me to the corner grocery, the law required that the package say this milk is dated to go on sale after six a.m. on a certain day. And when you went to the store on Tuesday, the milk had to be used, say by Tuesday and was dated, but if you bought it on Wednesday, you knew it would say Tuesday, you knew it was one day old. That was the law that was repealed by the State Legislature.

The subsequent law was passed under City pressure, but that law instead provided that the first day when milk is old, and provides the last day the milk can be sold, instead of doing it by the day of the week, and putting it in terms of February 24,
February 26. So now, when you go to buy fresh milk in the store, you don't find milk stamped the day you buy it, you buy milk stamped two days into the future. That is the technique used by magazines in order to give the people the impression that they are reading next month's magazine.

We don't think it is too good a technique for milk or other perishable consumer items.

Among the foods which are listed and which we are concerned with are: meats, poultry, fish, dairy products, eggs, fruits, vegetables and baked goods. And the law is carefully drawn to allow the Commissioner of Consumer Affairs to prepare and draft regulations to provide for the detailed control of the sale of the commodities. The milk-dating law that I referred to, by the way, is -- and it is interesting to note -- applies only to milk, and does not relate to dairy products such as skimmed milk, Dairy-Low, Light 'n' Lively, 99%, or any of the products which are
dairy, such as cheeses, yogurt, sour cream, cottage cheese.

When you buy those dairy products, which have to be frozen, and obviously are perishable, either should be stored in the freezer, or very cold place, without dating on it, and when it is perishable, very often consumers open the top of the package to find out if it is fresh. In order to see if it is fresh, you do what many housewives do, and that is open the package and you sniff at it. The problem there is that after a couple of people have done that, it will not be very desirable for the consumer, for people to have to buy in the supermarket. This leads to confusion and it leads to waste.

I think people should not have to use their noses to determine whether a product is fresh. They should be able to use their eyes and read a clear label in English, in numbers, affixed to the container.

Now, the Council is being asked to determine that a mandatory statement of clear,
legible dating coupled with a statement of recommended storage be put on the package, to assure the consumer of the freshness of the food he buys in the stores. This bill should be within the law. If a label says that this product is going to be good to March 8th, then it should last till March 8th.

Of course, this would depend upon the storage, the freezing conditions, if such be necessary, et cetera. However, there is a distribution problem by the routemen and there is no way of knowing whether he left a door of the freezer compartment open or whether he made his delivery directly to the store. This proposed law gives the Department of Consumer Affairs jurisdiction over the distribution and storage of these food products in order to see that the perishableness as well as the dating is meaningful and proper and adhered to. It also gives the Commissioner powers which he does not now have to issue a stock-removing order if he finds for example that there is a load of stale yogurt in a supermarket, or sour cream, or curdled milk
or stale bread that has become hard, or rolls or muffins that are not in the condition that they should be in; or a banana that is ripe to the point of being rotten, or strawberries that have turned to mush.

Under this regulation, the Commissioner will have the power to issue a stop-sale & start-removal order and take the goods off the shelf rather than issuing a summons for a civil violation served on a storeowner, which as a usual measure does not work too well, and may lead only to a very minor fine, and may not prevent from continuing the sale and distribution of the stale merchandise.

So this law is much more than simply an outlined sale of stale food products token. This law outlaws the sale of perishable goods and provides for a system of plain, clear listing of dates, and provides for machinery so that the Department of Consumer Affairs and the Consumer Affairs protection inspector can apply the law and see that the foods offered for sale in New York City stores is fresh, wholesome and suitable for use.
I would like to add one thought. Most food is reasonably fresh and when people buy it, can be eaten. However, there is food that has to last a certain period of time. Many people in New York City, particularly single people or people with small families buy food, and necessarily store food in their apartment for certain periods of time.

In other words, not everyone rushes home and after they come from the supermarket, sit down and eat what they bought. And this system of coded and dating will provide people to buy foods with a knowledge as to how long they can keep it in the refrigerator or at home in a pantry, and by when it must be used, and not have to worry about how long food will remain fresh when it is offered to them.

So that you can provide the same system of distribution for freshness of food -- in other words, people don't have to worry about trying to find out which of the two loaves of bread came in first, or tried to see, and decide which will last longer. They can read
it and decide.

We think this is a visible advance in consumer protection. It is the first such bill offered to a municipal legislature. I think it is the kind of a bill that if New York City adopts it, will be followed by cities all over the country. It is part of a general national upsurge in consumers' protection, and essentially is a disclosure bill, and based on the theory that people who buy food, who buy things that they will put into their mouths or their bodies, who buy nutrition have the right to buy, as a matter of law, with the knowledge that the food is fresh.

Many years from now this bill will seem ridiculous and elementary, and people will wonder how it was that cities never had laws providing for fresh fruit and providing for open-dating. But now it is a landmark, it is an advance, and I ask you to adopt it.

THE CHAIRMAN: Mr. Stern, a few questions:
I would like to ask you, upon whom does the responsibility to make the dating fall?

COMMISSIONER STERN: I would like to call on Susan Furst.

MISS FURST: The way it is set up, this is in a number of areas, recognizing that where the manufacturer or producer has the information, so the way it works is they can pick a date, and they can consider a date that they think is reasonable, but we have the right to challenge any date they have so selected.

Now, I imagine most manufacturers are not going to want to put a stamp on there. So when people end up buying these products, frozen or fresh, and they get them in the grocery store, they will hold the grocery storeowner responsible to put the date or stamp on there. We don't. In fact, we will hold hearings. For example, if the product is cottage cheese, let's say, and we received a complaint from people that ABC cottage cheese had already turned before the date
printed on there, we will hold a hearing and invite the manufacturer and they can establish that the date they selected was a reasonable one.

THE CHAIRMAN: The thought occurred to me, assuming an article is dated by the supplier or manufacturer, and the inspector came in to the retail grocery store and found that the product, although within the subscribed date, was curdled, for instance, would the retailer be penalized?

MISS FURST: No, he would not be the one who had put the date on. The person who did. Then we will hold a hearing and challenge the date that the producer has put on it.

It says in Section B36-120.4:

"The Commissioner" -- in c --

"The Commissioner shall have the power after reasonable notice and hearing to determine the reasonableness of any statement or representation as to the date affixed pursuant to B36-120.2."

So that you confine this, as best as we can in drafting, as the way to deal with a
product.

With respect to the next Section, B36-E20.5, you have a provision for civil penalty of no less than $25 to $250 for each violation. That simply complies with the agricultural market law working now. That is in force, - there are alternate civil and criminal penalties, which we call on, and that is what this applies to. That is for each violation, and there should be a semi-colon.

THE CHAIRMAN: Who imposes the civil fines?

MISS FURST: The Civil Court. It is the Civil Court or the Criminal Court. Obviously what we do, and I repeat, an offender starts in the Criminal Court, but in most matters we don't burden the Criminal Court. What we do essentially is to go into the Civil Court to enforce these regulations.

To begin with, we generally get the producers into the office of the Consumer Affairs where we have a hearing. If penalties have to be invoked, usually they are essentially put into the Civil Court and
prosecuted by the Corporation Counsel acting on behalf of the City. But first we generally have hearings.

On repeated offenders, the fine may go up to $100 for a violation, and usually the matter is then turned over to the Corporation Counsel to initiate suit. But the great majority of cases are settled in the sense that it becomes a Civil Court procedure. Basically, it is an administrative tribunal within the Department of Consumer Affairs.

THE CHAIRMAN: Do you think there should be something in here for a procedure before a court of competent jurisdiction?

MISS FURST: I think that the language we have in there is existing law and refers to the procedures that are used. We could put it in there very easily.

THE CHAIRMAN: Any questions?

MRS. RYAN: Mr. Chairman, this, of course, this legislation is geared for the supermarkets, the food stores, not for restaurants or anything like that.

MISS FURST: It is not intended to apply
to either restaurants or wholesalers. This essentially is to protect the consumer from purchasing where the merchandise eventually ends up. At a certain level. But it is aimed at helping the consumer at the self-service grocery stores.

MRS. RYAN: Thank you.

COMMISSIONER STERN: It is aimed at the retail purchaser.

COUNCILMAN WEISS: On page three, 1294b, why is it necessary? Does not the Commissioner have the power generally to do that now?

MISS FURST: She does have the general power. I found it as a matter of good practice to deal with specific law. We are frequently asked to comment on the law so people can apply it. It helps somewhat, although I realize it is redundant. But it does let people know the authority under which you operate, and this is under Section 33, and the language is from the Charter.

COUNCILMAN WEISS: Precisely my point. Because what will happen is every time, you know, if in fact your theory is sound, every
time we pass legislation in any area, not just to put the amendment in, but the original law on which it rests, we will fill the administrative code with pages upon pages of redundant language. It seems to me that anybody who challenges your right can go and look at the pertinent chapter to see what the Commissioner's rights are. They are spelled out in there. Why, you know, put the surplusage in.

MISS FURST: I am perfectly willing to strike that section out.

COUNCILMAN GREITZER: It says here, Commissioner -- the question I wanted to ask you is on dating where it says here under 120.2 that the requirement is that the date is that on which it is to be sold after a clearly specified date. Will there also be something here that will indicate that the date on the item is the last date on which the article can be sold, or something to that effect, or is there just going to be a date on it and the public is supposed to know what that date means?
MISS FURST: That will be something to be determined by regulation. In other words, if we don't get, it seems to me, language in those words that will make it clear that appear there, fixed upon thereto, there will have to be a statement about that, that it cannot be sold after the clearly specified date. Yes. We want to, for example, make sure that this cannot be sold after the last date stamped there. We want to make sure that the item is first for human consumption.

COUNCILMAN GREITZER: Now, I was asking whether there is something to be in here that the date which will be shown will be the date on which the merchandise must be sold, that is the last date that it is to be sold, that kind of language, whether that will appear on there, so that it could not be the date that it first comes into the store.

MISS FURST: That is one of the things I think you may be right in the language of this section which would be better instead of saying "affixed thereto a statement," a statement indicating, and then we come up with some
workable language. That language obviously is from the milk-dating bill, the people don't know what the date stands for. I am sure that people think that the date that is fixed there is the first date when it really is a couple of days ahead of the day. Exactly what language we are going to require I think would depend on the particular product, but there will be language in there, there will have to be a date, and if necessary there may have to be a label above where the stamp is, or the label should be dated so that it is obvious. We don't want to put a lot of language on a small bottle or on very small print which might be so minute as to get all the information on it and then cannot be read. We hope to deal with this case-by-case in our regulations, but to make it clear to the consumer that what he chooses is essential information. That is one of the problems with a State law in the milk-dating. People don't know, but there is a way that you can get that information to the consumer.

COUNCILMAN GREITZER: Thank you.
COUNCILMAN LERNER: On packaged meats, I am not sure I understand this, the date that will be on the package would be the last date that it should be used?

MISS FURST: Not the last date it should be used, but the last date it should be sold.

COUNCILMAN LERNER: So that six minutes after you buy it it will turn rotten? That is no help. As I understand the milk dating allows about three days after that last date. Then milk is dated as an estimated date of consumption which is based on the last date that milk can be sold. That is already established in our minds, that milk will last X number of days. That is if you keep it properly refrigerated, et cetera. But meats and frankfurters, you just don't know. We have no idea. The manufacturers do. How should that be handled? Suppose a refrigeration truck breaks down on the way and there is no way for the person to know when she gets the package to the house how long to keep it?

MISS FURST: As I understand the code numbers which are put on there, the date that
the manufacturer puts on the products takes into account the estimated time, from experience and by working with them, the estimated period of the average consumer's storing, or time that he uses up these products. It is based on their experience. That is why we are putting the burden on the manufacturer, to give us the right to question them as to why they have chosen that date. Obviously, where meat has gone bad in shipment I assume that since selling bad food is against the law, that meat would not be put on the counter.

Besides, perishables are required to be put on cooled shelves.

COUNCILMAN LERNER: I know, but we ought to know that when you buy a quart of milk and you put it into the refrigerator, that it will last another three or four days. I know from my own experience with skimmed milk that it lasts longer. I also know that if I go to the corner delicatessen, it will last a shorter time because it probably has been around longer. That is the kind of
information a consumer should have.

