

Tel No. : (852) 2973 8148
Fax No.: (852) 2136 3281
Our ref.: L/M (3) to HWF(F) 5/1/4/3

13 October 2006

Clerk to Panel
LegCo Panel on Food Safety and Environmental Hygiene
(Attn: Miss Flora Tai)
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2509 0775)

Dear Miss Tai,

**Subcommittee on
Food Business (Amendment) Regulation 2006
Meeting on 16 October 2006**

Thank you for your letter of 9 October 2006. Our responses to Members' suggestions and requests are as follows –

(a) Upon Members' request, we have seriously examined the idea of providing a definition for the term "chilled" in the Amendment Regulation. We have consulted the Prosecution Division of Department of Justice on the implications on our enforcement action for providing a definition. The conclusion we reach is that it is much more desirable not to provide a term "chilled" in the Amendment Regulation. We should instead rely on the dictionary¹ meaning of the word "chilled", which means "to preserve at a low temperature without freezing". The reasons are:

(i) We have explored the option of defining "chilled" on the basis of the temperature of the meat. However, to do so will create serious enforcement difficulty as anything falling outside that temperature range

¹ Oxford Advanced Learner's English – Chinese Dictionary

will not be enforceable. In practice, when taking enforcement actions under section 30D(1) or (2) of the Amendment Regulation, we do not rely solely on the temperature (whether it is within the range of 0 - 4°C) of the suspected chilled meat to determine if the meat is chilled or not, as temperature can be easily manipulated. Instead, in addition to making reference to the temperature of the meat, we will prove the status of the meat by collecting circumstantial evidence to establish its source, e.g. whether the meat is delivered to the shop from a local slaughterhouse or a boundary control point; matching information specified in the health certificate, etc. It is however not practicable to list out all these circumstantial evidence to define “chilled” in the Regulation.

- (ii) Regarding Members’ concern on whether the trade has sufficient knowledge of what “chilled meat” actually means in the absence of a legal definition, please kindly note that information about “chilled meat” and the proper way of meat handling have been published and disseminated in the Food Hygiene Code (2003) for free distribution to the food business trade. The Food Hygiene Code is also uploaded on the Food and Environmental Hygiene Department (FEHD)’s website: <http://www.info.gov.hk/fehd>. For application for permission to sell chilled meat in a Fresh Provision Shops (FPS) and a market stall, FEHD will impose requirements and conditions to all applicants for compliance. The information of “chilled meat” is also set out in the requirements and conditions. Compliance with such requirements and conditions is a prerequisite for the granting / renewal of the licence / tenancy. So far, Members’ concern is not a problem with the trade, but FEHD stands ready to provide assistance if the trade has any questions in this regard.

- (b) The term “冷凍” has long existed in the Food Business Regulation (Cap. 132X) (FBR). It is also used in other pieces of legislation to refer to “chilled” food items. On the other hand, the term “冰鮮” is more commonly used by the general public and the trade in everyday expressions. It will be a substantial exercise to change “冷凍” to “冰鮮” in the existing legislation and we need to fully assess the implications to go down this road. While we agree that the parallel use of two different Chinese expressions to refer to the same English term may not be the best arrangement, so far there is no confusion in the community, in particular the meat trade, in understanding both terms.

On the other hand, since the introduction of the Amendment Regulation on 18 August 2006, many members of the meat trade have installed signs in accordance with the revised requirements and conditions to show that “冰鮮

肉” is available at their premises / stalls. It will create confusion to the trade and the public and there will be cost implications, if the terminology is to be changed within such a short space of time. As such, we suggest that we monitor the situation closely. We will re-visit Members’ proposal if we find that the current arrangement brings any confusion to the trade and the public.

- (c) The term “meat” under our Amendment Regulation only appeared in Schedule 2. The purpose of amending Schedule 2 is to distinguish pre-packaged chilled beef, mutton or pork from non pre-packaged chilled beef, mutton or pork. There is no intention to change the definition of “meat” in this exercise.

As to Members’ suggestion to extend the coverage of the definition of “meat” in section 3 of the FBR, we consider it prudent to proceed with caution, as the amendment of the definition may have far-reaching implications to the trade and thorough consultation with the trade is necessary.

