

Code of Practice on Section 78B Orders

under Part VA of
Public Health and
Municipal Services Ordinance
(Cap. 132)

**CODE OF PRACTICE ON SECTION 78B ORDERS
UNDER PART VA OF
PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(CAP. 132)**

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CHAPTER 1: BACKGROUND

1.1 The Public Health and Municipal Services (Amendment) Ordinance 2009, which was published in the gazette on 8 May 2009 and came into force on the same day, amended the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”) by empowering the Director of Food and Environmental Hygiene (“the Authority”) to make an order under the new section 78B of Cap. 132 (“section 78B order”) if the Authority has reasonable grounds to believe that the making of the order is necessary to prevent or reduce a possibility of danger to public health or to mitigate the adverse consequence of a danger to public health. The orders may –

- (a) prohibit the import of any food;
- (b) prohibit the supply¹ of any food;
- (c) direct that any food supplied be recalled;
- (d) direct that any food be impounded, isolated, destroyed or otherwise disposed of; or
- (e) prohibit the carrying on of an activity in relation to any food or permit the carrying on of such activity in accordance with conditions.

¹ “Supply” means (a) to sell the food; (b) to offer, keep or exhibit the food for sale; (c) to exchange or dispose of the food for consideration; (d) to transmit, convey or deliver the food in pursuance of (i) a sale; or (ii) an exchange or disposal for consideration; or (e) for commercial purposes, to give the food as a prize or to make a gift of the food.

CHAPTER 2 INTRODUCTION

2.1 This Code of Practice is issued under the new section 78K of the Ordinance. This Code of Practice (hereinafter referred to as the “Code”), is identified as “Code of Practice on Section 78B Orders” in Gazette Notice (G.N. 2766 of 2009), and takes effect on 8 May 2009. A failure on the part of any person to observe any provision of the Code does not of itself render that person liable to any civil or criminal proceedings. However, if in any legal proceedings², the court³ is satisfied that a provision of the Code is relevant to determining a matter that is in issue in the proceedings –

- (a) the Code is admissible in evidence in the proceedings; and
- (b) proof that the person contravened or did not contravene a relevant provision of the Code may be relied on by any party to the proceedings as tending to establish or negate that matter.

2.2. The Authority may from time to time revise the whole or any part of the Code after consulting stakeholders, if possible, and may at any time revoke the Code.

2.3 This Code aims to –

- (a) explain the relevant powers of the Government; and
- (b) set out the actions that the trade should take for compliance with section 78B orders.

It is important to note that the compliance with the Code does not of itself confer immunity from any legal obligations in Hong Kong.

2.4 The making of a section 78B order is in the common interest of the industry, the Government and, in particular, the consumers. While it is an effective and powerful tool to remove from the market any food that may be unsafe, it is always in the best interest of both the trade and the consumers for the relevant traders to suspend import/ supply or carry out recalls voluntarily. An industry-initiated recall (voluntary recall), which is much more common than a mandatory one in different overseas jurisdictions, is a fundamental way for any responsible trader to ensure that unsafe food is not consumed. It must be emphasized that the objective of a section 78B order is not to penalize the food traders, but to secure cooperation from the trade to protect public health in a systematic and effective manner.

² “Legal proceedings” includes proceedings of the Municipal Services Appeals Board for an appeal against a section 78B order

³ “Court” includes a magistrate and the Municipal Services Appeals Board

CHAPTER 3 SCOPE OF APPLICATION

3.1 Legal provisions related to section 78B order issued under new Part VA of the Ordinance are applicable to food that has the meaning given to it by section 2(1) of the Ordinance (e.g. meat, dairy products, vegetables, bakery products, canned food, bottled soft drink and bottled water, flour, egg, etc.) but includes also live poultry, live reptiles and live fish. The scope of an individual order however depends on what is specified in the actual order.

