The Administration's response to concerns raised on the Factories and Industrial Undertakings (Medical Examinations) Regulation at the meeting of the Subcommittee on Regulations relating to Occupational Safety and Health on 11 April 2000

(a) The Administration to re-consider whether it is necessary to provide a grace period of three months after the commencement of the Regulation for employees engaged in designated occupations to be medically examined.

It is our legislative intent to require all serving workers in the designated occupations, who have been employed in their occupations prior to the commencement of the Regulation, to be medically examined for the first time shortly after the commencement date. According to the first version of the Regulation submitted to the Subcommittee, employees employed in the designated occupations should be medically examined "from time to time". In our opinion, "from time to time" covers periodic medical examinations for workers newly employed after the commencement of the Regulation, as well as the first medical examination of serving workers. At the Subcommittee meeting on 11 November 1999, Members raised their concerns that this intent has not been clearly reflected in the first version of the Regulation. To clarify, the Administration proposed to add section 3(2), which requires the first medical examination of serving workers to be conducted within a reasonable grace period (3 months).

At the meeting on 11 April 2000, Members raised that the 3-month grace period provided in section 3(2) might motivate proprietors to dismiss serving workers before the grace period is due in order to avoid the medical expenses. It was proposed that instead of providing for a grace period under the Regulation, all serving workers should have been medically examined when the Regulation is brought into operation, after serving reasonable prior notice of the requirements of medical examinations.

Having re-considered the latest suggestion, the Administration holds the view that the chance for proprietors to dismiss serving workers within the grace period in order to avoid medical expenses is rather slim. It is because the grace period is only applicable to serving workers at the time the Regulation is brought into operation, the medical expenses (around

$400 per worker) saved are one-off savings. Comparing with severance payments, long service payments and other payments required under the Employment Ordinance and the employment contracts which may arise, the medical expenses saved are insignificant. On the other hand, removing the grace period would not prevent proprietors from dismissing serving workers in order to avoid the medical expenses because they could still dismiss the workers concerned on the eve of the commencement of the Regulation.

We consider section 3(2), which requires the first medical examination of serving workers to be conducted within a reasonable period of time after the commencement of the Regulation, necessary. The length of the grace period is largely a matter of implementation. In any case, adequate publicity would be staged in due course to ensure proprietors are well informed of the commencement date of the Regulation. As shortening or removing the grace period would not improve the Regulation, we consider it inappropriate to revise the Regulation in the manner suggested.

(b) The Administration to consider a central levy system to pay for the medical examinations of casual workers in the catering industry, who are required to be medically examined under the Regulation, based on the database of the Mandatory Provident Fund.

The proposal concerning collection of the proposed levy based on the database of the Mandatory Provident Fund (MPF) is not feasible. Pursuant to sections 41 and 42 of the Mandatory Provident Fund Schemes Ordinance (MPFSO), the Mandatory Provident Fund Schemes Authority (MPFA) cannot disclose information obtained in the exercise or performance of its functions conferred or imposed by or under the MPFSO. Similarly, insurance companies (MPF approved trustees) cannot disclose information to the MPFA or any other person other than for the purpose of the MPFSO, or they would have contravened the MPFSO and possibly the Data Privacy Ordinance.

Even if disclosure is to be permitted, the database is not of value because it cannot identify the number of workers in Chinese restaurant kitchens who are required to be medically examined under the proposed Regulation. Under the MPF System, as far as the catering industry is concerned, employers are required to enrol their employees in registered MPF schemes and make mandatory contributions on their behalf. However, the MPFA database will only include the number of employees employed by each participating employer, without any details on the names of the employees and their posts. As the proposed Regulation

does not apply to all employees in the catering industry, the MPFA database cannot provide sufficient information for a fair levy-collecting mechanism to be developed.

The proposal also suffers another practical problem: who to collect the levy. MPF approved trustees are approved by the MPFA to operate MPF master trust schemes or MPF industry schemes which are registered with the MPFA. These approved trustees are not empowered to collect levies on behalf of the Government. In the absence of an existing establishment to absorb the work of collecting the levy and administering the scheme of medical examinations of casual workers in the catering industry, putting in place a central levy system in the catering industry, whose working population is not expected to be very large, may not be cost effective.