

## Research Article

### The Economic Analysis of Law on the To-be-expired Food Sales and Supervision

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**Abstract:** To-be-expired food sold in shops and supermarkets without supervision run the certain risks of the security of people's lives and health. However, under the current legal system, it is very difficult for the supervision departments on food safety to take fruitful/effective supervision measures. This exposes the contradiction and conflict of legality and rationality in food safety supervision. From the point of Law and Economics, this study analyzes in detail the causes of market self-regulation failure towards business behavior in selling the approaching expired food and problems in government regulation. The study also puts forward the legal governance mechanism of dealing with selling approaching expired food in order to provide some guidance to the legislation of supervision of food safety supervision.

**Keywords:** Expired, food, management, near, safety

## INTRODUCTION

To-be-expired food sold by shops and supermarkets has certain risks for consumers (Zheng, 2009), so the State Administration for Industry and Commerce (SAIC) requires to-be-expired food should segregated in sales (Pan and Zheng, 2009; Zhang, 2012), but in practice not much of shops and supermarkets which obey this regulation strictly (Dai, 2011; Peng, 2014). The current law on food safety in our country only set up one standard of "shelf life" without any other security level, which gives the related government department a law enforcement difficulty on supervision of selling to-be-expired food (Cai, 2012). Under this background, how to set up a series of rules of law to regulate to-be-expired food selling in order to ensure food safety is an urgent problem for the present.

This study analyzes the causes in market self-regulation failure towards business behavior in selling the approaching expired food and problems in government regulation and also puts forward the legal governance mechanism of dealing with selling approaching expired food in order to provide some guidance to the legislation of supervision of food safety supervision.

## MATERIALS AND METHODS

Institutional measures established to regulate to-be-expired food sales need to analyze the dangers of stores'

behavior of selling to-be-expired food and find out the real reason of to-be-expired food sales supervision defeat under the current legal system framework. There is a lot of reasoning method, in which legal economic analysis method is a more insight method. Cost benefit analysis method in the Law and Economics, risk aversion under the asymmetric information theory, description of optimal allocation of resources in Kos theorem, public goods theory methods and others are important methods and theory bases used to analyze to-be-expired food selling behavior and government regulatory behavior. Existing academic materials such as: "Economic Analysis of the Civil Law" by Hans - Bernd Schafer and Klaus Ott, "Law and Economics" by Robert and Thomas (2011), "Foundations of Economic Analysis of Law" by Steven Shavell, "Economic Analysis of Law" by Richard (2007) and other works have a detailed discussion of analysis methods of Law and Economics. These materials provide us a unique key to open the door of the legal system.

### Location of to-be-expired food:

**The concept of to-be-expired food:** To-be-expired food refers to those still in the label shelf-life range and close to expiration date. (Although this kind of food is not expired, the underlying risks are very large. Firstly, there are security risks; which means that once the to-be-expired food is sold out, they will great possibly affect the public's security of lives and health due to

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excessive guarantee period if the food are not eaten before the expiration date.

Secondly, there exist management risks. On one side, shops and supermarkets must check the deadline of guarantee period, which leads to reducing the efficiency. On the other side, the food safety supervision authority is difficult to regulate business to sell to-be-expired food.

**The division between the best edible period and food guarantee period:** In Practice, it is very common to sell to-be-expired food in shops and supermarkets. The reason why the public pay much attention to to-be-expired food is that there is hidden damage in this kind of food and safety accident may be caused by the food. So far as China current law is concerned, it pays attention to the concept of food shelf life only, but it does not involve problems related to limitation of the food quality. In fact, laws in many countries not only regulate food guarantee period, but also the best edible period. For example, Britain's "food safety law" prescribes food exceeding the best edible period must be on discounted sales (Chen, 2011).

**The conflict between legitimacy and rationality on food guarantee period:** Food safety and shelf-life of law is the minimum of food sales for the businessmen. However, law only provides food shelf life is difficult to distinguish between the freshness of food and its sales price by only providing food shelf life. So it does not have the rationality. Sales in the food warranty period are legal, but not reasonable.

