

Special Rules of the State Council on Strengthening the Supervision and Management of the Safety of Food and Other Products

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The Special Rules of the State Council on Strengthening the Supervision and Management of the Safety of Food and Other Products, which were adopted at the 186th executive meeting of the State Council on July 25, 2007, are hereby issued, and shall be effective as of the date of issuance.

Premier: Wen Jiabao

July 26, 2007

Special Rules of the State Council on Strengthening the Supervision and Management of the Safety of Food and Other Products

Article 1 In order to strengthen the supervision and management of the safety of food and other products, further define the responsibilities of the producers and operators, the supervision and management authorities and the local people's government, strengthen the coordination and assistance among the supervision and management authorities ("regulatory authorities"), and protect the human health and life safety, these Rules have been made.

Article 2 The products as mentioned in these Rules shall include edible agricultural products, drugs and other products related to the human health and life safety, in addition to food.

Where a law provides for the supervision and management of a product, such a law shall apply; where a law does not provide or provides unclearly for the supervision and management of a product, these Rules shall apply.

Article 3 A producer or business operator shall be responsible for the safety of products produced or sold by it, and shall not produce or sell products that do not conform to the statutory requirements.

Where the production or sale of products requires a license or authentication according to a law or administrative regulation, the production or business operation shall be carried out in conformity with the statutory conditions and requirements. Where the production or business operation is not carried out in conformity with the statutory conditions and requirements or the products that do not conform to the statutory requirements are produced or sold, the regulatory authorities for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc., in their respective capacities, shall confiscate the illegal income, products and tools, equipment, raw materials and other property used for the illegal production, and impose a fine of 50,000 yuan if the value of goods is less than 5,000 yuan, impose a fine of 100,000 yuan if the value of goods is more than 5,000 yuan but less than 10,000 yuan, or impose a fine of not less than 10 times but not more than 20 times the value of goods if the value of goods is more than 10,000 yuan; if serious consequences are caused, the original license issuing authority shall cancel a license; and if a crime of illegal business operation, production or sale of fake or substandard commodities, etc. is constituted, the offender

shall be pursued for criminal liability according to law.

Where a producer or business operator is no longer in conformity with the statutory conditions and requirements but continues the production or business operation, the original license issuing authority shall cancel a license, and announce the list of producers and operators whose licenses have been cancelled on the major local media; and if a crime of illegal business operation, production or sale of fake or substandard commodities, etc., is constituted, the offender shall be pursued for criminal liability according to law.

Where a license for the production or business operation shall be legally obtained but is not obtained, the regulatory authorities for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc., in their respective capacities, shall confiscate the illegal income, products and tools, equipment, raw materials and other property used for the illegal production, and impose a fine of 100,000 yuan if the value of goods is less than 10,000 yuan or impose a fine of not less than 10 times but not more than 20 times the value of goods if the value of goods is more than 10,000 yuan; and if a crime of illegal business operation is constituted, the offender shall be pursued for criminal liability according to law.

The relevant industrial associations shall strengthen the self-regulation in their respective industries, supervise the productions and business operations of the producers and business operators; strengthen the dissemination and publicity of public health knowledge, and guide the consumers to choose products produced and sold by legitimate producers and business operators and products with legitimate labels.

Article 4 The raw materials, accessories, additives and agricultural inputs used by a producer for producing the products shall comply with the provisions of laws and administrative regulations and mandatory standards of the state.

Where the raw materials, accessories, additives or agricultural inputs are illegally used, in violation of the preceding paragraph, the regulatory authorities for agriculture, health, quality inspection, commerce, drug, etc., in their respective capacities, shall confiscate the illegal income, and impose a fine of 20,000 yuan if the value of goods is less than 5,000 yuan, impose a fine of 50,000 yuan if the value of goods is more than 5,000 yuan but less than 10,000 yuan, or impose a fine of not less than 5 times but not more than 10 times the value of goods if the value of goods is more than 10,000 yuan; if serious consequences are caused, the original license issuing authority shall cancel a license; and if a crime of production or sale of fake or substandard commodities is constituted, the offender shall be pursued for criminal liability according to law.

