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From The Year of the Dog to The Year of the Pig: China’s Food and Food Packaging Laws Year-in-Review

In 2018, the food and food packaging industry witnessed many changes within China’s regulatory system, beginning with the National People’s Congress (NPC) - China’s national legislative body - embarking on a massive restructure of its organizational bodies, which extended to many of its food regulatory agencies.[1] Details of China’s reshuffle was reported in Keller and Heckman’s China Regulatory Matters (CRM) newsletter in March 2018 - China’s National People’s Congress Passes Reshuffle Plan to Establish New Food and Food-Related Agencies.[2] Since then, structural reforms and nomenclature changes have been taking place among and within different governmental agencies at both national and local levels, including the State Administration for Market Regulation (SAMR), General Administration of Customs (GAC), and National Health Commission (NHC), bringing substantial changes to how the food industry will be administered in practice. Now that the reshuffle is fully in place at the central level, we expect to see a continuous roll-out of regulations and standards in 2019 to accommodate the restructured food regulatory system. Let’s take a closer look at what we have seen in 2018 and how things may play out in 2019.

I. Food Safety Standards Under Further Development

In 2018, the Chinese Government kept pace with its commitment to optimize its food standard system by developing and amending many of its food safety standards, including general areas like test methods, nutrition and labeling, to more specific standards like dairy products, infant formula, and food additives. Revisions to the standards that are most likely to capture the attention of the food industry include the Standard for the Use of Food Additives (GB 2760-2014), General Standard for the Labeling of Prepackaged Foods (GB7718-2011), and Standard for the Nutritional Labeling of Prepackaged Foods (GB 28050-2011).

The authority is addressing specific areas that are likely to have a broad and sweeping impact on many products exported to China. For example, the food labeling standard, GB7718-2011, is being amended to address claims that are becoming more prevalent, such as "no artificial color added," and "free of food additives," which often can be viewed as misleading or confusing to consumers. A new provision has been proposed to regulate these types of claims that tout the negative presence of ingredients. Date marking on food packaging also can be problematic on many levels, including food importers who are not permitted to re-sticker or make date alterations when the original date has an error. To help accommodate the industry, the revised standard may allow certain flexibility to make corrections by adding a sticker or re-printing the correct date under prescribed conditions.

On the nutrition labeling front, the standard drafting group working on GB28050-2011 is considering several modifications to the current nutrition labeling requirements. For instance, it has been proposed to expand the scope of nutrients subject to mandatory declaration from the current scheme of energy, i.e., protein, fat, carbohydrate and sodium, to capture four core nutrients, i.e., vitamin A, calcium, sugar and saturated fat. The amendment of GB28050 may introduce a new "healthy choice" logo based upon the science behind classification and ranking of foods per their nutritional composition, the so-called "nutrient profiling" which was initiated by the World Health Organization (WTO) to prevent disease and promote health. Other areas that are covered in the draft include measure units of nutrients, requirements of nutrient content claims, comparative claims, and function claims.
A revised draft General Standard for the Use of Food Additives, GB 2760-XX, was released in December 2017,[3] to reflect the developments of the industry and the food additive regulations over the past five years. Notably, food additives that have been approved since 2014 will be incorporated into the revised standard. Some flavoring substances that are no longer used by industry have been proposed to be removed from the standard. It can be anticipated that the format of the food additives standard may also be improved to be more searchable/user-friendly.

We anticipate that interested stakeholders will be given another opportunity to submit comments on the above standards, once there is WTO notification, before they are officially finalized.

II. Regulations on Special Foods to Be Strengthened

Special foods, as defined in China’s Food Safety Law, refer to health food, infant and young children formula, and food for special medical purposes (FSMP). Supervision of health food is ranked as a high priority on SAMR’s 2019 agenda. As stated by SAMR via a video conference on January 24, 2019,[4], whistleblowers are encouraged to report non-compliant health food products and the monetary value of the fine on violators will be increased. False claims remain an issue within the health food industry. The government has, therefore, strengthened its inspection on health food labeling and advertising and published guiding documents to help the industry achieve compliant status.[5]

China has a dual system to regulate health foods, i.e., “registration” and “notification”, based on the subject product’s composition and target function claim(s). While the authority has developed catalogs to specify substances that can be used in health food, more substances are currently under review which may be approved in the future. It should be noted that the testing protocols for certain health functions were abolished in 2018[6] which has resulted in difficulty and uncertainty for the industry to apply for approval of health food as it involves submission of test results on product safety and efficacy. Industry has been calling for clarity from the authority to expedite the review and approval of health foods.

