

Food waste

Information on expiry dates for businesses

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Food wastage concerns us all. You can make a difference in your everyday activities. Also in your business.

By operating smartly, you can waste less food every day and increase your profits. Because wasted food costs money. You can also contribute to one of the agreements concluded between the *Alliantie Verduurzaming Voedsel* (Food Sustainability Alliance) and the Ministry of Economic Affairs to make food production more sustainable by 2020. The aim is for significantly less food to be wasted by 2020.

Wasting less food is easier if you know what to look for. The expiry date is one point to watch. Clarity about it and proper application of the rules on expiry dates can help you to waste less. This brochure shows how expiry dates should be applied in accordance with EU Regulation No 1169/2011.

Expiry dates in brief. How does it all work?

- The indication of expiry dates on food products was regulated as per 13 December 2014 by Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers.
- The rules are pretty much the same as those in previous European directives, except that certain products which used to be exempt are now considered normal products requiring an expiry date.
- The Regulation makes it mandatory to indicate an expiry date on a product in order to inform consumers. The reason for the date on a product is therefore consumer protection.
- The Regulation prescribes the use of two different types of expiry date: the 'date of minimum durability' and the 'use by' date:
 - The 'date of minimum durability' or 'best before' date is the date up until which the producer or retailer guarantees the characteristics and quality of the product.
 - The 'use by' date is the last date on which the product should be consumed.

The basic principle is that if you are selling prepacked goods, then the 'date of minimum durability' must be indicated. But there are exceptions to this:

- some products require a 'use by' date;
- some products are exempt by virtue of being specifically listed (in Annex 10 to Regulation No 1169/2011) or there are exceptional circumstances (Article 44 of Regulation 1169/2011).

This brochure includes a diagram guiding you through Regulation No 1169/2011 in three easy steps, clarifying whether an expiry date is needed on your product and, if so, which type of date and when.



What is a prepacked product?

Regulation No 1169/2011 gives the following definition: *"any single item for presentation as such to the final consumer and to mass caterers (= restaurants, canteens, schools, hospitals and catering enterprises in which, in the course of a business, food is prepared to be ready for consumption by the final consumer) consisting of a food and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; 'prepacked food' does not cover foods packed on the sales premises at the consumer's request or prepacked for direct sale."*

In addition to prepacked products there are other types of packaging, but the Regulation does not deal with those apart from in Article 44.

Article 44

National measures for non-prepacked food

1. Where foods are offered for sale to the final consumer or to mass caterers without prepackaging, or where foods are packed on the sales premises at the consumer's request or prepacked for direct sale.



Cutting food waste is easier than you think if you know what you can do.
Tips for cutting food waste.

- Do not indicate an expiry date on a product if no date is required under the Regulation, for example for fresh fruit, vegetables or potatoes (see figure page 5).
- If an expiry date is mandatory, then use the correct kind (a 'date of minimum durability' or a 'use by' date).
- Be careful with 'use by' dates, and use one only when necessary. The *Warenwet*¹ sets rules about which products should be considered highly perishable.
- Chilled foods are not highly perishable *per se* and do not always require a 'use by' date. Sometimes, a 'date of minimum durability' on a chilled product will suffice. See figure page 5 for an explanation of when a food is highly perishable and must have a 'use by' date.
- Both 'dates of minimum durability' and 'use by' dates should be considered inclusive; in other words, the food product can be used on that date and expires the day after. It is worth spelling this out on the packaging².
- Give storage instructions for final consumers. You could refer to the storage guide available on the *Voedingscentrum* website at www.voedingscentrum.nl/bewaarwijzer. This will help you to store foods for longer.
- In order to avoid foods being thrown away prematurely, it is useful to make the storage information as clear as possible. 'After opening, keeps for three days in the fridge' is much more useful to final consumers than 'After opening, can be kept for only a limited period'.
- A new date may be affixed to the product. This is known as an expiry date extension and is perfectly legal. Once the 'date of minimum durability' has

¹ *Warenwetbesluit Bereiding en behandeling van levensmiddelen* (BBL – Preparation and Handling of Foodstuffs (Commodities) Decree)

² Strictly speaking, this is not allowed, but in the Netherlands, the NVWA does not take action in this regard, and this is a 'category D' infringement. For more information, see: www.vwa.nl/onderwerpen/toezicht-nvwa-dier/dossier/interventiebeleid/uitgangspunten-afhandelen-overtredingen

expired, a product can still be sold with a new ('best before') date affixed by a retailer (see box below).

- From that moment on, the retailer is responsible for the characteristics and quality of the product.

More information on expiry dates

The NVWA (Netherlands Food and Consumer Product Safety Authority) has two information sheets, also available on its website www.vwa.nl/actueel/infobladen-voor-bedrijven-en-instellingen.

