

Voluntary - Public

Clearance Office: Office of Scientific and Technical Affairs (OSTA)

Date: 6/25/2009

GAIN Report Number: KS9028

Korea - Republic of

Post: Seoul

SPS327 - Draft Revision to Enforcement Regulations of Food Sanitation Act

Report Categories:

FAIRS Subject Report

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Report Highlights:

Korea notified its draft revision of the Enforcement Decree and the Enforcement Regulations of the Food Sanitation Act to the WTO for international comments under G/SPS/N/KOR/327 on May 18. The changes made in the proposal are mainly related to domestic industry but there are some proposals that may have an impact on imported food. This report is to provide the relevant proposals covered by SPS 327 to interested parties so that they can prepare comments on this proposal. Comments are due by July 14, 2009.

General Information:

Background: The Ministry for Health, Welfare and Family Affairs (MHWF) announced a draft revision to the Enforcement Decree and the Enforcement Regulations of the Food Sanitation Act on April 24, 2009, which was notified to the WTO under SPS 327. The revision was proposed in order to address public concerns regarding food safety after repeated food related incidents. Most of changes made in these proposed regulations are related to domestic manufacturers and food

businesses in order to improve local business practices and are not aimed at imported food products. However, some of the proposals may have an impact on imported food products. Those proposals are spelled out below.

Summary of Proposed Changes

- To set the conditions for which an emergency response is required resulting from a hazardous food (Article 7 of Enforcement Decree)
- To expand mandatory nutritional labeling to include ice candies, hamburgers, fish meat sausages, sandwiches, and rice rolls (Article 6 of Enforcement Regulations)
- To establish criteria for what will be considered as a foreign material and for when foreign material findings are reportable to the government (Article 57 of Enforcement Regulations)
- To introduce a color logo system for food business that will indicate sanitation conditions (Article 72 of the Enforcement Regulations)

The full text of the proposed Articles is below.

Enforcement Decree

Article 7 (Emergency response requirements, etc.)

① A “food that poses or is concerned to pose a material hazard to public health as provided under the Presidential Decree” referred to in Article 17 Paragraph 1 Section 2 of the Act shall mean each of the following:

1. In the case that casualties occur due to the intake of a hazardous food, etc. domestically or in another country;
2. In the case that a raw material or ingredient with the potential of causing severe damage to human health is detected in a food, at a domestic, or overseas research or inspection agency;
3. In the case that a food is manufactured, processed or prepared using animals with diseases referred to in Article 93 Paragraph 1 or raw materials or ingredients referred to in Article 93 Paragraph 1 of the Act. (*Post comments: Article 93 refers to BSE, Anthrax, and Avian influenza as the animal diseases of concern.*)

Note: For the full text for Article 7 of the Enforcement Decree, please refer to the relevant Korean text of Article 17 and Article 93 of the Food Sanitation Act in the Appendix.

Post Comment: This may pose a problem for ingredients originating from AI contaminated poultry, regardless of whether HPAI or LP as we are unaware of whether the Korean government can verify whether the poultry meat originated from an AI infected animal.

Enforcement Regulations

Article 6 (Food products subject to nutritional labeling)

Article 6 proposes to add ice candies, hamburgers, fish meat sausages, sandwiches, and rice rolls to the list of food products mandating nutritional labeling.

The full list of products subject to mandatory nutritional labeling is as below:

1. Long shelf life food (limited to retort food products)
2. Of confectionaries, biscuits (including cookies, crackers, snacks, and others) candies and **frozen desserts**
3. Breads and dumplings
4. Chocolates
5. Jams
6. Edible oil and fats
7. Noodles
8. Beverages
9. Foods for special purpose
10. Of processed meat products, **fish meat sausages**
11. Of ready to eat products, **rice roll, hamburgers, and sandwiches**
12. Of products other than listed above, products that wish to carry nutritional labeling or nutritional emphasis mark