THE CHAIRMAN: The requirement there be a recommended condition for storage I think might be the information necessary to the consumer so that he or she may know how long it can remain after the selling date.

COUNCILMAN LERNER: Do you leave the plastic on or do you take it off?

MISS FURST: That depends on the product.

THE CHAIRMAN: I am trying to find out how the consumer would know how long an article can be kept after the final date of purchase?

MISS FURST: Well, the foremost and of importance is the intent to make sure that the consumer when he bought the product knows it is in proper condition. In other words, that is if we by saying that a package of pot roast has to be kept in a cool area, milk is supposed to be kept in a cooled area, a lot of perishable products are to be kept that way. That is what we had in mind. That is our obvious jurisdiction, the selling of food to the consumer. We might very well be able to put that kind of regulation in. Some
products, obviously, it does not matter. It would apply to milk, obviously hot dogs would vary. It would depend on when you opened them.

COUNCILMAN LERNER: The reason -- I don't have this in New York City -- but upstate I have been buying some packaged meat and on the wrappers it says remove the wrapping before putting it into the refrigerator in one store. I don't know if all over they have the same kind of stamping in grocery stores that you are supposed to remove the wrapping or is it spelled out on these foods or not?

COMMISSIONER STERN: Obviously this is an upstate grocery store. On most of the plastic wrappings, the label is so small I can't see how you would have enough room to put the condition of storage on or recommended method of storage or so forth. It is the kind of thing we would like to provide by regulation and modify this language to say to indicate so and so, and give the Commissioner discretion as to how it should be handled rather than to try to write it into law. But the whole dating question is really
more than just stamping a date on some food, and that is the way we will treat it.

THE CHAIRMAN: In the light of your statement, would you then recommend a change in language on the third line before the end of 120.2, indicating statements, or stating, indicating instead of -- take out the word after the statement and add "indicating"?

COMMISSIONER STERN: Yes.

MISS FURST: Right. "Indicating recommended condition and methods of storage," instead of -- and you can take out b, right, and leave it there -- "statement indicating method of storage," and the fact that the food is not resold after it is sold for human consumption after a clearly specified date.

THE CHAIRMAN: And take out "ban" and substitute "fact."

MISS FURST: Right. That cleans it up. And we are also deleting 129.4b, which is what Councilman Weiss recommended.

THE CHAIRMAN: Right.

COMMISSIONER STERN: And have a semi-colon
on 120.5 at the end of the line six, we will add a semi-colon.

And then c, in the first line, this will be changed to b.

THE CHAIRMAN: Right. Page 4c will become b, right.

Any other questions?

Thank you, Commissioner Stern -- excuse me, it will go into effect immediately as it stands now, but it will take the Commissioner some time to draft regulation, so we won't put in six months, you know, but leave "Immediately".

COMMISSIONER STERN: Yes. Thank you.

That is what I had in mind. Thank you very much.

THE CHAIRMAN: Thank you.

COMMISSIONER STERN: I want to thank the Council.

THE CHAIRMAN: I would like to call out-of-turn former Congressman Tenzer who has to go to Washington.

MR. TENZER: Thank you, Mr. Chairman.

Ladies and gentlemen of the Committee on Consumer Affairs of the City Council: it
is a pleasure to be here. I am here in my capacity as counsel to the manufacturers of Confectionery and Chocolate Association with offices at three West 51st Street. I have been associated with the confectionery and chocolate industry for many, many years. I have with me Mrs. Grace Valle, executive secretary of the Association of Manufacturers of Confectionery and Chocolates.

I appreciate your calling me at this time, Mr. Chairman, and I want to address myself in general to the bill on the consideration which is 229A.

As I understand it, this bill will take the place of the other two bills ---

THE CHAIRMAN: Yes, sir.

MR. TENZER: All three bills cover essentially the same subject matter. So although I have not seen 229A until this morning, I assume that it covers the same subject as the other two. I will address myself to the general legislation.

We are considered dairy manufacturers also, and might fall under the category of
perishable goods. I would like to indicate, however, in a very brief statement, that it is obvious from the testimony of the representatives of the Department of Consumer Affairs that indicates in prescribing rules and regulations for conditions under which food shall be stored, that they do not address themselves to the problem of the packaging of hard candies like Charms or Life-Savers. These are processed foods, and they are not in the class or category of perishable foods. These packages of sugar-coated products, including these hard candies, have a lifetime of at least five years, and really can last indefinitely.

It seems to me that we require, and should require, some limitation in order not to make this broad in the whole area of processed foods. When you are dealing with fish, meats, poultry, eggs, cheese, butter, milk, the City of New York has gone very far in protecting the consumer with regard to those products. But when you are dealing
with -- perhaps you would like to see some samples, I know everybody likes candy -- but we have some samples to indicate where the problem is. I have been identified with the industry all my life.

Now, I know that in those days we did not have air-conditioning and refrigeration and we did not have highly developed technology for processing of food, where foods such as candy products, including candy products, were subjected to very great degrees of temperature variations, and it could spoil. But there was no spoilage in packages of hard candy, including gum. It would keep very nicely.

Take, for example, a Hershey bar or a Barton's candy box or Barichini solid chocolate box, either milk or bitter-sweet or vanilla without anything else, and put it on the shelf, and take a bar which might have just come out of the factory, and sometimes you have a consumer purchase a box of these chocolates. Then he takes it and puts it in the rear of the car by the time he gets
to where he is going, within a half an hour even, regardless of the condition of that product, it will be destroyed. The real problem with respect to candy arises with the way it is handled by the consumer very often. Of course, there may be a box of candy that is put on the shelf by a retailer and for some reason he turns off the air-conditioning at night or something happens to the cooling system and the product might be destroyed. But I would like to suggest since the Department of Consumer Affairs has no provision for products such as this that the candy be exempted specifically from this legislation. They are a dairy product, but candy is not a dairy product in the true sense, although it does have milk, it is milk chocolate. But it is powdered milk and uses processed milk in milk chocolate, so what you are dealing with is processed milk and processed milk products. The danger of spoilage to set in is almost minimal. And deterioration does not set in. This
product could last five years, three years from today it will look just as it does now. For example, the use of chocolates and candy products in rations to the Army has proven that it can be kept for many years. Take those Army rations, they lasted two, three years and were put up two and three years in advance of that. And they remained good. Of course, they were made with a different type of ingredient because they wanted to make sure they did not melt in extreme temperatures of 125 degrees. So you have a different type of product. You don't put any milk chocolate, milk into a product such as this. But candy -- incidentally, another feature, for example, most of the -- a good deal of candy today -- the business done in candy today is candy eaten -- although it is eaten every day by most people, the fact is that a great deal of these products are made for specific holidays.

Products such as Candy Corn which is sold at Christmas and Halloween times; Easter time. This candy may have been made a year
in advance. Sugar-coated jelly beans, jelly eggs, can be made a year in advance. Chocolate-coated raisinettes could be made around the clock. Or products like licorice.

In other words, to even out the production, this is made year-round.

THE CHAIRMAN: You are leaving samples here as exhibits?

MR. TENZER: Of course, I will have made my package a little lighter than way.

How about cough drops: what would you consider them? Would they come under food products? They remain good, depending strictly upon the way they are treated by the consumer. But you take a package of Luden's of Smith Brother's cough drops, and you can carry them in your coat pocket, take one out, rewrap the end and put it back in your coat pocket. Take it out next year, and it still may be as good as the day it was made. It might be crystallized if it were kept in an unfavorable condition, but it is edible. It would not fall under the description of perishables such as fresh vegetables, meats and poultry would.
So I recommend to you for your consideration that candy and confectionery products, including gum, be exempted from legislation because this legislation is addressed to perishable foods purchased in the supermarkets.
Candy is usually not really a supermarket item like the rest of the items of produce, which is what we are addressing ourselves to.
Because just to reiterate here, candy usually is sold in candy stores and from counters. It is not done to any great extent in supermarkets, although they do carry it. Candy, like most products tend under unfavorable conditions, if not kept in air-conditioned stores. I didn't hear a word with regard to processed foods other than in supermarkets, and rightly so, because we recognize the pressure that this legislation would create, the horrendous problems of enforcement on the Department when you are dealing with every candy store and every cigar counter in every building throughout the City. So whether or not it applies to a box of candy or a package like this, whether we are going to apply
dating and conditions under which candy is
to be kept on a little yellow piece of paper,
conditions of storage, becomes impossible.

So as to what should be done with this,
or the individual mint that you take off a
cigar counter, or where instead of picking
up a penny you pick up a couple of these, or a
holiday's fruit jelly, they are good for
five or ten years. It is not applicable,
and we think that the consumer should be
protected. We should address ourselves to
that which we can enforce, namely, the per-
ishable foods which has created a problem in
the first instance, the fresh meats, poultry,
the fish, the eggs, the dairy products which
have to be controlled and have a two or three
or four or five-day life, as has been test-
ified to.

I would be glad to answer any questions.

THE CHAIRMAN: I think I want to say that
it is not the intention of this amended bill
to include what you addressed yourself to.
The original bill, 390, involved all packaged
foods, which might have incorporated the items
you mentioned, but this refers to the perishable foods. Without being particularly competent to testify in that connection, I would say that chewing gum, those items are non-perishable, and I am sure that the Commissioner of Consumer Affairs would agree. So I don't think we have a problem on that.

MR. TENZER: I just wanted to be sure. I didn't have that bill that you have under consideration, as I have stated before, and I merely wanted to make our representation to the Department of Consumer Affairs, since they have addressed themselves to food products which are the problem and which we hope, when this bill is passed, will be enforced. But I just wanted to have it all clear on that.

THE CHAIRMAN: Any questions?

COUNCILMAN RYAN: One question, and I hesitate a little bit to bring it up because, in fact, when this product is stale, it is more desirable, but I have, in all fairness, to tell you that I have purchased licorice -- I have a great licorice-eater, and I understand it is low in calories, too -- now, whether
that is true or not I don't know, but I have obtained it in the markets where I have seen it shipped where it is soft and chewy, and very tasty, but I don't like it that way. I like it with a hard consistency, I find that is even more desirable. But I would think in all fairness that the product does change.

COUNCILMAN LERNER: Within minutes after opening. I have kept licorice in the refrigerator and it gets hard.

COUNCILMAN RYAN: It so happens I like my licorice very hard and find it highly desirable that way. The same with gumdrops.

MR. TENZER: You find that the items don't change in the stores. But let's say that you have a very desirable-by-children product, and it is handled often by the consumer. The alteration takes place in the hands of the consumer, not in the hands of the manufacturer, and it is not in the hands of the wholesaler and it is not in the hands of the retailer. It happens because of the unfavorable conditions under which the consumer keeps it.
COUNCILMAN RYAN: I don't agree, quite.

MR. TENZER: Then there is also, to a considerable degree, a rotation problem.

COUNCILMAN LERNER: I bought a package about two weeks ago, licorice, and I put it in a bread box thinking it would stay relatively moist, if nothing else. Within a very short time, it became hard and impossible to eat.

COUNCILMAN RYAN: I prefer it that way.

MR. TENZER: That is the thing, you put it into a breadbox which is designed to keep bread fresh, but it draws from the ---

COUNCILMAN LERNER: If not in the bread box, then where else would you put it, then?

MR. TENZER: May I, please, I would like to share the licorice with the two licorice-eaters, but I am, you know, there is another thing involved. As a matter of fact, Congressman Farbstein wrote some very learned answers to this subject of the rotation of foods in the stores. When you get a lazy clerk who will continue to pile merchandise on top of rather than rotating it and putting
the new merchandise underneath or in back, which is the proper system for the retailing of food, and regardless of all the instructions they get for rotation of food products, the clerks don’t do it. But be that as it may, that the legislation was not intended to concern itself with the confectionery industry. We didn’t read it that way in the bill, but if we have the Chairman’s understanding and the other members of the Committee’s understanding that it is not, we will be glad to defer to the Commissioner’s discretion as far as the enforcement of this law is concerned and the handling of these products.

COUNCILMAN LERNER: Excuse me, if I may, but packaged nuts are considered perishable foods, or are they not considered?