According to the principles of economics, one of the factors that determine the prices of commodities is the usable value of it. The usable value of food in the best period of food is higher than exceeding the best period of natural edible food. Of course, the price also should be higher. From the provisions in the British "food safety law" we can find the corresponding answers. However, China's food safety legislation has not provided the best edible period, which leads to a lot of business sales in the warranty period of the food-unchanged price. This deviates from the basic principles of economics.

We can see that provisions on the shelf life of the present system of "food safety law" are legal but unreasonable. The conflict between the legitimacy and rationality of the legal system makes the food safety supervision not be able to really effectively regulate to-be-expired food, which also makes the current food safety enforcement embarrassing.

**The externality of to-be-expired food and its harm:**

**Externality of to-be-expired food sales:** Externality in economics of law is also called external effect, which

refers to the impact that some commercial economic activity brought to bodies besides those involving in the activity.

From the point of view of economics, activities the economic subject are products under the free market. The market reflects the mutually beneficial exchange of goods or services, the need to pay a certain cost, but the cost can make both sides benefit in the process of exchange. But in fact, some factors make the two trading parties not pay the cost or they pay the cost but benefit not shared by the trading parties (Robert and Thomas, 2011). This is how externality of commercial economic activities is formed. When business sell to-be-expired food, the two trading parties don't pay the cost and they don't share benefit, which is called negative externality and positive externalities in economics.

**Negative externalities in selling to-be-expired food:**

Negative externalities in economics refers to as a commercial activity, has brought the adverse effect to the participation main body the economic activities and the commercial economic activities unrelated third parties, the adverse effects caused part of the cost of third parties responsible for the matter shall be borne by the business economic activities by the parties to the transaction shall be bear.

To take a business selling the to-be- expired food as an example, the businessmen are taking the compensation risks that the to-be-expired food possibly cause physical damage to people. Businessmen shall bear compensation responsibility no matter in what kind of situation, if the consumers get hurt physically. Merchants sell the to-be-expired food so that the risk of such compensation the greatly increased.

On the other hand, merchants are also facing risks being punished because of to-be-expired food on the food shelf. For consumers, they may suffer from damage because they don't eat the food on time.

In fact, the to-be-expired food also affects the buyers' family members and their friends. Therefore, businesses selling to-be-expired food gained profit maximization. But the purchaser of Pro expired food consumers will also get the maximum benefit, even if both of the two parties are satisfied, but the third party neither selling nor buying the food may also be adversely affected by the expired food. The side effect is called negative externality. When a commercial economic activities have negative externalities, unable to realize the maximization of social benefits by market regulation. Because there is no negative externalities, private marginal cost = seller marginal cost + consumer marginal cost = marginal social cost, the private marginal benefit = sellers marginal profit + consumer marginal profit = marginal social benefit, if rely on market regulation, then the marginal social cost =

marginal social benefit, maximizing the realization of social benefit (Liang, 2011). However, from the point of view of society, the market adjustment has not realized the optimization at this moment when merchants sell to-be-expired food. So market adjustment is failure and need to be intervened with the power of government.

**Positive externality selling to-be-expired food:**

Positive externalities refers to commercial activity and to third parties involved in the main body of the economic activity outside of the irrelevant to the commercial economic activity brought benefits or interest, the interest is not by the trading parties enjoy, but by the transaction outside the third party to enjoy, this will generate positive externality. The typical example of business selling to-be-expired food is that the business sell the food at discount. Some people buy the food and make donation (Huang, 2013). In this case, that the donors enjoy the benefits makes the social marginal benefit > private marginal benefit. From a private personal point of view, once there is something wrong to those who eat the approaching-the -expired food, the society will pay huge cost, including both express cost such as cost of the treatment and hidden cost such as reduction of social public prestige. Although Positive externalities can obtain short-term benefits, it still failure to the market regulation malfunction. So it needs government to regulate specification.

