中華人民共和國香港特別行政區政府總部食物及衞生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

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10 April 2008

Ms Connie Fung
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(Fax : 2877 5029)

Dear Ms Fung,

Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 (L.N. 69 of 2008)

Thank you for your letter of 7 April 2008.

Our response to the questions raised are set out in the attached note. Please feel free to let us know if you have further questions.

(Mrs Angelina Cheung)
for Secretary for Food and Health

Response to Comments from Assistant Legal Advisor on the

Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 (L.N. 69 of 2008)

1. Section 2

(a) We do not consider it necessary to define the term "electronic messages" in the Amendment Regulation. The term "electronic messages" is unambiguous and has its general meaning.

(b) A "sample" in section 62 of the Public Health and Municipal Services Ordinance (Cap 132) refers to a small amount of a food or drug, or of any substance capable of being used in the preparation of any food or drug, taken for analysis, or for bacteriological or other examination. The meaning is different from the "sample" used in the proposed definition of "advertisement" in section 2 of the Amendment Regulation. A "sample" in that section refers to an example of a food product that can be tried to see what it is like. The same rendition has been adopted in the definition of "advertisement" in section 2 of the Family Status Discrimination Ordinance (Cap. 527). We therefore do not consider it necessary to make the Chinese rendition of "sample" in section 2 of the Amendment Regulation consistent with that of the same term used in section 62 of Cap 132.

(c) We have included the definition of Vitamin A in the Amendment Regulation because Vitamin A may exist in its true form (retinol) and precursor form (beta-carotene or provitamin A). A definition is therefore needed to state that retinol and beta-carotene are the chemical forms for calculation of Vitamin A content, and the respective conversion factors. This is in line with the Codex Guidelines on Nutrition Labelling, which also provide for a specific footnote for Vitamin A, and not other vitamins. Similarly, we have included the definition of some nutrients, e.g. sugars (and not all types of nutrients, e.g. protein) in the Amendment Regulation as the definition of these nutrients is specifically provided for in the Codex Guidelines.

2. Part 2 of Schedule 6

(a) Section 1(4) provides that the Authority may impose such conditions as the Authority may deem fit; and require the applicant to give an undertaking to comply with such conditions as the Authority may from time to time impose with regard to the prepackaged food to which the exemption applies. The conditions that we will impose on the importer or manufacturer to whom the exemption has been granted ("the grantee) include –

(i) The grantee should inform the distributors and retailers that the exempted product should be separately identified indicating the exemption status of the products when they are put on sale. (The new Regulation 4B(4)(a) provides that if any item in respect of which an exemption has been granted under Part 2 of Schedule 6 is labelled or displayed for sale otherwise than in the manner required by the Authority, the food item shall be marked or labelled with its energy value and nutrient content in compliance with Part 1 of Schedule 5.)

(ii) The grantee should notify the Authority of any changes to his particulars, or to the names and addresses of the distributors/retailers during the validity period of the exemption.

(iii) The grantee should keep, for at least two years from the date of granting/renewal of the exemption, the distribution records or any other relevant information in respect of the exempted product and produce such records for inspection upon request by the Authority.

(iv) The grantee should permit the Authority to inspect the records or accounts in respect of the exempted product.

(v) The grantee should report the sales quantity in respect of the exempted product on monthly basis within the first ten days of each calendar month. The grantee should produce for inspection, upon request by the Authority, appropriate documents to support the sales quantity so reported.

(b) Under the small volume exemption scheme, products of different packing sizes/flavours, etc. are considered as different food products. In most cases, these food products come with a specific bar code. Food products with

different bar code will be treated as different food products under the small volume exemption scheme. The meaning of the phrase "food of the same version" is clear in the context of Part 2 of Schedule 6 and we do not consider it necessary to define the phrase.

(c) Section 1(4) of Part 2 of Schedule 6 provides that the Authority may impose such conditions as the Authority may deem fit; and may require the applicant to give an undertaking to comply with such conditions as the Authority may from time to time impose with regard to the prepackaged food to which the exemption applies. It will be specified in the conditions that the conditions apply to the same exemption, whether it is a new or renewed exemption. We therefore do not consider it necessary to amend section 2 of Part 2 of Schedule 6.

(d) The undertaking referred to in section 1(4)(b) of Part 2 of Schedule 6 is an undertaking to comply with such conditions as the Authority may from time to time impose with regard to the prepackaged food to which the exemption applies. We do not consider it necessary to amend section 3 of Part 2 of Schedule 6 because any breach of the undertaking naturally means breach of a condition imposed by the Authority.

(e) If a person is aggrieved by a decision of the Authority of revoking the exemption, the person may make representation to the Authority in writing within the period specified in the notice. The Authority will then consider the representation submitted. If a person is aggrieved by a decision of the Authority refusing an application for grant of exemption, refusing an application for renewal of the exemption or revoking the exemption, then the person may appeal against the Authority's decision in court.