- (d) The types of meat in item 1(b) of Schedule 2 to the Amendment Regulation is the same as those types of meat under the definition of “meat” under section 3(1) of the FBR, except pre-packaged chilled beef, mutton or pork.
- (e) We have carefully studied the suggestion to define the term “premises” in the Amendment Regulation but we conclude that it is not appropriate to do so for the following reasons -
 - (i) At present, in processing a FPS licence application on a particular premises, irrespective of whether it is inside a supermarket or in a corner shop, there is no restriction that the premises have to be fully segregated from the remaining part of the premises which may be doing other businesses. It is therefore operationally not viable to set down the design of the premises as basic requirements of a FPS, e.g. it should be segregated by wall from the adjoining premises. Notwithstanding this, Members may rest assured that FPS licensee is not free to extend his business to the remaining part of the premises because, in granting the FPS licence, the Director for Food and Environmental Hygiene (DFEH) will specify the boundary of the licensed premises on the layout plans submitted by the licensee in the first place.

In short, through the existing licensing policy and legal backing in the FBR, the Administration can effectively bring the licensing of FPS selling meat under control. For new applications for FPS licence to sell meat, approval will not be granted unless stringent segregation

requirements are met.

- (ii) We note that “premises” in the Public Health and Municipal Services Ordinance (Cap. 132) is defined in a generic manner namely, “[p]remises" includes land, buildings, structures and basements and, in relation to any building, includes the curtilage thereof, and, in relation to the internal parts of a building, includes any bedspaces, cubicle, room, floor, or portion of a floor, the subject of a separate letting.’

For “food premises” and “food room”, they are defined in the FBR also in a generic manner. “Food premises” means “any premises on or from which there is carried on any food business” and the expression “premises” includes a vessel and a stall. For “food room”, it means “any room, (being, or being part of, any food premises) where any person engages in the handling of open food or in the cleaning of equipment for the purpose of a food business, but does not include a room in which the only handling of food which occurs is in the course of serving food for consumption therein.”

To operate a FPS, the licensee must meet the requirements as set out under sections 32 and 33 of the FBR and the licensing requirements and conditions as imposed by DFEH. There are adequate provisions in the FBR for DFEH to impose stringent requirements to fully segregate two premises (e.g. by full-height brick / concrete walls from the front to the back with no openings thereupon and separate independent entrance) in the event that an application is submitted for a FPS licence to sell chilled meat in the premises adjacent to a licensed FPS with endorsement to sell fresh meat.

- (f) As explained, our target, subject to sufficient evidence being collected, is always to hold the person in charge of the business responsible for any contraventions detected. However, if section 30D(1) or (2) of the Amendment Regulation was so drafted that only the licensee / nominated manager / market stall tenant would be liable to prosecution, an enforcement problem might arise in the event that the licensee / nominated manager/market stall tenant was not in fact the person in charge of the business at the material time when the contravention was detected. It is possible that the licensee / nominated manager / market stall tenant is genuinely not responsible for the contraventions detected, and it would be unfair to hold him responsible. With section 30D(1) and (2) of the Amendment Regulation in its current form, we should be able to take enforcement actions against any person, including but not limited to the licensee / nominated manager / market stall tenant or any employee, having

regard to the actual circumstances of the case or available evidence.

- (g) As you will appreciate, there are quite many subsidiary legislations under the & Public Health and Municipal Services Ordinance (Cap. 132), which themselves have a very broad coverage. It does not appear practicable to list out all the provisions under which “any person” would be liable for the relevant offences within such a short timeframe. Even for the FBR alone, we have identified some 42 sections (covering more than 50 subsections) setting out different types of offences. Of these, some 42 subsections have made reference to “any person / every person”, while about 16 have made reference to “the licensee / the proprietor”. We have reviewed our prosecution statistics for the past six months, even for offences which have references to “any person / every person”, in over 74% of the cases we have prosecuted the person responsible for the business, namely the licensee / nominated manager / market stall tenant, instead of the employees of the FPS / market stalls concerned.

2. As requested, we also attach the additional licensing requirements/conditions in relation to the sale of chilled and pre-packaged chilled beef, mutton or pork imposed as a result of the Amendment Regulation for your kind reference.

Yours sincerely,

(Vincent Liu)
for Secretary for Health, Welfare and Food

c.c.