- Food product expiry dates, for businesses (information sheet 6, only available in Dutch)
- Charities and voluntary organisations (information sheet 76, only available in Dutch)

Expiry date extension

Changing a 'date of minimum durability' requires a full HACCP plan, one component of which is the performance of a risk assessment. Moreover, it must be done in such a way that consumers can still see that the 'date of minimum durability' has been changed, and the original date should still be legible. N.B. It is prohibited to extend the expiry date of eggs or other products with a 'use by' date.



Which type of expiry date does a food product require?

Guiding you through Regulation No 1169/2011 in three easy steps:

Step 1: Are the foodstuffs you sell 'prepacked'?

Yes → step 2

No Regulation No 1169/2011 does not apply unless you are selling non-prepacked products or products packed at the sales outlet at the consumer's request or prepacked for direct sale, in which case Article 44 of the Regulation applies.

Be aware of the change!

The Regulation does away with a number of exemptions for prepacked products which used to be allowed under the WEL (Labelling of Foods Act). This means that these previously exempt products now must have a 'best before' or a 'use by' date.

These are:

- individual portions of ice cream
- products sold on the street or in markets, on water or to private dwellings or packed on the seller's premises for direct sale
- products prepacked at the request of the purchaser in order to be served by the purchaser as part of a meal;
- products traded in fantasy packaging, such as figurines or souvenirs.



Step 2: Do the foodstuffs correspond to the exemptions in Annex 10 to Regulation No 1169/2011?

Yes No date needs to be indicated on this product.

No → step 3

Annex 10 lists the following products:

- a) fresh fruit and vegetables, including potatoes, which have not been peeled, cut or similarly treated; this derogation does not apply to sprouting seeds and similar products such as legume sprouts (so frozen fruit and vegetables must have an expiry date)
- b) wines, liqueur wines, sparkling wines, aromatised wines, and similar products obtained from fruit other than grapes, and beverages falling within CN code 2206 00 obtained from grapes or grape musts
- c) beverages containing 10 % or more by volume of alcohol,
- d) bakers' or pastry cooks' wares which, given the nature of their content, are normally consumed within 24 hours of their manufacture (such as cakes, tarts or baked savoury snacks)
- e) vinegar
- f) cooking salt
- g) solid sugar
- h) confectionery products consisting almost solely of flavoured and/or coloured sugars, chewing gums and similar chewing products.



Step 3: Is this product highly perishable?

Yes The product requires a 'use by' date [*] (e.g. mince, fresh salmon, some chilled ready meals)

No The product requires a 'date of minimum durability' [*] (e.g. pasta, soft drinks, cake or frozen fish)

[] The date must always be indicated at the time of purchase, except in the case of distance selling, which is where the supplier and the customer are not physically present at the same place but still enter into a transaction using a means of remote communication, e.g. the internet. N.B. If you use vending machines or automated sales outlets, the date must still be available at the time of purchase.*

When is a product to be considered as highly perishable and thus requiring a 'use by' date?

Only those products which are highly perishable and can soon pose a risk to health must bear a 'use by' date rather than a 'date of minimum durability'. The BBL publishes guidelines on perishability and hygiene codes.

A product must bear a 'use by' date:

if it must be stored at a temperature of between 0°C and 6°C or

if it lasts for less than 5 days before going off.

N.B. Chilled products are not necessarily highly perishable and do not automatically have to have a 'use by' date. It depends on the method of storage.

Regulation (EU) No 1169/2011 is directly applicable, which means that no national provisions are necessary. For this reason, the Warenwetbesluit Etikettering van Levensmiddelen (WEL) has lapsed. The WEL was based on a large number of directives which have all now been repealed (and, where necessary, included in Regulation No 1169/2011).

The acts repealed by Regulation (EU) No 1169/2011 were as follows:

- *Directive 87/250/EEC of 15 April 1987 on the indication of alcoholic strength by volume in the labelling of alcoholic beverages for sale to the ultimate consumer*
- *Directive 90/496/EEC of 24 September 1990 on nutrition labelling for foodstuffs*
- *Directive 1999/10/EC of 8 March 1999 providing for derogations from the provisions of Article 7 of Council Directive 79/112/EEC as regards the labelling of foodstuffs*
- *Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs*
- *Directive 2002/67/EC of 18 July 2002 on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine*
- *Regulation (EC) No 608/2004 of 31 March 2004 concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters*
- *Directive 2008/5/EC of 30 January 2008 concerning the compulsory indication on the labelling of certain foodstuffs of particulars other than those provided for in Directive 2000/13/EC of the European Parliament and of the Council*



Acknowledgements: this brochure is realised with the support of Food Sustainability Alliance, Ministry of Economic Affairs, Ministry for Health, Welfare and Sport, and The Netherlands Nutrition Centre Foundation.

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2015-125