MR. TENZER: Packaged nuts are generally vacuum-packed and can remain in that state a very long time. There is a peculiarity about the butter, in that it is a little different. Every nut has a nut germ in it which is part of the creation process. And
under certain degrees of temperature, that nut germ develops a worm that is contained. The manufacturer does not put it there, nature put it there. And that nut germ develops automatically when you retain the nuts under unfavorable conditions they will become wormy. Under normal temperature, and under usual and normal temperatures, it will last a long time. But there is an oil which is extracted and becomes exuded which, when it develops, gives a rancid taste to the nut. It is an oil that causes this rancidity, caused by the temperature in the room or the conditions under which it is stored.

COUNCILMAN LERNER: Under this legislation, the label will have a condition of storage on it.

MR. TENZER: Yes. Even under the bill that you had under consideration before I believe that those packages where there was room for it, processed, perishable food, there ought to be a label, imprinted on the label which tells the date and gives some instructions,
generally applicable to all these products. That does not have to be legislated. But it should be on the can, should be on the container. Many people will be smart enough to take care of milk, use only what they need and put the rest back in the refrigerator, but you should take the same kind of care with any perishable food. One should not leave milk on the table for two hours but put it back into the refrigerator again and then take it out for lunch and change the conditions of the product. The same would be recommended with candy. If you remove it from a cool storage place, and place it on the table, just like milk, it cannot last as long as if it were put back into a cool place.

COUNCILMAN WEISS: Congressman, just so that we have, or I have a clear understanding as to what we are doing here today, I don't think that it would be fair or accurate to state that under no circumstances would the Commissioner have the right to designate or give any kind of fine on perishable items
including candy as well or any other kind of food. I think what we are saying is that clearly this legislation is addressed to perishable foods. And therefore, by the very use of that term, the items which you referred to are not perishable, and therefore, would by the exercise of reasonable discretion on the part of any Commissioner, be deemed not to be perishable. But you are in favor, as I understand, of having the same discretion over manufacturers where perishable products do obtain, and that the reasonable attitude of a Commissioner in the future will encompass certain products, even though the package, and even though it may be candy, or confectionery, may come within the purview of perishable goods, and in that instance, under the terms of this legislation, the Commissioner would have the right to and have the power to designate that particular item as being perishable?

MR. TENZER: I don't think that we are in disagreement, but we know that we have no perishable items such as the foods I mentioned
before. I don't think we in this industry, as I suggested when we started out with the idea that candy and confectionery items are not generally perishable. But what we say is, and we agree with you, we make it on the invitation of the Commissioner, if the Commissioner invites us in, to speak with us about details of this industry with his Department and to assist in every way to determine if there is in her opinion any product which is perishable, and we will be glad to come in and give our technical views and any consideration, help in and consideration to promulgate rules and regulations.

We don't want to be dealing with products which spoil under poor conditions or by the consumer. Even if candy may crystalize, or may not look appetizing, it will not have lost one iota of its nutritional value. What has happened is an occurrence, if you see grayness on chocolate, which is commonly referred to as granulated. I am talking about solid chocolates or chocolate-coated manufactured goods. These are derived from the cocoa leaf
which contains a quantity of cocoa butter. Cocoa butter is a fat. When it gets to a certain degree temperature, the butter rises to the surface and creates a bloom. But it does not change the nutritive value, it simply has changed in eye appeal.

We would like to be available to come in and give you all the information that our years of experience in the candy industry has given us and make it available to you.

COUNCILMAN HABER: I have a question: several times over the years, I heard — I don't know if you are talking about a particular boxed candy, such as caramel or cream-filled, but I have had this experience, or I have heard, not too often, but on various times they were not only discolored, but I have had experience with it being stale.

MR. TENZER: This discoloration might be due to over-exposure to heat.

COUNCILMAN HABER: That is part of it, but I am talking about also the fact that it was actually stale, where you bit into it and it was hard and it had a — I don't know it
is hard to describe, but it had a staleness to it.

MR. TENZER: That is because, as I said before, if it is chocolate-coated, and if it was kept at home or it was improperly stored, the cocoa butter in it rises to the surface and discolors it. And it tastes a little like -- I guess you would call it a little rancid, but it does not disturb the nutritional value.

COUNCILMAN HABER: I am not talking so much about the discoloration as I am actually talking about a dankness; it is a difficult taste to describe, but you have a feeling -- that it may very well have the nutritional value, I am sure, but it has that funny taste. It is definitely a stale taste.

MR. TENZER: I am not sure of the particular condition which you are talking about. But it would probably be from improper storage.

COUNCILMAN HABER: This is something that was brought in the store the same day, by someone, who brought it up that evening and
found it contained something wrong with it.

MR. TENZER: It could be that the retailer probably did not store it properly. If you shut off the air-conditioning in the store at night because the retailer wants to save a couple of pennies, and it stays that way overnight and the temperature reaches 90 degrees outside, you will have the candy product destroyed.

THE CHAIRMAN: Thank you very much, Congressman. Nice to see you, pleasure to have had you here.

COUNCILMAN LERNER: And thank you very much for the licorice.

MR. TENZER: Thank you very much for calling me out-of-turn. I appreciate it very much.

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LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1971

No. 17

Introduced by Messrs. Merola, Sharison and Mrs. Ryan—

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the labeling of perishable foods.

Be it enacted by the Council as follows:

Section 1. Title B of chapter 36 of the administrative code of the city of New York is hereby amended by adding thereto a new article 12 to read as follows:

CHAPTER 36
Article 12
PERISHABLE FOODS

§ B36-120.1 Legislative intent.—The Council finds that consumers cannot be certain that food offered for sale is fresh or that it will remain fresh for a reasonable period of time after it is purchased. The council particularly recognizes consumer concern with the freshness of foods including, but not limited to, meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods. The Council further finds that the food industry's practice of controlling food freshness through coded dates has proven inadequate for protection of the public. The council has concluded that a mandatory system of clear and legible dating accompanied by a statement of recommended conditions of storage is the best way to assure consumers of the freshness of the foods that they buy in stores.

§ B36-120.2 Perishable foods.—It shall be unlawful to sell or offer for sale any perishable food designated by the commissioner of consumer affairs in accordance with §B36-120.3 hereof unless there is stamped printed or otherwise plainly and conspicuously marked on the top cover or principal panel of its container or any label affixed thereto the statements indicating recommended conditions and methods of storage, and the fact that it is not to be sold after a clearly specified date for human consumption as food.

§ B36-120.3 Regulations.—(a) The commissioner of Consumer Affairs shall promulgate regulations designating those perishable foods which shall come within the scope of §B36-120.2 wherever the commissioner shall find that because of the nature of the commodity, the mode of packaging or other consideration, such information about the commodity shall be necessary and proper to provide adequate information to the consumer as to the perishable nature of such commodity and conditions of storage.

(b) The commissioner may make and promulgate such other rules and regulations as may be necessary to carry out the purposes of §B36-120.2.
§ B36-120.4 Powers of the Commissioner.—(a) The commissioner shall receive and evaluate complaints and initiate his own investigations relating to these matters and take appropriate action related thereto including stop-sale and stop-removal orders where necessary and proper.

(b) The commissioner shall have the power after reasonable notice and hearing, to determine the reasonableness of any statement or representation as to the date and conditions of storage affixed pursuant to § B36-120.2 of this article.

§ B36-120.5 Penalties.—Any person, firm, corporation or association or agent or employee thereof, who shall violate any of the provisions of this Article or of the regulations promulgated pursuant to § B36-120.3 shall pay a civil penalty of not less than twenty-five dollars nor more than two hundred fifty dollars for each violation; and shall, upon conviction thereof, be punished by a fine of not less than twenty-five nor more than two hundred fifty dollars for each such violation.

§ 2. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on April 6, 1971 and approved by the Mayor on April 23, 1971.

HERMAN KATZ, City Clerk, Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW SECTION 27

Pursuant to the provisions of Municipal Home Rule Law Section 27, I hereby certify that the enclosed local law (Local Law 17 of 1971, Council Int. No. 229-A), contains the correct text and:

Received the following vote at the meeting of the New York City Council on April 6, 1971: 36 for, none against, 1 not voting.

Was approved by the Mayor on April 23, 1971.

Was returned to the City Clerk on April 23, 1971.

J. LEE RANKIN, Corporation Counsel.
GENERAL ORDER CALENDAR

G.O. No. 21—Int. No. 229—A

Report of the Committee on Consumer Affairs in Favor of Adopting, as Amended a Local Law to Amend the Administrative Code of the City of New York in Relation to Labelling of Perishable Foods:

The Committee on Consumer Affairs, to which was referred on May 5, 1970 (Minutes, page 1079), the annexed amended local law, respectfully

REPORT:

The purpose of this bill is to require clear and legible dating accompanied by a statement of recommended conditions of storage of perishable foods including, but not limited to meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods.

The legislation also provides that the Commissioner of Consumer Affairs shall promulgate regulations designating those perishable foods which shall come within the scope of this proposed local law.

Accordingly your committee recommends its adoption as amended.

A LOCAL LAW to amend the administrative code of the city of New York, in relation to the labeling of perishable foods.

Be it enacted by the Council as follows:

Section 1. Title II of chapter 36 of the administrative code of the city of New York is hereby amended by adding thereto a new article 12 to read as follows:

CHAPTER 36

Article 12

PERISHABLE FOODS

§ B36-120.1 Legislative intent.—The Council finds that consumers cannot be certain that food offered for sale is fresh or that it will remain fresh for a reasonable period of time after it is purchased. The Council particularly recognizes consumer concern with the freshness of foods including, but not limited to meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods. The Council further finds that the food industry’s practice of controlling food freshness through coded dates has proven inadequate for protection of the public. The Council has concluded that a mandatory system of clear and legible dating accompanied by a statement of recommended conditions of storage is the best way to assure consumers of the freshness of the foods that they buy in stores.

§ B36-120.2 Perishable foods.—It shall be unlawful to sell or offer for sale any perishable food designated by the commissioner of consumer affairs in accordance with §B36-120.3 hereof unless there is stamped printed or otherwise plainly and conspicuously marked on the top cover or principal panel of its container or any label affixed thereto the statements indicating recommended conditions and methods of storage, and the fact that it is not to be sold after a clearly specified date for human consumption as food.

§ B36-120.3 Regulations.—(a) The Commissioner of Consumer Affairs shall promulgate regulations designating those perishable foods which shall come within the scope of §B36-120.2 wherever the commissioner shall find that because of the nature of the commodity, the mode of packaging or other consideration, such information about the commodity shall be necessary and proper to provide adequate information to the consumer as to the perishable nature of such commodity and conditions of storage.

(b) The commissioner may make and promulgate such other rules and regulations as may be necessary to carry out the purposes of §B36-120.2.

§ B36-120.4 Powers of the Commissioner.—(a) The commissioner shall receive and evaluate complaints and initiate his own investigations relating to these matters and take appropriate action related thereto including stop-sale and stop-removal orders where necessary and proper.

(b) The commissioner shall have the power after reasonable notice and hearing, to determine the reasonableness of any statement or representation as to the date and conditions of storage affixed pursuant to §B36-120.2 of this article.

§ B36-120.5 Penalties.—Any person, firm, corporation or association or agent or employee thereof, who shall violate any of the provisions of this Article or of the regulations promulgated pursuant to §B36-120.3 shall pay a civil penalty of not less than twenty-five dollars but not more than two hundred fifty dollars for each violation; and shall, upon conviction thereof, be punished by a fine of not less than twenty-five nor more than two hundred fifty dollars for each such violation.

§ 2. This local law shall take effect immediately.


On motion of the Vice-Chairman (Mr. Cuite), the foregoing matter was coupled as a General Order for the day. (See ROLL CALL ON GENERAL ORDERS FOR THE DAY.)
REPORTS:

The purpose of this bill is to require clear and legible dating accompanied by a statement of recommended conditions of storage of perishable foods including, but not limited to, meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods.

The legislation also provides that the Commissioner of Consumer Affairs shall promulgate regulations designating those perishable foods which shall come within the scope of this proposed local law. Accordingly your committee recommends its adoption as amended.