DFEH	(Attn: Ms Rhonda Lo)	2536 0355
	(Attn: Dr Thomas Chung)	2521 9527
DoJ	(Attn: Mr Vidy Cheung)	2845 2215

Additional Requirements for FPS [sale of chilled meat (i.e. beef, mutton, pork) only]

- (1) Refrigerator(s), part of which shall be used for the display of chilled meat for sale, shall be provided on the premises. A thermometer shall be provided to the refrigerator to show the temperature between 0 degree Celsius and 4 degree Celsius throughout the time when the chilled meat is being stored inside the refrigerator.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (2) A rectangular notice made of acrylic material with the sides measuring not less than 40 cm (length) x 30 cm (width) and printed with RED legible English letters “CHILLED MEAT FOR SALE” and RED legible Chinese words “冰鮮肉出售” shall be provided. In the said notice, the size of each Chinese character shall not be less than 5 cm (height) x 5 cm (width) and the size of each English letter shall not be less than 2 cm (height) x 2 cm (width). The notice shall be affixed at a conspicuous location facing the customers at the entrance of the premises and unobstructed at all times.

(For cutting and de-boning other than meeting immediate orders of customers)

- (3) A designated meat processing area of suitable space sufficient for food handlers in carrying out cutting, de-boning and other work process shall be set aside on the premises. The meat processing area shall be maintained at 15 degree Celsius or below and shall be provided with working table, working facilities, refuse bin and a thermometer in good working order to record the temperature of the area.

Additional Conditions for FPS [sale of chilled meat (i.e. beef, mutton, pork) only]

- (1) Refrigerator(s) in good working order shall be provided on the premises, part of which shall be used for the display of chilled meat for sale.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (2) Chilled meat shall be displayed for sale inside display refrigerators being maintained at a temperature between 0 degree Celsius and 4 degree Celsius at all times. Chilled meat shall only be taken out from the display refrigerator for the purpose of cutting, weighing and wrapping to meet the immediate orders of customers.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (3) A rectangular notice made of acrylic material with the sides measuring not less than 40 cm (length) x 30 cm (width) and printed with **RED** legible English letters “CHILLED MEAT FOR SALE” and **RED** legible Chinese words “冰鮮肉出售” shall be displayed at a conspicuous location facing the customers at the entrance of the premises and unobstructed at all times. In the said notice, the size of each Chinese character shall not be less than 5 cm (height) x 5 cm (width) and the size of each English letter shall not be less than 2 cm (height) x 2 cm (width).

- (4) All chilled meat sold on the premises shall be obtained from lawful sources. The licensee shall on demand by health inspector produce

for ready inspection and for making copies by a health inspector at all times, document showing that the chilled meat is obtained from such sources. The document should be kept for at least 60 days and bear the slaughtering date, description of the meat, net weight, name and address of slaughtering plant or its code.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (5) All prepackaged chilled meat sold on the premises shall be obtained from lawful sources and the meat must be prepacked either at the sources or at premises approved by the Director of Food and Environmental Hygiene. The licensee shall on demand by health inspector produce for ready inspection and for making copies by a health inspector at all times, document showing that the chilled meat is obtained from such sources. The document should be kept for at least 60 days and bear the slaughtering date, description of the meat, net weight, name and address of slaughtering plant or its code.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (6) Prepackaged chilled meat shall be displayed for sale on the premises inside display refrigerators being maintained at a temperature between 0 degree Celsius and 4 degree Celsius at all times. The prepackaged chilled meat shall only be taken out from the display chiller to meet the immediate orders of customers in their original and intact pre-packed form without being contaminated or tampered with.

(Note : “Chilled Meat” means meat which has been preserved by

chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

(7) **(For cutting and de-boning other than meeting immediate orders of customers)**

In carrying out cutting, de-boning or other work process in any way other than requiring in cutting up the chilled meat to meet the immediate orders of customers, the process must be done in a designated area. The temperature of the designated area must be kept on or below 15 degree Celsius.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

(8) Chilled or frozen meat/poultry shall not be displayed or sold as fresh meat/poultry.

(Breach of the condition warrants immediate cancellation of the fresh provision shop licence without warning. The Director of Food and Environmental Hygiene will not exercise his discretion to suspend the “immediate cancellation” decision if the licensee appeals against the decision to be heard in the respective appeal tribunals.)

(9) During the conveyance of chilled meat from the lawful sources approved by the Director of Food and Environmental Hygiene / licensed food factory to your licensed fresh provision shop, you should ensure that the chilled meat shall be kept hygienically and at a chilling temperature between 0⁰C and 4⁰C at all times.

(10) If there is a need for conveyance of chilled meat from your licensed

fresh provision shop to the user, you should ensure that the chilled meat shall be kept hygienically and at a chilling temperature between 0⁰C and 4⁰C at all times.

