



中華人民共和國香港特別行政區政府總部食物及衛生局
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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電話號碼 Tel nos. : 3509 8925
傳真號碼 Fax nos. : 2136 3281

20 April 2015

Ms Alice LEUNG
Clerk to Subcommittee on Food and Drugs
(Composition and Labelling) (Amendment) (No. 2) Regulation
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Fax: 2509 9055)

Dear Ms Leung,

Food and Drugs (Composition and Labelling) (Amendment) (No. 2) Regulation

I refer to your letter of 22 October 2014. Regarding the questions raised by the Subcommittee at its meeting on 20 October, our response is as follows:

Whether the Centre for Food Safety (“CFS”) had initiated any prosecutions against non-compliance with the legibility requirement of food labels under the Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) over the past three years; if so, provide details including the penalties imposed

2. Under the existing Food and Drugs (Composition and Labelling) Regulations (Cap. 132W) (the Regulations), all prepackaged food should be legibly labelled unless otherwise exempted. Failure to provide legible labels in accordance with the Regulations is an offence for which the maximum penalty is a fine of \$50,000 and imprisonment for six months.

3. As stated in our letter of 9 June 2014 to the Legislative Council Panel on Food Safety and Environmental Hygiene, under CFS’ enforcement strategy, CFS would, upon detection of non-compliance with the nutrition labelling requirements under the Regulations in prepackaged food including failure to provide legible nutrition labels, proceed to issue a warning letter to the food trader concerned requiring compliance with the requirements within a specified period. If the food trader failed to comply with the

relevant requirements within that period, CFS would initiate prosecutions. According to information of CFS, food traders would either make improvements within the said period or cease selling the relevant products. Thus, no prosecution for the legibility of nutrition labels has been instituted.

4. As the Nutrition Labelling Scheme under the Regulations has been in full operation for nearly four years, the trade should be familiar with and capable of strictly abiding by the requirements stipulated in the relevant provisions. In addition, CFS also issued the "Trade Guidelines on Preparation of Legible Food Label" in May 2012 to assist the trade in providing clear and legible information on the food labels. In view of this, CFS has decided to tighten up its enforcement by doing away with the practice of issuing warning letters and allowing time for food traders to rectify any non-compliance with the Regulations. CFS has adopted the new enforcement strategy since October 2014. If CFS identifies any non-compliance with the requirements, including failure to provide labels meeting the legibility requirement, it will initiate prosecutions immediately without allowing any time for compliance.

Whether the present drafting of Section 1(2) of the proposed newly added Schedule 6A could reflect the Administration's intent that CFS would use distilled water for constituting infant formula for measuring the fluoride content of the infant formula concerned when taking enforcement actions against non-compliance cases

5. When examining the fluoride content of infant formula, CFS will use ultrapure water for testing. In enforcing the law, CFS will take into consideration the instructions for use of the relevant infant formula, including the type and amount of water as recommended by the manufacturer for reconstituting the formula. If the instructions for use of the product do not make any special recommendation in respect of the type of water to be used or only indicate that ordinary drinking water may be used to reconstitute the formula, CFS will calculate the fluoride content of the formula after reconstitution by making reference to the fluoride content of drinking water in Hong Kong and the findings of the test conducted with ultrapure water. Under the newly added provision of Section 1(2) of Schedule 6A to the Amendment Regulation, the fluoride content of infant formula is in a form that is reconstituted or served according to any instructions for use provided. The policy intent is thus reflected in this provision. CFS will include in the technical guidelines information about calculating the fluoride content of infant formula for reference by the trade.

Consider and respond to a member's request that CFS should conduct a study on the fluoride content of infant formula products on sale in Hong Kong

6. CFS collected sample data of infant formula products in 2012, of which ten were provided with nutrition labels showing their fluoride content. Upon calculation, the fluoride content of all these ten products was found to be meeting the requirements of the Codex Alimentarius Commission (i.e. not more than 100 mg/100 kcal). To ensure compliance of the infant formula products in the market with the requirements under the Amendment Regulation, CFS will, upon implementation of the Amendment Regulation, take samples of infant formula products in the market for examination of their fluoride content.

Respond to a member's view that the maximum penalty level provided under the proposed new regulation 5(1AC) should be raised from level 5 to level 6 so as to achieve a higher deterrent effect

7. Under the Amendment Regulation, any person who advertises for sale, sells or manufactures for sale any infant formula which does not conform to the nutritional composition requirement, or any infant formula, follow-up formula or prepackaged food for infants and young children that is not marked or labelled in compliance with the nutrition labelling requirements, will commit an offence. Offenders are liable to a maximum penalty of a fine at level 5 (\$50,000) and imprisonment for six months.

8. We are of the view that the criminal liability imposed on the offenders by the above penalty can achieve a deterrent effect. In determining the penalty, we have also taken into account the relativity between such penalty and others relating to food labelling requirements. However, having regard to Members' views on whether the suggested penalty has a sufficient deterrent effect, we consider it more appropriate to conduct a comprehensive review of the food safety-related penalties under the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislation as well as the Food Safety Ordinance (Cap. 612). We will commence the relevant work next year.

Yours sincerely,



(Jeff LEUNG)

for Secretary for Food and Health