

2019 POLICY SPOTLIGHT SERIES | 2019年度政策聚焦系列

# Diversified Product Offerings and Industrial Transformation are Facilitating the Development of a Healthier and More Sustainable China

## 共创健康中国： 多元产品助力消费升级及产业转型



**AmCham China**  
中国美国商会

The American Chamber of Commerce in the People's Republic of China

## Chairman's Message

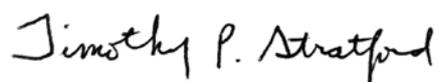
Food safety has become a central priority for China. 2018 marked the 10th anniversary of China's first *Food Safety Law*, and AmCham China welcomed the Chinese government's reorganization that took place in the spring of 2018, hopeful that the reorganization -- particularly the creation of the State Administration for Market Regulation (SAMR) -- will contribute to continued improvement in market supervision and food safety.

Ongoing attention to the food and beverage sector has been demonstrated through the "Healthy China 2030" initiative, first announced during the 13th Plenum. Healthy China 2030 lays out a roadmap for China to attain the health standards of developed countries by 2030 and has quickly become an essential part of the framework for China's healthcare reform. Healthy China 2030 covers public health services, environmental management, and food and drug safety, among other areas.

Over the last several years, China has indeed made significant progress to ensure that its 1.4 billion citizens can eat and drink with less risk. AmCham China has seen a positive trend toward greater attention to process management from farm to table, and an increased focus on health and development. Implementation of Healthy China 2030 requires close collaboration between a variety of actors, including private enterprises and government regulators. To that end, these pages offer some recommendations to address ongoing regulatory issues that, when addressed, will strongly contribute to timely attainment of China's food safety and quality goals.

We encourage the Chinese government to make use of industry associations like AmCham China to develop regular platforms for dialogue between industry and regulators that encourages the sharing of international best practices and technology. We also recommend that in light of the 2018 government reorganization, the Chinese government promote transparency and information sharing with respect to different regulatory agencies' supervisory responsibilities and make available official communication channels of China's government departments as soon as possible, to improve understanding and communication between industry and government. Finally, we recommend the government continue to improve the national food safety standards system and ensure that development of nutrition policies leads to policies that are fair, reasonable, and realistic. And for our partners in the US government, we suggest improving levels of information sharing on food safety best practices through dialogues, workshops, and activities to meet demand for these types of expertise across the Chinese government.

This Food and Beverage Spotlight has been drafted by AmCham China members who work in the industry daily and have been involved in the industry for many years. This report is presented with the goal of helping to facilitate even closer US-China cooperation, which will benefit both countries.



Timothy Stratford

Chairman,  
American Chamber of Commerce in China  
July 2019

## 主席致辞

食品安全已成为中国的重点工作。2018 年标志着中国首部《食品安全法》颁布 10 周年。此外，对于 2018 年春季中国政府重组，中国美国商会表示欢迎，并希望此次重组——特别是成立国家市场监督管理总局——将有助持续改善市场监管和食品安全。

中国在“十三五”规划中提出了“健康中国 2030”战略，体现了国家对食品和饮料行业的持续关注。该战略制定了中国在 2030 年达到发达国家医疗标准的路线图，并迅速成为中国医疗改革框架的重要组成部分。“健康中国 2030”涵盖了公共卫生服务、环境管理、食品药品安全等领域。

在过去几年，中国在保证 14 亿公民食品安全方面，取得了重大进展。从农场到餐桌，我们看到了对流程管理更加关注，对健康和发展更加关注的积极趋势。落实“健康中国 2030”，需要各个参与者的密切合作，包括私营企业和政府监管机构。为了实现这一目标，本发言稿针对现有监管问题提供了一些建议，如果得到解决，将有力推动中国实现食品安全和质量的目标。

我们鼓励中国政府借助中国美国商会等行业协会的力量，建立行业与监管机构的定期对话平台，分享国际最佳实践经验和技术。鉴于 2018 年政府重组，我们也建议中国政府加强不同监管机构监督职责的透明度和信息共享，尽快打通中国政府部门的官方沟通渠道，以增进行业与政府之间的理解和沟通。最后，我们建议政府进一步完善国家食品安全标准体系，确保制定公平、合理、符合实际的营养政策。对于我们在美国政府的合作伙伴，我们建议通过对话、研讨会和其他活动，提高食品安全最佳实践信息共享水平，以满足中国政府对此类专业知识的的需求。

《食品和饮料》由商会会员企业从事专业工作多年的人员起草，该报告旨在促进中美之间更密切的合作，从而使双方获益。



夏尊恩

中国美国商会主席  
2019年7月

## Introduction

**2** 018 was a fruitful year for food safety in China. At all levels of government and in collaboration with various social organizations, significant food safety efforts were undertaken to strengthen the legal system, improve supervision and administration, and support social co-governance (e.g. the integration of resources from social and public sectors to improve food management and safety). In March 2018, the food safety regulatory structure was reorganized when the State Council initiated a vast restructuring of China's ministries and institutional organization structure with the goal of improving the government's institutional operational efficiency and market regulation.

