

LEGISLATIVE COUNCIL BRIEF

Public Health and Municipal Services Ordinance (Chapter 132)

FOOD BUSINESS (AMENDMENT) REGULATION 2006

INTRODUCTION

The Director of Food and Environmental Hygiene (DFEH), in exercise of the power under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132), made the Food Business (Amendment) Regulation 2006 (the Amendment Regulation) at Annex.

JUSTIFICATIONS

Background

2. At present, fresh provision shops (FPSs) (including supermarkets) and stalls in public markets are allowed to sell both fresh beef, mutton or pork and imported chilled beef, mutton or pork on compliance of a set of licensing requirements and conditions/tenancy clauses. These requirements and conditions/tenancy clauses basically control the source of supply, handling, display and storage of chilled meat. In particular, operators are not allowed to display and sell chilled beef, mutton or pork as fresh beef, mutton or pork. Operators are also required to display a legible notice at a conspicuous location and on the refrigerator stating that imported chilled meat is available for sale on the premises for information of consumers.

3. Nevertheless, there have been cases where FPS licensees/ public market tenants display or sell 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. To deter the malpractice, since June 2003, the Food and Environmental Hygiene Department (FEHD) has imposed heavier sanction against unscrupulous meat traders. FEHD would cancel the FPS licence/terminate the market tenancy once such malpractice is discovered. Starting from 1 June 2005, control action has been further tightened up by setting down in the licensing requirements and tenancy clauses the required size of the notice and the use of display chiller. It has also been made a standing practice that FEHD would execute the “immediate cancellation/ termination” decision to the above breaches, regardless of whether the licensee/market tenant has lodged an appeal against such decision. Notwithstanding the strengthened sanction, the problem of selling chilled meat as fresh meat still persists. Since 2003, FEHD has discovered 40 cases of food premises involved in the sale/display of chilled beef, mutton or pork as fresh beef, mutton or pork, and about 50% of the licences/tenancies of such premises or public market stalls have been cancelled/terminated as a result. More effective measures are needed to avoid proliferation of the problem.

The Proposal

4. Having considered the food hygiene requirements and the concerns of the meat trade, we consider it practicable to prohibit the sale of fresh beef, mutton or pork and chilled beef, mutton or pork in the same FPS or market stall (commonly known as “one licence for one shop”). The proposed arrangement would enhance food safety and protect consumers’ interest. While we recognise that the “one licence for one shop” proposal could not eradicate the problem of unscrupulous meat traders mixing chilled beef, mutton or pork with fresh beef, mutton or pork in the same premises, it could reduce such chance and could facilitate enforcement action by FEHD.

5. At present, there are 337 FPSs (of which 225 are in supermarkets and 112 are individual retail shops) that are endorsed to sell fresh, chilled and frozen beef, mutton or pork. There are also 38 stalls in public markets that are endorsed to sell both fresh and chilled beef, mutton or pork. We propose to amend the Food Business Regulation (Cap. 132 sub. leg. X). When the Amendment Regulation comes into operation, those FPSs and market stalls currently endorsed to sell both fresh and chilled beef, mutton or pork will have to choose to sell either fresh beef, mutton or pork, or chilled beef, mutton or pork. However, to maintain the existing level of convenience to consumers, we will allow the sale of fresh and chilled beef, mutton or pork in the same premises provided that the chilled beef, mutton or pork sold is pre-packaged and has been properly marked and labelled in the prescribed manner before distribution to the retail outlets. The label should contain information on the food name, the “slaughtering” and “use by” dates, the name and address of slaughtering plant and the net weight.

6. To complement the Amendment Regulation, FEHD will impose additional licensing requirements/conditions on the FPSs and market stalls selling beef, mutton or pork. FPS licensees/ market tenants selling fresh meat will be required to put up a legible notice concerning the commodities sold (i.e. fresh meat) for easy identification by consumers. For FPSs selling chilled beef, mutton or pork 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 for preservation of the cold chain. For FPSs and market stalls selling pre-packaged chilled beef, mutton or pork, display refrigerator maintained at a temperature below 4°C should be provided. FPS licensees and market tenants will have to keep invoices showing the supply of their chilled and pre-packaged chilled beef, mutton or pork for not less than 60 days to facilitate verification by FEHD staff. The invoices should contain information concerning the name and address of the slaughtering plant, the date of slaughtering as well as description and amount of meat to facilitate source tracing when necessary.