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| “Food” in section 2(1) of Cap 132 | includes (a) drink; (b) chewing gum and other products of a like nature and use; (c) smokeless tobacco products; and (d) articles and substances used as ingredients in the preparation of food or drink or of such products, but does not include (i) live animals, live birds or live fish (excluding shell fish); (ii) water, other than (A) aerated water; (B) distilled water; (C) water from natural springs, either in its natural state or with added mineral substances; and (D) water placed in a sealed container for sale for human consumption; (iii) fodder or feeding stuffs for animals, birds or fish; or (iv) articles or substances used only as drugs |
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3.2 A section 78B order may be addressed to a particular person or particular persons; a class of persons; or all persons. While a section 78B order is potentially applicable to any person, including non-trade parties, such order would normally only be binding on the food trade. The actual persons to be bound will depend on the circumstances of individual case and the Authority will in all cases specify in the section 78B order the person intended to be bound by the order.

CHAPTER 4: STATUTORY POWERS

4.1 The Authority may make a section 78B order if the Authority has reasonable grounds, at the time of making the order, to believe that the making of the order is necessary to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health.

4.2 The Authority is empowered to make a section 78B order to do any one or more of the acts as specified below –

- (a) prohibit the import of any food for the period specified in the order;
- (b) prohibit the supply of any food for the period specified in the order;
- (c) direct that any food supplied be recalled and specify the manner in which, and the period within which, the recall is to be conducted;
- (d) direct that any food be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which, and the period within which, the impounding, isolation, destruction or disposal is to be conducted;
- (e) prohibit the carrying on of an activity in relation to any food, or permit the carrying on of such activity in accordance with conditions specified in the order, for the period specified in the order.

4.3 As a section 78B order may be addressed to a particular person or particular persons, a class of persons or all persons, the Authority may confine the persons to whom the section 78B order will apply by specifying that person or persons in the order.

4.4 A person bound by a section 78B order who contravenes a term of the order commits an offence and is liable on conviction to a fine at level 6 (\$100,000) and imprisonment for 12 months.

4.5 If it appears to a public officer, authorized in writing in that behalf by the Authority, that a term of a section 78B order has been contravened by a person bound by the order in respect of any food, the public officer may seize and remove from the person any such food or any package in which it is contained; affix to any such food that is in the person's possession a mark, seal or other designation; or destroy or otherwise dispose of any such food that is in the person's possession.

4.6 Apart from the power to make a section 78B order, the Authority may also require a person bound by the order to inform the Authority of the

actions taken by the person in relation to the order (e.g. providing progress reports on a recall exercise), or to provide samples of the food that is the subject of the order for testing and analysis. If the Authority has reasonable grounds to believe that a person possesses any information or document that may assist the Authority in deciding whether to make, vary or revoke a section 78B order, the Authority may require the person to provide any such information or document. Anyone who fails to provide the Authority with the required information or document may be liable to a fine at level 3 (\$10,000) and imprisonment for 3 months.

CHAPTER 5: FORMS OF ORDER

Prohibition of import

5.1 Given the large amount of food imported into Hong Kong, a section 78B order to prohibit import is a highly effective and direct measure for stopping problem food from entering the Hong Kong market. If only the food products produced by a particular overseas plant or only the food products of a particular batch to be imported from overseas are problematic, a prohibition of import is likely to apply to that particular plant or that particular batch of food, instead of all of the relevant food products from the whole exporting country/place.

Prohibition of supply

5.2 If the problem food has already entered Hong Kong or the food is locally produced or manufactured, the Authority will consider making a section 78B order to prohibit supply. Food traders will no longer be allowed to put the food concerned on the market for the period specified in the order.

Recall

5.3 If the problem food has already left the control of the food manufacturers, importers or distributors, it may be necessary for the Authority to make a section 78B order directing the parties concerned to take action to recall the food. A recall means the recovery of the food from all points in the food chain, including the final consumers. The order will direct that any food supplied be recalled in the manner and within the period specified in the order. For example, the order may require the food traders to arrange a public recall announcement and immediately notify all known consumers of the recall and the related arrangements.

Disposal

5.4 Depending on the circumstances, the Authority may also make a section 78B order to require the food traders to impound, isolate, destroy or otherwise dispose of the problem food concerned in the manner and within the period specified in the order.