2018 marks the tenth anniversary of China's first *Food Safety Law*. The past decade has witnessed steady progress in national food safety regulations and development of a standards system. In 2018, in addition to government restructuring, the central government launched "Healthy China 2030" (Healthy China), a national strategy to attain the health standards of developed countries by 2030. The strategy covers public health services, environmental management, the healthcare industry, and food and drug safety. AmCham China members want to play a full role in promoting food safety, social co-governance, and a healthy China. We believe that pursuing these strategies will create a favorable business climate for the long-term growth of the industry.

## Recent Developments and Ongoing Regulatory Issues

### *Institutional Reform under the State Council*

AmCham China welcomes the government's efforts to improve market supervision and food safety through institutional reform. We hope the government will consider the industry's perspectives on these efforts as discussed below.

### *Guarantee More Professional Food Safety Supervision*

Food safety supervision is a highly specialized and technically demanding field. We anticipate that the State Council's institutional reforms will be implemented in accordance with local conditions and in a unified manner. We urge that all localities ensure the professional qualifications of local food safety supervisors or introduce expert consultation mechanisms to ensure that food supervision processes and standards are more scientific, authoritative, and of a high quality.

To that end, we recommend that State Administration for Market Regulation (SAMR) organize regular training for local inspectors. AmCham China members are ready to share their global experience and expertise and mobilize a variety of resources to assist market supervisors to build capacity.

When introducing new laws or revising existing laws, AmCham China recommends that SAMR seek feedback on draft regulations from industrial associations (like AmCham China) and individual corporations, allow for an adequate transition period for companies to comply with revised regulations, and offer detailed, timely, and authoritative interpretations of any new regulations. This will improve understanding and compliance.

### *Balance the Desire for High-Quality Food with Strict Industry Management*

China's food safety supervision system is gradually evolving towards a more comprehensive governance model that involves all sectors of society. As part of the evolution, AmCham China urges respect for business autonomy. Food production and management companies are legally defined as the "first responsible person" (or entity). Given their legal obligations, companies should be permitted autonomy to implement risk management processes. This autonomy should be balanced alongside a stronger, more systematic series of food safety supervision mechanisms to hold regulators and enterprises accountable for meeting standards and ensuring regulatory errors are rectified on an industry-wide basis. Authorities should avoid any impulse for "one-size-fits-all" regulatory enforcement.

# 引言

**2**018年是中国食品安全工作成果丰富的一年。在各级政府的重视和社会各界的共同努力下，食品安全领域在法规体系建设、科学监管、社会共治等各个方面均取得了卓越的成果。2018年3月启动的国务院机构改革，着力推进重点领域和关键环节的机构职能优化和调整，为全面提升市场监管机构执行力打下了坚实的基础。

2018年是我国第一部《食品安全法》颁布实施十周年，国家食品安全法规标准体系建设稳步推进，相关法律法规不断完善。2018年也是“健康中国”战略深入实施的一年。为营造有利行业长远发展的商业环境，中国美国商会（以下简称“商会”）会员企业愿意充分发挥自身作用，为食品安全社会共治共享和推进“健康中国”贡献力量。

## 最新进展和现存监管问题

### 国务院机构改革

为进一步加强市场监管工作，新组建了国家市场监督管理总局（以下简称“总局”）。我们赞赏中国政府通过机构改革提升食品安全监管力度和效率的决心，也希望新组建的食品安全监管机构能够在逐步完善体系和推进工作时，综合考虑来自企业的以下几方面诉求。

### 保障并加强食品安全监管的专业性

食品安全监管工作专业性强，技术要求高。我们期待各地在落实国务院机构改革任务过程中因地制宜，发挥统一管理优势的同时，加紧提升基层食品安全监管人员的专业能力或引入专家咨询机制，确保食品监管工作能够以更科学、更权威、更高水平地向前推进。

建议总局定期组织培训，商会会员企业愿意充分发挥各自的资源优势和分享在全球其他市场运营的经验，调动多种资源，助力市场监管人员能力建设。

在相关法规制定和修订过程中，广大企业也希望总局继续充分征求行业协会（如中国美国商会）及企业的意见，并给新法规充足的执行过渡期，为业界提供详细的科学解读，以利于企业认真了解和遵照执行。

### 平衡“管活管优”和“严管食品行业”的关系

在中国食品安全监管体系逐步走向全社会参与的综合治理模式的过程中，应更加重视企业自治的关键作用，突出食品生产经营企业“第一责任人”的法律主体地位，允许企业自主实施食品安全风险管理。强化建立系统性食品安全监管机制，对监管者和企业科学追责、强调系统性纠错和提升改进，避免“一刀切”式的监管执法。

### 尽快推进地方“三局合一”，提升监管效率

过去，“多合一”综合执法在地方上遇到了执法依据不统一、执法程序不统一、法律文书不统一等问题，属地和垂直的交叉管理也造成部门协调的复杂繁琐。我们期待，本次机构改革能自上而下推进“三局”在办事流程、监管体系、以及内部工作机制上的协调，提升监管效率，更好地适应市场监管一体化的新形势。