Article 57 (Criteria for/scope, etc. of foreign materials in foods, etc. subject to the reporting requirement)

① Foreign materials that the operator of a business shall report to the KFDA Commissioner, the mayor/governor or the mayor of the city/gun/gu pursuant to Article 46 Paragraph 5 of the Act shall mean any of the following:

1. A material of matter or size which may cause direct hazard or damage to human health during consumption;
2. A material which may cause abomination during consumption of foods;
3. Any material as recognized by the KFDA Commissioner that may get into a food during the manufacturing, processing, preparation, process when the food is divided into smaller packages for sale, distribution, or sale and has the potential to cause harm to human health or is not suitable for human consumption.

② Upon receiving a report by a consumer on the finding of a foreign material in a food referred to above in Paragraph 1, the operator of a business shall file a foreign material report as per Attachment 52 (including a report in an electronic format) accompanied by supporting evidence

including photo(s) of the food, or the actual food, etc. according to the following classification of businesses:

1. KFDA Commissioner
 - A. Food manufacturing/processing businesses referred to in Article 23 Section 1 and food additive manufacturing businesses in Article 23 Section 3 of the Decree;
 - B. Selling businesses specializing in distribution referred to in Article 24 Section 5.B.3) and businesses engaged in import/sale of foods, etc. in Section 5.B.5) of the Decree.
2. Mayor/governor or mayor of city/*gun*/*gu*
 - A. On-the-spot sale/manufacture/processing businesses referred to in Article 24 Section 2 and businesses engaged in dividing foods into smaller packages referred to in Section 5.A of the Decree;
 - B. Food service businesses referred to in Article 24 Section 8 of the Decree;
 - C. Meal service/food sale businesses referred to in Article 24 Section 5.B 4) and miscellaneous food selling businesses referred to in Section 5. B. 6) of the Decree.

③ Upon receiving a report from a consumer pursuant to Article 46 Paragraphs 2 and 3 of the Act, the Korea Consumer Agency, consumer organizations, mayor/governor or mayor of city/*gun*/*gu* shall make a notification to the KFDA Commissioner without delay with a foreign material reporting notification (including a notification in an electronic format) as per Attachment 53 accompanied by supporting evidence such as photos of the food, or the actual food, etc.

④ Specific matters pertaining to the criteria/scope and procedures, etc. with regard to the reporting of foreign materials referred to in Paragraphs 1 and 2 above shall be established and announced by the KFDA Commissioner.

Article 72 (Classification and announcement, etc. of businesses with good grades in terms of food sanitation and safety)

① The grades of businesses which have good food sanitation levels and supply safe foods as provided in Article 50 Paragraph 4 of the Act shall be as follows:

1. Grade A businesses: gold logo
2. Grade B businesses: green logo
3. Grade C businesses: yellow logo.

② In the case that a business is selected as a good-grade business referred to above in Paragraph 1 based on the results of a sanitation and safety evaluation referred to Article 50 Paragraph 1 of the Act, the KFDA Commissioner shall issue a good-grade business certificate as per Attachment 61 and a good-grade business hanging board as per Annex 20.

③ Upon receiving a good-grade business hanging board referred to above in Paragraph 2, the

operator of the business shall attach the hanging board at the entrance or at a place conspicuous to the consumer.

④ The KFDA Commissioner shall announce businesses selected as good-grade businesses pursuant to Paragraph 2 in at least one general newspaper with national circulation and registered under Paragraph 1 of the Act on Liberty and Functionality Protection of Newspapers, etc. or on the KFDA homepage or the homepage of the competent special autonomous province/city/gun/gu.

⑤ Specific matters pertaining to the criteria for good grades referred to above in Paragraph 1, grading procedures, announcement methods referred to in Paragraph 3 and the sanitation and safety evaluation shall be established and announced by the KFDA Commissioner.

Post Comments: According to Article 72, KFDA can give logos in three different colors to businesses with good sanitation condition. This color logo program applies to domestic food businesses only.