**Consumer information asymmetry theory of adverse selection near the expired food:**

**Information asymmetry property near the expired food:** Information is the main element of market economy, also has the certain value attribute, thus the birth of the intermediary in the transfer of information economy as a means of survival, it is self-evident importance for the main body of market information. Information asymmetry refers to the quantity and quality of information in the economy of both parties held by the transaction are not identical, this kind of Information Holdings differentiation destroyed the information balance, so the formation of asymmetric state (Feng, 2013).

Asymmetric information widely exists in the market, because the information can be divided into public information and private information of two kinds, the main commercial normally sell their goods or services will open a part of the information and another part will be private information to be retained, consumers can only buy in before the contact to the merchant of public information, for the retention of information not known before buying, it leads to the asymmetry of information. Normally, the advantage of information by the seller to the buyer's strong grasp of the information known.

To business sales near the expired food as an example, in fact business understanding for shelf life of the food is far stronger than the consumers and even some businesses will be the shelf life of food tampering continued after sales, consumers for this information may not know (Li, 2013). businesses this man-made information, make the content of personal information on near expired food increase the amount of information, namely business mastery increases the amount of information held by consumers unchanged, the information asymmetry of the increasingly strong. Visible, observed from the practice, the information asymmetry property near the expired food is far stronger than the normal food.

**The consumer to the adverse selection near the expired food:** Information asymmetry can lead to moral hazard, for food near the expiration, businesses will rely on their own for the food information advantage to infringe upon the interests of consumers, to maximize its profits.

This situation once formed, consumers will make adverse selection is not conducive to the seller of goods. Specifically, as consumers buy near the expired food in the case of asymmetric information, consumers will not only consider fraud this businessman is very shameless, but also that all businesses are such frauds, all businesses are included in the ranks of First impressions are strongest liar, thus forming the psychological state.

The converse choice not only for the formal business unfair and the establishment of market transaction credit loss, is not conducive to the whole market transaction order. Therefore, business sales near the expired food due to the existence of information asymmetry so strong, relying on market regulation is often failure need government near the expired food businesses selling is regulated, in order to reduce the moral risk caused by information dissymmetry.

**KOS THEOREM FROM THE PERSPECTIVE OF BUSINESS SELLING FOOD NEAR THE EXPIRATION OF BEHAVIOR**

For the sale process near the expired food, whether merchants or consumers need to pay a certain cost, the transaction cost is externalized as commodity prices.

The transaction cost and the legal system, has a detailed description of the Kos theorem, Kos theorem is divided into the first theorem (Coase I Theorem) and theorem second (Coase Theorem II), the first theorem of Kos think: if the transaction cost is zero, no matter how defined rights, can achieve the best allocation through market transactions and the law the provisions of independent.

Kos second theorem that transaction cost is greater than zero in the real world, due to the presence of

transaction costs, property rights initial allocation to the optimal state could not state through no cost transaction changes (Feng, 2009). in other words, when the transaction cost is zero, no legal system of special arrangement, both parties to the transaction only rely on the negotiations can realize resources optimization allocation, but because business selling food near the expiration of its price tends to remain unchanged, at a time when consumers equal pay a certain cost to buy near the expired food, in fact, the same price you can buy fresh food is in the period of.

In the transaction price is excessively high, the optimum allocation of necessary legal system arrangement to realize the resources. Therefore, the government should introduce relevant regulations, to limit food near the expiration of the transaction price, optimize the allocation of resources, which is similar to the countries like Britain provisions in the law where the fundamental reason near expired food must be discounted sales.

**Near the existence of expired food sales regulation problem for government departments:**

**The governmental supervision inefficient:** Because the law does not limit line against merchant sales near expired food make special provisions, the State Administration for Industry and Commerce and in 2007 promulgated the "although" guiding opinions on regulating the food Sok card ticket system and purchase ledger system requirements on to the shelf life of food, it shall make a striking marked in the purchase ledger and food display or make eye-catching tips to consumers, but the supervision and law enforcement measures do not involve the government regulators and penalties. Therefore, the current commonly used approach is to "raid", "concentrated inspection", "special action", "catch negative examples", "tree typical positive", "rectification" and other methods.

