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China’s New Food Safety Law: Evolution Over Revolution
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Approved by:  
William Westman  
AgBeijing

Prepared by:  
Mark Petry and Wu Bugang

Report Highlights:  
China’s new Food Safety Law takes an evolutionary approach in adopting a legislative framework that modernizes approaches to food safety. It makes positive steps by increasing the use of risk analysis in decision-making, public information and consumers’ rights, process rather than end point focus, and food safety supervision. However, it retains some of the shortcomings of the current legal structure in the lack of clear or centralizing authority, insufficient oversight of small producers, and enforcement. Despite the many changes that China’s vast size, population, production, and modernization pose, the Food Safety Law appears to be an improvement over the existing complex set of legal measures.
China’s New Food Safety Law: Evolution Over Revolution

Executive Summary: On February 28, China’s National People’s Congress (NPC) Standing Committee passed the first comprehensive Food Safety Law (FSL) after five years of drafting; the first draft was read in December 2007. The FSL will go into effect on June 1, 2009. For the first time, the Chinese Government uses Western terminology in calling for food safety regulation “from the production line to the dining table.” Key organizational provisions create a state-level Food Safety Commission to oversee food-safety monitoring. This Commission will be composed of members from the Ministry of Health (MOH), Ministry of Agriculture (MOA), General Administration for Quality Supervision, Inspection and Quarantine (AQSIQ), State Food and Drug Administration (SFDA) and the State Administration for Industry and Commerce (SAIC). While many of the ultimate responsibilities are not clear and fine tuning will continue, the big winner appears to be the Ministry of Health, which gets unequivocal responsibility for creating the basic infrastructure for food-safety regulation, risk assessment, and standard-setting. Key new provisions also aim to increase China’s ability to conduct product trace back and recall.

Overview

China’s draft Food Safety Law (FSL) takes an evolutionary approach in adopting a legislative framework that modernizes approaches to food safety. As China’s first law devoted solely to the subject of food safety generally, the new FSL takes a broad perspective and is the first major law that would direct food safety regulators how they should evaluate risks and conduct supervision rather than prescribing the process of regulating food or outcomes.

Most importantly, China has wholeheartedly embraced risk assessment and a science-based decision-making system. In the FSL, China makes important new commitments to public transparency, public information, consumer rights, and increased surveillance and monitoring. China also appears to slowly be moving toward a regulatory approach that focuses on process rather than solely on end point testing. It includes language that
encourages food manufacturers and processors to take active involvement in establishing their own standards that are more stringent than those set by the health authorities, or, set their own standards in areas where standards have not yet been set; a section on measures to take in the event of a food safety incident; a section that establishes a central food safety information portal encouraging timely and accurate reporting; and language to strengthen liabilities and penalties. New provisions in the FSL also increase the recordkeeping burden on food processors and distributors in order to facilitate a more robust recall system. The intent of the changes seem well-designed to fit the modernization of the food production and distribution system while maintaining increases in overall food quality and safety.

While there are important improvements, several traditional weaknesses of China’s food safety system remain, which may undermine the intent of the legislation. Although it proposes to establish a central committee under the State Council, a primary point of concern is the continued reliance on local and regional authorities to monitor, supervise, and enforce local adherence to regulations and standards. Areas where conflict of interest has led to past food safety incidents appear to remain. As noted by the United Nations, it is unclear whether the FSL provides the needed statutory power to ensure jurisdiction and resources to food safety authorities, especially to supervise the vast numbers of small food producers active in China.\(^1\) Regulatory authority also continues to be divided by the stage of manufacturing or distribution, rather than by product. As products cross lines of regulatory authority, communication becomes fractured and might continue to undermine surveillance, monitoring, enforcement, as well as the new recordkeeping and recall initiatives. The FSL also disappoints by not placing significant responsibility for producing safe products on producers or ensuring that liability plays a more significant role in ensuring self-compliance. There also appears to be little new emphasis on human health surveillance infrastructure or data collection. Lastly, while there is some clarification of roles, the FSL does little to consolidate the complicated structure of China’s varying food safety authorities.