APPENDIX

Relevant Korean Text

Food Sanitation Act (Finalized on February 6, 2009)

Article 17 (Emergency responses to hazardous foods, etc.)

① In any of the following cases with regard to foods being sold or collected/ manufactured/imported/processed/prepared/stored/divided into smaller packages or transported for selling purposes (hereinafter in this Article referred to as “manufactured/sold.”), the KFDA Commissioner shall develop emergency response measures and take necessary measures:

1. In the case that concerns about potential hazards of a food are raised domestically or in another country based on science as specified under the Ministry for Health, Welfare, and Family Affairs Ordinance;
2. In the case that a food poses or is concerned to pose material hazard to public health as provided under the Presidential Decree.

② An emergency response measure referred to above in Paragraph 1 shall contain each of the following:

1. The type of the food;
2. The type and severity of the human health hazard posed by the food;
3. Matters pertaining to bans as necessary on manufacture/sale specified below in Paragraph 3;
4. Matters pertaining to education/awareness-raising for consumers about emergency response guidelines;

5. Other matters necessary to prevent and contain hazards derived from foods

- ③ The KFDA Commissioner may ban the manufacture/sale of a food for which it is determined to require an emergency response referred to above in Paragraph 1 until it is determined as to whether the food poses a hazard.
- ④ The operator of a business shall not be engaged in the manufacture/sale of the food referred to above in Paragraph 3.
- ⑤ The KFDA Commissioner shall hear the opinions of interested parties as provided under the Presidential Decree to impose a ban on the manufacture/sale referred to above in paragraph 3.
- ⑥ In the case that the operator of a business has an objection to a ban imposed pursuant to Paragraph 3, s/he may request the KFDA Commissioner to lift the ban in entirety or in part.
- ⑦ The KFDA Commissioner shall lift a ban referred to above in Paragraph 3 in entirety or in part in the case that it is determined that hazard of a food to public health has not materialized or potential hazard does not exist any longer.
- ⑧ In the case that information on a hazardous food which has caused sudden hazards or is determined to have the potential of causing a hazard needs to be communicated to the public urgently and the conditions specified under the Presidential Decree are met, the KFDA Commissioner may request a broadcasting operator as specified under the Presidential Decree among broadcasting operators referred to in Article 2 Section 3 of the Broadcasting Act to broadcast such information quickly or a telecoms operator as specified under the Presidential Decree among telecoms operators referred to in Article 5 of the Electricity and Telecommunications Business Act to transfer such information quickly via text or voice message.
- ⑨ Upon receiving a request pursuant to paragraph 8, broadcasting operators and telecommunications operators shall comply with the request unless there are justifiable reasons not to do so.

Article 93 (Penalties)

- ① A person who manufactures/processes or prepares a food or food additive using animals with any of the following diseases for selling purposes shall be subject to the imprisonment of at least 3 years:
 - 1. BSE
 - 2. Anthrax
 - 3. Avian influenza.
- ② A person who manufactures/processes or prepares a food or food additive using any of the following raw materials or ingredients, etc. for selling purposes shall be subject to the imprisonment of at least 1 year:

1. Ephedra
2. Oriental aconite
3. Aconite
4. Aconitum ciliare
5. Aconiti Koreani tuber
6. Toad venom
7. Dictamni radialis cortex
8. Henbane

③ In the case that a food or food additive referred to above in Paragraphs 1 and 2 is manufactured/processed/prepared and sold, a penalty of at least twice and not exceeding 5 times the retail price of the food or food additive shall be imposed additionally.

Enforcement Date: This proposed revision is to make enforcement regulations to reflect changes made in the revision to the Food Sanitation Act announced on February 6, 2009, which shall go into effect on August 7, 2009. Thus, the enforcement date of this proposed revision is August 7, 2009, which is same as the Food Sanitation Act.

Comments: According to the WTO notification SPS 327, international comments are due by July 14, 2009.