These methods seem to be able to expired food businesses sales approaching to a certain extent acts play a supervisory role, but because these practices lack of continuity, which belongs to the stage of practice, "rumour", businesses recover, it played a limited role, law enforcement efficiency is very low.

**The government department high supervision cost:**

Government departments for business selling food near the expiration of supervision need to invest a lot of manpower and material resources, the long-term tracking and recording business sales of food information and sales of food in practice businesses are not limited to shopping malls, supermarkets such large commercial institutions, dotted with a small grocery store is innumerable, which makes the government supervision departments to do unavoidably, the

exhaustive supervision, should be in the human and material resources to increase the cost of inputs, so that the high cost of inputs are often unable to afford the government supervision department. But in the current government regulators for sellers selling food near the expiration of behavior is not too good method, efficiency of the current method of supervision is also very low, because of the lack of continuity will supervise behavior leads to repeated investment supervision cost, in the cost accounting of this, the government supervision departments are often unable to take into account business selling food near the expiration problem.

**The interests game of the supervision department of the multiple law enforcement:**

The interests of the game is due to the limited resources in order to obtain certain people and interests must pay some interest, then there will exist how to measure, how decision-making problem between the interests and benefits paid, decision makers tend to pay the least gain the maximum interests.

If the government departments affected by the interests of the game thought, when law enforcement will produce "seek nothing but profits" approach. Specific to the expired food businesses sell near the supervision system of law enforcement power, the main body of law enforcement power is more dispersed, the Bureau of industry and commerce, food and drug supervision and Management Bureau, health supervision departments have corresponding, law enforcement is very easily lead to have good prospects of gain that regulation income is greater than the cost of supervision is competing, unable to map the supervision cost is higher than the regulatory benefits even when the mutual shuffle, "no not early" still become the current administrative department of multiple law enforcement the external performance of the most concentrated. At the same time, law enforcement because of the government supervision departments are often separate action, act of one's own free will, the lack of prior communication and law enforcement cooperation, it also gives the operator evade supervision provides a certain space.

**The government regulators exist dereliction of duty:**

Local Chinese oozes personal atmosphere, a molecular government supervision department personnel also belong to the society, cannot escape the social and independent existence, this leads to a more intimate relationship in the established law enforcement supervision personnel in the course of time line will be object of law enforcement, even as regulators send news secretly, provide the umbrella, the dereliction of duty behavior widely exists in the field of food safety

supervision in. Therefore, the dereliction of duty, government regulators not only make business selling food near the expiration to be effective supervision, risk to a certain extent, an increase of people's lives and health damage and also gave the green light for the operators of rent-seeking, corruption is catalyzed by a series of chain type.

## DISCUSSION

In developed countries, food is often divided into different security levels according to the different needs of people for food safety and each are given a different level of legal requirements. At present, China's laws on food safety only set up a standard, "shelf life", without any other security level, which gives the related government department a law enforcement difficulty on supervision of selling expired food. Analyzed from the view of Law and Economics, to-be-expired food sales would pose a threat to the third person outside consumers, so it will increase the overall cost burden on society and reduce the efficiency of food resources. Also the sellers are in a strong position and they grasp far more information about to-be-expired food than consumers, so many consumers will take some risk aversion measures to deal with it. These factors are destructions of a healthy, harmonious, honest and creditable market trading order, but relying solely on the strength of market self-regulation cannot solve all these problems. In Law and Economics, the Kos theorem provide a theoretical basis for government legislation and enforcement which is in the world of transaction cost is greater than zero, in order to realize the optimization of social resources, government forces by using a means of administrative intervention are also needed to solve the problems.

**Legal mechanism near the expired food sales of six governance, law and economics perspective:** The foregoing in view of law and economics discussed the market adjustment business sales approaching failure reason expired food, is mainly externalities, asymmetric information and transaction cost higher elements, while government departments near the expired food businesses selling regulation is in a bad state, selling behavior so that it should establish a corresponding law mechanism to regulate business. These mechanisms include the following contents.

**A "critical period" regulating mechanism:** The international community for food safety standards usually divided into different "critical period", China's existing laws for the regulation of food safety in only "shelf life", but do not involve "taste the best period",

"preservation", "near the shelf life" this concept, the time limit for a different meaning, represents the food at different stages of edible state.