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While this Law would require implementation by several ministries at the central, provincial, and local level, overall it appears to be a positive step in charting a path for the future and continuing the modernization of China’s food safety system.

Notes:

This report evaluates the Food Safety Law\textsuperscript{2} as passed by the State Council in February 2009 and compares it to the two laws that have the most similar content, the 2001 Food Hygiene Law and the 2006 Law on Farm Quality and Safety, and the draft of the Food Safety Law that passed the second reading in the State Council in April 2008\textsuperscript{3}. The report comments on specific topics of interest according to their order in the Food Safety Law. This report synthesizes opinions of various Chinese opinion leaders, foreign food safety specialists, and FAS China. Not all issues are covered. This report does not constitute a U.S. Government official position on the law or represent the views of offices or departments outside of the FAS Beijing Office of Agricultural Affairs.


\textsuperscript{3} EU-China Project, \textit{The PRC Food Safety Law} (English Translation) (Beijing, 2008).
Detailed Review of Articles of the Food Safety Law

Chapter 1, General Provisions (Article 1 – 10), outlines the basic points of the FSL, including regulatory responsibilities, the new Food Safety Committee, and consumers’ rights. Article 2 outlines the scope of the FSL, defines how it interacts with other laws, and indirectly states which ministries are responsible for certain broad areas of action. Article 2 notes that the FSL is designed to govern food quality and safety standard setting, but does not supersede the Food Hygiene Law or the Law on Farm Quality and Safety in terms of implementation or daily management of risks.

**Article 2.** “The quality and safety management of primary agricultural products for consumption (hereinafter referred to as “Edible Agricultural Products”) shall abide by the Law of the People’s Republic of China on Quality and Safety of Agricultural Products. However, this Law must be observed when developing quality and safety standards and releasing food safety information on edible agricultural products.”

This and later Articles clarify that the Ministry of Health (MOH) assumes nearly comprehensive responsibility in setting standards while removing this authority from other ministries or clarifying lines of authority in favor of MOH. This hands MOH greater power over standard setting, regulation development and methodology at the expense of the other members of China’s other key food safety ministries: the Ministry of Agriculture (MOA), the Administration for Quality, Supervision, Inspection, and Quarantine (AQSIQ), State Agency for Industry and Commerce (SAIC), and the Ministry of Commerce (MOFCOM). The key exceptions to this are the regulation of primary agricultural products (Article 2) and products of biotechnology (Article 101), which remain subject to previous laws and regulations that hand regulatory authority to MOA.

**Article 4.** “The State Council shall establish a Food Safety Committee whose responsibilities will be determined by the State Council.

The executive department of health under the State Council is responsible for the overall food safety coordination, risk assessment of food safety, formulation of food safety standards, release of food safety information, development of accreditation criteria for food testing agencies and testing specifications, and the organization of investigation of and response to major food safety accidents.

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The regulatory departments for quality supervision, industry and commerce administration, and food and drug administration under the State Council shall regulate food production, food distribution, and catering service, respectively, in accordance with this law and the responsibilities identified by the State Council.”

Article 4 establishes a Food Safety Committee at the State Council level that will be responsible for many high-level coordination and policy making tasks. The Committee will be composed of MOH, MOA, AQSIQ, SAIC, and the State Food and Drug Administration (SFDA). Compare to the previous draft FSL, newly added passages in Articles 5 – 10 provide additional clarity to the roles of local and provincial government agencies. These articles appear to give local authorities additional flexibility in creating local food safety surveillance and enforcement mechanisms rather than dictating that the relationships remain fixed throughout the country. Providing for more flexibility and communication may have important benefits in allowing localities to fit regulatory responsibilities within existing bureaucratic structures or consolidate functions.

**Article 5.** “The local People’s Government at the county level or above shall define the regulatory responsibilities relating to food safety for the executive departments on health, agriculture, quality supervision, industry and commerce, and food and drug administration in accordance with this Law and the State Council regulations. The relevant departments shall be responsible for the regulatory work on food safety within their respective jurisdiction.”

Article 10 of the FSL marks the highest level inclusion of consumers’ rights within food safety legislation. It maintains rights that Chinese consumers have as active participants in the system by: reporting food safety incidents or concerns; receiving more information about incidents collected by the government; and to receive compensation as the result of a contaminated or adulterated product.