A LOCAL LAW to amend the administrative code of the city of New York, in relation to the labeling of perishable foods.

Be it enacted by the Council as follows:

Section 1. Title B of chapter 65 of the administrative code of the city of New York is hereby amended by adding thereto a new article 12 to read as follows:

CHAPTER 65

ARTICLE 12

PERISHABLE FOODS

§ 38-1201 Legislative intent.—The Council finds that consumers cannot be certain that food offered for sale is fresh or that it will remain fresh for a reasonable period of time after it is purchased. The council particularly recognizes consumer concern with the freshness of foods including, but not limited to, meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods. The Council further finds that the food industry's practice of controlling food freshness through coded dates has proven inadequate for protection of the public. The council has concluded that a mandatory system of clear and legible dating accompanied by a statement of recommended conditions of storage is the best way to assure consumers of the freshness of the foods that they buy in stores.

§ 38-1201.2 Perishable foods.—It shall be unlawful to sell or offer for sale any perishable food designated by the commissioner of consumer affairs in accordance with §83-1201.3 hereof unless there is stamped printed or otherwise plainly and conspicuously marked on the top cover or principal panel of its container or any label affixed thereto the statement or date of recommended conditions and methods of storage, and the fact that it is not to be sold after a clearly specified date for human consumption as food.

§ 38-1203 Regulations.—(a) The commissioner of Consumer Affairs shall promulgate regulations designating those perishable foods which shall come within the scope of §38-1201.2 wherever the commissioner shall find that because of the nature of the commodity, the mode of packaging or other consideration, such information about the commodity shall be necessary and proper to provide adequate information to the consumer as to the perishable nature of such commodity and conditions of storage.

(b) The commissioner may make and promulgate such other rules and regulations as may be necessary to carry out the purposes of §38-1201.2.

§ 38-1204 Powers of the Commissioner.— (a) The commissioner shall receive and evaluate complaints and initiate his own investigations relating to these matters and take appropriate action related thereto including stop-sale and stop-sale orders where necessary and proper.

(b) The commissioner shall have the power after reasonable notice and hearing to determine the reasonableness of any statement or representation as to the data published pursuant to §38-1201 of this article.

§ 38-1205 Penalties.—Any person, firm, corporation or association or agent or employee thereof, who shall violate any of the provisions of this Article or of the regulations promulgated pursuant to §38-1203 shall pay a civil penalty of not less than twenty-five dollars but not more than two hundred fifty dollars for each such violation; and shall, upon conviction thereof, be punished by a fine of not less than twenty-five nor more than two hundred fifty dollars for each such violation.

§ 2. This local law shall take effect immediately.


Laid over.
G. O. No. 24—Int. No. 229A.

An amended Local Law to amend the Administrative Code of the City of New York,
in relation to labeling of perishable foods.

Page 1679, Minutes of May 5, 1970.
Amended March 18, 1971 and laid over.
Page 333, Minutes of March 18, 1971.
Again laid over March 30, 1971; Page , Minutes of March 30, 1971.

LOA - 3/30/71
THE COUNCIL
The City of New York

Intp. No. 229-A

Introduced by Messrs. Merola and Sharison and Mrs. Ryan — read and referred to the Committee on Consumer Affairs

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the labeling of perishable foods

Be it enacted by the Council as follows:

Section 1. Title B of Chapter 36 of the administrative code of the city of New York is hereby amended by adding thereto a new Article 12 to read as follows:

CHAPTER 36

Article 12

. PERISHABLE FOODS

§ B36-120.1 Legislative Intent.—The Council finds that consumers cannot be certain that food offered for sale is fresh or that it will remain fresh for a reasonable period of time after it is purchased. The Council particularly recognizes consumer concern with the freshness of foods including, but not limited to, meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods. The Council further finds that the food industry's
practice of controlling food freshness through coded dates has proven inadequate for protection of the public. The Council has concluded that a mandatory system of clear and legible dating accompanied by a statement of recommended conditions of storage is the best way to assure consumers of the freshness of the foods that they buy in stores.

§ B36-120.2 Perishable Foods.—It shall be unlawful to sell or offer for sale any perishable food designated by the commissioner of Consumer Affairs in accordance with § B36-120.3 hereof unless there is stamped, printed or otherwise plainly and conspicuously marked on the top cover or principal panel of its container or any label affixed thereto the statements (a) recommended conditions of storage, and (b) that it is not to be sold after a clearly specified date for human consumption as food.

§ B36-120.3 Regulations.—(a) The commissioner of Consumer Affairs shall promulgate regulations designating those perishable foods which shall come within the scope of § B36-120.2 wherever the commissioner shall find that because of the nature of the commodity, the mode of packaging
or other consideration, such information about the commodity shall be necessary and proper to provide adequate information to the consumer as to the perishable nature of such commodity and conditions of storage.

(b) The commissioner may make and promulgate such other rules and regulations as may be necessary to carry out the purposes of § B36-120.2.

§ B36-120.4 Powers of the Commissioner.—(a) The commissioner shall receive and evaluate complaints and initiate his own investigations relating to these matters and take appropriate action related thereto including stop-sale and stop-removal orders where necessary and proper.

(b) The commissioner, in the performance of said functions, shall be authorized to hold public and private hearings, administer oaths, take testimony, serve subpoenas and receive evidence, and to promulgate, amend and modify procedures and practices governing such proceedings, and to promulgate, amend and modify rules and regulations necessary to carry out the powers and duties of the department.
The commissioner shall have the power after reasonable notice and hearing, to determine the reasonableness of any statement or representation as to the date affixed pursuant to § B36-120.2 of this Article.

§ B36-120.5 Penalties.—Any person, firm, corporation or association or agent or employee thereof, who shall violate any of the provisions of this Article or of the regulations promulgated pursuant to § B36-120.3 shall pay a civil penalty of not less than twenty-five dollars not more than two hundred fifty dollars for each violation and shall, upon conviction thereof, be punished by a fine of not less than twenty-five nor more than two hundred fifty dollars for each such violation.

Section 2. This local law shall take effect immediately.
FOOD PRODUCT DATING

Eileen F. Taylor
Marketing Economics Division

ABSTRACT: In response to a congressional request, an exploratory study was conducted to determine and summarize what is presently known about food product dating. In the past year, several bills have been introduced in Congress to require that packaged perishable foods bear labels specifying the date after which products should not be sold. Several retail chains have recently initiated open code dating programs and many processors are studying the possibility of open dating their products. The article discusses current industry practices on product dating, pros and cons of different open dating methods and selected findings of a Food Stability Survey made by Rutgers University. Also included are recommendations for further research that would help to determine consumer interest in and use of open dates, and the possible costs involved for the retailer.

KEY WORDS: Food product codes, product dating, open dating

In late 1969, legislation was introduced in Congress to amend the Fair Packaging and Labeling Act to require that packaged perishable foods bear labels specifying the date after which they are not to be sold for consumption. Several similar bills were introduced during the 2nd session of the 91st Congress, but hearings have not been held on any of them. In April 1970 the results of two limited retail surveys made in Washington, D.C. were released. The reports on both of these surveys charged that retailers were not rotating and removing stock and were thus selling a substantial amount of overage food. Since these findings were based on restricted samples, and little objective research data were readily available, the Chairman of the Special Consumer Inquiry of the House Special Studies Subcommittee wrote to Agriculture Secretary Hardin asking that USDA evaluate several aspects of food product dating.

In response to the Secretary's request for information, the Economic Research Service in late July began exploratory work on food product dating. When the preliminary investigations were completed, ERS submitted a report of these findings to Congress. Included were recommendations for further research that would help to determine the consumer's interest in and possible use of open dates, as well as the scope of some of the concerns of the retailer and processor about different open dating techniques.

The first step of the ERS exploratory work was to determine industry practices regarding food product coding and code dating. Virtually every food product now on grocery store shelves has a code on it. The codes used are established by the processor and may provide various kinds of processing information, including some kind of date. Many codes give product identity and the plant--even the time of day or shift--where the product was processed. There normally is a code date representing the date of manufacture or final packaging, perhaps accompanied by an indication of a reasonable shelf life. Or there may be an expiration or "pull" date, after which the product should be removed from the retailers' shelves while still allowing for storage time in the home.
According to most food processors, product codes—including dates—are intended primarily as inventory and quality control devices. They enable the processor to identify the product and the source of its raw materials; they allow for stock rotation on a first-in, first-out basis; they enable the company personnel to withdraw overage products from the retail shelf; they help the company trace and handle consumer complaints; codes can be used to identify product lots if recall becomes necessary; and they make it possible to trace product movement in the marketplace.

Open dating of products is unusual at present. Six municipalities (New York City, State of New Jersey, Baltimore, St. Louis, Birmingham, and suburban Philadelphia) have ordinances requiring open dating of fresh milk. Although some States require that various foods be dated, these dates generally must only be legibly coded and are not intended for consumer use. Most refrigerated dough products, where yeast is an important quality factor, are open dated by the processor. A date is pressed into the can lid with a statement on the label saying "Perishable - Keep Under Refrigeration. For Best Results, Use Before Date on End of Can." This is about the only widely distributed product where an open date is used and explained by the manufacturer as an indicator of quality.

Rutgers Food Stability Survey

When the Economic Research Service began its exploratory work on food dating, very little pertinent research data were found. The most extensive research has been done by the Food Science Department of Rutgers University at the request of the State Department of Health after legislation similar to that later introduced in Congress was introduced in the New Jersey legislature. This study was commissioned in 1969 to ascertain which foods may be likely to be of low quality or to create a public health hazard if their shelf life expires before they are consumed, and what effects, if any, open dating could have on reducing potential hazards.

The Rutgers study team began by looking at four quality areas: aesthetic, nutritional, microbial, and functional. Data from the National Communicable Disease Center showed that, even allowing for unreported cases, the causes of food poisoning in the United States are not generally due to the food processing industry. Since the product would usually become aesthetically unacceptable before becoming a health hazard, the research emphasized the relationship of other types of quality to the age of packaged foods. In fact, it did not go substantially beyond the area of aesthetic quality, which is defined as changes involving color, flavor, and texture—those aspects of food quality most subject to consumer evaluation.

The Rutgers study team began by reviewing the available literature on quality changes in food before, during, and after processing, as influenced by type of processing, packaging, shipping, and handling, as well as the temperature and time of storage. Termination of shelf life was defined as the point at which some significant quality change (determined by scientific experts, not by consumers) takes place in the food at a given temperature.

In analyzing available scientific information on the shelf life of processed foods, Rutgers discovered it was not generally applicable to processed foods now on the market or to consumer package sizes in retail stores. For instance, although the Department of Defense has generated, for specific purposes, substantial quantities of information about the durability of foods at given temperature and time levels, these do not apply to general consumer marketing conditions.

Rutgers requested information from most major food processing companies and retail chains about their respective code dating methods, and their procedures for monitoring and retrieving stock from
consumer outlets. They also asked the processors to define the accepted shelf life of their products at various temperatures, the quality factor basis for such shelf life, and the standards and criteria used in determining unsalable merchandise. More than 100 processors cooperated, although the information on procedures varied considerably among companies. All cooperating companies applied quality control and dating systems and some were extremely sophisticated in their monitoring and retrieval practices.

In addition, a review was made of present legal requirements for dating of food products in the United States at the Federal, State and local levels and in foreign countries. Open dating of some food products is common in several European countries and experiences there with product dating were closely examined and documented in the report.

The general recommendations included in the Rutgers report are: (1) Food processors should mark all exterior cases or overwraps in English with the date of manufacture or date of final packaging to simplify inventory rotation, (2) a legible uniform manufacturers' code should appear on every purchase unit to facilitate identification and pickup if recall is necessary, (3) an open date of shelf display (month, day and year) should be stamped indelibly by the retailer on each unit of most foods for use by the consumer after purchase, (4) the food industry should give satisfactory guidance to consumers on home storage conditions and on the maximum length of time food items may be wisely stored before being used, and (5) sanitary requirements as expressed in the Food and Drug Administration's Good Manufacturing Practices should be extended from the processor's premises to all personnel, equipment, and facilities directly involved in food handling at all levels of the food marketing system.