THE AMENDMENT REGULATION

7. The Amendment Regulation will -
- (a) define the term “pre-packaged”;
 - (b) add a new section 30D to prohibit the sale, or offer or exposure for sale, or possession for sale fresh beef, mutton or pork and chilled beef, mutton or pork at the same market stall or premises on which the business of a fresh provision shop is carried on;
 - (c) add a new section 30E to provide for exception to the new section 30D;
 - (d) add a new section 30F to make it an offence for a person to open or in any other way tamper with the package containing pre-packaged chilled beef, mutton or pork for sale;
 - (e) stipulate that DFEH may grant permission to any person to sell, or offer or expose for sale, or possess for sale fresh beef, mutton or pork, or chilled beef, mutton or pork, but not both, at the same market stall or premises referred to in the new section 30D;
 - (f) specify the penalty for contravention of the new sections 30D and 30F;
 - (g) amend the list of restricted foods in Schedule 2 to single out “pre-packaged chilled beef, mutton or pork” as a separate entity; and
 - (h) add Schedule 6 to prescribe the manner in which the pre-packaged chilled beef, mutton or pork should be marked and labelled.

LEGISLATIVE TIMETABLE

8. The legislative timetable is as follows –

Publication in the Gazette	7 July 2006
Tabling at Legislative Council	12 July 2006

To allow FPS licensees and market tenants to make necessary adjustments, the Amendment Regulation shall come into operation on the expiry of a period of six weeks commencing on a day on which the Amendment Regulation is published in the Gazette.

IMPLICATIONS OF THE PROPOSAL

9. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the principal Ordinance. It has no economic, productivity or environmental implications. FEHD will step up enforcement actions by redeploying existing manpower resources. Additional recurrent cost, if any, would also be absorbed by FEHD from within existing resources. In line with the sustainability principle of pursuing policies which promote and protect the physical health and safety of the people of Hong Kong, the proposal would enhance food safety and help reduce the risk of food-borne diseases.

PUBLIC CONSULTATION

10. We have consulted the Legislative Council Panel on Food Safety and Environmental Hygiene and relevant stakeholders on the proposal on a number of occasions. Some Members consider that the proposal could help enhance the enforcement action by FEHD against the problem of selling chilled meat as fresh meat and yet maintaining a business-friendly environment as well as providing convenience to consumers. Some Members consider it not necessary to introduce the Amendment Regulation as the Government may step up enforcement

action to address the problem. Some Members who are supported by fresh meat traders consider that no exception should be provided in the new section 30E. The Consumer Council supports measures that would protect consumers from trade malpractice of selling chilled meat as fresh meat and provide convenience to consumers. While supporting the provision of exception for the new requirement, the Hong Kong Retail Management Association considers that the new requirement could be effected with imposition of new licensing requirements instead of legislative amendments and that beef and mutton should be excluded from the proposal.

PUBLICITY

11. A press release will be issued. A spokesman will be made available to answer media enquiries.

ENQUIRIES

12. Any enquiry on this brief can be addressed to Mr Vincent Liu, Principal Assistant Secretary for Health, Welfare and Food (Tel: 2973 8148).

Health, Welfare and Food Bureau
July 2006

FOOD BUSINESS (AMENDMENT) REGULATION 2006

(Made by the Director of Food and Environmental Hygiene under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132))

1. Commencement

This Regulation shall come into operation on the expiry of the period of 6 weeks commencing on the day on which this Regulation is published in the Gazette.

2. Interpretation

Section 3(1) of the Food Business Regulation (Cap. 132 sub. leg. X) is amended by adding –

““pre-packaged” (經預先包裝), in relation to any chilled beef, mutton or pork, means completely enclosed in a package in such a way that –

- (a) the contents of the package cannot be altered without opening the package or changing the packaging; and
- (b) the chilled beef, mutton or pork is ready for sale as a single food item;”.

3. Sections added

The following are added immediately after section 30C –

“30D. Restriction on sale, etc. of chilled beef, mutton or pork

(1) No person shall sell, or offer or expose for sale, or possess for sale fresh beef, mutton or pork and chilled beef, mutton or pork at the same premises.

(2) No person shall sell, or offer or expose for sale, or possess for sale fresh beef, mutton or pork and chilled beef, mutton or pork at the same market stall.

(3) In subsection (1), “premises” (處所) means the premises on which the business of a fresh provision shop is carried on.

30E. Exception to restriction on sale, etc. of chilled beef, mutton or pork

Section 30D does not apply if –

- (a) the chilled beef, mutton or pork concerned is pre-packaged;
- (b) it has been packaged in a place other than in the premises or market stall referred to in that section; and
- (c) the package is marked and labelled in the manner prescribed in Schedule 6.

30F. Further restrictions on trading of pre-packaged chilled beef, mutton or pork at retail level

Unless with reasonable excuse, no person having the possession for sale of any pre-packaged chilled beef, mutton or pork at any premises referred to in section 30D or market stall shall open, or in any other way tamper with, the package at the premises or market stall.”.

