

February, 2018

NEW CALL FOR PUBLIC COMMENT REGARDING FOODSTUFF PRODUCTS

In the last few weeks, the Ministry of Health solicited public comments on three proposals which would amend relevant regulations in connection to foodstuff products, as detailed below:

1. Proposal for the modification of Article 105 of the Food Health and Safety Regulation

The first public comment process will be open between January 12th and March 13th, 2018, and is available [here](#).

This initiative proposes the **amendment of Article 105 of the Food Health and Safety Regulation** (RSA) in order to, **“introduce into the regulation the obligation, criteria and conditions for recall of products from the market and their eventual alternative use”**. The proposed regulation sets forth that when a foodstuff product qualifies as corrupted, adulterated, falsified or contaminated in accordance to the provisions of the RSA (Article 98 and subsequent), and has been, “distributed in the market without the direct control of the manufacturer or the importer, either the manufacturer, the importer or the holder of the products shall notify the health authority”.

In this context, the importer, manufacturer, packer, distributor and seller, as applicable, **shall recall the product(s) as a preventive measure while the health authority analyzes the situation**. The health authority shall authorize the commercialization of products again if it deems that there is no public health threat. On the other hand, if the authority determines that the product qualifies as corrupted, adulterated, falsified or contaminated, such product may be destined to non-human food industrial use, insofar as: (i) it is subject to a prior denaturing process, (ii) such process is authorized by the health authority, and (iii) it does not entail reintroducing a hazard into the food chain from the primary product through consumption. If these conditions are not met, or if the owner of the products deems it necessary, the product must be destroyed. The disposal process also requires the authorization of the health authority.

Additionally, if the health authority determines that there is a risk to consumers' health, the proposal sets forth an obligation for the manufacturer or importer to inform, “consumers of the situation and the reasons for the recall in an effective and accurate manner”.



If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Carey contact.

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2. Proposal for the amendment of paragraph II “labeling and advertisement” of the RSA for the regulation of healthy or functional messages in food

This period for public comment will be open between January 15th and March 15th, 2018, and is available [here](#).

In general terms, this proposal aims to properly **determine the regulation applicable to “functional foods”**. Therefore, the proposal includes the incorporation of a new definition into Article 106 of the RSA, which provides that, “foods with healthy or functional properties [are] those foods that comply with all of the requirements and conditions for declaring any of the healthy messages included in the approved associations set forth by the Ministry of Health which authorizes the Technical Rules on Nutritional Guidelines to declare healthy or functional messages in food [currently Resolution No. 860 of 2017]”.

Moreover, the proposal adds a new final paragraph to Article 114 of the RSA, which sets forth a relevant prohibition in this regard. The new paragraph states that, “in the labeling and/or advertisement of any particular type of food, **it is forbidden** to use the expressions ‘**healthy food**’, ‘**functional food**’, ‘**nutraceutical food**’, ‘**super food**’ and **other equivalent phrases or fantasy names**, declared in any language”. Furthermore, the denomination, “food with healthy or functional properties”, may only be used for those products that comply with the provisions of the Nutritional Guidelines for Declaring Healthy Properties approved by the Ministry of Health”.

3. Update project for maximum limits of pesticide residues in foods

This public comment process will be open between January 23rd and March 23rd, 2018, and is available [here](#).

In this case, the proposal does not correspond to a possible amendment to the RSA, but to a **modification of Resolution No. 33 of 2010 which, “sets the maximum tolerance for pesticide residues in foods”**.

This project proposes the **addition of 38 new pesticides to the list of those associated to maximum presence limits in foods** for human consumption, e.g. espinetoram, meptildinocap and piridabene. Moreover, some of the pesticides currently included on the list are eliminated, such as aldicarb y clorfentazine.

The proposal also expands the list of foods associated with these maximum pesticide residues limits (tolerance), adding 88 new foods, including peas, cherries, beans and turkey meat.