Article 5 A seller must establish and implement a product supply inspection and acceptance system, examine the business qualifications of suppliers, verify the certificates of qualified products and product labels, and establish a product supply account to truly record the names, specifications, quantities, suppliers and their contacts, time of supply, etc. of products. A sales enterprise engaging in the product wholesale business shall establish a product sales account to truly record the types, specifications, quantities, flow, etc. of the wholesale products. A production enterprise selling self-made products at a centralized trading place of products shall perform its duty of establishing a product sales account by analogy in line with the provisions on a sales enterprise engaging in the product wholesale business. The product supply account and sale account shall be kept for at least two years. By the production lot of products, a seller shall ask for an inspection report issued by an inspection agency in conformity with the statutory conditions or a photocopy of an inspection report signed or sealed by the supplier from the supplier; and where such an inspection report or a photocopy of an inspection report cannot be provided, the products shall not be sold.

For any violation of the preceding provision, the regulatory authorities for industry and commerce and drug, in their respective capacities, shall order cessation of production; where an inspection report or a photocopy of an inspection report cannot be provided and products are sold, shall confiscate the illegal income and illegally sold products, and impose a fine of three times the value of goods; and if serious consequences are caused, the original license issuing authority shall cancel a license.

Article 6 An enterprise launching a centralized trading market of products, an enterprise leasing out counters for marketing products, or an enterprise sponsoring or holding a product exhibition fair shall examine the business qualifications of an admitted seller, clarify an admitted seller's responsibility for product safety, regularly inspect an admitted seller's business environment, conditions and internal safety management system and products' conformity with statutory requirements, and when finding any sales of products not in conformity with the statutory requirements or finding any other violation, timely stop the same and immediately report on it to the administrative authority for industry and commerce at the place where it is located.

For any violation of the preceding provision, the administrative authorities for industry and commerce shall impose a fine of not less than 1,000 yuan but not more than 50,000 yuan; if the circumstances are serious, shall order cessation of production for correction; and if serious consequences are caused, the business license shall be cancelled.

Article 7 A producer or business operator of export products shall ensure their export products to conform to the standards of import country (or region) or the contractual requirements. Where a law provides that the products must undergo inspection before export, the products shall pass the inspection conducted by an agency meeting the legal provisions.

The export product inspectors shall conduct inspection according to laws and administrative regulations and relevant standards, procedures and methods, and shall be responsible for the inspection certificates produced by them.

The entry-exit inspection and quarantine agencies and regulatory authorities for commerce, drug, etc. shall establish and make available to the public the good and bad records of producers and business operators of export products. For those with good records, the formalities for inspection and quarantine shall be simplified.

Where a producer or business operator of export products evades the product inspection or makes falsehood, the entry-exit inspection and quarantine agency and drug regulatory authority, in their respective capacities, shall confiscate the illegal income and products, and impose a fine of three times the value of goods; and if a crime is constituted, the offender shall be pursued for criminal liability according to law.

Article 8 The import products shall conform to the mandatory requirements of the state technical specifications of this country and the inspection requirements as provided for by an agreement signed between China and the export country (or region).

The regulatory authorities for quality inspection and drug shall implement the categorized management of import products and the record-filing management of consignees, as per the degree of credibility and level of quality management of a producer or business operator and the results of risk assessment of import products. The consignees of import products shall truly record the flow of import products. The period of record keeping shall be at least two years.