III. Challenges and Opportunities for Imported Foods Remain

Cross Border E-Commerce (CBEC) opens a new door to facilitate the export of food to China. The government announced that the current CBEC regulatory mechanism will remain after 2018.[7] Foreign brands exported to China via CBEC will continue to enjoy the advantages brought by this mode of commerce. However, Chinese authorities emphasize that CBEC products must be compliant in terms of safety and quality. Regardless of whether a food product is imported through CBEC or traditional modes, products exported to China continue to face potential challenges from the "Professional Consumer", so-called bounty hunters, who bring complaints or suits against food companies, alleging food non-compliance, typically focusing on food labeling, for monetary gains. This is because under Article 148 of China’s Food Safety Law[8], when damage results from a non-compliant food product, the consumer can be entitled to a compensation up to 10 times of the product’s purchase price. In 2018, we saw an increase of cases brought against food producers and operators who were ultimately relieved from the burden of unreasonable claims for punitive damage. More and more courts are recognizing that the time and resources being used to protect consumers who are purchasing products to seek monetary gain is taking away from efforts that should be used to protect a bone fide purchaser. More details of importing foods via CBEC can be found in our CRM - Beijing Confirms Cross Border E-Commerce is Here to Stay.[9]

IV. Food Packaging

To help industry better understand and implement the food packaging GB Standards, in 2018 China’s National Center for Food Safety Risk Assessment (CFSA) published a guidance book titled, Implementation Guidance on Migration Testing Standards for Food Contact Materials and Articles, which contains comprehensive and practical interpretations and guidance for the implementation of GB 31604.1-2015 (General Rules for Migration Testing on Food Contact Materials and Articles) and GB 5009.156-2016 (General Rules for Migration Testing Pre-treatment Methods for Food Contact Materials and Articles).

In 2018 we also saw significant development in domestic production licensing requirements for food contact materials. Currently, there are 24 categories of industrial products that are designated by the State Council as being subject to production licensing (or "QS" licensing, as opposed to "SC" licensing which applies to the production of food and food additives).[10] In November 2018, SAMR published the long-awaited General Rules for the Implementation of Production Licensing for Industrial Products and the corresponding product-specific detailed implementation rules.[11] The QS licensing system is granted upon different categories including food packaging materials, for example, plastic packaging, tools, paper packaging and containers. More details about QS licensing rules in relation to food contact materials will be separately discussed in future CRM newsletters.
It should be noted that the Chinese authority continues to heighten its supervision of food contact materials. For example, earlier this year a juice vending machine manufacturer was heavily fined after determining that a food-contact metal component inside the machine did not comply with the new GB Standard on food-contact metal materials and articles. Accordingly, industry should ensure strict compliance with China's applicable GB standards to avoid any potential adverse impact on their business activities.

V. Outlook for 2019

Chinese food authorities are expected to remain vigilant in improving its food safety management system in 2019. In February, the State Council released a notice imposing food safety accountability on the Communist Party leaders at local levels, which signals the commitment to enhance the enforcement over food safety. From the legislative perspective, SAMR and NHC have made their work plans for 2019, including setting up priorities to develop certain food safety standards, e.g., Limits of Organic Pollutants in Food, Hygienic Requirements for Food Production and Management Process, and updating the existing food regulations, e.g., Administrative Provisions on Food Labeling and Measures for the Supervision and Administration of Food Safety.

We expect 2019 to be a year in which we will see more regulations to enhance China’s mission to improve food safety. Accordingly, the food and food packaging industry should be vigilant about keeping up with these changes to ensure it can continue to prosper in an industry that is filled with opportunities and a consumer thirst for new products. We will continue to keep you apprised of these developments throughout the year.


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