### 尽快推进各部门监管职责和沟通渠道的信息公开

此次机构改革整合了多部委多部门的监管职责，但具体司局和处级部门的信息公开尚未完成，使得企业了解相关部门具体职能并进一步沟通的难度增大。我们期

### ***Promote “Three-In-One” Integration of Local Supervisory Departments to Improve Regulation***

In the past, enforcement of relevant laws was hindered by inconsistent enforcement, procedures, and legal documentation. A lack of appropriate coordination across relevant regulatory authorities at central, provincial, and local levels also created operational challenges. We hope that the creation of SAMR enables improved coordination among supervisory authorities and internal accountability within the three bureaus (local regulatory bodies of the former State Administration for Industry and Commerce, China Food and Drug Administration (CFDA), and provincial Quality and Technology Supervision Bureaus). We anticipate that improved coordination will lead to improved regulatory efficiency and supervision.

### ***Clarify Regulatory Responsibilities***

While the institutional reform under the State Council is a positive step in bringing together previously fragmented regulatory responsibility, some ministry departments have yet to publish details about their administrative responsibilities. It is very difficult for companies to address issues or communicate with relevant authorities without clear information about their roles and responsibilities. We urge relevant ministries and commissions charged with monitoring the food and beverage industry to publish regulatory information on their websites in a timely and complete manner to allow food and beverage companies to access relevant regulatory information and improve communication with relevant government departments.

### ***Implementing “Healthy China” through Social Co-governance***

Healthy China, a national strategy first announced in 2016, reflects the Chinese government’s determination to promote public health as a key aspect of social and economic development nationwide. As part of its ongoing development, the food and beverage industry has increasingly prioritized food safety. Businesses have incorporated concepts of “nutrition and health” into their long-term development strategies to provide consumers with appetizing and healthy products.

### ***Implementing “Healthy China” through Practical Action***

AmCham China members accept their obligation to support the National Nutrition Plan (2017-2030) (a segment of Healthy China.) We believe that our participation will encourage high-quality develop-

ment of the food and beverage industry. Since the roll-out of Healthy China, the food and beverage industry has both diversified and improved the nutritional value of its product offerings. The focus has been on reducing sodium, oil, and sugar content in food, as well as promoting healthy mouths, healthy weight, and healthy bones (a program known as the “Three Reductions and Three Kinds of Health”). Some examples include:

- Product innovation by developing products with reduced salt, oil, and sugar content. These products are appealing to consumers but provide a more nutritionally-balanced set of dietary choices;
- Providing clear, factual and easy-to-understand product nutrition information on packaging materials and via marketing strategies to help consumers make more informed choices;
- Promoting healthy lifestyles by partnering across industries to enhance literacy and education about health, encourage exercise, and balanced diets;
- Instituting responsible marketing techniques to prevent inappropriate marketing materials from reaching children under the age of 12.

### ***Implementing a Co-governance Model Across Government and Enterprises in Order to Build a “Healthy China”***

Healthy China’s success requires collaboration across various actors. A series of documents introduced by the Chinese government emphasize the government’s leading role in coordinating social organizations, industry stakeholders, and individuals to work together to promote healthy outcomes.

To this end, we expect decision-makers in government to fully engage with the scientific community and food and beverage industry when developing nutrition and health policies. They should do so in a manner which is open, practical, fair, derived from scientific principles and evidence-based results, and utilizes the industry’s practical expertise. For example, the “Three Reductions and Three Kinds of Health” strategy requires cooperation from various elements of society. The strategy must consider differing needs of consumers, foster innovative and diversified product offerings, and strengthen service delivery to allow consumers access to low-salt, low-oil, and low-sugar foods. The key to building a healthier China lies in an environment of strong social co-governance.

AmCham China members also appeal to government regulators and research institutions to increase public awareness and understanding by educating consumers about how to decipher pre-packaged food labels and popularizing knowledge about key nutrients and additives. A broader and deeper public

望相关部委网站能够尽快完善信息公开，以便食品生产和经营企业准确、及时了解信息，更顺畅地与政府有关部门沟通。

### 社会共治，建设“健康中国”

作为一项国家战略，“健康中国”体现了国家从战略层面推动健康议题的决心。近年来，食品饮料行业不断转型升级，在保证食品安全的基础上，将“营养健康”的元素纳入到企业长期发展战略中，为消费者提供既美味又健康的产品。

### 以实际行动积极落实“健康中国”战略

商会会员企业一致认为，配合“健康中国”国家战略，积极参与推进《国民营养计划（2017—2030年）》的实施，是食品饮料行业义不容辞的义务，也是追求高质量发展的必由之路。自“健康中国”战略推出以来，食品饮料行业已经在产品多元化和提升产品营养健康价值方面进行了许多有益的探索和实践，并在推动“三减三健”方面采取了切实行动。

