

FOOD AND DRUGS (COMPOSITION AND LABELLING) (AMENDMENT: REQUIREMENTS FOR NUTRITION LABELLING AND NUTRITION CLAIM) REGULATION 2008

Small Volume Exemption for Food Products with Nutrition Claims

1. This paper sets out a proposed amendment to the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 (Amendment Regulation).
2. The Administration notes that the nutrition labelling scheme is generally supported by Members of the Legislative Council. However, there remains some concerns about the small volume exemption scheme. In relation to small sales volume food products with nutrition claims, the Administration notes the estimate from the food trade that if they are not exempted, some 15 000 food products might be withdrawn from the market upon implementation of the nutrition labelling requirements. While the Administration does not concur with such an estimate, we note that the trade's campaign has aroused concerns from some sectors of the community, who are consumers of food imported in small volume with claims, on whether these food might be withdrawn. We note that some members of the public are also worried about the possible withdrawal of food which they or their family have been relying on due to their special health need. During the Subcommittee discussions, Members are also particularly concerned about the effect of the Regulation on food choice.
3. Having considered the various views from Members and the concerns expressed by members of the public, we consider that the needs of the minority sectors of the community should also be addressed. In view of this, the Administration proposes to exempt food products with low annual sales volume (i.e. 30 000 units or below) with nutrition claims. Nutrition labelling seeks to assist consumers in making informed food choice. To protect the interest of consumers, we propose to require these food products to be displayed for sale with a warning label informing consumers that the nutrition information and nutrition claims of these products may not comply with Hong Kong laws. The warning

label, in bilingual format, should be securely affixed to or form part of its container and be displayed in a conspicuous and easily legible manner. With the warning label, consumers should exercise their decision whether to buy these products on an informed basis. We understand that small volume food products with claims take up about 2.5% of the prepackaged food market in terms of volume. Through this arrangement, we hope to strike a delicate balance between the consumers' right to information and food choice.

4. The proposed wording of the warning label are as follows –

HKSARG Warning

Nutrition labelling exempted

**Nutrition label and claims for this product may not
comply with Hong Kong laws**

香港特區政府忠告

豁免營養標籤

此產品的營養標籤及聲稱未必符合香港法律

Each product under the small volume exemption scheme will be granted an exemption number and this number should either be clearly marked on the warning label affixed to each product or displayed in close proximity to the place where the food is displayed for sale.

5. Given the warning nature of the label, we will stipulate in the law that the label should be in bilingual format. We will also stipulate that the design, form and size (including font size of the words) of the warning label would have to be as specified by the Authority, as set out in Annex A.

6. Part 2 of Schedule 6 of the Amendment Regulation regarding application procedures for small volume exemption would apply equally to products with nutrition claims.

7. Under the Amendment Regulation, the nutrition labelling scheme will commence on 1 July 2010. The Administration will review the operation of the warning label arrangement for the small volume

exemption products with claims within one year after implementation of the nutrition labelling scheme.

8. Amendments will be made to the new section 4B of and the new Schedule 6 to the Regulation. The draft Resolution which sets out the proposed amendments is at Annex B. Some minor polishing up and consequential amendments are also added to the draft and all amendments to the last draft have been marked up in revision mode for ease of reference.

Food and Health Bureau
May 2008

**Sample of warning label for products with claims
under small volume exemption**

(A) Requirements

- Bilingual
- Type sizes: No smaller than 10 point (or no smaller than 6 point, if the total surface area of the food package is smaller than 200 cm²)
- Underline heading of “HKSARG Warning”
- Wording to be surrounded by a line as demarcation

(B) Samples (wordings in required type size)

(1) With Exemption No. Separately Displayed

(i) Products with package of total surface area of 200 cm² or more

<p><u>HKSARG Warning</u> 香港特區政府忠告 Nutrition labelling exempted 豁免營養標籤 Nutrition label and claims on this product may not comply with Hong Kong laws 此產品的營養標籤及聲稱未必符合香港法律</p>