When finding any products not in conformity with the statutory requirements, the regulatory

authorities for quality inspection and drug may list the importers, inspection declarers and agents of products not in conformity with the statutory requirements on the bad record list. Where an importer or seller of import products makes falsehood, the regulatory authority for quality inspection and drug, in their respective capacities, shall confiscate the illegal income and products, and impose a fine of three times the value of goods; and if a crime is constituted, the offender shall be pursued for criminal liability according to law. Where an inspection declarer or agent of import products makes falsehood, the qualifications for inspection declaration shall be cancelled, and a fine of the value of goods shall be imposed.

Article 9 A production enterprise that finds any hidden safety risk in its produced products likely to cause damages to the human health and life safety shall make available to the public the relevant information, notify the sellers of cessation of sales, notify the consumers of cessation of use, and report on it to the relevant regulatory authorities; and the sellers shall immediately cease the sales of such products. A seller that finds any hidden safety risk in its sold products likely to cause damages to the human health and life safety shall immediately cease the sales of such products, notify the production enterprise or supplier, and report on it to the relevant regulatory authorities.

Where a production enterprise or seller fails to perform the obligations as set forth in the preceding paragraph, the regulatory authorities for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc., in their respective capacities, shall order the production enterprise to recall the products or the seller to cease sales, and impose a fine of three times the value of goods on the production enterprise or a fine of not less than 1,000 yuan but not more than 50,000 yuan on the seller; and if serious consequences are caused, the original license issuing authority shall cancel a license.

Article 10 A local people's government at or above the county level shall include the product safety supervision and management in the targets for assessing the government work, take the general responsibility for the product safety supervision and management within its administrative region, uniformly lead and coordinate the work on the supervision and management within its administrative region, establish and enhance a supervision and management coordination mechanism, and strengthen the law enforcement coordination and supervision; shall uniformly lead and command the product safety emergency response work, and organize the investigation and handling of a product safety incident according to law; and establish a supervision and management accountability system to evaluate and assess all regulatory authorities. The regulatory authorities for industry and commerce, drug, etc. shall do a good job in the product safety supervision and management according to law under the uniform coordination by the same-level people's government at the place where they are located.

Where a local people's government at above the county level fails to perform its functions of leadership and coordination of the product safety supervision and management, and product safety incidents occur many times in a year within its administrative region, causing serious social effects, the supervisory organ or appointment and removal organ shall impose a sanction of serious demerit, demotion or removal from office on the principals and directly responsible persons in charge of the government.

Article 11 The competent authorities for quality inspection, health, agriculture, etc. of the State Council, in their respective capacities, shall make, amend or draft relevant state standards as soon as possible, and accelerate the establishment of a uniformly managed, well coordinated, practical, scientific and reasonable system of product standards.

Article 12 In the supervision and management of product safety, a people's government at above the county level and its departments shall perform their functions in accordance with the statutory

powers and procedures, and shall be open, fair and just. The administrative sanction of a fine shall not be imposed twice or more for the same violation of a producer or business operator; and where a crime is involved, and pursuing the offender for criminal liability is required according to law, the case shall be delivered to the public security organ according to the Rules on Administrative Law Enforcement Agencies to Deliver Crime-Involved Cases.

The regulatory authorities for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc., In their respective capacities, shall supervise and inspect the producers and business operators, and record information on their conformity with the mandatory standards and statutory requirements, and such records shall be signed by the supervisors and inspectors before being archived. The supervision and inspection records shall be regarded as a content of regular assessment of their directly responsible persons in charge. The general public shall have the right to consult the supervision and inspection records.

Article 13 For a producer or business operator under any of the following circumstances, the regulatory authorities for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc., in their respective capacities, shall take measures to redress a violation and prevent or reduce the occurrence of damages, and impose a penalty according to these Rules:

1. Engaging in production or business operation without obtaining a license that shall be obtained according to law;
2. Engaging in production or business operation not in conformity with the statutory conditions or requirements, or producing or selling products not in conformity with the statutory requirements, after obtaining a license or being authenticated;
3. A producer or business operator continuing to engage in production or business operation after being no longer in conformity with the statutory conditions or requirements;
4. In producing products, a producer failing to use raw materials, accessories, additives or agricultural inputs according to the provisions of laws and administrative regulations and mandatory standards of the state;
5. A seller failing to establish and implement a product supply inspection and acceptance system and establish a product supply account;
6. A production enterprise or seller failing to perform the obligations as set forth in these Rules, when finding any hidden safety risk in its produced or sold products likely to cause damages to the human health and life safety; or
7. A producer or business operator violating any other relevant provision of laws, administrative regulations and these Rules.

