

**Murdo, Patricia**

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**Subject:** FW: Wasting of Milk in Montana

This blog was forwarded from a Core-Mark email address.

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**From:** Bears, Tom  
**Sent:** *Wednesday, March 19, 2014 3:52 PM*  
**To:** Murdo, Patricia  
**Subject:** Wasting of Milk in Montana

[Here is a blog to explain how much waste there is in the 12-day rule in Montana. From water to money thought you would want to know one more reason to change the law. I would like to hope we are not a wasteful state.](#)

[Dana Gunders's Blog](#)

## How Montana's Sell-by Date Sends Good Milk Down the Drain

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Posted October 31, 2013 in [Health and the Environment](#), [Living Sustainably](#), [Solving Global Warming](#), [U.S. Law and Policy](#)

Last month, we released a report called [The Dating Game](#) with Harvard Food Law and Policy Clinic, in which we examined the laws behind those dates you see on your food. In addition to the primary finding—that most Americans are confusing those dates to be about food's safety, when in fact they are indicators of freshness or peak quality—we also found a patchwork of piecemeal state laws that have popped up in the absence of any federal regulation on the topic.

One example of the arbitrary nature of some of these state laws is being challenged in Montana, soon to be heard in the Montana Supreme Court. It's a fascinating case that, in my humble opinion, demonstrates how ridiculous these laws can be.

First, the rule: Grade A milk sold in Montana must be labeled with a "sell-by" date 12 days after the date of pasteurization, and retail sellers of grade A milk must remove that milk from their shelves upon expiration of the 12-day "sell-by" date. These rules combined are referred to as the "12-day rule." Compare this with other states, such as Pennsylvania that requires a date 17 days from pasteurization, California which requires a processor-decided date when product is normally (but not required to be) removed from the shelf, and Texas which has no requirements at all.

The case at hand was brought by an out-of-state distributor challenging the legitimacy of such a short timeframe for a variety of reasons, including that the 12-day rule put

them at a disadvantage to milk produced in Montana. After hearing 1,180 pages of testimony, the Hearing Examiner strongly recommended the rule be changed. Yet, the ultimate decision falls to the Board of Livestock, who chose to ignore all recommendations and maintain the status quo. The case, heard in 2010-2011, is now being appealed.

While I really want to paste the [entire 24-page decision](#) by the Hearing Examiner in here, I'll spare you and just choose a handful of highlights and thoughtful conclusions that can be instructive more broadly than this particular case:

**Milk dates are not about safety.** The decision notes early, as a fact not contested by any party that, “the pasteurization process for milk is so effective in terms of eliminating harmful organisms that milk will become unpalatable in terms of taste and smell before it will cause harm in terms of human safety.” Therefore, consumers’ safety is simply not a factor in the debate about milk dating.

**Arbitrary timelines do not accommodate technological improvements.** “As a result of improvements in production and processing that have occurred since 1980 [when the original rule was made], a shelf life of 21 days is now the going standard for the American and Canadian milk processing industry. “ And the decision later points out that “the 12-day rule effectively prohibits sellers of milk from selling milk products for 43% of the time (9 of the 21 days) during which milk is fresh and of good quality.” A good reminder that laws around food dating should consider how innovation could impact the effectiveness of rule.

**Shortened timeframes lead to loss.** “One retailer, who owns only two stores in Montana, estimated that his cost of good wasted as a result of the 12-day rule is \$5,000 to \$10,000 per year.” The Montana Food Distributors Association estimates there are about 1200 stores selling milk in Montana. If there were \$5-10k in losses for every two stores, that would be \$6-12 million in lost milk, just from this rule. And that’s to say nothing of the resources lost if you consider what goes into producing milk (for instance, [about 144 gallons of water are required to produce one gallon of milk](#) – more than a 25 minute shower). Lesson? This law is leading to unnecessary waste of perfectly good, nutritious milk.

**“Sell by” dates are inappropriate.** In line with one of the recommendations in our Dating Game report, the decision states “the sell-by date not only fails to provide consumers with accurate information about product freshness, it misleads some consumers into believing that milk freshness is limited to the expiration of the sell-by date when in fact milk freshness extends far beyond that date and continues to be extended by milk processing improvements.” Later, he concludes that “a ‘sell-by’ label is ambiguous at best and misleading at worst. For these reasons, continued use of a “sell-by” date is, in the hearing examiner’s opinion, an inappropriate tool for the regulation of milk freshness.” The decision notes that in deciding to have a sell-by date, it is assumed consumers know the shelf life of milk after that date, but in fact that was shown not to be true.

For this reason, we recommend that sell-by information be hidden from the consumer and replaced by a date that is in fact meant to communicate directly with the

consumer—such as a “best-by” date. (Putting a “best-by” date beside the “sell-by” date is currently prohibited in Montana.)

**Consumers’ right to know is subverted.** Finally, he boils it down to giving consumers the appropriate information to make their own decisions. “In the hearing examiner’s judgment, consumers ought to be allowed to know the actual shelf life of milk they purchase; they ought to be allowed to compare the actual shelf lives of milk from different processors; and they ought to be allowed to decide within the time period of milk’s actual shelf life just how fresh they want their milk to be and how long they need their milk to last after they buy it. The 12-day rule provides none of these opportunities for the consumer....This is a regulatory approach inconsistent with the purpose of affording consumers information about, and reasonable protection against, poor quality milk.”

Given all of this, the question still remains, why would the Board of Livestock ignore the strong, clear recommendations of the Hearing Examiner, and given the arguments, do they have the right to do that? We will see what the Montana Supreme Court has to say about it all.

In the end, however, this just points out the additional challenges and unnecessary energy that’s going into state laws when, in fact, a standard federal system that takes consumers’ health and well-being into account would make the most sense.

*Tom*