The Rutgers study team has completed its research and submitted its findings and recommendations to the New Jersey Department of Health. To make the substantial amount of information collected more widely available, USDA has agreed to publish the report early in 1971.

USDA Research

USDA's Agricultural Research Service, like the Department of Defense, has conducted research on the durability of foods under highly specific environmental conditions. The Western Utilization Laboratory of ARS has researched the shelf life of frozen foods. The impact of quality control during processing and distribution and its effect on the shelf life of meat products has also been studied by ARS researchers. Most of the research, like that done by the Department of Defense, was not oriented toward product dating but was concerned with product durability under various conditions.

Food Industry Attitudes on Open Dating

Since ERS became involved in the question of food product dating last summer, interest in open dating has been widespread in the food industry. During the past few months several retail food chains have begun programs of open code dating. One chain in Chicago is promoting freshness codes as a service to customers. Large placards are displayed in meat, dairy, delicatessen and snack departments explaining how to interpret the codes on private label products. In addition, at the service desk of each store, a code book is available which interprets the codes on many of the products carried in the store.

A chain in the Boston area announced that "Our Secret Code's no secret any- more" and now distributes small pamphlets explaining the codes on some of its own products, including fresh meats, delicatessen, dairy and bakery items. The pamphlets are available to shoppers in all stores, and although the number of items covered is not extensive, those that are explained are considered important in family food buying.
Many other chains in different parts of the country are trying other approaches. For instance, some divisions of a national chain have begun an advertising campaign to explain the dates on their private label products. Each week's ad features the date on a particular product--where it is on the package, how to read it, and what it means. Placards with similar explanations are placed in the appropriate departments in the stores.

In addition, some trade associations are encouraging their members to reevaluate their cryptic coding policies, with a view to open dating. Several have established study groups to look at the possibilities with regard to feasibility, usefulness, and costs. Many processors, on their own initiative, are taking a close look at the question of dating, and whether some kind of open date could provide genuinely useful information for the consumers. A few have publicly announced that they will begin to open date their products soon.

**Pros and Cons of Open Dating**

Opinions on open dating range from those who see code dates as top-secret management tools to those who recommend full disclosure of all possible product information on the label.

Advocates of open dating feel consumers are entitled to information on product freshness. Such information will help not only the shopper in the store, but also the homemaker storing and using the products in the home. Those in favor of open dates point out that the code now on the package--which the shopper sees and knows may include a date indicative of freshness--makes the consumer feel unsure and somewhat deceived. Proponents of open dating also point out that it would make the job of stock rotation and removal of out-of-date food much easier for the retailer.

Opponents retort that a readable date would not provide the consumer with any genuinely useful information. The temperature conditions and general methods of handling a product, they point out, are more important quality determinants than time alone. They feel open dating would be costly because shoppers would search through products on the shelf to find the most recent date. This would cause acceptable products to be rejected--and eventually reach their expiration date--so that product waste would increase substantially. The increased waste due to selective buying would lead to higher food prices. They foresee more out-of-stock situations because retailers will place on the shelves only items bearing the same date--and they will not restock until what is on the shelf is completely sold or must be removed.

Open dating advocates do not see selective buying as a serious problem, once the shopper becomes accustomed to readable dates. Data from the Rutgers report on open dating experiences in Europe tend to substantiate this opinion.

Even if everyone involved in the food product dating question--manufacturers, retailers, consumers, and legislators--could agree that some kind of open date would be useful, there would remain the task of getting agreement on the type of date to be used. There are numerous possibilities, many of which are already in use as code dates. For example, some individuals favor the use of a date of manufacture or date of final packaging. This, they argue, would give a common ground for comparisons, but would not involve the manufacturer in making statements on how long his product should be on the shelf. Opponents of this type of date point out the difficulties involved with items seasonally packed or stored for a period of time before final packaging. Moreover, the typical consumer does not have the necessary technical expertise to judge what the shelf life of products should be. Variations in quality control could mean that the same product from different plants of the same company could have different shelf lives. For example, even though each
plant meets acceptable sanitary requirements, one that has never, more sophisticated equipment might be better able to control bacteria and produce a product with a longer shelf life. Opponents claim any date in the past has a psychological disadvantage, so customers would be particularly inclined to search for the most recently dated product.

Another possibility is the use of an expiration date--the date after which a product should not be consumed. However, establishing such a date by law for any product is impossible because of shelf life variability and because the rate of quality loss typically is very gradual. It is not technically feasible to set a precise date after which significant quality changes would occur.

A retail "pull" date--after which the product must be removed from retail sales--is often suggested. Set by the processor, the "pull" date allows for adequate storage time in the home even if the item is purchased on the last acceptable day of sale. The drawback of this method could be a lack of understanding by shoppers of the home storage time allowed by the processor. If shoppers read the pull date as an expiration date, good quality products would be rejected and might have to be destroyed.

A more acceptable technique, suggested in the Rutgers report, is durability dating--that is, the provision of temperature and time guidelines to maintain optimum quality. For example, the refrigerated dough products mentioned earlier have a date stamped on the can lid and two statements on the label: "Perishable - Keep under refrigeration. For best results, use before date on end of can." This tells the consumer that, if the product is properly handled, it will be of high quality until the specified date. Beyond that date, the product will still be acceptable although it may no longer have optimum quality.

However, the main objection to dating is the importance of product handling. For most foods, temperature is a far more important quality determinant than simple elapsed time. Some people feel that any date may actually be a false assurance of quality because if the product temperature has not been properly maintained in handling, the food will not be of good quality even if its "pull" date is still months away. Open dating advocates argue that a date should not mean a guarantee of quality; it is only a useful guide for the shopper both in the store and in the home, and a way of making the retailer's job easier.

ERS Findings

When ERS had completed the initial exploratory work on the open dating question, a report outlining the findings and recommending some further study was forwarded to Congress. The report noted that some resistance to a program of open code dating has centered around the costs involved for the retailer and the lack of information on benefits to and use by consumers. Thus, the report recommends as a first step in researching open dating that arrangements be made with a large retail chain actively involved in open dating to monitor and evaluate its program.

The research will obtain information on the following six points:

1. Determine the extent to which consumers examine open dates in making purchases of food products, especially selected semiperishable and perishable items.

2. Interview a selected number of customers to ascertain their interest in and reaction to open code dating as practiced by the chain organization.

3. Measure the quantity of products withdrawn from the shelves by the store organization because of expiration of the open date.
4. Quantify, where possible, any cost to the chain organization of open dating including such factors as loss of product, frequency of delivery, and labor cost involved in any particular aspect of open dating.

5. Describe the arrangements prevailing between the chain organization and and food processors for products removed from the shelf because of expiration of the date.

6. Evaluate the acceptance and attitude of store personnel and chain store officials of open dating as a basis for efficient stock rotation.

The research, as proposed, would probably cover at least a 3-month period and could be expanded to include more than one retail organization. The results should provide some indications of the usefulness and feasibility of open dating for both consumers and processors.
Bread

Bread manufacturers and distributors generally use a letter code standing for production date, often in conjunction with a colored twister. Letters ABCD-EF stand for the days of the week—A is Monday, B is Tuesday, etc., to Friday. The Twister, or color, varies among manufacturers, but it serves as a reminder for the customer to spot bakes which must be picked up. Bread is supposed to be pulled from the shelves after 48 hours; whole grain and raisin breads are often granted longer shelf lives (as indicated below).

Alphabet Code

A—Monday
B—Tuesday
C—Wednesday
D—Thursday
E—Friday
F—Saturday
G—Sunday
H—Missing
I—Motion to use
J—Number
K—Number
L—Number
M—Number
N—Number
O—Number
P—Number
Q—Number
R—Number
S—Number
T—Number
U—Number
V—Number
W—Number
X—Number
Y—Number
Z—Number

Baked Goods

Refrigerated goods

Refrigerated baking goods are open-dated, because results can be guaranteed only through a given date. No baker will vouch for a product beyond that date, but the dough may not rise as well as it should, as yeast may not be properly activated. The test on the cylinder states that for best results, the product should be used before the date stamped on the metal end.

Acme Delivery Code

Stamped near the shop. Same ABCD-EF series as on bread.

ABCDEF delivery code used in conjunction with colored twist: Monday—white; Tuesday—blue; Wednesday—green; Thursday—yellow; Friday—red; Saturday—brown. Shelf life is 48 hours.

Acme Delivery Code

Brick to conventional ABCD-EF delivery code stamped on colored twist; Fresh Mon.—blue; Tues.—green; Wed.—red; Thurs.—yellow; Fri.—brown. Shelf life is 48 hours.

Meal-End Delivery Code

Meal-End Delivery Code

Brick to conventional ABCD-EF delivery code stamped on colored twist; Fresh Mon.—white; Tues.—blue; Wed.—green; Thurs.—yellow; Fri.—brown. Shelf life is 48 hours.

Bread

Bread removed after two days, whole wheat after three days.

Alfold Bakers

Letter code is stamped directly on colored twister, called the "Twist." Twister codes on bread: Fresh Mon.—blue; Tues.—green; Wed.—red; Thurs.—yellow; Fri.—brown. Shelf life is 48 hours.

Bread Supermarket

Bread Supermarket

This system is markedly different from those used by the other bread manufacturers. It is relatively new and designed to assist the customer who knows nothing about colors or letters but can read a date, printed on the end label of the package loaf of bread. Example: 0 for the 1st day of the month, 1 for the 2nd, etc. Note this difference above: Pappadoply: Forty was a pull date, not the day of delivery. All their breads have a two-day shelf life.

Same code. Four-day shelf life.

Same code. Four-day shelf life.

Same code. Four-day shelf life.

Same code. Four-day shelf life.

Don't wait till that happy day to decipher all the current code system. We're managed to break many of them. Generally speaking, most nationally distributed items, with the coded information, are the date of manufacture. On locally distributed items, where the code may do its own polishing, or a "best before" date is used, where the code may do its own polishing of the above pull dates and shelf lives.

Date code

Some letter code is stamped on package side; 48-hour shelf life.

Some letter code is stamped on package side; 48-hour shelf life.

Marked by ABCD-EF letter code on package top. Color and any numbers that follow are not referred to the packing machine, shelf life information was not shown.

"Freshly Baked"

Letter code on package bottom; 24-hour shelf life.

"Freshly baked"

Letter code on package bottom; 24-hour shelf life.
Chickering the Supermarket Code

Fruits, preserves, cake, baking and flourine mixes

Pillsbury's dry packaged items are all coded to inform the consumer only. Code always begins with a letter denoting the month product was manufactured (A for January), followed by a series of four numbers, three of which don't concern the consumer. The number sequence changes. The code could read HOU07. It refers to the 7th month: August. Final digit, 7, stands for 1970. But code could also read HOUOS. If still stands for August, but here the year is indicated by the O lying second to last. It, too, means 1970. Too complicated? These are not extremely perishable goods, however, so don't lose too much sleep over it. A Pillsbury spokesman notes that all wheat products (flour, wheat cereals, macaroni) are subject to developing weevils, but that this is due to weather and humidity conditions, not to length of time the product is on the shelf.

Dry Cereals

Since shelf life of dry cereals varies geographically due to climate, (ten months on the West Coast, twelve months in the more humid Southeast), the take force in each area is told when to remove the product from their shelves. For their use, the boxes are color-coded on the back side: Colors are divided into three. Most interior colors are General Mills won't see, nor will they declock digits printed on the package, with which the plant, shift, production line, etc., information. If you can decipher their codes, you'll also have the production dates of their cereals. Why they

Milk

New York City's Health Code requires that milk (in quart, half gallon and gallon sizes), skin milk, cream and half-and-half be clearly marked with the date of expiration on the top of the container. Somewhere on the carton will be found the legend, "Not to be sold after midnight of date indicated on top." This expiration date must not exceed 60 hours after 6 a.m. following production.

When the same farms whose milk products are sold in New York City deliver to outlets in Nassau, Suffolk or Westchester, they do not date-mark, since production control adds to the cost of the operation and companies feel pressured to keep prices down. In recent years, a number of companies, among them Borden and Crowley, have pushed their milk business out of the New York City market.