Additional Requirements for FPS [sale of prepackaged chilled meat (i.e. beef, mutton, pork) only]

- (1) Refrigerator(s), part of which used for the display of prepackaged chilled meat for sale, shall be provided on the premises. A thermometer shall be provided to the refrigerator to show the temperature between 0 degree Celsius and 4 degree Celsius throughout the time when the prepackaged chilled meat is being stored inside the refrigerator.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (2) A rectangular notice made of acrylic material with the sides measuring not less than 40 cm (length) x 30 cm (width) and printed with RED legible English letters “PREPACKAGED CHILLED MEAT FOR SALE” and RED legible Chinese words “預先包裝冰鮮肉出售” shall be provided. In the said notice, the size of each Chinese character shall not be less than 5 cm (height) x 5 cm (width) and the size of each English letter shall not be less than 2 cm (height) x 2 cm (width). The notice shall be affixed at a conspicuous location facing the customers at the entrance of the premises and unobstructed at all times.

Additional Conditions for FPS [sale of prepackaged chilled meat (i.e. beef, mutton, pork) only]

- (1) Refrigerator(s) in good working order shall be provided on the premises, part of which shall be used for the display of prepackaged chilled meat for sale.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (2) A rectangular notice made of acrylic material with the sides measuring not less than 40 cm (length) x 30 cm (width) and printed with **RED** legible English letters “PREPACKAGED CHILLED MEAT FOR SALE” and **RED** legible Chinese words “預先包裝冰鮮肉出售” shall be displayed at a conspicuous location facing the customers at the entrance of the premises and unobstructed at all times. In the said notice, the size of each Chinese character shall not be less than 5 cm (height) x 5 cm (width) and the size of each English letter shall not be less than 2 cm (height) x 2 cm (width).

- (3) All prepackaged chilled meat sold on the premises shall be obtained from lawful sources and the meat must be prepacked at the sources or at premises approved by the Director of Food and Environmental Hygiene. The licensee shall on demand by health inspector produce for ready inspection and for making copies by a health inspector at all times, document showing that the chilled meat is obtained from such sources. The document should be kept for at least 60 days and bear the slaughtering date, description of the meat, net weight, name and address of slaughtering plant or its code.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (4) Prepackaged chilled meat shall be displayed for sale on the premises inside display refrigerator(s) being maintained at a temperature between 0 degree Celsius and 4 degree Celsius at all times. The prepackaged chilled meat shall only be taken out from the display chiller to meet the immediate orders of customers in their original and intact pre-packed form without being contaminated or tampered with.

(Note: “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (5) Chilled or frozen meat/poultry shall not be displayed or sold as fresh meat/poultry.

(Breach of the condition warrants immediate cancellation of the fresh provision shop licence without warning. The Director of Food and Environmental Hygiene will not exercise his discretion to suspend the “immediate cancellation” decision if the licensee appeals against the decision to be heard in the respective appeal tribunals.)

- (6) During the conveyance of prepackaged chilled meat from licensed food factory / lawful sources approved by the Director of Food and Environmental Hygiene to your licensed fresh provision shop, you should ensure that the prepackaged chilled meat shall be kept hygienically and at a chilling temperature between 0⁰C and 4 ⁰C at all times.

- (7) If there is a need for conveyance of prepackaged chilled meat from your licensed fresh provision shop to the user, you should ensure that the prepackaged chilled meat shall be kept hygienically and at a chilling temperature between 0⁰C and 4 ⁰C at all times.

Additional Requirements for FPS [sale of fresh meat (i.e. beef, mutton, pork) and prepackaged chilled meat (i.e. beef, mutton, pork) on the same premises]

- (1) A rectangular notice made of acrylic material with the sides measuring not less than 50 cm (length) x 40 cm (width) and printed with RED legible English letters “FRESH MEAT AND PREPACKAGED CHILLED MEAT FOR SALE” and RED legible Chinese words “新鮮肉及預先包裝冰鮮肉出售” shall be provided. In the said notice, the size of each Chinese character shall not be less than 5 cm (height) x 5 cm (width) and the size of each English letter shall not be less than 2 cm (height) x 2 cm (width). The notice shall be affixed at a conspicuous location facing the customers at the entrance of the premises and unobstructed at all times.
- (2) A rectangular notice made of acrylic material and printed with RED legible English letters “FOR PREPACKAGED CHILLED MEAT ONLY” and RED legible Chinese words “預先包裝冰鮮肉專用” shall be affixed at a conspicuous position on the display refrigerator and unobstructed at all times.
- (3) Refrigerator(s), part of which used for the display of prepackaged chilled meat for sale, shall be provided on the premises. A thermometer shall be provided to the refrigerator to show the temperature between 0 degree Celsius and 4 degree Celsius throughout the time when the chilled meat is being stored inside the refrigerator.