4. Section added

The following is added –

“31A. Power of Director to grant permission

(1) Notwithstanding section 30(1), in relation to the food specified in items 1(a) and 1(b) of Schedule 2, the Director may grant permission to a person to sell, or offer or expose for sale, or possess for sale at any premises the food specified in that item 1(a) or the food specified in that item 1(b) but not both at the same premises.

(2) Notwithstanding section 30(1), in relation to the food specified in items 1(a) and 1(b) of Schedule 2, the Director may grant permission to a person to sell, or offer or expose for sale, or possess for sale at any market stall the food specified in that item 1(a) or the food specified in that item 1(b) but not both at the same market stall.

(3) In subsection (1), “premises” (處所) means the premises on which the business of a fresh provision shop is carried on.”.

5. Offences and penalties

(1) Section 35(1)(a) is amended by adding “30D(1) or (2), 30F,” after “30C(1),”.

(2) Section 35(3)(a) is amended by adding “, 30D(1) or (2), 30F” after “30A”.

6. Restricted foods

Schedule 2 is amended –

(a) in the square brackets, by repealing “s. 30” and substituting “ss. 30 & 31A”;

(b) by repealing item 1 and substituting –

“1. (a) Fresh meat

(b) Chilled meat other than pre-packaged chilled beef, mutton or pork

(c) Pre-packaged chilled beef, mutton or pork

(d) Frozen meat”.

7. Schedule 6 added

The following is added –

MARKING AND LABELLING OF PRE-PACKAGED
CHILLED BEEF, MUTTON OR PORK

1. **Name or designation**

Pre-packaged chilled beef, mutton or pork shall be legibly marked or labelled with the name or designation of the food.

2. **Indication of “slaughtering” and “use by” dates**

(1) Pre-packaged chilled beef, mutton or pork shall be legibly marked or labelled with the “slaughtering date” and the “use by” date.

(2) The “slaughtering date” shall be indicated by the words “slaughtering date” in English lettering and by Chinese characters “屠宰日期” followed by the date on which the animal was slaughtered.

(3) The “use by” date shall be indicated by –

(a) the words “use by” in English lettering and by Chinese characters “此日期或之前食用” followed by the date up to and including which the pre-packaged chilled beef, mutton or pork, if properly stored, is recommended for use; and

(b) a statement of conditions for storage which need to be observed if the pre-packaged chilled beef, mutton or pork is to retain its quality attributes until that date.

(4) The “slaughtering date” and the “use by” date shall be shown either in Arabic numerals or in both the English and Chinese languages and, subject to subsection (6), shall be expressed in terms of a day, a month and a year.

(5) The “slaughtering date” and the “use by” date may appear on the labelling of the pre-packaged chilled beef, mutton or pork separately

from the words immediately preceding the date, if those words are followed by a reference to the place where the date appears.

(6) Where the “slaughtering date” and the “use by” date are shown in Arabic numerals –

- (a) the day shall be indicated by the words “DD”, “dd”, “D” or “d” in English lettering and by Chinese character “日”;
- (b) the month shall be indicated by the words “MM”, “mm”, “M” or “m” in English lettering and by Chinese character “月”; and
- (c) the year shall be indicated by the words “YY”, “yy”, “Y” or “y” in English lettering and by Chinese character “年”,

and the day, month and year can appear in any order.

3. Name and address of slaughtering plant

Pre-packaged chilled beef, mutton or pork shall be legibly marked or labelled with the business name and the full address of the slaughtering plant.

4. Net weight

(1) Pre-packaged chilled beef, mutton or pork shall be legibly marked or labelled with its net weight.

(2) The net weight shall, so far as is practicable, be indicated in accordance with the Weights and Measures Ordinance (Cap. 68) or with the International System of Units set out in the First Schedule to the Metrication Ordinance (Cap. 214).

5. Appropriate language

The marking and labelling for the purposes of sections 1, 2(1), 3 and 4 shall be in the English language or Chinese language or in both languages,

but if both languages are used for any such marking or labelling, the name or designation of the food under section 1 shall be shown in both languages.”.

Director of Food and Environmental
Hygiene

2006

Explanatory Note

This Regulation amends the Food Business Regulation (Cap. 132 sub. leg. X) for the following purposes -

- (a) to prohibit the sale, or offer or exposure for sale, or possession for sale fresh beef, mutton or pork and chilled beef, mutton or pork at the same market stall or premises on which the business of a fresh provision shop is carried on unless the chilled beef, mutton or pork is pre-packaged and the package is marked and labelled in the prescribed manner;
- (b) to make it an offence for a person to open or in any other way tamper with the package;
- (c) to provide that the Director of Food and Environmental Hygiene may grant permission under section 30 to sell, or

offer or expose for sale, or possess for sale at the same premises either fresh meat or chilled meat that is not pre-packaged but not both; and

- (d) to impose the penalty on any person who contravenes section 30D or 30F.