Kellogg's is now phasing in a new system for better control. The previous system (which probably is in your supermarket right now) consisted of only one number, which represented months of manufacture (1 through 12). Example of new coding: 05017A represents the 5th month: May. Month is coded 1-12. 0 stands for the year: 1970 (1971 will be represented by a 1). 117 is the 117th day of the year. June 27, 1970 is the date of manufacture. This production code will be found on package tops. Average shelf life of Kellogg's products can go to twelve months, with variations. Polished cereals (Sugar Smacks) generally last less long than others (Corn Flakes). Sugar coating requires special inner wrapping. Different geographic areas and temperature conditions have varying effects on the product.

Dairy By-Products

Vegtable

Carriera a four-unit pull date. The first unit is for internal use. The following three give the date in this manner: The second unit is a letter which stands for the month (A for January through L for December). The last two digits stands the date.

Yogurt

Marked with a letter having no consumer significance and two numbers separated by a space. This is the pull date. The first number (or numbers) represents the month (January is 1; December is 12); the following numbers stand for the day of the month. Retail stocks are supposed to be removed at end of two-week intervals.

Cottage cheese and sour cream

Dated on the label the first two numbers denote month, and the last two the day when the sour cream is to be removed from the shelves. The product keeps a month's shelf life.

Eggs

Dated on the label, the first two numbers denote month, and the last two the day when the sour cream is to be removed from the shelves. The product keeps a month's shelf life.

The code above translates into October 23, 1970. Manufacturer states the average shelf life as eight to nine months.
Cracking the Supermarket Code

The lid is marked with a four-digit removal date. The first digit stands for the month and is followed in sequence, representing January through June, and then continues for July through December. The next two digits tell the date. Early in the month, n 0 will appear before the day. This November 6 would read 506. A 9 is always in food place. Total coded date would read 3000. Products are taken off the shelf two weeks after date of manufacture.

Given two in a package, date (coded as above) is stamped on the outer sleeve, lathen corner of the dual pack.

Dairy Lea
Cottage cheese

(A five-digit pull date code is located on the package top. One letter is followed by four numbers. Disregard the letter. The numbers are dated in sequence, with the first two representing the month and last two the date. L 225 would mean a pull on December 25.

HO-TROL
A four-digit pullout code is located on the container bottom. If the expiration date is January 1, code would read 0101.

Yogurt

A four-digit packaging date is used. It is essentially the same code as the Dairy Lea cottage cheese, with outer numbers adding up to the month, the inner two stating the date.

Space Age

(Bottled ice cream)

Space Age

All Student products except pull out date code, are coded in a similar fashion. The letter of the container, with a number that contains a hard top on a half gallon, representing January through June, and then continues for July through December. The first digit is always in food place. The code date on such items the first four digits of the date first month followed by the day. This September 15 would read 915. The day is always before the month.

The AA program is intensive, beginning with the flock, which must be kept separate from other poultry on the farm. Facilities in which birds are kept are inspected, as is the processing plant. The quality of the eggs is carefully controlled. In New York State, even the weight is controlled. Extra large eggs must weigh no less than 27 ounces; large, 24 ounces; medium, 21 ounces. The retail store must keep the eggs under refrigeration at less than 60 degrees. Chains may elect to go under the Grade A program, in which the quality of the egg is determined by grading. If a dozen eggs are found to include ten of A quality (two eggs may be less than A, but some may be AA), the answer is marked AA. These eggs are stamped with a packing date, by month and day (Dec. 25), open numerical dating (1225) or the day of the year (359). Responsibility for control is left to the managers of the store.

LO — Friday
LO — Saturday

The day code, H through P, remain constant.

Here's a trick which might help you break most codes on the food shelf. In the package stamp, look for a package of fresh-processing ground beef. Most markets mold beef from two to four times a day, so chances are that beef is fresh that day. Check the code. Any other meat similarly marked is fresh that day. Working backwards by letter, you will get a pretty good idea of the use of other meat in the store.

Pre-Packed and Vacuum-Packaged Meats

Many of the meat-processing and meat-packing companies voluntarily follow the grading recommendations of the American Meat Institute, a research, educational and trade organization. In an attempt to give more information to the consumer, the AMI has just voted to adopt open dating. Until now the four-digit code was used—the two outer numbers were added to get the month, and the two inner stated the day. Digits will continue to be used because most machines are set up for this method. As of January 1, 1971, however, the first two numbers will indicate the month, the following two the day (February 28 will be stamped 1228). Here's the hitch: individual manufacturers and some meat-packing companies will continue to determine the digits used for packaging or pull dates. The producers name is of greater value to the consumer.

While vacuum-packed meats have long lives, the Vacuum can be tricky. If you mean you
Report of the Committee on Consumer Affairs in Favor of Adopting, as Amended a Local Law to Amend the Administrative Code of The City of New York in Relation to Labelling of Perishable Foods.

The Committee on Consumer Affairs, to which was referred on May 5, 1970 (Minutes, page 1679), the annexed amended local law, respectfully

REPORTS:

The purpose of this bill is to require clear and legible dating accompanied by a statement of recommended conditions of storage of perishable foods including, but not limited to, meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods.
The legislation also provides that the Commissioner of Consumer Affairs shall promulgate regulations designating those perishable foods which shall come within the scope of this proposed local law.

Accordingly your committee recommends its adoption as amended.

A LOCAL LAW to amend the administrative code of the city of New York, in relation to the labeling of perishable foods.

Be it enacted by the Council as follows:

Section 1. Title B of chapter 35 of the administrative code of the city of New York is hereby amended by adding thereto a new article 12 to read as follows:

CHAPTER 35
Article 12

PERISHABLE FOODS

§ B36-120.1 Legislative intent.—The Council finds that consumers cannot be certain that food offered for sale is fresh or that it will remain fresh for a reasonable period of time after it is purchased. The Council particularly recognizes consumer concern with the freshness of foods including, but not limited to, meat, poultry, fish, dairy products, eggs, fruit, vegetables and baked goods. The Council further finds that the food industry's practice of controlling food freshness through coaled dates has proven inadequate for protection of the public. The Council has concluded that a mandatory system of clear and legible dating accompanied by a statement of recommended conditions of storage is the best way to assure consumers of the freshness of the foods that they buy in stores.

§ B36-120.2 Perishable foods.—It shall be unlawful to sell or offer for sale any perishable food designated by the commissioner of consumer affairs in accordance with §B36-120.3 hereof unless there is stamped printed or otherwise plainly and conspicuously marked on the top cover or principal panel of its container or any label affixed thereto the statements indicating recommended conditions and methods of storage, and the fact that it is not to be sold after a clearly specified date for human consumption as food.

§ B36-120.3 Regulations.—(a) The commissioner of Consumer Affairs shall promulgate regulations designating those perishable foods which shall come within the scope of §B36-120.2 wherever the commissioner shall find that because of the nature of the commodity, the method of packaging or other consideration, such information about the commodity shall be necessary and proper to provide adequate information to the consumer as to the perishable nature of such commodity and conditions of storage.

(b) The commissioner may make and promulgate such other rules and regulations as may be necessary to carry out the purposes of §B36-120.2.

§ B36-120.4 Powers of the Commissioner.—(a) The commissioner shall receive and evaluate complaints and initiate his own investigations relating to these matters and take appropriate action related thereto including stop-sale and stop-removal orders where necessary and proper.

(b) The commissioner shall have the power after reasonable notice and hearing, to determine the reasonableness of any statement or representation as to the date affixed pursuant to §B36-120.2 of this article.

§ B36-120.5 Penalties.—Any person, firm, corporation or association or agent or employee thereof, who shall violate any of the provisions of this Article or of the regulations promulgate pursuant to §B36-120.3 shall pay a civil penalty of not less than twenty-five dollars not more than two hundred fifty dollars for each violation; and shall, upon conviction thereof, be punished by a fine of not less than twenty-five nor more than two hundred fifty dollars for such each violation.

§ 2. This local law shall take effect immediately.


Laid over.
March 10, 1971

Mr. Rolf Bergman
Acme Reporting Service
140 Nassau Street
New York, New York

Re: Intro. No. 229A

Dear Rolf:

Permission is hereby given to Tenzer, Greenblatt, Fallon & Kaplan, Esqs., to purchase the portion of the transcript indicated in the enclosed xerox of their letter, which took place at the hearing of the Committee on Consumer Affairs on March 4th, 1971.

We thank you for your cooperation in this matter and request that you bill the firm directly.

Very truly yours,

THOMAS J. CUITE,
Vice Chairman

TJC/am
encl.
cc: Herbert Tenzer, Esq.
March 4, 1971

Honorable Thomas J. Cuite
Vice Chairman City Council
City Hall
New York, N.Y.

Dear Tom:

I testified on behalf of the Association of Manufacturers of Chocolate and Confectionery, Inc. on March 4, 1971 before the Consumer Affairs Committee concerning a Bill to require dating for perishable commodities.

At our expense I would like to have a transcript of my remarks together with the specific comments made with respect to the candy by the representatives of the Department of Consumer Affairs.

I understand that the request for a transcript must be approved by you and I would appreciate your cooperation.

Very sincerely yours,

Herbert Tenzer

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HT:EH
THE COUNCIL
The City of New York

Int. No. 229 May 5, 1970

Introduced by Messrs. Merola and Sharison—read and referred to the Committee on
Consumer Affairs.

A LOCAL LAW

To amend the administrative code of the city of New York, in
relation to labeling of perishable foods.

Be it enacted by the Council as follows:

Section I. Article 11 of title B of chapter 36 of the administrative code of the
City of New York is hereby amended by adding thereto a new section B36-120.2, to
read as follows:

§ B36-120.2 Perishable foods.—a. It shall be unlawful to sell or offer for sale
any perishable food unless there is stamped, printed or otherwise clearly marked on its
container or any label affixed thereto the statement, that it is not to be sold after a
clearly specified date for consumption as food.

b. The term "perishable food" means meat, poultry, fish, dairy products, eggs,
fruit, vegetables, bread, coffee and any other food that the commissioner of consumer
affairs designates as perishable.

c. The commissioner may make and promulgate such rules and regulations as may
be necessary to carry out the purposes of this section.

d. Any person, firm, corporation or association or agent or employee thereof, who
shall violate any of the provisions of this section upon conviction thereof shall be punished
by a fine of five hundred dollars or by imprisonment of thirty days or both such fine
and imprisonment.

§ 2. This local law shall take effect immediately.
March 4, 1971

TESTIMONY -- New York City Council
Committee on Consumer Affairs
Thursday, March 4, 1971

Re: Intros: 231 and 390

Gentlemen:

We would like to make the following observations and comments pertaining to Int. No. 390 by Messrs. Merola and Sharison and Mrs. Ryan in relation to the dating of packaged food.

First, Article II states that it shall be unlawful to sell or offer for sale any canned, bottled, or packaged food unless there is stamped, printed, or otherwise clearly marked thereon and decipherable the date of canning, bottling, or packaging. As it is now written, it doesn't state, "offer for sale at retail." Does this mean that the manufacturer or supplier shall be responsible for dating any pre-packaged or pre-canned or bottled merchandise? Or, will that be the sole responsibility of the retailer?

Secondly, in considering this proposed legislation, we are sure you are aware that many food retailers throughout the State and in the City of New York are presently engaged in the open dating of perishable foods such as meat and dairy items that are wrapped or packaged at the store level. A growing number of food retailers have embarked on open code dating in the past few months.

Article II goes on to state that this local law shall take effect immediately. Whether or not the proposed legislation becomes law, we think due consideration on this and other matters should be given for time to comply in a realistic, workable fashion.
We question the value of providing the consumer with the date on which any product is packaged without also providing him with the date upon which the same product is no longer fit for human consumption. For example, the dating of canned fruit without a further explanation of the projected shelf life would in no way let the consumer know whether or not the product was still fit for human consumption. It would appear that the existing manufacturers' codes and the existing stock rotation and policing methods now used in supermarkets are more effective in protecting the consumer than the proposed legislation would ever be.

