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22 August 2006

Dear Mr Lam,

Food Business (Amendment) Regulation 2006 (L.N. 169)

Thank you for your letter of 19 July 2006 on the Food Business (Amendment) Regulation 2006 (L.N. 169 of 2006) (“the Regulation”). Our responses to the questions you raised are set out below.

Section 1 of the Regulation

Day of commencement

- As explained in the Legislative Council Brief, there have been cases where fresh provision shop (“FPS”) licensees/public market tenants display or sell at their premises/stalls chilled beef, mutton or pork as fresh beef, mutton or pork. This is not satisfactory from the food hygiene perspective as fresh and chilled meat have different shelf life and should therefore be subject to different storage conditions. There is a contamination risk if fresh meat and chilled meat are mishandled or mixed during the retail stage.
- This Regulation seeks to improve food hygiene by prohibiting the sale of fresh and chilled beef, mutton or pork at the same market stall or same premises of an FPS, unless the chilled beef, mutton or pork being sold is pre-packaged and has been properly labelled.
- Although it is desirable to have the Regulation taking effect as soon as possible from the food hygiene angle, we consider it reasonable to allow FPS licensees and public market tenants sufficient time to understand and make adjustments where necessary for complying with the new Regulation. In this connection, upon gazettal of the Regulation, we have issued letters to individual operators to inform them of the details of the Regulation. We

have also organised briefings for them and trade associations to explain the preparation they need to make, such as fitting out their premises and liaising with their suppliers for the proper labelling of pre-packaged chilled beef, mutton or pork, etc. It was in view of these steps that we have appointed the day of commencement of the Regulation to be on the expiration of the period of six weeks commencing on the day on which the Regulation was gazetted.

New Section 30D

Definition of “premises”

- The term “premises” is defined in the Public Health and Municipal Services Ordinance (Cap. 132) (“PHMSO”) to cover a wide range of places including land, buildings, structures, and the internal parts of buildings, etc. Insofar as the new section 30D(1) of the Regulation is concerned, our objective is to confine its application to the premises of an FPS only. The definition of “premises” given by PHMSO is therefore considered too broad for our purpose and we have decided to make it clear in section 30D(3) that, for the purpose of subsection (1), “premises” should mean “the premises on which the business of a fresh provision shop is carried on”.

Licensing requirements/conditions

- The structural and other main standard requirements for the issue of an FPS licence can be found in the Food and Environmental Hygiene Department’s pamphlet “A Guide to Application for Fresh Provision Shop Licence”, which is available online. Insofar as structure is concerned, it is stipulated that, as a general rule, premises on solid ground floor having direct access to a street (as means of escape in case of emergency) are normally suitable. Inside the premises, the licensee has the responsibility to comply with other specified requirements/conditions including the provision of suitable refrigerators and/or cold storage facilities, drainage and ventilation systems, toilets and other sanitary fittings, etc. From time to time, and depending on the actual circumstances of each application, such requirements/conditions may be revised, or there may be new requirements/conditions imposed. Such will be made known to the existing licensees as well as those still in the application process. Upon coming into effect of the new section 30D, some additional licensing requirements/conditions (though not related to structures) have become effective. For instance, FPSs and market tenants selling meat will be required to put up a legible notice concerning the type of meat items being sold for easy identification. For those FPSs endorsed to sell chilled meat only, if the business involves processing/de-boning of chilled meat in addition to cutting to meet consumers’ demand, the processing area will have

to be temperature-controlled at 15 °C or below for preservation of the cold chain. For those selling pre-packaged chilled meat, display refrigerators maintained at a temperature between 0 °C and 4 °C at all times should be provided.