The term hand is an objective description of food quality and safety, provides differential method is simple, convenient, safe for consumers, on the other hand also provides a basis for the administrative law enforcement of food by the regulatory authorities (Tu and Zhang, 2013). Therefore, China's food safety legislation should learn from the international for food safety "critical period" of the provisions of the food safety period is divided into "taste the best period", "preservation", "near the shelf life", "shelf life" of four different period, each period the execution of different standards, if the merchant violation of one grade standards will be subject to the standard of grade of punishment, it not only embodies the humanization of law enforcement and make administrative enforcement of law can really achieve the penalty when its over.

This practice is more common in the world, said that the international food safety standards have priority in application to the food safety standards in our country's legislation, our legislation should adopt the mode of legislation. From a legal point of view of economics, a standard measures if only one punishment magnitude, not only for minor violations and unfair, sometimes illegal act prompted a slight violations implementing heavier, for example, if the robber only imposed a death penalty, will make the criminals to kill in the robbery after.

So is the food safety period, divided into four period implementation of optimal configuration of different standards for businesses and consumers can realize resource, if only the provisions of the "shelf life" a level, not only at different stages of the food cannot implement the regulation, at the same time also prompted businesses to obtain excess profit in different stages, food more it is near the end of shelf life, the more excess benefit is obtained in the interests of businessmen, such some businessmen tamper and artificially extend food shelf life practices will be not at all surprising.

Therefore, the legislation should establish food safety "critical period" normative system, the food is divided into different stages, each stage of the implementation of the different standards and with the corresponding punishment measures, so that it can make the food regulatory enforcement activities according to the law.

**A standard mechanism for food near expired:** The supervision of the government supervision departments should expired food businesses sell near the behavior, the most important criterion is the food near expired

Table 1: Limitation near to guarantee period

Guarantee period	Beijing (days)	Jiangsu province (days)	Zhejiang province (days)
More than 1 year	45	45	45
More than half a year but less than 1 year	30	30	20
More than 90 days but less than half a year	20	15	15
More than 30 days but less than 90 days	10	10	10
More than 16 days but less than 30 days	-	-	5
More than 10 days but less than 30 days	2	3	-
Less than 15 days	-	-	1 to 4
Less than 10 days	1	1	-

standard. The standard theory can be divided into objective standard and legal standard, the objective standard is a food is in the objective truth state near the shelf life, the state is different due to individual differences in different foods. The legal standard is legal according to the food safety technical standards and practice summary artificial identified a food is near the shelf life of the state. From the perspective of legal economics, the objective standard of true and reliable

The food is near expired standard is slightly different, but are all based on scientific and statistical results, with very strong practicality, countries can refer to the above all in the development of relevant laws and regulations of the practice determines the corresponding food near expired standard, with rigid standards, food safety supervision organs of law enforcement behavior can go.

**Near the price management mechanism of expired food sales:** For the sales management of food near the expiration of, at present the State Administration for Industry and commerce business requirements of sub regional placed individually, but not for food near the expiration of the sales price level given set, practice various practices in business is chaos and some of the pro expired food do not partition placed "mixed" sell, of course the price may not do some distinction; although the partition placed but the price to implement the same standards and deliberately reducing the number of fresh food, the purpose is to advance digestion Pro expired food; others are done in will be expired food price handle after partitioning; some of it is will be expired food tie-in sale, sale with prizes, gifts, the price will be passed on to other commodities above (Liu and Bai, 2012).

The fundamental reason lies in the lack of the chaos of the price management system constraints, if the food's "critical period" is divided into different period, as described in the previous section "taste the best period", "preservation", "near the shelf life", "shelf-life" four terms, each term of a law mandating the implementation of the corresponding price standard, the business sector, the price department has the right of supervision on business sales in different period the price of food and the provisions of the business only

but if the measurement objective standards must be investment cost is huge and inefficient and legal standards have the advantage of low cost, high efficiency, so the food is near expired standard adopts the legal standard is suitable. In practice, some provinces such as Beijing, Jiangsu, Zhejiang also introduced legislation to regulate the corresponding, to clearly defined food near expired standard (Table 1).

price, do not permit the use of tying, such as gifts "transfer price" sales of food. This not only standardize business sales of food behavior, but also is convenient for the food safety law enforcement law enforcement.