**Article 10.** “Any organization or individual has the right to report any act during food production and trade that violates this Law and has the right to inquire food safety information from relevant agencies and provide comments and suggestions about food safety regulation.”

The consumer rights defined here are vague; they could be interpreted narrowly or broadly. Moreover, both information sharing and liability are developing concepts within food safety law. Information sharing with consumers and the level of transparency in acknowledging problems and the risks posed to consumers has been a weak point in China’s
response to food safety incidents in recent years. While the response and emergency communications efforts of the government have been improving, access to information is still highly variable depending on the ministry involved and the issue. Clarity regarding liability (compensation) for damages suffered due to food safety is also an emerging issue. Criminal liability is an established tool for the government to tackle problems\textsuperscript{5}, but China has yet to develop a system where civil liability grants consumers significant rights. If Article 9 leads to an increased ability of consumers to gain compensation for wrongdoing, it has the potential to increase the vigilance of companies to regulatory compliance. Regardless, China’s consumers have won a victory in gaining the legal right to become more involved in the process.

Chapter 2, Surveillance and Assessment of Food Safety Risks (Articles 11-17), strengthens and centralizes the central government’s role in standard setting and risk management, while maintaining local governments primary authority for enforcement and surveillance of food safety in China. A strong point of the FSL is its consolidation of surveillance, communication, standard setting and other functions under the direction of the Ministry of Health and the provincial/local public health bureaus. Previous organization of these functions was either stove-piped according to a ministry’s regulatory authority or given to SFDA to coordinate. This structure worked poorly due to the lack of inter-ministry coordination and the lack of resources and authority given to SFDA. While each ministry maintains control over its own regulatory area, the Ministry of Health and its local affiliates are much better placed to carry out the coordination and communication tasks because of the authority given to them in the FSL, their health focus, and the generally adequate level of funding vis-à-vis other ministries.

While this fits into China’s overall legal and regulatory traditions, many observers note that most of China’s failures to enforce the rule of law founder on the lack of accountability

and conflicts of interest that reside at the local level. Maintaining a central government presence at the local level to supervise inspection and surveillance would be an enormous undertaking that would require a vast increase in resources. While keeping with China’s modern tradition of strong local governance, many observers will note that the continued primacy of local officials in this area is one of the weakest points in the FSL and a lost opportunity.

In Chapter 2, surveillance and risk assessment are given very specific roles within China’s food safety legal framework. While risk in not new to Chinese law, the FSL describes risk with more depth and context than previous laws. Though laws are not the appropriate legal documents to specify how risk should be evaluated, preceding laws describe risk in the absolute context rather than in the context where it is unavoidable, scientific information evolves, and resources must be used in a way to minimize the risks present. This is an important step because it allows for a more nuanced concept of risk for the purposes of creating regulations, surveillance, and enforcement.

The articles in Chapter 2 of the FSL contain two important aspects. The first is the scientific method has been placed at the center of food safety system and the second is that the existing regulatory infrastructure is instructed to use risk-based decision-making. In short, the law is not revolutionary but evolutionary in its incorporation of risk.

For example, Article 13 shows the evolutionary approach by strengthening the existing system of expert committees for joint decisions-making. These committees become the cornerstone of the FSL by giving them the primary role and responsibility in

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6 USDA Foreign Agricultural Service GAIN Report CH6095, Law on Farm Product Quality and Safety of the People’s Republic of China, (Unofficial Translation, 2006). Article 6. “The executive departments in charge of agriculture under the State Council shall establish an expert committee on risk assessment for farm product quality and safety staffed by experts from relevant fields to perform risk analysis and assessment on potential hazards that may affect farm product quality and safety.” Article 12. “In formulating farm product quality and safety standards, it is necessary to take into full account the result of the risk assessment on farm product quality and safety and listen to opinions of farm product producers, sellers, and consumers to ensure safe consumption.”