On the other hand, any prediction of the last date on which any product would be fit for human consumption would be meaningless if the product was improperly stored after leaving the retail establishment. Just consider frozen products which could thaw, or extremely perishable items such as fresh poultry, which were unrefrigerated for several hours on a 90-degree day in July!
The Bohack Consumer Guide

How to read the supermarket codes

Supermarket Codes are those numbers and/or letters printed on almost every item on supermarket shelves which give either the date of manufacture or the date of expiration (when the item should be removed as no longer fresh).

In this booklet—in separate category listings—we explain how to read these codes.

Because we believe that you have a right to know. Because we believe that it will help you in your shopping and because we think it’s the sort of information you would expect from us, your best friend in the neighborhood.

*Based on the NEW YORK Magazine Consumer Handbook

BAKERY

Bread manufacturers and distributors generally use a letter code standing for production date, often in conjunction with a colored twister. Letters ABCDEF stand for the days of the week—A is Monday, F is Saturday. There is no G because no baking takes place on Sunday. The twister, with color keys varying among manufacturers, makes it easier for the routeman to spot loaves which must be picked up. White bread is supposed to be pulled from the shelves after 48 hours; whole grain and raisin breads are often granted longer shelf lives (as follows).

ARNOLD BAKERS

Arnold Bread. Letter code is stamped directly on colored twister, called the Kwik Lok seal. Fresh Mon.—pink; Tues.—white; Wed.—blue; Thurs.—yellow; Fri.—green; Sat.—gray. Letter code is Arnold spelled backwards; Mon.—D; Tues.—L; Wed.—O; Thurs.—N; Fri.—R; Sat.—A. Routemen are instructed to pull all bread from shelves within 48 hours.

BOHACK

Breads. Delivery date is coded by colored twist: Mon.—blue; Tues.—white; Wed.—green; Thurs.—red; Fri.—yellow. Since the breads are left on the shelf for two days, no baking is done on Saturday. After 48 hours, breads are reduced and marked “day-old bread.”

AMERICAN BAKERS

Taystee Bread. Alphabetic code appears on seal in addition to colored twister. A through F letter code. Color code is: Mon.—green; Tues.—red; Wed.—orange; Thurs.—white; Fri.—blue; Sat.—yellow. White bread removed after two days, whole wheat after three.

BOND BAKING CO.

Hollywood Diet Bread. Colored twister alone (no letter) is used. Fresh Mon.—blue; Tues.—yellow; Wed.—orange; Thurs.—green; Fri.—red; Sat.—white. Shelf life is 48 hours.

ITT CONTINENTAL BAKING CO.

Wonder Bread. An A through F letter code is stamped onto the colored twister. Fresh Mon.—red; Tues.—white; Wed.—blue; Thurs.—yellow; Fri.—orange; Sat.—green. Shelf life is 48 hours.
BAKERY

PEPPERIDGE FARMS
Breads. This system is markedly different from those used by the other bread manufacturers. One numeral is printed over the other on the end label of the packaged loaf of bread. Example:
0 for the 7th day of the month, 2 for the 22nd.
7 2
Note this difference also; Pepperidge Farm uses a pull date, not the day of delivery. All their breads have a two-day shelf life.
Rolls. Same code. Four-day shelf life.
Butterfly rolls. Danish pastry. Removed after six days. Coded with above pull dates plus colored twists for day of delivery. Green twist indicates shipment on Monday or Thursday; red—Tuesday or Friday; black—Wednesday or Sunday. No shipment on Saturday.

THOMAS BAKERS
Breads. ABCDEFG delivery code used in conjunction with colored twist: Mon.—red; Tues.—white; Wed.—blue; Thurs.—yellow; Fri.—green; Sat.—orange.
The following breads are pulled after 48 hours: white, whole wheat, protein, gluten, Rite-Diet. Raisin bread may remain for 72 hours. Moisture in the raisins keeps bread fresher longer.
Date nut cake. Same letter code is stamped on package side; 48-hour shelf life.
Corn and bran muffins. Marked by ABCDEFG letter code on package top. Disregard any numbers that follow—they refer to the packaging machine. Shelf life is 48 hours.
Toast-R-Cakes. Letter-coded on package bottom; 72-hour shelf life.
English muffins. Letter-coded on package bottom; 72-hour shelf life.

DAIRY
Milk. New York City's Health Code requires that milk (in quart, half gallon and gallon sizes), skim milk, cream and half-and-half be clearly marked with the date of expiration on the top of the container. Somewhere on the carton will be found the legend, "Not to be sold after midnight of date indicated on top." This expiration date must not exceed 66 hours after 6 a.m. following pasteurization.
When the same firms whose milk products are sold in New York City deliver to outlets in Nassau, Suffolk or Westchester, they do not open-date, since product control adds to the cost of the operation and companies feel pressured to keep prices down.
Cream cheese and Neufchatel cheese. Marked with a letter having no consumer significance and two numbers separated by a space. This is the pull date. The first number (or numbers) represents the month (January is 1; December is 12); the following numbers stand for the day of the month. Retail stocks are supposed to be replenished at one- to two-week intervals.
Liederkranz, Camembert. Open dates are given on those ripening cheeses whose character changes with time. An insert in the package explains the significance of the date. The cheese starts out with a mild character, then starts to ripen from the outside in. The literature tells at what time gourmets consider cheese at its best, and beyond what point it is really strong.
Refrigerated biscuits. Refrigerated baking goods are open-dated, because results can be guaranteed only through a given date. No harm will come to user after that date, but the dough may not rise as well as it should, as yeast may not be properly activated. The text on the cylinder states that for best results the product should be used before the date stamped on the metal end.

BOHACK
Eggs. While eggs do not have to be dated under law, Bohack has voluntarily placed itself under the United States Department of Agriculture quality control program. Under this program all of our eggs bear U.S.D.A. "A" shield and are purchased only from United States Government inspected farms. These eggs are packed and graded "A" by government inspectors at the plant and then re-inspected by U.S.D.A. inspectors at the Bohack Dairy Distribution Center. In addition to this, regular inspections are made at store level to maintain the "A" quality. These eggs are stamped with the packing date which is the day of the year. (For example—12/29 = 363). Weight is controlled—extra large eggs weigh no less than 27 ozs. per dozen; large eggs weigh no less than 24 ozs.; medium eggs weigh no less than 21 ozs.

BORDEN
Yogurt. Carries a four-unit pull date. The first unit is for internal use. The following three give the date in this manner: The second unit is a letter which stands for the month (A for January through L for December). The final two digits state the date.

BREAKSTONE
Cottage cheese, sour cream and yogurt. A four-digit pull date code is located on the lid. The first two digits indicate the month and the last two indicate the day. If the expiration date is January 1, code would read 0101.

CROWLEY
Buttermilk, yogurt, cottage cheese, sour cream. The same code is used for all Crowley products except milk. It is a four-digit expiration code. The sum of the first and last digits corresponds to a month of the year. The middle two digits (do not add) stand for the month date. Thus 6256 L would decode: December 25. Disregard the letter following the digits; it's often a vat number and is for company use only. On buttermilk, the code is stamped on top. Sour cream, cottage cheese and yogurt are coded on the bottom of each container. Crowley gives cottage cheese twelve to fourteen days on the shelf. Sour cream, yogurt and buttermilk need not be removed for three weeks.
DAIRY

DANNON

Yogurt. The lid is marked with a four-digit removal date. The first digit stands for the month and is set up on a 1-6 basis, representing January through June, then 1-6 again for July through December. The next two digits tell the date. Early in the month, a 0 will appear before the day. Thus November 6 would read 506. A 0 is always in final place. Total coded date would read 3060. Products are taken off the shelves two weeks after date of manufacture.

Danny (premixed yogurt) and Bokoo (pudinglike desert). Sold two to a package. Date (coded as above) is stamped on the outer sleeve, lefthand corner, of the dual pack.

FROZEN

GENERAL FOODS

Birds Eye Frozen Foods. The codes indicate date of production and may contain a line of digits, but the consumer need concern himself only with the first four. For example, with 1097, the first 1 gives the year, 1971; the next three list the day of the year—here, the 97th day, which is April 7. Unfortunately, on frozen vegetables packed with an overwrap, the coding is on the inner cardboard box, and is not visible to the customer or store owner until unwrapped. Where there is no overwrap, the code is embossed with dye on the outside of the package.

On frozen concentrates (orange juice, Awake, Orange Plus), the code is stamped on the end of the can. Properly frozen, these items have store shelf lives of several months.

COOL 'N Creamy and Cool Whip. On these polyethylene containers, the code is ink-stamped on the bottom of the bowl. They have longer shelf lives, properly handled, than most other frozen foods.

KRAFT

Cheeses. All of Kraft's products are coded with the day of production. It is a five-unit code stamped right on the label. The first three numbers stand for the day of the year. The letter which follows is a plant number. The final digit refers to the year. Hence, the code 217N1 means the cheese was manufactured on the 217th day of 1971—August 5, 1971.

PILLSBURY

Refrigerated biscuits, cookie dough, dinner rolls. These refrigerated baking goods are open-dated. Statement reads, "Use before (date) for best results."

SEALTEST

Cottage cheese, sour cream, yogurt, butter. All Sealtest products except milk are marked, generally at the bottom of the container, with a number that contains at least four digits and may contain more. Only the first four are important to the consumer; they list the final date on which merchandise should be sold. The consecutive numbering system is used—the first two digits give the month; the final two, the day.

BOHACK

Bohack Coffee. Coding appears on bottom of the can. Coding reads E-10-0. First letter of code indicates the month: "A" starting with July; "B" for August, "C" for September, etc. First set of numbers indicates the day of the month. Last number indicates the year. Example: E-10-0 stands for November 10, 1970. Shelf life—1 year.


Bohack Evaporated Milk. Coding appears on bottom of can. Coding reads N-12-0. First letter stands for the month of the year. First set of numbers stand for the tank numbers. Second set of numbers stand for the year. Example: N-12-0 stands for November from tank number 12 in the year 1970. Shelf life—9 months.

Bohack Flour. Coding appears on bottom of bag. Coding reads—T 124. First letter stands for the point of manufacture. The first number stands for the year of manufacture. Last set of numbers stand for the day of the year. Example: T 024 stands for Topeka—1971—24th day of the year. Shelf life—12 months.


Bohack Oils. Coding appears on bottom of the bottle. Coding reads—Oo 24. First number stands for the year. The letter stands for the month of the year. Example: e—January; f—February; g—March; etc. Last two numbers stand for the day of the month. Example: Oo 24 stands for 1970—November 24th. Shelf life—one year.


Bohack Pourable Dressings, Mayonnaise and Salad Dressing. Coding appears on label. Coding reads—0171. First two digits represent the week of production. Last two digits represent the year. Example: 0171 stands for the first week of the year 1971. Shelf life—4 months.
GROCERY

GENERAL FOODS
Maxwell House, Sanka, Yuban, Maxim. The same code used on General Foods frozen products is stamped on the bottom of coffee cans, with dating information given in the first four digits. Shelf life is at least three to four months.
Jars of coffee are coded with indecipherable slots on the label.
Coffee packed in bags is the most likely to go stale.

KRAFT
Mayonnaise, jellies, preserves, salad dressings, prepared dinners, macaroni and cheese, confections. The same code used on Kraft cheeses appears on these products.

PILLSbury
Flour, pancake, cake frosting and brownie mixes. Code always begins with a letter denoting the month product was manufactured (in an alphabetical sequence in which A is January), followed by a series of four numbers, three of which don't concern the consumer. The number sequence changes. The code could read HOUO7. H refers to the 8th month: August. Final digit, 7, stands for 1970. But code could also read HOUOS. H still stands for August, but here the year is indicated by the 0 lying second to last. It, too, means 1970. These are not extremely perishable goods. A Pillsbury spokesman notes that all wheat products (flour, wheat cereals, macaroni) are subject to developing weevils, but that this is due to weather and humidity conditions, not to the length of time the product is on the shelf.

MEAT

Fresh meats. Your best guarantee of the freshness of packaged meats is your own sense of sight. Is the meat a good color? Is it red (fresh) or turning brown? Are steaks marbled?

Our meats and fish carry codes governed by the type of weighing and pricing machine in the department.
At the present time we are using 4 types and they are as follows:
1. N.C.R. (which is a square label)
2. Hobart (which is a square label)
3. Sanitary (which is a square label)
4. Toledo (which is a rectangular label)
Regardless of the machine in use, three separate codes are used.