**Near the expired food sales supervision enforcement efficiency mechanism:** At present the government supervision department for business sales of food behavior supervision law enforcement behavior shows the characteristics of high cost, low efficiency of law enforcement, the one-sided pursuit of benefits, the rent-seeking behavior of living space is difficult to completely eliminate, from the angle of law and economics, the enforcement mechanism of high efficiency must have the following elements: one is to minimize the cost of law enforcement. Two is the high degree of public participation in law enforcement. Three penalties is appropriate as the backing.

Specifically, the government supervision department near the expired food businesses sell regulation in the cost is too high or blindly additional cost, need to rely on the system design to reduce the cost, the best way is to should establish corresponding incentive mechanism, encourage people not to business sales behavior of compliance report, give full play to the people for the supervision of food near the expiration of sales. In after receiving the report from the masses, the government supervision departments shall timely fixed field evidence for law enforcement, business irregularities must be given different levels of punishment, to embody the fairness and impartiality. This can reduce the cost of administrative law enforcement supervision department of government investment and can change the "raid", "concentrated inspection", "special action" and the discontinuity of the merchant left law enforcement to evade law

enforcement space. So, near the expired food sales in order to establish the mechanism of supervision of law enforcement efficiency needs to solve the following problems: one is to control the cost of law enforcement, the enforcement of manpower, resource allocation to a reasonable extent, neither too little and not invest too much. Two is the establishment of a prize report mechanism, play folk strength Supervision Department of government, the liberation of hands. Three is the establishment of many orders of magnitude of punishment level, give different penalties for different grades of irregularities. Four is the authority defined the administrative law enforcement departments, the maximum to avoid duplicate law enforcement or mutual buck passing phenomenon. Five is the introduction of the accountability mechanisms, in order to dereliction of duty prevention supervisors, the thorough elimination of rent-seeking space. The establishment of the mechanism, law enforcement mechanism efficiency will be the formation of Business selling food near the expiration is a huge security risk, even some black businessmen tamper near expired food shelf life to continue as fresh food on sale, which exacerbated the possibility of induced food safety accidents.

From the level of legal norms, due to the current law of our country only to limit the shelf life of the food may not be sold, for food near the expiration no clearly defined, it is difficult to make the supervision of law enforcement of the relevant government departments. From a legal point of view of economics, business sales near the expired food is a kind of existence of external behavior, threatened to consumers outside of the third people, but because the business is in a strong position, grasp the food near the expiration information far more than the consumer and thus also the birth of adverse selection of consumers, the construction of all these is not conducive to health harmony, honesty and credit market transaction order, relying solely on regulation cannot solve the problems above market, realize the optimal allocation of social resources, need the government to administrative intervention measure to solve.

Visible, the method of economic analysis of law for government near the expired food businesses self regulation, provided the ideological and theoretical foundation. However, in practice, due to the existence of low efficiency, high cost, long law enforcement and other abuses of government supervision departments of law, so we need government to establish corresponding law system to ensure the effect of government regulation. According to the analysis methods of the economics of law, according to the law enforcement status limit for the legal system of food safety and food

safety, should focus on the establishment of the "critical period" standard mechanism, standard mechanism, food near expired sales price management mechanism, the supervision of law enforcement efficiency mechanism, so that it can make businesses to sell expired food acts more standardized, the masses of the people it will be more assured of food consumption.

## CONCLUSION

Point at the current food safety legal system and existing situation of food safety enforcement, we propose to establish safety grade standards, establish regulatory enforcement standards, reduce the burden of social costs, improve efficiency of the supervision of law enforcement and other aspects to strengthen the supervision of to-be-expired food sales. Only in this way can make sellers' behavior of selling to-be-expired food more standardized and the people will be more able to safely consume food.

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