Where a regulatory authority for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc. fails to perform the functions as set forth in the preceding paragraph and causes consequences, the supervisory organ or appointment and removal organ shall impose a sanction of serious demerit or demotion on the principals, directly responsible persons in charge and other directly liable persons of it; where serious consequences are caused, shall impose a sanction of removal from office or dismissal on the principals, directly responsible persons in charge and other directly liable persons of it; and where a crime of malfeasance is committed by any of the principals, directly responsible persons in charge and other directly liable persons, the offender shall be pursued for criminal liability according to law.

Where the powers are abused or there is any other malfeasance in violation of these Rules, the supervisory organ or appointment and removal organ shall impose a sanction of demerit or serious demerit on the principals, directly responsible persons in charge and other directly liable persons of it; where serious consequences are caused, shall impose a sanction of demotion or removal from office on the principals, directly responsible persons in charge and other directly liable persons of it; and where a crime of malfeasance is committed by any of the principals, directly responsible persons in charge and other directly liable persons, the offender shall be pursued for criminal liability according to law.

Article 14 When finding any violation of these Rules within the capacity of any other regulatory authority, a regulatory authority for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc. shall immediately notify in writing and deliver the case to the competent regulatory authority to handle. The competent authority shall handle the case immediately, and shall not pass the buck; where consequences are caused by failure to immediately handle it or by buckpassing, the supervisory organ or appointment and removal organ shall impose a sanction of serious demerit or demotion on the principals, directly responsible persons in charge and other directly liable persons of it.

Article 15 The regulatory authorities for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc. shall perform their respective product safety regulatory functions, and exercise the following powers:

1. Entering the production or business premises to conduct on-site inspection;
2. Consulting, copying, seizing or detaining relevant contracts, bills and account books and other relevant materials;
3. Seizing or detaining products not in conformity with the statutory requirements, illegally used raw materials, accessories, additives and agricultural inputs, and instruments and equipment used for illegal production; and
4. Seizing production or business premises where any major hidden risk likely to cause damages to the human health and life safety exists.

Article 16 The regulatory authorities for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc. shall establish a producer or business operator violation record system to record and make available to the public the information on violations; and shall cancel a license of a producer or business operator with a record of multiple violations.

Article 17 Where an inspection or testing agency produces a false inspection report, causing serious consequences, the authority granting qualifications to it shall cancel the inspection or testing qualifications; where a crime is constituted, the directly responsible persons in charge and other directly liable persons shall be pursued for criminal liability according to law.

Article 18 Where a product safety accident or any other product safety incident having a serious effect on the society occurs, the regulatory authorities for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc., in their respective capacities, must timely respond to it, take measures to control the development of situations, reduce losses, release information according to the provisions of the State Council, and do a good job in the relevant post-accident or post-incident work.

Article 19 Any organization or individual shall have the right to report any violation of these Rules. The authority receiving the report shall keep the informant confidential. After a report is investigated to be true, the authority receiving the report shall reward the informant.

The regulatory authorities for agriculture, health, quality inspection, commerce, industry and commerce, drug, etc. shall open their respective e-mail addresses or report telephone numbers; timely and completely record and properly keep the record of received reports. Where a reported matter is within the capacity of any authority above, the report shall be accepted, and verification, handling and reply shall be made according to law; otherwise, the report shall be forwarded to the competent handling authority, with the informant being notified.

Article 20 These Rules shall be effective as of the date of issuance.