(ii) Products with package of total surface area smaller than 200 cm²

<p><u>HKSARG Warning</u> 香港特區政府忠告 Nutrition labelling exempted 豁免營養標籤 Nutrition label and claims on this product may not comply with Hong Kong laws 此產品的營養標籤及聲稱未必符合香港法律</p>

(2) With Exemption No. Marked on Warning Label

(i) Products with package of total surface area of 200 cm² or more

<p><u>HKSARG Warning 香港特區政府忠告</u> Nutrition labelling exempted 豁免營養標籤 Nutrition label and claims on this product may not comply with Hong Kong laws 此產品的營養標籤及聲稱未必符合香港法律 Exemption No. 豁免編號: 1234</p>
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(ii) Products with package of total surface area smaller than 200 cm²

<p><u>HKSARG Warning 香港特區政府忠告</u> Nutrition labelling exempted 豁免營養標籤 Nutrition label and claims on this product may not comply with Hong Kong laws 此產品的營養標籤及聲稱未必符合香港法律 Exemption No. 豁免編號: 1234</p>
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3rd (revised) draft: 8.5.2008
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INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

FOOD AND DRUGS (COMPOSITION AND LABELLING)
(AMENDMENT: REQUIREMENTS FOR NUTRITION
LABELLING AND NUTRITION CLAIM)
REGULATION 2008

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on May 2008.

RESOLVED that the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008, published in the Gazette as Legal Notice No. 69 of 2008 and laid on the table of the Legislative Council on 9 April 2008, be amended -

- (a) in section 2(3), in the new definition of "nutrition claim", by adding ", subject to paragraph (3)" after "(營養聲稱)";
- (b) in section 2, by adding -

"(4) Regulation 2 is amended by adding -

"(3) For the purposes of these regulations, the following do not constitute a nutrition claim -

- (a) mention of any nutrient content in a list of ingredients required by section 2 of Schedule 3;
- (b) any quantitative or qualitative declaration of any nutrient content specified in section 2(4E)(a) of Schedule 3;
- (c) other quantitative or qualitative declaration of energy value or any nutrient content required by law;
- (d) any quantitative or qualitative declaration of change in nutritional value due to genetically modified process;
- (e) any claim forming part of the name, brand name or trade mark of a prepackaged food; and

(f) any quantitative declaration of energy value or any nutrient content contained in a prepackaged food which -

(i) is expressed -

(A) as an actual amount; or

(B) in any manner specified in section 2 or 3 of Schedule 5; and

(ii) does not place any special emphasis on the high content, low content, presence or absence of energy or that nutrient contained in the food."."

(c) in section 4, by repealing the new section regulation 4B(4)(a) and substituting -

~~"(a) any item in respect of which an exemption has been granted under section 1 of Part 2 of Schedule 6 is not labelled or displayed for~~

~~sale in the manner specified in section 2A of that Part; or~~;

“(4) If any item in respect of which an exemption has been granted under Part 2 of Schedule 6 is displayed for sale in contravention of section 2A of that Part, paragraph (1) shall apply in relation to such item.”;

(d) in section 4, in the new regulation 4B(5), by repealing “paragraph (6)” and substituting “paragraphs (5A) and (6)”;

(e) in section 4, in the new regulation 4B, by adding -
“(5A) Any item in respect of which an exemption has been granted under Part 2 of Schedule 6, except an item displayed for sale in contravention of section 2A of that Part, shall be exempt from the requirement of paragraph (5).”;

(f) in section 5, by adding -

“(67A) Regulation 5(3) is amended, in the Chinese text, by repealing “依照上述方式” and substituting “遵照符合上述規定”.”;

(g) in section 8(1), by adding “2,” before “4A &”;

(h) in section 10, in the new section 4(3) of ~~Part 1 of~~ Schedule 5, by repealing “Schedule” and substituting “Part”;

(i) in section 10, by repealing the new section 5 of ~~Part 2 of~~ Schedule 5;