- 产品创新和多元化：持续创新，积极研发适合消费者口味和健康需求的减盐、减油、减糖产品，提供更多营养均衡的产品选择。
- 清晰易懂的产品信息：在包装和销售渠道提供完善、清晰易懂并基于事实的产品营养信息，帮助消费者科学选择。
- 推动健康生活方式：积极与社会各界合作，通过开展健康教育、倡导均衡膳食和积极运动，提升公众的营养和健康素养。
- 负责任营销：不对12岁以下儿童开展市场营销活动。

### 构建政府、企业、社会共治格局，建设“健康中国”

共建共享是建设“健康中国”的基本路径。政府出台的一系列纲领性文件都强调了政府主导，统筹社会、行业和个人三个层面，形成健康促进的强大合力。

为此，我们期待决策部门在制定营养健康政策的过程中，能充分听取科研界和产业界的意见和建议，依据科学事实和数据，参考产业实操经验，制定实事求是、公正合理的政策法规。正在推进的“三减三健”行动就需要社会多方共同协作。例如，“三减”的推广及实施需要考虑消费者的不同需求，要引导企业通过创新开发兼顾消费者口味和健康需求的多元化产品；并加强服务创新，为消费者获取低盐、低油、低糖食品提供更加便利的服务。因此，在政府引导下，食品饮料行业、科技界、社团组织及个人等共同参与，共创良好的社会共治氛围是建设“健康中国”的关键所在。

同时我们也呼吁政府监管部门和科研机构加大科普宣传力度，积极向消费者传播有关预包装食品标签解读、食品饮料以及重要营养素和添加剂的科学知识，消除大家由于信息不正确或不完整产生的误解，帮助消费者理性选择，实现科学膳食。同时，加强对食品安全谣言的打击，才能有效避免食品谣言引起的恐慌，增强中国公众对食品安全的信心。商会愿意积极参与并支持相关的营养健康科普宣传活动。

### 食品饮料行业生产和经营管理有关的法治建设、监管问题和建议

为营造有利行业长远发展的商业环境，商会企业对完善法规标准、市场监管和执法提出以下建议：

#### 继续改革食品安全法规体系顶层设计，释放行业创新活力

- 《食品安全法》对提升行业食品安全水平发挥了巨大的作用，给广大的生产经营企业和消费者带来了前所未有的信心，但我们也应看到，将标签、营养、检测方法作为食品安全范畴进行管理的做法越来越不利于行业发展，也不利于国家推进《国民营养计划》，企业往往会为规避食品安全的严厉处罚措施而放弃营养强化产品的开发。因此建议将这部分内容移出食品安全标准体系，纳入国家强制性指南文件，这样既可以强制规范行业发展，又不会动辄上升到食品安全层面，减少企业压力，避免不必要的监管资源浪费及行业损失。

understanding of these issues can eliminate misunderstandings and assist consumers in making rational choices in favor of healthier diets. At the same time, preventing false food safety rumors and factual inaccuracies from spreading will enhance public confidence in China's food safety. AmCham China stands ready to support these nutritional and health science education activities.

### ***Recommendations for the Operation of the Food and Beverage Industry***

In order to create a sustainable business environment for the industry, AmCham China members suggest the following improvements to laws and standards, market supervision, and enforcement:

#### *Continue to Reform Industry Regulation to Promote Innovation*

- The *Food Safety Law* has played a significant role in improving food safety standards industry-wide and raising consumer and business confidence. We must also recognize, however, that by introducing more stringent labeling, nutrition, and testing to regulate food safety, the regulators have created operational challenges. Nor are such steps necessarily conducive to the promotion of the National Nutrition Plan. As general practice, companies tend to abstain from developing nutritionally-enhanced products in order to avoid running afoul of food safety standards. AmCham China recommends that requirements for nutritious foods be removed from food safety standards and regulations and be incorporated into national mandatory guidance documents instead. Such reform will not only improve industry regulation but will also ease the corporate compliance burden while reducing unnecessary regulatory oversight.
- We recommend improving food safety, hygiene, and product standards through the gradual promotion of Good Manufacturing Practice (GMP) and Hazard Analysis and Critical Control Point (HACCP) techniques to streamline final product standards and requirements. These techniques control for product quality and adherence to food safety standards. In particular, we recommend that monitoring and detection of microorganisms gradually shift from the final product testing stage (as at present) to monitoring throughout the entire cycle so as to reduce the number of unwanted microorganism and bacteria colonies currently discovered in the final product testing stages.
- With respect to healthcare products, we recommend improving regulations, accelerating the

examination and approval procedures, and strengthening market oversight. Because the previous standards were abolished, China lacks a functional standards system for healthcare products. Consequently, in the absence of these standards, it is necessary to crackdown on the spread of fraudulent, unscientific, and non-standard healthcare products and concepts to both improve the quality of products and improve the industry's reputation.