Frozen beef, mutton or pork

- One of the main objectives of this Regulation is to improve food hygiene in Hong Kong by reducing the chances of unscrupulous meat traders selling chilled beef, mutton or pork as fresh beef, mutton or pork. One reason why this malpractice has been possible is because chilled beef, mutton and pork and fresh beef, mutton or pork look and feel similar, and that they are allowed to be sold without any packaging or labelling requirements at the same market stall or same premises of an FPS.
- On the other hand, frozen beef, mutton or pork looks and feels more differently from fresh/chilled beef, mutton or pork. It is more difficult to sell the former as the latter two. Besides, our enforcement statistics so far do not suggest a strong need to apply the Regulation to frozen beef, mutton or pork as well.

Definition of market stall

- The term “market stall” is explained in section 6 of the Public Markets Regulation (Cap. 132 sub. leg. BO). Sections 30 and 31 of the Food Business Regulation (Cap. 132 sub. leg. X) (“FBR”) have made reference to the term for imposing regulatory control of its operation. We consider that its meaning is clear enough.

Legal responsibility of contravention of section 30D(1) or (2)

- In the event of contravention of new section 30D(1) or (2), having regard to the evidences collected, enforcement actions will be taken against the person in charge of the business. Such persons will be the licensee/nominated manager of the FPS premises or the tenant of the market stall.

New section 30F

- The following are examples that would meet the test of “reasonable excuse” under section 30F -
 - (i) The licensee/tenant/employee opens up the package to cut the

pre-packaged chilled beef, mutton or pork upon a customer's request after the transaction has been completed (i.e. after the customer has paid);

- (ii) The licensee/tenant/employee opens up the package of the pre-packaged chilled beef, mutton or pork in order to dispose of the content, which has already perished, separately from the package; or
- (iii) The package has been torn or become loose during transportation and the licensee/tenant/employee intends to fix or replace the package.

Amendments to section 35 of the Food Business Regulation – offences and penalties

- When a person sells chilled beef, mutton or pork as fresh beef, mutton or pork at the premises of an FPS or in a market stall, he will contravene the new section 30D(1) or (2) if he -
 - (i) is selling “genuine” fresh beef, mutton or pork at the same time; and
 - (ii) the chilled beef, mutton or pork being sold is not pre-packaged and has not been properly labelled as required by the Regulation.
- As for your question, we have discussed with the Customs and Excise Department, which has recently sought legal advice on the feasibility of taking enforcement actions against the sale of chilled meat as fresh meat under section 7 of the Trade Descriptions Ordinance (Cap. 362) (“TDO”). The Department of Justice (DoJ) does not recommend a prosecution be pursued under Cap. 362. In brief, DoJ has advised that it is arguable for “meat” to be included within the purview of the TDO. It further considers that the various attributes to goods as set out in the definition of “trade description” in the TDO, which mainly relate to physical characteristics (i.e. quantity, composition, method of manufacture, etc.), are not quite applicable to “chilled meat”. Besides, there are already other legislations (i.e. the PHMSO) that specifically deal with meat and poultry. It therefore does not appear that the legislature had intended to extend the ambit of the TDO to cover meat and poultry as well.

Amendments to Item 1, Schedule 2 to the Food Business Regulation

- The types of meat specified in Schedule 1 to the FBR are “prohibited food” items which, according to section 29 of the same, are prohibited from being sold in Hong Kong at all.

- On the other hand, the types of meat specified in Schedule 2 to the FBR are “restricted food” items which can be sold subject to permission being sought from the Director of Food and Environmental Hygiene under section 30 of the FBR and other requirements being fulfilled.
- Since Schedule 2 will not take precedence over Schedule 1, the absence of this reference to “excluding meat specified in Schedule 1” in Schedule 2 will not change the nature of “prohibited food” (i.e. it cannot be sold at all). As such, we consider that the reference to “excluding meat specified in Schedule 1” is not necessary to be mentioned in Schedule 2 and therefore take the opportunity of this legislative exercise to improve the language of the FBR.

I hope the above clarify matters.

Yours sincerely,

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for Secretary for Health, Welfare and Food

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