7 Ibid.

making risk the key factor in: 1) assessing situations and reporting to the State Council and 2) regulation development. Articles 13 - 17 lay the parameters for consideration, primarily science-based methods. While “other relevant information” could include non-scientific considerations and is mentioned in Article 13 of the FSL and in the Farm Product Quality and Safety Law⁹, the primacy of science-based information is a strength of the FSL.

**Article 13.** “A national assessment mechanism for food safety risks shall be established to assess the risks on biological, chemical and physical hazards in foods and food additives.

The executive department of health under the State Council shall be responsible for organizing food safety risk assessments. An expert committee on food safety risk assessment, which is composed of experts on medical science, agriculture, food, and nutrition, shall be established to conduct the food safety risk assessments.

The safety assessment of pesticides, fertilizers, growth regulators, animal drugs, feed and feed additives shall be attended by experts from the expert committee on food safety risk assessment.

The food safety risk assessment shall be conducted on the basis of scientific methods, information of food safety risk surveillance, scientific data, and other relevant information.”

**Article 16.** “Food safety risk assessment results shall be the scientific basis for developing and modifying food safety standards, as well as regulating food safety.

In case the food safety risk assessment concludes that a food is unsafe, the executive departments for quality supervision, industry and commerce, and food and drug administration under the State Council shall immediately take corresponding actions within their respective duties to ensure termination of the food production and trade inform consumers to stop consumption of the food; if necessary, the executive department of health under the State Council shall immediately formulate or modify the relevant food safety national standards.”

**Article 17.** “The executive department of health under the State Council shall, in conjunction with relevant State Council departments, conduct comprehensive analyses of the food safety situation according to the result of food safety risk assessments and food safety regulatory information. For foods with high potential risks as a result of the comprehensive analyses, the executive department of health under the State Council shall issue food safety alerts to the public in a timely manner.”

Article 13 has several pieces of information that are not directly stated. First, the list of areas covered makes it clear that risk-based decision making applies to the all food regulators (MOH, MOA, SAIC, MOFCOM, AQSIQ, SFDA, SAC) and that this should not be considered a law that only applies to the main drafters in the Ministry of Health or Experts’

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⁹ USDA Foreign Agricultural Service GAIN Report CH6095, *Law on Farm Product Quality and Safety of the People’s Republic of China, Article 12, (Unofficial Translation, 2006).*
Groups. Second, it highlights safety assessments in several sensitive areas where China has taken strong positions (pesticides, growth regulators and veterinary medicines) in areas where observers suggest that previous decisions were made in response to crisis situations rather than scientific evaluation. This is an important point because China’s industry establishment complains that they are penalized when the thousands of unregistered companies misuse inputs or don’t follow standard production practices. Thus, industry can suggest that enforcement problems not lead to regulatory actions.

Chapter 3, Food Safety Standards (Articles 18 – 26), covers much of the content of the Food Hygiene Law and Law on Farm Product Quality and Safety in specifying the areas that require regulation, such as pathogens or labeling. This Chapter largely leaves the structure from the other laws in place. However, Article 19 appears to be an important break with existing practice by making all standards mandatory. Currently, there is a confusing mix of voluntary and mandatory standards. While there are many voluntary standards issued by the central government, large producers view it as de facto mandatory. Whether this is retroactive is an important distinction that will come out with subsequent regulation.

**Article 19.** “Food safety standards are mandatory. Except for the food safety standards, no other mandatory standards for food shall be developed.”

**Article 22.** “The executive department of health under the State Council shall consolidate the mandatory standards among existing quality and safety standards for edible agricultural products, food hygiene standards, food quality standards, and relevant industry standards related to food and issue unified national food safety standards.

Before issuance of the national food safety standards specified in the Law, food producers and traders shall produce or trade food based on existing quality and safety standards for edible agricultural products, food hygiene standards, food quality standards, and relevant industry standards related to food.”

Article 22 specifically notes that China will create a unified national food safety standard. Added only in the final version of the law, it is unclear what a unified standard signifies. It would appear to mean the process of changing voluntary standards to mandatory ones and compiling them in a way to match existing publications of food safety standards. At the currently time, China groups standards thematically (such as contaminants, quality standards or food additives) and the
process of creating national standards would presumably consist of compiling and publishing categories of standards that are currently not compulsory. This process is likely to be a long one as China includes public comment periods for new mandatory measures and must also report those with a trade impact to the WTO SPS or TBT Committee.