- We recommend that regulators simultaneously release mandatory allergen labels and documents that offer specific technical guidelines for corporate management and regulatory oversight. These documents have not always been issued at the same time, creating compliance challenges after the associated standards are released.
- We recommend research be undertaken on proper methods for recycling packaging materials and subsequent laws and regulations be developed to guide the legal use of recycled packaging materials.

#### *Enhance Understanding of Laws and Regulations Among Regulators to Allow for More Consistent Implementation*

- We recommend that the Chinese government prioritize harmonization between the *Food Safety Law* regulatory standards as soon as possible. The government should clarify the relationship between food safety standards and non-food safety standards and the roles of relevant regulatory departments. It has been AmCham China's experience that different regulatory departments often have different understandings of national standards, industry standards, enterprise/company standards, and group standards related to non-food safety, which severely hampers execution of non-food safety standards.
- Following the release of the *Administrative Measures on Food Operation Licenses* in 2015, further reform must be undertaken to improve product licensing, including adopting a license reporting system to improve management, and allowing food production licenses to be gradually cancelled.
- We strongly urge the government to improve management and supervision of food safety and associated risks. A national food safety random inspection team should be established to ensure that sufficient resources are allocated to inspections and they can be carried out during the entire food management process from source to end product. This type of process management should fundamentally improve food safety and quality across the industry.

- 进一步完善食品安全卫生规范和食品安全产品标准，逐步推进良好卫生规范管理制度（GMP）与关键危害控制计划（HACCP）相结合的过程管理标准，简化终产品指标要求。例如：微生物的监测和检测应逐步从终产品检测过渡到过程监测，减少终产品中不必要的菌落总数检测。
- 建议完善保健品法规，加快保健品审批，加强上市产品监管。对因旧评价标准废止导致的保健品功能标准体系缺失问题进行补充，坚决打击不规范的健康概念商业炒作，引导行业健康发展，提升健康产业形象。
- 建议国家在发布强制过敏原标识的同时，出台具体的企业管理及政府监管的技术指导文件，避免标准发布后的各种挑战。
- 建议开展可回收包装材料再生利用的科学法规研究，适时启动回收再生包装材料合法利用的法规建设进程。

### **进一步提升法规执行部门对国家法规标准的深刻理解，建立科学合理的统一执行尺度**

- 建议国家对整个食品法律法规标准体系进行统一说明，食品安全标准体系和非食品安全标准之间的关系以及相关管理部门的职责划分尤其需要尽快明确。各监管部门和行业对非食品安全国家标准、行业标准、企业标准、团体标准的地位就存在不同理解，造成执行困扰。建议在确保食品安全的基础上，建立一个统一的非食品安全标准法规体系，解决行业在执行标准过程中遇到的问题。
- 进一步简政放权，在前两年出台的新《食品生产许可证管理办法》的基础上，进一步改革生产许可制度，逐步取消发放生产许可证，建议可采取报备制度进行管理。
- 进一步推进实施过程管理检查监管制度以及完善按照风险等级划分管理措施的制度，打造国家级食品安全飞行检查队伍，将资源集中分配到过程检查中，引导企业采取从源头到终产品的全过程

管理理念，从根本上提升食品行业的食品安全质量水平。

### **进一步完善惩罚性赔偿制度，缓解职业索赔人对企业带来的负面影响**

近年来，职业索赔人打着食品安全的旗号，滥用法律，谋求一己私利，为企业正常经营带来负面影响，浪费了大量行政及商业资源。

2018年我们高兴地看到，各地监管机构和司法机关在处理职业索赔人案件时日趋谨慎，深圳、成都、上海等地方陆续出台了遏制职业索赔人负面影响的政策，规范、惩治“以打假为名、行牟利之实”的职业索赔、职业举报行为。

商会建议：

- 下一步在国家层面通过区分问题的风险程度；
- 引导该制度将重点放在重大风险食品安全问题上。寻求打击假劣产品和维护企业健康发展的平衡点，审慎处理不合理赔偿要求，以索赔为目的的购买不予保护；
- 进一步推广公益、集体诉讼，通过更透明、不以营利为目的的渠道保护消费者权益，使职业索赔回到社会共治的应有轨道。

### **进口食品随附官方证书**

在过去两年中，国家质量监督管理部门就“进出口食品随附官方证书”与出口国政府及行业积极沟通，并探讨可执行的方案。商会赞赏中国政府在此过程中表现出的开放态度和专业精神。

2019年9月30日，两年的“进口食品随附官方证书”过渡期即将结束。目前商会及行业非常关注此事，并期待与中国政府继续沟通，从兼顾进口食品安全监管和贸易便利化的角度出发，探索进口食品监管更高效的解决方案。

### ***Professional Faultfinders and Professional Claimants***

Professional Faultfinders (PFFs) and professional claimants have abused the law for personal gain in the name of food safety, at significant cost to business operations and administrative and commercial resources.

In 2018, AmCham China members welcomed evidence that supervisory bodies and judicial organs are becoming increasingly cautious in dealing with cases involving professional claimants. Shenzhen, Chengdu, and Shanghai introduced policies to curb and punish professional claimants whose actions are driven solely by personal gain.