Additional Conditions for FPS [sale of fresh meat (i.e. beef, mutton, pork) and prepackaged chilled meat (i.e. beef, mutton, pork) on the same premises]

- (1) All fresh meat sold on the premises shall be obtained from local licensed slaughterhouses. Unless with the approval of the Director of Food and Environmental Hygiene, the licensee shall register with local licensed slaughterhouse(s) his fresh provision shop. The licensee shall on demand by health inspector produce for ready inspection and for making copies by a health inspector at all times, document showing that the fresh meat is obtained from such source. The document should be kept for at least 60 days and bear the date of slaughter, description of the commodities, quantity, name and address of that premises registered with the slaughterhouse(s).

(Note: “Fresh Meat” means meat derived from animals which have been slaughtered in a licensed local slaughterhouse.)

- (2) All prepackaged chilled meat sold on the premises shall be obtained from lawful sources and the meat must be prepacked either at the sources or at premises approved by the Director of Food and Environmental Hygiene. The licensee shall on demand by health inspector produce for ready inspection and for making copies by a health inspector at all times, document showing that the chilled meat is obtained from such sources. The document should be kept for at least 60 days and bear the slaughtering date, description of the meat, net weight, name and address of slaughtering plant or its code.

(Note : “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (3) A rectangular notice made of acrylic material with the sides measuring not less than 50 cm (length) x 40 cm (width) and printed with **RED** legible English letters “FRESH MEAT AND PREPACKAGED CHILLED MEAT FOR SALE” and **RED** legible Chinese words “新鮮肉及預先包裝冰鮮肉出售” shall be displayed

at a conspicuous location facing the customers at the entrance of the premises and unobstructed at all times. In the said notice, the size of each Chinese character shall not be less than 5 cm (height) x 5 cm (width) and the size of each English letter shall not be less than 2 cm (height) x 2 cm (width).

(Breach of the condition warrants immediate cancellation of the fresh provision shop licence without warning. The Director of Food and Environmental Hygiene will not exercise his discretion to suspend the “immediate cancellation” decision if the licensee appeals against the decision to be heard in the respective appeal tribunals.)

- (4) Refrigerator(s) in good working order shall be provided on the premises, part of which shall be used for the display of prepackaged chilled meat for sale.

(Note: “Chilled Meat” means meat has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (5) A rectangular notice made of acrylic material and printed with **RED** legible English letters “FOR PREPACKAGED CHILLED MEAT ONLY” and **RED** legible Chinese words “預先包裝冰鮮肉專用” shall be displayed at a conspicuous position on the display refrigerator and unobstructed at all times.

(Breach of the condition warrants immediate cancellation of the fresh provision shop licence without warning. The Director of Food and Environmental Hygiene will not exercise his discretion to suspend the “immediate cancellation” decision if the licensee appeals against the decision to be heard in the respective appeal tribunals.)

- (6) Prepackaged chilled meat shall be displayed for sale on the premises inside display refrigerator(s) being maintained at a temperature between 0 degree Celsius and 4 degree Celsius at all times. The prepackaged chilled meat shall only be taken out from the display

refrigerator to meet the immediate orders of customers in their original and intact pre-packed form without being contaminated or tampered with.

(Note: “Chilled Meat” means meat which has been preserved by chilling at a temperature between 0 degree Celsius and 4 degree Celsius from the point of slaughter, storage and transportation to the point of sale.)

- (7) Chilled or frozen meat/poultry shall not be displayed or sold as fresh meat/poultry.

(Breach of the condition warrants immediate cancellation of the fresh provision shop licence without warning. The Director of Food and Environmental Hygiene will not exercise his discretion to suspend the “immediate cancellation” decision if the licensee appeals against the decision to be heard in the respective appeal tribunals.)

- (8) During the conveyance of prepackaged chilled meat from licensed food factory / lawful sources approved by the Director of Food and Environmental Hygiene to your licensed fresh provision shop, you should ensure that the prepackaged chilled meat shall be kept hygienically and at a chilling temperature between 0⁰C and 4 ⁰C at all times.

- (9) If there is a need for conveyance of prepackaged chilled meat from your licensed fresh provision shop to the user, you should ensure that the prepackaged chilled meat shall be kept hygienically and at a chilling temperature between 0⁰C and 4 ⁰C at all times.