

Provisions on the Administration of Food Recall

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Order of the General Administration of Quality Supervision, Inspection and Quarantine
(No. 98)

The Provisions on the Administration of Food Recall, which were deliberated and adopted at the executive meeting of the General Administration of Quality Supervision, Inspection and Quarantine on July 24, 2007, are hereby promulgated and shall become effective as of the date of promulgation.

Director: Li Changjiang
August 27, 2007

Provisions on the Administration of Food Recall

Chapter I General Provisions

Article 1 These Provisions are enacted according to the Product Quality Law of the People's Republic of China, the Food Hygiene Law of the People's Republic of China, Special Provisions of the State Council on Strengthening the Supervision and Administration of the Safety of Food and Other Products, and other laws and regulations for the purpose of strengthening the supervision over food safety, preventing and reducing the hazards of unsafe food, and protecting the health and safety of consumers.

Article 2 The recall of food produced or sold within the territory of the People's Republic of China as well as the supervision and administration thereof shall be governed by these Provisions.

Article 3 The term "unsafe food" as mentioned in these Provisions refers to the food against which there is evidence proving that it has caused or may cause hazards to human health, and includes:

1. the food that has triggered food contamination or food-borne diseases, or caused hazards to human health, or even caused death;
2. the food that may bring about food contamination or food-borne diseases, or cause hazards to human health;
3. the food containing the components that may bring about hazards to the health of specific groups; however, such components and their hazards have not been marked on food labels and written instructions, or such marks are not complete or specific; and
4. other unsafe food as prescribed in any relevant law or regulation.

Article 4 The term "recall" as mentioned in these Provisions refers to such activities in which a food producer timely eliminates or reduces the food safety hazards in a batch or category of its food that is unsafe due to production cause according to the prescribed procedures and by way of exchange of foods, return of foods, supplementation or modification of consumer instructions, etc.

Article 5 The General Administration of Quality Supervision, Inspection and Quarantine (hereinafter referred to as "AQSIQ") shall, within the scope of its authorities, be responsible for uniformly organizing and coordinating the supervision and administration of food recall across the country.

The quality and technical supervisory organ of each province, autonomous region or municipality directly under the Central Government (hereinafter referred to as the provincial quality supervisory

organ) shall be responsible for uniformly organizing the supervision and administration of food recall within its jurisdiction.

Article 6 The AQSIQ and the provincial quality supervisory organ shall establish an expert committee of food recall (hereinafter referred to as the “expert committee”) to provide technical support for the investigation and assessment of food safety hazards.

Article 7 The AQSIQ shall strengthen the food recall management informationization construction, and organize the establishment of a food recall information management system for uniform collection, analysis and handling of the food recall information.

The local quality supervisory organ at each level shall establish the quality and safety archives about the food producers within its jurisdiction, and be responsible for collecting, analyzing and handling the food safety hazards and food recall information, and reporting the information level by level.

Article 8 A food producer shall establish complete product quality and safety archives as well as relevant management systems, accurately record and keep the information about raw and supplementary materials procurement, production and processing, storage and transport, sales and product identification, etc. in the production link, and keep the records on consumer complaints, incidents of food-borne diseases and food contamination incidents, as well as the archives about the disputes over food hazards.

Article 9 A food producer shall timely report all the information about food safety hazards to the local provincial or municipal quality supervisory organ, and such information shall include consumer complaints and incidents of food safety hazards, etc., and shall not conceal or falsely report the fact that its food will endanger human health.

Chapter II Investigation and Assessment of Food Safety Hazards

Article 10 To judge whether the food is safe or not, the investigation and assessment of food safety hazards shall be made.

Article 11 The investigation of food safety hazards shall mainly include:

1. Whether the food conforms to the safety requirements as set forth in the laws, regulations and standards on food safety;
2. Whether the food contains non-food raw and supplementary materials, non-food addictive chemicals, or whether the non-food is taken as food;
3. The composition of main consumption groups for the food, and the proportion thereof; and
4. The quantity, batch or category of the food possibly posing safety hazards, as well as its circulation area and scope.

Article 12 The assessment of food safety hazards shall mainly include:

1. The food contamination and food-borne diseases as triggered by the food, or the hazards to human health as brought about by the food, or the possibility of the said hazards;
2. The hazards of unsafe food to main consumption groups;
3. The serious degree and urgent degree of hazards; and
4. The short-term and long-term consequences of hazards.

Article 13 Where a food producer gets the information that its food may pose safety hazards or receives a written notice on investigation of food safety hazards from the local provincial quality supervisory organ, it shall immediately investigate and assess the food safety hazards.

A food producer shall timely submit an investigation and assessment report on food safety hazards to the provincial quality supervisory organ through the local municipal quality supervisory organ, and the

said investigation and assessment report shall include the contents as mentioned in Articles 8, 11 and 12 of these Provisions.