AmCham China recommends that further action be taken through these next steps:

- Set the level of risk posed by professional claimants at the national level;
- Encourage the regulatory system to focus on safety issues with significant associated risk and set a balance between the need to crack down on counterfeit products and permit organic industry development. Establish clear procedures for identifying and addressing unreasonable claims.
- Promote public interest litigation and devise ways to protect consumers' rights through more transparent channels, rather than those that allow PFFs and professional claimants to do so through profit-oriented means.

### ***Food Import Certificates***

In October 2017, the General Administration of Quality Supervision, Inspection and Quarantine (now merged under SAMR) enacted new regulations requiring that official certificates be attached to imported foods. The certificate should come from the competent regulatory authority in the exporting country and is an effort to help Chinese authorities control the quality of food coming into China. China proposed to implement a two-year transition period to allow importers to comply. AmCham China appreciates the openness, communication, and professionalism demonstrated by the Chinese government during this process.

On September 30th, 2019, the two-year transition period for the official certificate will expire. AmCham China members are very concerned about the end of the transition period and expect further engagement with the Chinese government to ensure operational continuity following the end of the transition period. Any solutions should focus on both imported food safety regulations and trade facilitation opportunities.

### ***The Quality and Safety Law for Agricultural Products and the Agricultural Products Qualification Certification System***

Since 2015, the Ministry of Agriculture (now the Ministry of Agriculture and Rural Affairs) has been in the process of revising the *Agricultural Products Quality and Safety Law*. In order ensure the improvement of food safety regulation and enforcement, AmCham China recommends that the amendment should not only strengthen supervision of sourcing for edible agro-products, and also address the original regulatory blind spot: clearly defining the responsibilities of agricultural retail investors. The amendment should be complementary to the existing *Food Safety Law* and improve oversight of edible agro-products from sourcing to market. It should provide national legislative support for new supervision systems (e.g., certificates, traceability of edible agro-products, credit systems, comprehensive law enforcement, public opinion monitoring, and emergency response) in combination with local law enforcement efforts.

Our suggestions concerning a management system for edible agro-product qualification certificates are as follows:

- Promote local best practices and improve the national Certificate Management System;
- Encourage national cross-sector cooperation and integration of relevant regulatory departments;
- Effectively integrate existing systems that track product origin, credit histories, purchase inspections and due diligence with any new system for tracking edible agro-products to ensure effective government regulation.

### ***The "Transparent Kitchen" Initiative***

In 2018 many cities strove to become a "Food Safety Model City." As part of this process, the concept of the "Transparent Kitchen" has become a popular vanity project promoted by market regulators, food safety supervision authorities, and/or local governments. Under this initiative, catering enterprises are forced to install network broadband and video cameras throughout their kitchens to meet requirements. If they refuse, they face delays during the corporate license application, approval, and verification process.

This is an example of a well-intentioned government advocacy initiative hindering business operations. AmCham China recommends that the relevant department under the State Council take a leading role in researching, gathering information, undertaking special studies and supervising the implementation of

## 《农产品质量安全法》的修订及食用农产品合格证制度完善及相关建议

农业部已于2015年开始推动《农产品质量安全法》的修订工作。为促进食品行业发展以及保证食品安全立法和执法的完善，商会建议在修订中重点加强对食用农产品种养殖源头的监管，对原有的监管盲点——农业散户也提出主体责任要求；做好与《食品安全法》的衔接，以合格证为抓手，提升食用农产品的产地准出和市场准入的监管衔接；结合地方执法实践，为合格证、食用农产品追溯、信用体系、综合执法、舆情监测和应急响应等新型监管制度提供顶层立法支持。

关于食用农产品合格证管理制度，我们建议：

- 推广地方最佳实践经验，完善全国合格证管理制度；
- 探索国家层面的跨部门合作方式，做好各相关部门监管和制度等方面的无缝衔接；
- 做好制度结合，如结合产地、追溯、信用等制度强化流通透明性和农业生产环节的主体责任，结合进货查验和尽职免责制度，以有效的政府监管来提升合格证的准入作用。

## 明厨亮灶

近一年，全国多个地区市场监管、食品安全监管部门或在地方政府的要求下，将“明厨亮灶”视为争取食品安全示范城市的“形象工程”，逐步形成一刀切地强制要求或变相强制餐饮企业引入网络宽带、加装实时监控摄像头，并在企业证照的申请、审批和核查等环节设置障碍，把国家层面的政策倡导变成了证照办理的前置条件，大大增加了企业的运营负担。商会建议由国务院减轻企业负担的牵头部门搜集信息专题研究，予以督察，切实减轻企业负担；建议国家市场监督管理总局加强与地区市场监管部门的协调，避免倡导政策在地区层面强制执行和过度执行的情况。

## 信用监管的探索和建议

2018年7月全国市场监管工作座谈会上，时任国家市场监督管理总局张茅局长要求建立以“双随机、一公开”