(square label) N.C.R. and Hobart Scales

MEAT CODING
Mon, Tues, Wed, Thur, Fri, Sat.
1st week HH HK HL HN HO HP
2nd week KH KK KL KN KO KP
3rd week LH LL LN LO LP
4th week NH NK NL NN NO NP
5th week OH OK OL ON OO OP

(rectangular label) Toledo Scale

MEAT CODING
Mon, Tues, Wed, Thur, Fri, Sat.
1st week AA AB AC AD AE AF
2nd week BB BA BC BD BE BF
3rd week CC CA CB CD CE CF
4th week DD DA DB DC DE DF
5th week EE EA EB EC ED EF

(square label) Sanitary Scale

MEAT CODING
Mon, Tues, Wed, Thur, Fri, Sat.
1st week 1A 1B 1C 1D 1E 1F
2nd week 2A 2B 2C 2D 2E 2F
3rd week 3A 3B 3C 3D 3E 3F
4th week 4A 4B 4C 4D 4E 4F
5th week 5A 5B 5C 5D 5E 5F

POST
Dry cereals. Stamped on top with a four-digit production date code. Example: 1295. First number always stands for the year. Hence, 1971. Following three digits give the day of the year, in which January 10 would be 010. The code above translates into October 23, 1971. Manufacturer states the average shelf life as eight to nine months.
In order to make maximum use of the perishable meat code system, we are listing below a guide on maximum shelf life of self-service meat packages.

Coding is only a guide, regardless of our coding policy, all meats and poultry on display are checked regularly for freshness and appearance. Torn, bloody or poor appearing packages must be removed immediately, regardless of wrapping date.

Ground beef must have a day of the week affixed to the package in addition to the code. The maximum shelf life of self-service meat packages is as follows:

<table>
<thead>
<tr>
<th>Day Wrapped</th>
<th>Ground Beef (Must Be Removed)</th>
<th>Boneless Beef, Veal &amp; Poultry &amp; Fish (Must Be Removed)</th>
<th>Beef Bone-In Pork, Lamb &amp; Offal (Must Be Removed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fri.</td>
<td>Fri. Closing</td>
<td>Sat. Closing</td>
<td>Sat. Closing</td>
</tr>
<tr>
<td>Sat.</td>
<td>Sat. Closing</td>
<td>Sat. Closing</td>
<td>Mon. Closing</td>
</tr>
</tbody>
</table>

**Chickens.** Beginning March 1, 1971, all chickens will have an expiration date on the top right-hand corner of a Toledo label. The last two digits stand for the day of the month. Example: A01 means that the chicken is to be pulled from the case on the first of the month.

**Smoked Meats.** Maximum package life is 7 days. Faded smoked meats that no longer have eye or sales appeal must be removed regardless of wrapping date.

**PRE-PACKED AND VACUUM-PACKED MEATS**

Many of the meat-processing and meat-packing companies voluntarily follow the coding recommendations of the American Meat Institute, a research, educational and trade organization. In an attempt to give more information to the consumer, the AMI has just voted to adopt open dating, (i.e. now the four-digit code was used—the two outer numbers were added to get the month, the two inner stated the day). Digits will continue to be used because most machines are set up for this method. As of January 1, 1971, however, the first two numbers will indicate the month, the following two the date (December 25 will be stamped 1225).

While vacuum-packed meats have long lives, the vacuum seal can break. If this occurs, you will often get a smell on the package, quickly followed by discoloration.

**ARMOUR**

Refrigerated canned meat products. The code date gives the date of manufacture. For example, in L12 the first letter stands for the month (A is January, L is December). The second letter gives the year, 1-1971. The day of the month is a bit more complicated. Dates 1 through 23 are represented by a letter of the alphabet, where A is the first day of the month, Z is the 23rd (J, Q and V are not used). The numbers 1-8 then stand for the 24th through 31st days of the month. Hence, L12 is December 25, 1971.

**BOHACK**

Vacuum packed meats. A four-digit code is used on all our vacuum packed meat and represents the day of manufacture. All our meat products that are vacuum packed will have a 30-day store life from date of manufacture. This time assures freshness in normal home use after code date.

A package of frankfurters reading 1147 means August 14th.

1. The first and last figure added together give the month. Example: 1 plus 7 equals 8th month, which is August.
2. The center two figures are the day of the month.
3. This item will be removed from sale at the close of business on the 14th of September.

**NOTE ON OPEN DATING**

We realize that these codes are often confusing. We are now embarked on a program to clarify and simplify our own codes with open dating. (For example: June 10, 1971 would be coded 61071.) We are also doing everything possible to have the manufacturers whose products we carry do the same.

Bohack vacuum-packed refrigerated canned hams. The date of manufacture is embossed on the can. The months Jan. through Sept. are shown as numbers 1 through 9. The last three months of the year (to avoid double digits) are shown by their initials. O—Oct.; N—Nov.; D—Dec. For example: 11571 means Jan. 15, 1971. O1571 means Oct. 15, 1971.

Non-refrigerated canned meat products. A seven-character code is employed. The first four units represent the date of manufacture and are the only ones of value to the consumer. For instance, L250 means December 25, 1970. The letter stands for the month (in alphabetical order, A-L); the two numbers which follow are the day of the month (numerals 01 to 31 are used here) and the fourth character tells the year, in which 0 = 1970 (I would be 1971, etc.).

Vacuum-packed refrigerated sausage and bacon. The code date is a pull date based on the day of manufacture. The old AMI four-numeral code is used. Probable change to open numerical dating is in the offing.

Non-vacuum-packed refrigerated hams and sausages. The code date, the same as for vacuum-packed meats, is a pack date. It, too, may go to open numerical dating early in the year.

**HEBREW NATIONAL KOSHER FOODS, INC.**

Vacuum-packed, pre-packed meats: corned beef, pastrami, salami, bologna, frankfurters, knockwurst, liverwurst. All merchandise has clear open numerical coding. The number need not contain four digits, however; February 28 might read 228. This is a production date. With regard to the products' shelf life, manufacturer stated that if properly refrigerated and not mishandled, their meats might easily last two months.
What the U.S.D.A. stamps mean.

Meat. The U.S.D.A. is the United States Department of Agriculture. All meat processed in plants which sell their products across state lines must, under Federal law, be inspected for wholesomeness. The inspection stamp which is round looks like this:

Meat grading is a voluntary service provided by the U.S.D.A. to those who ask for it and pay a fee for it. Bohack requests this service. Grading defines the quality of the meat. At Bohack the only grade of beef we sell is Choice. Choice means by government definition “very tender, juicy and flavorful.” The Choice Grade stamp which is shield shaped looks like this:

Poultry. The U.S.D.A. also grades poultry as another voluntary, extra-fee service. The U.S.D.A. shield mark for poultry looks like this:

At Bohack the only poultry we sell is marked U.S.D.A. Grade A. This is the grade of “highest quality, meaty and of good appearance.”

Eggs. On the same voluntary, extra-fee basis, the U.S.D.A. grades eggs. The shield looks like this:

Grades AA and A certify that the eggs are “ideal for frying and poaching with white and yolk standing high.”

Butter. The U.S.D.A. also grades butter. To earn the right to use this shield the manufacturer must meet exacting requirements.

U.S. Grade AA Butter:

requirements:
- delicate, sweet flavor with a fine pleasing aroma
- made from high-quality fresh sweet cream
- smooth cream texture with good spreadability
- salt completely dissolved and blended in just the right amount to enhance savory quality.

U.S. Grade A Butter:

requirements:
- pleasing flavor
- made from fresh cream
- fairly smooth texture
- rates close to top grade.

These are the official U.S. Grades. Look for them when you shop. You will find you can recognize them easily. Do not be confused by other marks which are not those of the U.S.D.A.

Bohack: your best friend in the neighborhood.
A LOCAL LAW To amend the administrative code of the city of New York, in relation to labeling of perishable foods.

DISAPPROVED

This bill would amend Article 11 of Title 3 of Chapter 36 of the Administrative Code by adding thereto a new section 36-120.2 which would make it unlawful to sell any perishable food unless its container or label bears a statement that it is not to be sold after a specified date for consumption as food.

Perishable food would be defined as meat, poultry, fish, dairy products, eggs, fruit, vegetables, bread, coffee and any other food that the Commissioner of Consumer Affairs designates as perishable. Such Commissioner would be authorized to promulgate rules and regulations necessary to carry out the purposes of this section.

Violations, upon conviction, would be punishable by a fine of $500 or by imprisonment of 30 days or by both.

The labeling of perishable food containers with an expiration date would serve no useful purpose. Such a date would not take into account mishandling of the product. For example, frozen foods if not kept at a proper temperature would deteriorate before the expiration date. The shelf life of food is determined by the age and condition of the raw materials, the packaging, the manner in which the product is handled, stored, transported, etc.

The administrative feasibility of determining and checking on the validity of expiration dates of thousands of different food products is questionable. Moreover, it would not be practical to place dates on products such as fruits and vegetables. The public health significance of dates on these items and on bread and coffee is subject to doubt.
Finally, the definition of "perishable food" in the proposed law is defective in that it does not necessarily bear any relationship to factors of time, storage conditions, chemical factors, etc. Thus, a container of coffee, canned fruit, canned vegetables, canned meat, canned poultry and canned fish cannot be regarded as perishable. Some of these foods are packed in a period of high production and may be eight or ten months in the warehouse prior to being offered for sale without adverse effect on their quality or wholesomeness.

James G. Haughton, M.D.
First Deputy Administrator
Health Services Administration
May 29, 1970

Consumers Union of U.S. Inc.
256 Washington Street
Mount Vernon, New York

Gentlemen:

labeling of perishable foods.

229
May 28, 1970

Doctor Mary McLaughlin, Comm.
N.Y.C. Department of Health
125 Worth Street
New York, New York

Dear Doctor McLaughlin:

 labeling of perishable foods.
May 28, 1970

Hon. Bess Myerson Grant, Comm.
N.Y.C. Dept. of Consumer Affairs
80 Lafayette Street
New York, New York

Dear Commissioner Grant:

labeling of perishable foods.
May 28, 1970

Mr. John E. Hopkins, Jr., Exec. V.P.
Metropolitan N.Y. Retail Merchants Assn.
393 7th Avenue
New York, New York

Dear Mr. Hopkins:

labeling of perishable foods.
May 28, 1970

Mr. Arnold Witte
Commerce & Industry Assn.
99 Church Street
New York, New York

Dear Mr. Witte:

labeling of perishable foods.
By Messrs. Merola and Sharison—

A LOCAL LAW to amend the administrative code of the city of New York, in relation to labeling of perishable foods.

Be it enacted by the Council as follows:

Section 1. Article 11 of title B of chapter 36 of the administrative code of the City of New York is hereby amended by adding thereto a new section B36-120.2, to read as follows:

§ B36-120.2 Perishable foods.—a. It shall be unlawful to sell or offer for sale any perishable food unless there is stamped, printed or otherwise clearly marked on its container or any label affixed thereto the statement, that it is not to be sold after a clearly specified date for consumption as food.

b. The term "perishable food" means meat, poultry, fish, dairy products, eggs, fruit, vegetables, bread, coffee and any other food that the commissioner of consumer affairs designates as perishable.

c. The commissioner may make and promulgate such rules and regulations as may be necessary to carry out the purposes of this section.

d. Any person, firm, corporation or association or agent or employee thereof, who shall violate any of the provisions of this section upon conviction thereof shall be punished by a fine of five hundred dollars or by imprisonment of thirty days or both such fine and imprisonment.

§ 2. This local law shall take effect immediately.

In accordance with the provisions of Council Rule No. 84b, Mr. Sharison then spoke on the foregoing proposed local law for two minutes.

Referred to the Committee on Consumer Affairs.
By Messrs. Merola and Sharison:

A LOCAL LAW

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A LOCAL LAW

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A LOCAL LAW

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REFERRED TO THE COMMITTEE ON CA
ROBERT SHAFFER
ASSN OF ICE CREAM
MANUFACTURERS
OF N.Y. STATE

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