

**Subcommittee on
Food Business (Amendment) Regulation 2008**

Matters Arising from Meeting on 23 October 2008

At the meeting of the Subcommittee on 23 October 2008, some Members considered that retailers should be exempted from compliance with the requirement of no live poultry at retail premises overnight in case of adverse weather, such as when typhoon signal no. 8 was hoisted or in times of black rainstorm warning, as some retailers would have practical difficulties complying with the requirement under such exceptional circumstances. Some Members proposed that the Director of Food and Environmental Hygiene (DFEH) should be given discretionary power to exempt retailers from the requirement under adverse weather through an amendment to the Food Business (Amendment) Regulation 2008 (the Amendment Regulation). The Administration's response to Members' views is provided below.

Proposed Amendment

2. Having considered Members' views and the implications on avian influenza risks, we propose to amend the Amendment Regulation to stipulate that if a black rainstorm warning or a gale warning (i.e. typhoon signal no. 8, 9 or 10) is in force at any time between noon and 8:00 p.m. on a day, then the live poultry retailers (including public market stall tenants and fresh provision shop licensees) are exempt from compliance with (a) the requirement to slaughter all live poultry remaining at their retail premises before 8:00 pm on that day and (b) the requirement that there is no live poultry remaining at retail premises between 8:00 pm that day and 5:00 am the next day. In considering the time range, we are of the view that should the gale/black rainstorm warning be cancelled before noon, the retailers should still have relatively long business hours to sell their stock and thus the compliance with the requirement of no live poultry overnight should not be exempted. The proposed resolution to amend the Amendment Regulation is at Annex.

3. At the meeting on 23 October 2008, some Members suggested providing DFEH with a general discretion to exempt retailers from the requirement of no live poultry overnight in case of adverse weather. We consider that there would be difficulties in implementing it.

4. The making of the Amendment Regulation by DFEH is empowered by section 56 of the Public Health and Municipal Services Ordinance (Cap. 132). Section 56(3A) of Cap. 132 stipulates that –

“Regulations made under this section containing provisions –

- (a) requiring the registration or licensing of premises, businesses or persons; or
- (b) restricting the sale, possession or use of specified foods, may empower a specified public officer, by notice in the Gazette, to grant exemptions from such provisions or any of them.

5. In other words, if DFEH is to grant exemption from the requirement of no live poultry at retail premises overnight, he has to do so by publishing a notice in the Gazette. Given the unpredictable nature of black rainstorm warning or gale warning, it is impractical or even impossible to arrange for the gazettal of the notice immediately on the relevant day when DFEH decides to grant an exemption. Notices published in any other manner are inconsistent with section 56(3A) of Cap. 132.

6. Therefore, we are of view that the circumstances that merit an exemption from the requirement of no live poultry overnight, i.e. the occurrence of a gale warning or black rainstorm warning during a specified time period, should be stipulated clearly in the Food Business Regulation (Cap. 132X). This should also provide more certainty to the trade, as they will know for sure under what conditions they are exempt from the requirement. This will in turn allow them to make better arrangement concerning their business operation.

Advice Sought

7. Members’ views are sought on the Administration’s proposed amendment to the Amendment Regulation.

Food and Health Bureau
October 2008

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

FOOD BUSINESS (AMENDMENT) REGULATION 2008

RESOLVED that the Food Business (Amendment) Regulation 2008,
published in the Gazette as Legal Notice No. 185 of 2008 and laid
on the table of the Legislative Council on 2 July 2008, be amended
by adding –

**“6. No live poultry at retail
premises overnight**

(1) Section 30AA is amended by adding –

“(1A) If a black rainstorm
warning or a gale warning is in force at
any time between noon and 8:00 p.m. on a
day, a permittee is exempt from
compliance with subsection (1)(a) on that
day and from compliance with subsection
(1)(b) between 8:00 p.m. that day and
5:00 a.m. the next day.

- (2) Section 30AA(3) is amended by adding –
- ““black rainstorm warning” (黑色暴雨警告) has the meaning given to it by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);
- “gale warning” (烈風警告) has the meaning given to it by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);”.”.