为基本手段，以重点监管为补充、以信用监管为基础的新型监管机制。

商会支持信用监管，但也看到了如下风险：信用立法滞后，相关规定散见于不同法律，部分法条不明确，未能清晰区分各主体责任；监管避难就易，对大型、实体、经营企业带来更多的处罚成本和声誉损失；信用惩戒有滥用、区分度低等风险，如“黑名单制度”标准、程序、惩戒措施相对混乱，失信程度不同的市场主体承担同样惩罚，信用修复制度不完善，同一经营者在不同地区因同样问题遭受多次信用惩罚，甚至因而影响企业正常经营；信用数据采集缺乏统一标准，部门间缺乏对接机制和数据安全操作细则等。

为此，我们建议：加强立法，明确主体职责，保证尽职尽责，提升精准公示；规范监管行为，明确监管手段、适用、标准、程序等内容，不断提升执法人员的专业能力；“过罚相当”，明确黑名单列入移出标准和程序、惩戒措施、公示渠道、信用修复、异议救济等；实现信用监管协同、信息实时共享。

## 落实责任溯源，保障食品安全——《食品安全法》第136条适用情况的建议

《食品安全法》第136条是针对食品经营者的“尽职免责”规定，符合食品行业主体多元化、责任差异化的特点，也体现了法律责任设定的公平性和合理性。但在实操中，因相关规定的笼统性和不确定性，以及可操作性适用标准的缺失，使执法裁量权过宽，导致适用争议而无法真正得到很好的实施。

商会提出建议如下：

- 统一规定并发布该条适用指导，细化经营者可以举证的方式，明确易于判断的情形；
- 该法涉及的“没收不符合食品安全标准食品”主要是为了风险防范而不属于行政处罚，建议不计入累计违法次数。

this initiative. We recommend that SAMR strengthen coordination with local market regulators to avoid unnecessarily burdensome regulation stemming from well-intentioned policy advocacy.

### *Improving Credit Supervision Techniques*

During the National Symposium on Market Regulation in July 2018, then SAMR Minister Zhang Mao called for the establishment of a new regulatory mechanism based on credit supervision and supplemented with random inspections, random assignment of inspectors, and transparent disclosure of results (the “double random, one open” initiative). This would replace the previous method focused on scheduled annual inspections.

AmCham China supports the use of credit supervision techniques but also foresees risks. Nationwide credit reporting legislation is currently insufficient and the relevant provisions are dispersed throughout different laws, with vague provisions and unclearly defined responsibilities. Furthermore, there is no existing uniform standard for credit data collection, no coordination mechanisms, and no rules governing data security or sharing between regulatory departments. In this context, regulatory agencies supervising credit scores may use them as an easy method to evaluate and dispense punishment without sufficient consideration of other aspects of a company’s operations. Regulatory punishments based on credit supervision are subject to abuse and inconsistent application. The process of blacklisting companies for serious violations is plagued by disorganized and inconsistent standards, procedures and sanctions. In some instances, separate businesses have had the same degree of penalty imposed on them regardless of the severity of any previous infractions. In other instances, a single business may be punished for the same violation in different regions. Both of these examples come at great cost to the business itself.

Therefore, we expect the government to strengthen legislation to clarify responsibilities among various operators in the production process, ensure exemption from liability when appropriate due diligence is conducted, and improve transparency and publicity of relevant regulations.

The competency of relevant law enforcement personnel needs to be enhanced to clarify regulatory applications, standards, and procedures. Clarifying the Blacklist inclusion criteria, removal procedures and disciplinary mechanisms, and establishing procedures for companies to repair their credit scores are important steps in creating an appropriate disciplinary system. Establishing a “Whitelist” of approved companies and regulatory processes will incentivize companies to meet those standards. Finally, there is a need to bolster inter-departmental coordination of

credit supervision and real-time information sharing to avoid companies being punished multiple times for the same infraction.

### *Application of Article 136 of the Food Safety Law*

Article 136 of the *Food Safety Law* exempts food safety operators from punishment if their food does not meet safety standards but they can prove that they completed satisfactory due diligence. Article 136 reflects the food and beverage industry’s diverse supply chains and responsibility, and appropriate exemption from legal liability. In practice, however, disputes have arisen from general regulations lacking in specificity, as well as a lack of applicable standards, which creates an environment characterized by overly broad enforcement discretion and substandard implementation.

In this regard, AmCham China recommends that the authorities:

- Publish uniform guidance regarding the application of Article 136 and standardize the methods by which food supply operators can provide evidence of due diligence;
- Where the law describes “confiscation of substandard food,” such action should be taken only for risk prevention rather than punishment. We recommend that such action be excluded from the cumulative number of violations.

### *Infant Formula Recipe Registration*

Following implementation of the infant formula Recipe Registration system in China, standards for infant formula have improved and the industry has enjoyed renewed consumer confidence. AmCham China supports strict management of the infant formula industry by the Chinese government and appreciates the efforts of SAMR to promote this work. Since February 2018, however, the examination and approval of infant formula recipes in China has stagnated. The result is that multiple, qualified applicants have been unable to obtain necessary permits for production and distribution of infant formulas.