- (j) in section 10, in the heading of the new Schedule 6, by repealing "PART 1 OF";
- (k) in section 10, by repealing the new section 6(a) of Part 1 of Schedule 6 and substituting -

 - "(a) packed in a container which contains -

 - (i) no other ingredient; or
 - (ii) ingredients packed in a separate container which has a total surface area of less than 100 cm²; and";
- (l) in section 10, by repealing the new section 10(b) of Part 1 of Schedule 6 and substituting -

 - "(b) packed in a container which contains -

 - (i) no other ingredient; or
 - (ii) ingredients packed in a separate container which has a total surface area of less than 100 cm²; and";
- (m) in section 10, in the heading of the new Part 2 of Schedule 6, by repealing "PART 1 OF SCHEDULE 5 UNDER REGULATION 4B(2)(b)" and substituting "SCHEDULE 5 UNDER REGULATION 4B(2)(b) and (5A)";
- (n) in section 10, in the heading of the new section 1 of Part 2 of Schedule 6, by repealing "Part 1 of";
- (o) in section 10, in the new section 1(1) of Part 2 of Schedule 6, by repealing "Part 1 of";
- (p) in section 10, in the new section 1 of Part 2 of Schedule 6, by adding -

"(1A) In determining whether certain prepackaged foods are of the same version for the purposes of subsection (1), regard shall be had to all relevant matters including -

- (a) the ingredients of the foods;
- (b) the volumes, weights and packing sizes of the foods;
- (c) the flavours of the foods;
- (d) the manufacturers and packers of the foods; and
- (e) the containers of the foods."

(q) in section 10, by repealing the new section 1(4) of Part 2 of Schedule 6 and substituting -

"(4) When an exemption is granted under subsection (1), the Authority may impose such conditions as the Authority thinks fit."

(r) in section 10, in the new section 2 of Part 2 of Schedule 6, by adding -

"(3A) The Authority may in respect of a renewed exemption impose any condition in addition to or instead of any condition previously imposed under section 1(4)."

(s) in section 10, in the new Part 2 of Schedule 6, by adding -

"2A. ~~Labelling and d~~Displaying for sale

No prepackaged food in respect of which an exemption has been granted under section 1(1) shall be displayed for sale unless -

(a) the food bears a label which is securely affixed to or forms part of its container and contains -

(a*i*) the food bears a label (in the case where there is a nutrition claim made on the label of, or in any advertisement for, the food) the following text in both the Chinese and English languages in a conspicuous and easily legible manner -

"香港特區政府忠告

豁免營養標籤

此產品的營養標籤及聲稱未必符合香港法律

HKSARG WARNING

Nutrition labelling exempted

Nutrition label and claims for

this product may not comply

with Hong Kong laws"; or

(i*i*) (in the case where there is no nutrition claim made on the label of, and in any

advertisement for, the food)
the following text in both the
Chinese and English languages
in a conspicuous and easily
legible manner -

"豁免營養標籤

Nutrition labelling exempted";

(b) the label referred to in paragraph

(a) (including the text on the
label) is -

(i) of a design, form and size
(including font size of the
text) as specified by the
Authority in the conditions
imposed under section 1(4) or
2(3A); and

(ii) used in compliance with those
conditions; and

(bc) the exemption number assigned by the
Authority is ~~also~~ clearly -

(i) marked on the label referred to
~~specified~~ in paragraph (a); or

(ii) displayed in close proximity to
the place where the food is
displayed for sale.";

- (t) in section 10, in the new section 3(1)(a) of Part 2 of Schedule 6, by adding "or 2(3A)" after "section 1(4)";
- (u) in section 10, in the new section 3(2) of Part 2 of Schedule 6, by adding "or 2(3A)" after "section 1(4)";
- (v) in section 10, in the new section 3(3)(a) of Part 2 of Schedule 6, by adding "or 2(3A)" after "section 1(4)".

Clerk to the Legislative Council

May 2008