**Article 23.** “The national food safety standards shall be reviewed and approved by the committee for evaluating national food safety standards comprising experts in medicine, agriculture, food, nutrition and other fields and the representatives from the health authorities under the State Council.

National food safety standards shall be developed based on the results of food safety risk assessments and full consideration of the results of quality and safety risk assessments of edible agricultural products, as well as the relevant international standards and international food safety risk assessment results. Due consideration shall also be given to a broad range of opinions of food producers and traders.”

Article 23 is particularly important from a domestic and international point of view because it enshrines China’s participation and use of both risk assessments and international standards in developing new regulations. It also specifically notes that regulatory ministries should continue or enhance their use of public comments for assessing other important factors.

Chapter 4, Food Production and Trade (Articles 27 – 56), expands on previous drafts of the FSL in an effort to expand and increase specificity related to internal production and distribution of food, especially in areas related to recent food safety incidents. Important areas of added detail relate to the operating conditions for enterprises (Article 27) and licensing requirements (Article 29). Article 30 is also noteworthy in that it clearly shows the difficulty in grappling with the problem of very small producers. Basically, for employment and food security reasons small producers can’t be shut down, but they are also a common source of China’s unpredictable food safety problems.

**Article 33.** “Food producers shall conform to good manufacturing practices. The State encourages food producers to implement the Hazard Analysis and Critical Control Point System to improve food safety management.

For those food enterprises passing the certification of GMP and HACCP, the certification institutions shall conduct the follow-up investigation according to
law; and for those failing to conform to the certification requirements, cancel the certificate according to law, timely report to the authorities of quality supervision, administration of industry and commerce and FDA, and notify the public. The certification institution shall not charge any fee for the follow-up investigation.”

Article 33 leaves some ambiguity how China will handle the inclusion of Good Manufacturing Practices (GMPs) or Good Agricultural Practices (GAPs) for producers and processors of food. Contradictorily, it states that producers “shall” conform to GMPs that are only “encouraged” in the first paragraph and the second paragraph implies that some may not pass GMP or HACCP certification. In the past, good agricultural and manufacturing practices have been a common policy advocated by industry groups and followed by the majority of producers. Those who did not were generally small or family processors. The financial cost and necessity of employing HACCP and GAP on individual farmers is probably unnecessary and overly expensive, but it might leave a gap where larger enterprises try to use to avoid compliance. As suggested by Suttmeier, the current situation leads to a confusing dichotomy between forcing modernization on medium and large enterprises while exempting small farmers from regulation considered too complicated or expensive for them.\(^{10}\)

The most important new regulatory component of the law relates to the expansion of mandatory agricultural input and product recordkeeping and licensing requirements (Articles 35 – 39) and their connection to expanded food recall capabilities (Article 53). This component was incorporated in previous drafts of the FSL, but the final text contains an expanded and more detailed explanation of the requirements. While further regulations may clarify the details, it appears that the extensive mandatory recordkeeping and trace back systems currently in place for food products for export will be extended to cover all food produced in China. While this may seem is a reasonable reaction to the nature of recent food safety issues, even partial implementation of such requirements will be an enormous

\(^{10}\) Suttmeier, Richard. The “Sixth Modernization”? China, Safety, and Management of Risks. Asia Policy, Number 6 (July 2008), 129-46.
task in China given that it is the world’s largest food producer and that small farmers/processors likely lack the resources and capacity to carry out such a policy. While the distinctions made in Article 35 between agricultural producer, farmer cooperative, and manufacturer may mean that individual farmers may be exempt, it still places a new and heavy burden on agricultural processors and on those sourcing directly from farmers. Regardless, it seems that this will be a significant and potentially costly new set of regulatory requirements for companies operating in China.

**Article 35.** “The edible agricultural product producer shall use the pesticide, fertilizer, growth regulator, animal remedy, animal feed, animal feed additives and others according to the food safety standard and the relevant national requirements. The manufacturer and farmer cooperative organization for edible agricultural products shall establish the edible agricultural product record system.