Article 14 Where a food producer fails to investigate or assess the food safety hazards upon notification, or its food is confirmed as unsafe upon investigation and assessment, the local provincial quality supervisory organ shall organize the expert committee to investigate and assess the food safety hazards, and make the determination.

Article 15 Both the food producer and the food seller shall assist the investigation of food safety hazards as organized by the provincial quality supervisory organ, and shall not refuse such investigation by the excuse that the food has passed any conformity examination.

Article 16 Where the investigation or assessment results about food safety hazards as drawn by a food producer are different with those drawn by the expert committee that is organized by the local provincial quality supervisory organ, the provincial quality supervisory organ may handle the discrepancy by way of hearing, etc., and make a decision of confirming results.

Article 17 Where it is confirmed upon the investigation and assessment of food safety hazards that the unsafe food comes from production link, the recall level shall be determined for implementing the recall.

Article 18 According to the serious degree of food safety hazards, the food recall shall be divided into three levels:

1. the first-level recall: the recall of unsafe food that has triggered or may trigger food contamination or food-borne disease that will bring about serious hazards to human health, even bring about the death, or that has a broad circulation or large social impact;
2. the second-level recall: the recall of unsafe food that has brought about or may bring about food contamination or food-borne disease that will bring about general hazards to human health, or that has a small circulation or small social impact; and
3. the third-level recall: the recall of unsafe food that has brought about or may bring about food contamination or food-borne disease that will bring about minor hazards to human health, or the recall of unsafe food that does not fall under the circumstances prescribed in Item (3) of Article 3 of these Provisions.

Chapter III Implementation of Food Recall

Section 1 Voluntary Recall

Article 19 Where the food is confirmed as unsafe food that shall be recalled, the food producer shall immediately stop producing and selling the unsafe food.

Article 20 After the food is confirmed as unsafe food that shall be recalled, the relevant seller shall be notified to stop the selling of relevant food and the consumers shall be notified to stop the consumption of relevant food within one day for the first-level recall, two days for the second-level recall, and three days for the third-level recall.

Article 21 Where a food producer publicizes the relevant information about food recall, it shall give a report to the quality supervisory organ at or above the provincial level according to the relevant laws and regulations as well as the relevant provisions of the AQSIQ.

Article 22 After the food is confirmed as unsafe food that shall be recalled, the food producer shall submit a food recall plan to the provincial quality supervisory organ through the local municipal quality supervisory organ within three days for the first-level recall, five days for the second-level recall, and seven days for the third-level recall.

Article 23 A food recall plan as submitted by a food producer shall mainly include:

1. the conditions about stopping the production of unsafe food;
2. the conditions about informing sellers of stopping the selling of unsafe food;
3. the conditions about informing consumers of stopping the consumption of unsafe food;
4. the types of food safety hazards, causes for such hazards, groups voluntary to such hazards, and the serious degree and urgent degree;
5. the contents of recall measures, including the implementation organization, contact information, specific measures, scope and term for the recall;
6. the anticipatory impact of the recall; and
7. the handling measures after the food recall.

Article 24 After the recall is implemented, the food producer shall submit interim progress reports on food recall to the provincial quality supervisory organ through the local municipal quality supervisory organ within three days for the first-level recall, seven days for the second-level recall, and 15 days for the third-level recall.

Where the food producer changes its recall plan, it shall state the change in the interim progress reports on food recall.

The local municipal quality supervisory organ shall put forward the opinions about handling the interim progress reports on food recall, notify the food producer of its opinions, and report its opinions to the local provincial quality supervisory organ.

Section 2 Compulsory Recall

Article 25 Under any of the following circumstances as confirmed, the AQSIQ shall order a food producer to recall its unsafe food, and may release the food safety information or consumer warning information, or adopt other measures to prevent hazards:

1. The food producer deliberately conceals food safety hazards, or fails to recall the food where it shall implement the voluntary recall;
2. The food safety hazards may be expanded or re-arise due to the food producer's faults; or
3. It is found upon state supervisory spot-check that there is any hidden safety problem in the food produced by the food producer, and such hidden problem may cause hazards to human health or life safety.

The food producer shall immediately stop producing and selling unsafe food upon receipt of a compulsory recall notice.

Article 26 A food producer shall, upon receipt of a compulsory recall notice, send out the notice according to Article 20 of these Provisions.

The food producer shall simultaneously make a food recall report according to Article 23 of these Provisions, and immediately implement the recall after giving a report to the AQSIQ for examination and approval through the local provincial quality supervisory organ within the time limit prescribed in Article 22 of these Provisions. Where a food recall report has not been approved upon examination, the food producer shall alter the report and implement the recall as required.

Article 27 A food producer shall, according to Article 24 of these Provisions, submit interim progress reports on food recall.