AmCham China recommends SAMR accelerate the examination and approval of infant recipe approval and, perform on-site audits within the time limits stipulated by law, in order to allow businesses to operate normally and meet consumer demand.

## 加快婴配奶粉配方注册审批进度，保障企业正常经营，满足中国消费者需求

自中国实施婴幼儿配方乳粉产品配方注册管理制度以来，中国婴配奶粉行业得到进一步的规范，对重建消费者信心与促进市场健康发展也起到了很大作用。我们赞成中国对婴幼儿配方乳粉行业实行以配方注册为代表的严格管理，也感谢国家市场监督管理总局为推动此项工作开展付出的努力与取得的成就。然而从2018年2月份以来，婴幼儿配方乳粉的注册工作已陷入停滞，导致一批符合要求的申请企业无法按正常程序要求获得注册许可并开展生产经营。这不仅给企业造成了市场和经济损失，也使中国消费者的需求无法得到保障。

商会建议：国家市场监督管理总局应加快婴幼儿配方乳粉产品配方注册的审批工作，在相关规定的时限要求下开展包括现场核查等各项审批工作，以保障企业正常经营，满足中国消费者需求。

## 建议

### 对中国政府：

- 在政策及标准制定及执行过程中充分利用商协会等平台，开展公私合作（PPP）项目或定期交流机制，鼓励分享国际先进经验及技术。
- 在落实国务院机构改革任务的同时，尽快推进各部门监管职责和沟通渠道的信息公开，以便食品生产和经营企业准确、及时了解信息，更好地进行与政府之间的沟通。
- 期待决策部门在制定营养健康政策的过程中，能充分听取科研界和产业界的意见和建议，制定实事求是、公正合理的政策法规。
- 继续完善食品安全国家标准体系，考虑出台国家食品标准体系管理规定，规范各种不同标准的出台和使用，积极发挥不同种类标准的积极作用，并探索独立灵活的营养标准体系。

- 不断加强市场监管和执法队伍建设，提高执法人员专业水平，持续推进标准化执法，加强各地法规的统一、准确解读与执行，并继续呼吁建立企业与立法部门沟通的公开渠道和机制，对于企业在合规中遇到的法规解读和执行层面的问题给予及时回应。

### 对美国政府：

- 加强美国政府相关主管部门、行业协会等与在华美企的交流，针对中国政府亟需了解的国际经验、最佳实践等，增加由各方参与的研讨机会。

## Recommendations:

### *For the Chinese government:*

- Utilize existing platforms offered by organizations like AmCham China to develop Public-Private Partnerships or regular platforms for dialogue to encourage the sharing of international best practices and technology.
- During the ongoing institutional reform of government agencies under the State Council, promote transparency and information sharing about the supervisory responsibilities and available official communication channels of China's government departments as soon as possible, to improve understanding and communication between industry and government.
- Require the departments responsible for developing standards and policies to consult with researchers and industry when developing nutrition and health policies. Use the consultation process to ensure the policies put forth are fair, reasonable, and realistic.
- Continue to improve the National Food Safety Standards System. Consider introducing standardized management regulations for this system. Increase the consistency with which new standards are introduced and linked to existing standards, and explore the development of an independent and more flexible nutrition standards system.
- Continue to strengthen the professional capacity of market regulators and law enforcement. Encourage standardized enforcement through consistent regulations, uniform interpretation and implementation of laws across provinces and regions, open new channels for communication between the private sector and regulators and respond in a timely manner to the legitimate problems encountered by companies during the regulatory compliance process.

### *For the US government:*

- Strengthen communication between relevant US government authorities, industrial associations, and American enterprises in China. Increase opportunities to involve all parties in seminars, dialogues, and workshops related to international expertise and best practice urgently in demand across the Chinese government.





This report can be downloaded at [www.amchamchina.org/policy-advocacy/policy-spotlight/food-safety](http://www.amchamchina.org/policy-advocacy/policy-spotlight/food-safety)

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## The American Chamber of Commerce in the People's Republic of China

### 中国美国商会

Floor 3, Gate 4, Pacific Century Place,  
2A Workers' Stadium North Road, Chaoyang District,  
Beijing, 100027, the People's Republic of China

**Tel:** (8610) 8519-0800

**Fax:** (8610) 8519-0899

**Website:** [www.amchamchina.org](http://www.amchamchina.org)

Headquartered in Beijing with chapters  
in Tianjin, Central China (Wuhan),  
Northeast China (Dalian, Shenyang)

北京市朝阳区工体北路甲 2 号,

盈科中心 4 号门 3 层

邮政编码: 100027

电话: (8610) 8519-0800

传真: (8610) 8519-0899

网址: [www.amchamchina.org](http://www.amchamchina.org)

中国美国商会总部设于北京, 在天津、  
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