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Environment and Food Bureau  
9-10/F, Citibank Tower,  
3 Garden Road  
Central  
Hong Kong

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**BY FAX**

Fax No. : 2136 3281

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(Attn : Mrs Ingrid Yeung  
Principal Assistant Secretary  
for the Environment and Food)

Dear Mrs Yeung,

**Public Health (Animals and Birds)  
(Chemical Residues) Regulation (L.N. 146 of 2001)**

I am scrutinizing the Public Health (Animals and Birds)(Chemical Residues) Regulation (L.N. 146 of 2001) published in the Gazette on 22 June 2001. I shall be grateful if you would clarify the following :

***Public Health (Animals and Birds)(Chemical Residues) Regulation***

**Section 2     Interpretation**

1.            In section 2 of L.N. 146 of 2001, the term "*food animal farmer*" includes an occupier of food animal rearing premises. Please explain the reason for including this category of persons who may not be responsible for feeding or keeping food animals on the food animal rearing premises.

2. In the definition of "*food animal trader*" in section 2, references are made to "places other than food animal rearing premises". Please specify what these places would be. Is it intended that slaughterhouse, lairage, market fresh provision shop or restaurant form part of such places by virtue of their exclusion from the definition of "food animal rearing premises"?

3. In the definition of "*maximum residue limit*" in section 2, limits are imposed only in relation to tissues and milk of a food animal. Please explain :

- (a) why there is no maximum residue limit of agricultural and veterinary chemical prescribed for body fluid of a food animal;
- (b) whether samples of body fluid would be taken from the food animals under section 18 for testing of prohibited chemical only;
- (c) under what circumstances the concentration of any of the agricultural and veterinary chemicals in the tissue or milk of a food animal would exceed the maximum residue limit. Paragraph 6 of the LegCo Brief states that these chemicals should only be used to treat bacterial diseases of food animals in a proper manner. Does this mean that the concentration of such chemicals would not in any event exceed the maximum residue limit if the food animals are fed with fodder contained or mixed with chemicals according to the instructions?

Sections 3, 5, 6, 7, 11, 12, 13

Offences

4. Each of sections 3, 5, 6 and 11 creates an offence for farmers and traders to keep food animals containing prohibited chemicals, supply food animals or milk that contain agricultural and veterinary chemicals, or possess a prohibited chemical or fodder containing or mixed with any prohibited chemical. A farmer has strict liability but section 17 provides a defence if he proves that he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention. However, a trader would only commit the offence if he knowingly and wilfully contravenes the provisions. Please explain the reasons for and the implications of the difference in policy.

5. It is usual to provide a statutory defence for a person charged with a strict liability offence if he proves :

- (a) that he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention; and
- (b) that he could not, by the exercise of reasonable supervision and reasonable diligence, have prevented those circumstances arising.

Please refer to section 5 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (10 of 2001). Please explain why the Administration considers that the second condition is not appropriate to be included in the defence provisions in section 17(4) or (5).

6. Who would be the persons to bring or cause to be brought into any slaughterhouse or wholesale market the specified food animals referred to in section 7?

7. Under section 12(2), a person commits an offence if he supplies or offers to supply fodder containing or mixed with any prohibited chemical to a person whom he knows or has reason to believe is a farmer or trader. Please explain why no defence is available to the supplier when section 17(8) provides a defence to the farmer or trader who has in his possession or under his control such fodder.

Section 8      Imported food animals

8. Section 8 requires imported food animals to be accompanied by a valid certificate issued by a competent veterinary authority of the exporting origin. Is the Administration aware that such authority exists in every exporting origin, and whether they are willing to certify in accordance with the requirements under section 8(a)?

Sections 9 and 14      Orders made by the Director

9. Sections 9(3) and 14(1)(a)(iii) empowers the Director of Agriculture, Fisheries and Conservation to make a suspension order upon receipt of reports or information from the Public Analyst or other sources (a) that a food animal is suspected of containing a substance other than the chemical specified in the Regulation that is likely to endanger animals or the health of any person and it is in the public interest to do so; or (b) that any fodder is suspected of containing substance

other than the specified chemicals that is likely to endanger animals or the health of any person. What types of substance does the Administration intend to extend its control under the Regulation? Are those chemicals mentioned in paragraph 12 of the LegCo Brief relevant? What is the justification for giving the Director the power to make such order?

10. What redress would a farmer or trader have against a suspension order made under sections 9 and 14, or an order to recall made under sections 10 and 15? Does he have the right to appeal to the Chief Executive in Council under section 11 of the Public Health (Animals and Birds) Ordinance (Cap. 139)? Please also clarify if section 9 of the Ordinance applies such that no compensation shall be paid in respect of any food animal forfeited under sections 9(2) or 14(2).

Section 1      Commencement

11. Paragraph 10 of the LegCo Brief mentions that the first phase implementation will cover the seven prohibited chemicals and 10 agricultural and veterinary chemicals. Please specify which 10 chemicals among the 37 chemicals listed in Schedule 2 and 22 chemicals listed in Schedule 3 that would be covered. How does the Administration intend to appoint under section 1 the commencement day for the Regulation to come into operation given that some but not all of the chemicals specified in Schedules 2 and 3 would be relevant?

12. According to paragraph 10 of the LegCo Brief, the second phase will come into effect when the related chemical testing methods are fully developed or adapted. Please confirm that the need for amendments to the Regulation would not arise as a result of the development of such testing methods. Kindly also indicate the timetable for the second phase implementation.

Consultation

13. Paragraph 21 of the LegCo Brief mentions that the Department has conducted public consultation with farming organizations, food animal traders, fodder suppliers and meat merchants. Please specify the outcome of consultation with the trade.

I am still studying the Chinese text of the above Regulation and will seek further clarification from you if necessary. I will also write to you after I have completed the scrutiny of the Harmful Substances in Food (Amendment) Regulation 2001 (L.N. 148 of 2001).

Yours sincerely,

(Bernice Wong)  
Assistant Legal Adviser

c.c. LA  
CAS(2)4  
D of J (Attn : Miss Miranda NG, SGC)  
(Fax No. : 2845 2215)