The local quality supervisory organ at or above the municipal level shall, according to Article 24 of these Provisions, put forward the opinions about handling the interim progress reports on food recall, and report the opinions to the AQSIQ level by level.

Section 3 Recall Assessment and Supervision

Article 28 A food producer shall keep the recall records, which mainly include the batch, quantity, proportion, cause and outcome, etc. of the recalled food.

Article 29 A food producer shall, within 15 days upon expiry of the time limit for food recall, submit a summary recall report to the local provincial quality supervisory organ; and shall give a report to the AQSIQ in the case of compulsory recall.

Article 30 The provincial quality supervisory organ at the place of a food producer shall organize an expert committee to examine the summary recall report, assess the recall impact, and notify the food producer of the examination conclusion in writing; and shall report relevant conditions to the AQSIQ for archival filing in the case of compulsory recall.

Where the provincial quality supervisory organ at the place of a food producer deems upon examination that the recall has not produced anticipatory impact, it shall notify the food producer to continue the food recall or implement the food recall once more.

Article 31 A food producer shall timely implement the harmless treatment of unsafe food, and timely destroy the food that shall be destroyed according to relevant provisions.

A food producer shall keep detailed records about the follow-up treatment of the recalled food, give a report to the local municipal quality supervisory organ, and be subject to the supervision of the municipal quality supervisory organ.

Article 32 The quality supervisory organ at or above the municipal level shall, within the prescribed scope of authorities, supervise the conditions about the recall progress of the food producer and the follow-up handling process of the recalled food.

Article 33 Any entity or individual may complain or tip off an act in violation of these Provisions or the relevant recall conditions to the quality supervisory organ at each level, and the food producer shall not impose restrictions in any means. The department that has accepted the complaint or tip-off shall make timely investigation and handling, and keep it confidential for the informer.

Chapter IV Legal Liabilities

Article 34 Where a food producer recalls its food, it can not be exempt from other legal liabilities.

Where a food producer voluntarily recalls its food, it may be given a lighter or mitigated punishment.

Article 35 Where a food producer fails to stop producing or selling unsafe food in violation of Article 19 or Paragraph 2 of Article 25 of these Provisions, it shall be warned, be ordered to make correction within a time limit; and if it fails to make correction within the time limit, it shall be given a fine of less than 30,000 yuan; and if it violates relevant laws or regulations, it shall be handled according to relevant laws or regulations.

Article 36 Where a food producer is under any of the following circumstances, it shall be warned, be ordered to make correction within a time limit; and if it fails to make correction within the time limit, it shall be given a fine of less than 20,000 yuan:

1. Failing to timely make the investigation upon receipt of a notice on investigation of food safety hazards as sent out by the quality supervisory organ;
2. Refusing to assist the investigation of food safety hazards as organized by the quality supervisory organ; or
3. Failing to timely submit the investigation or assessment report on food safety hazards according to these Provisions.

Article 37 Where a food producer violates Article 20, 21, 22, 23, 24, 26, 27 or 29 of these Provisions, it shall be warned and be ordered to make correction within a time limit; and if it fails to make correction within the time limit, it shall be given a fine of less than 30,000 yuan; and if it violates relevant laws or regulations, it shall be handled according to relevant laws or regulations.

Article 38 Where a food producer violates the obligation prescribed in Article 28 of these Provisions, it shall be warned and be ordered to make correction within a time limit; and if it fails to make correction within the time limit, it shall be given a fine of less than 20,000 yuan.

Article 39 Where a food producer violates the obligation prescribed in Article 31 of these Provisions, it shall be warned and be ordered to make correction within a time limit; and if it fails to make correction within the time limit, it shall be given a fine of less than 30,000 yuan; and if it violates relevant laws or regulations, it shall be handled according to relevant laws or regulations.

Article 40 Where a public servant for the administration of food recall, an expert or functionary for investigation or assessment of food safety hazards upon authorization makes up or spreads false information, violates the confidentiality provisions, forges or provides the relevant false conclusion or opinions, he shall be given an administrative sanction; if the losses are caused, he shall assume the liability of compensation; and if a crime is constituted, he shall be subject to criminal liabilities.

Article 41 The “administrative sanction” as prescribed in these Provisions shall be implemented by the quality supervisory organ at or above the county level within the scope of its authorities. Where there are otherwise provisions about the organs for administrative sanctions in any law or administrative regulation, such provisions shall prevail.

Chapter V Supplementary Provisions

Article 42 The recall administration of import and export food shall be carried out by the entry-exit inspection and quarantine agencies according to the relevant provisions of the AQSIQ.

Article 43 The specific requirements for information release or document formats involved in these Provisions shall be separately set down by the AQSIQ.

Article 44 The power to interpret these Provisions shall remain with the AQSIQ.

Article 45 These Provisions shall come into force as of the date of promulgation.