The agricultural authorities at or above the county level shall strengthen the management and guidance of the use of the agricultural inputs, and establish and improve the safety use system of agricultural inputs.”

**Article 36.** “The food producer shall check the license and compliance certificate of the suppliers when purchasing the food raw material, food additives, and food-related products. For the food raw material without the compliance certificate, the test shall be conducted according to the food safety standard. Any food raw material, food additives, and food-related products that do not meet food safety standards shall not be purchased or used.

Food producers shall establish the incoming product verification systems for food raw material, food additives, and food-related products, correctly recording such information as the name, specification, quantity, supplier name and contact information, and purchase date of the food raw material, food additives, and food-related products.

The verification records for food raw material, food additives, and food-related products shall not be altered or forged, and shall be maintained for at least two years.”

**Article 37.** “Food producers shall establish and maintain records of outgoing food inspections, check inspection certificates and the safety condition of outgoing food. They shall correctly record such information as the name, specification, quantity, production date, batch number, inspection certificate number, purchaser name and contact information, and sale date. Outgoing food inspection records shall not be altered or forged, and shall be maintained for at least two years.”

Article 43 and 44 repeat the need for licensing and registration for new food additives and novel foods. For example, Article 43 calls for a licensing system for food additives. China has an established registration system for food additives, but the licensing requirement
would be new. The new licensing component would feed into the trace back system
documentation described in Articles 35 – 39 and in the recall system described in Article 53.

**Article 53.** "A food callback system shall be established in China. Where a food
producer detects production of any food not meeting the food safety standard, the
food producer shall immediately stop production, call back products released to the
market, notify relevant producers and traders and consumers, and record all
callbacks.

Where finding out the trade of any unsafe food, the food trader shall immediately stop
trading, notify relevant producers and traders to cease production and trade of such
food, notify consumers to cease consumption of such food, and record all
notifications. Any food that the producer deems necessary for callback shall be
immediately called back.

Food producers shall remedy, or destroy or render harmless the recalled food, and
report the callback and treatment to the quality supervision authorities at or above
the county level.

When any food producer/trader fails to call back or stop operation of the food not
meeting the food safety standard as required in the Article, the authorities of
quality supervision, administration of industry and commerce and FDA at or
above the county level may order it to call back or stop operation."

Despite the text of Article 53, legal powers related to food recalls remain somewhat
unclear. Article 53 notes that primary recall functions remain with the ministry that regulates
the stage of processing or distribution where the problem occurs. Obviously, this requires
that communication be very good at a local level because any product trace back or recall
would likely occur across lines of regulatory authority. For large incidents, the State Food
and Drug Administration (SFDA) is tasked with overall coordination of food safety and with
recalls. Nonetheless, SFDA was not a powerful actor in the Chinese bureaucracy due to lack
of resources and bureaucratic power versus the other regulatory ministries and thus, is
criticized by many for performing poorly in its coordination role. Lacking resources and
lacking any other regulatory functions, it was also generally ineffective in recalling or
otherwise being active in taking suspect food out of the market.

Lastly, the description in Article 55 relating to false advertising and the possibility of
liability extending to spokespersons was one of the most discussed aspects of the FSL in the
Chinese press. This is another provision beefed up in the final version of the FSL and is a
reaction to the public discontent related to celebrity advertising for some of the dairy
companies implicated in the melamine contamination scandal. In practice, it would be hard to distinguish when a paid spokesperson would have knowledge of adulteration of a product that would negatively impact public health. In the past, misleading health claims are dealt with under labeling provisions. In an extreme example, this could be extended to advertising of legal products with known negative health effects.

**Article 55.** “The civil society or other organizations or individuals, when recommending foods to customers in the false advertising, causing damage to the lawful rights and interests to customers, shall bear joint and several liabilities with the food producer/trader.”

Chapter 5, Inspection and Testing of Food (Articles 57 – 61), generally reaffirms the Government of China’s role in certifying and accrediting public and private authorities that conduct food safety testing. One interesting note in Article 60 states that no firm is exempt from inspection. Previously, firms that were able to obtain the “famous brand” logo gained exemption from inspection. Public outcry was very loud when it was discovered that a main offender implicated in adulterating dairy products gained an exemption through this program.

Chapter 6, Food Import and Export (Article 62 – 69), is very similar to Regulations on the Enforcement of the Law of the People’s Republic of China on the Inspection of Import and Export Commodities\(^\text{11}\) and the Law on Import and Export Commodity Inspection\(^\text{12}\). One exception is Article 65, which appears to mirror the U.S.’s Bioterrorism Law, which would require registration for overseas production facilities and exporters and other similar measures.

**Article 65.** “Exporters or agents exporting food to China shall be put on record at the national exit-entry inspection and quarantine department. Overseas food producers exporting food to China shall get registered at the national exit-entry inspection and quarantine agency.

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The national exit-entry inspection and quarantine department shall regularly publish the lists of exporters, agents or overseas food producers who have been recorded or registered.”

Chapter 7, Prevention of and Response to Food Safety Incidents (Articles 70 – 75), adds new elements to existing emergency planning requirements for China’s food safety regulatory authorities. While encouraging better emergency response plans at the central and local levels will be an improvement by itself, fostering a greater amount of cross-ministry communication is also a benefit of mandating a formal emergency response planning mechanism. However, the lack of specificity and the continued reliance on inconsistent local authorities again emerges as a weakness related to the planning requirements in both Articles 70 and 72.

**Article 70.** “The State Council shall organize the formulation of emergency plans for national food safety incidents.

Governments at the county level or above shall formulate emergency plans for food safety incidents within their jurisdiction based on relevant laws, regulations, and the emergency plan of the higher level government and the local situation and shall submit their plans to the higher level government for the official record.

Food producers and traders shall develop a response plan for food safety incidents, regularly inspect the implementation of preventive measures related to food safety, and eliminate potential food safety risks in a timely manner.”

Article 72 instructs all levels of the Chinese bureaucracy to be more active in creating supervision and administrative plans. This is not a new instruction from the national level, but making it a legal requirement to do annual plans puts additional responsibilities on all levels of the regulatory and supervisory bureaucracy.

**Article 72.** “Upon receiving the food safety incident report, the executive department of health at the county level or above shall immediately work with the executive departments of agriculture, quality supervision, industry and commerce, and food and drug administration on investigation and handling of the incident and take the following measures prevent or mitigate the hazard to the public:

1) Deploy emergency rescue and the executive department of health shall arrange first aid and treatment to the injured persons from the food safety accident;

2) Seal up the food and raw materials likely causing the food safety accident and conduct immediate testing; for the confirmed food and raw material
contamination, order the food producer and trader to recall, suspend operation, and destroy the product according to Article 53 of the Law;

3) Seal up the contaminated food tools and devices, and order for cleaning and sterilization;

Properly handle news releases on disclosing the food safety accident and the treatment, explaining and clarifying on possible hazards.”

Information dissemination and access is a critical weak point in China’s current system for dealing with consumers and the media. Article 82 proposes that China establish new mechanisms for dealing with information dissemination relating to food safety. Terminology in this section is unclear, but the Government of China commits to more openness. The lack of “widespread disclosure” has been a point of criticism in past crises of all kinds, including food and human health safety. Nonetheless, a call for additional public information and disclosure shows that the Chinese leadership understands that past cover-ups have dented its credibility in dealing with emergency situations.

**Article 82.** “The State shall establish a unified food safety information release system. The following information shall be centrally disclosed by the executive department of health under the State Council:

1) Overall situation of food safety in the country;
2) Food safety risk assessment and food safety risk alert;
3) Information on major food safety incidents and the handling; and
4) Other important food safety information and information identified by the State Council as requiring centralized disclosure.

The information set forth in 2) and 3) may, if its impact is limited to particular regions, be disclosed by the health departments of the people’s governments of relevant provinces, autonomous regions and municipalities. The executive departments of agriculture, quality supervision, industry and commerce, and food and drug administration, shall disclose information on routine supervision and administration of food safety in accordance with their respective duties and responsibilities.

The regulatory departments on food safety shall disclose information on a timely, objective, and accurate basis.”
Bibliography