Prohibit or permit the carrying on of an activity in relation to food

5.5 Where situation warrants, the Authority may need to make an order to prohibit a particular activity in relation to problem food, or permit the carrying on of such activity in accordance with specified condition. Some examples may include –

- (a) raw fish/ oysters which were not intended for consumption in raw state but were supplied for the purpose of raw consumption: the Authority may make a section 78B order under section 78B(1)(e) to prohibit the supply of raw fish/ oysters unless a warning label (e.g. that the food is not intended for consumption in raw state) is properly attached to the product;
- (b) certain common raw material of a particular brand is found to contain highly toxic matter: a section 78B order may be made under section 78B(1)(e) to prohibit all local manufacturers from using that raw material in their production of food.

Points to note

5.6 It must be emphasized that the making of a section 78B order is not an impediment to the taking of any other legal action that may be available to the Government under any law. Also, it is not a defence for a person who has contravened a section 78B order to show that the food concerned is the subject of a licence, permit or any other form of authorization issued or granted under any ordinance.

CHAPTER 6: ROLE OF GOVERNMENT

Making of a section 78B order

6.1 In determining whether there are reasonable grounds to make a section 78B order to prevent or reduce a possibility of danger to public health or to mitigate the adverse consequence of a danger to public health, the Authority may, in so far as is practicable and reasonable, take into account all factors relevant to the circumstances of the case that the Authority considers appropriate, including but not limited to the following –

- (a) information obtained from any importer or supplier of the food;
- (b) information, reports or testing results obtained from a public analyst⁴;
- (c) information (including reports, alerts, warnings and advisories) obtained from any international food or health authority or the food or health authority of any place;
- (d) the time required for obtaining reports or testing results from a public analyst;
- (e) characteristics of any hazard⁵ in the food, the level of the hazard in the food, consumption pattern of the food and the exposure of the general public and vulnerable groups to the food;
- (f) any statutory requirement relating to the food;
- (g) information on the source and extent of the hazard, in particular on whether the hazard exists throughout or in any part of the manufacture or supply chain or is limited to a particular batch of food.

6.2 The Authority is to state clearly in the order the person, persons or class of persons to be bound by the order, the particulars of the food, the reason for making the order and the principal factors that led to the making of the order, the prohibition or action required and conditions (if any) under the order, and the period within which the relevant act is prohibited or required. Sample orders are provided at Appendices I, II & III. The sample orders are for reference only and a section 78B order is subject to modifications taking into account the actual circumstances of each case.

6.3 In cases where there is only a sole importer or a local manufacturer and a few easily identified retailers, a section 78B order may be addressed to

⁴ “Public analyst” means the Government Chemist, the Government Pathologist and any analyst appointed by the Chief Executive for the purposes of the Public Health and Municipal Services Ordinance (Cap. 132).

⁵ “Hazard” means a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.

and served on the particular importer or local manufacturer and the retailers. In such cases, an order will take effect when it is served on the person bound by it. However, in cases where the food concerned has been widely distributed, it may not be possible for the Authority to serve the order on every single food trader. In order to protect public health, the orders will be published in the Gazette. In such cases, an order will take effect at the time specified in it.

6.4 After a section 78B order is made, the Food and Environmental Hygiene Department (“FEHD”) may take the following actions –

- (a) make public announcements through press release, electronic alerts, and internet;
- (b) enforce the order and monitor the progress;
- (c) assess the adequacy of actions taken;
- (d) request for information;
- (e) take samples of the food that is the subject of the order for analysis, or for bacteriological or other examinations;
- (f) vary or revoke the order;
- (g) monitor the disposal of food;
- (h) audit the effectiveness of the order; and
- (i) consider the need to tighten up the licensing requirements (where the recall / cessation of supply is related to serious defects in the manufacturing process locally).

6.5 For industry-initiated recalls/ cessation of supply or import of food (voluntary recalls/ cessation of supply or import), the FEHD may also take the above actions as necessary, depending on the actual circumstances. For both mandatory and voluntary recall/ cessation of supply or import, the FEHD may publicize the recall/ cessation of supply or import when it considers that the public needs to be alerted to the possible danger to public health or that clarification of the situation needs to be made to allay public concerns. The FEHD may, depending on circumstances, alert the public before making a section 78B order.

Make public announcements through press release, electronic alerts and internet

6.6 Even before a section 78B order is made, the FEHD may via press release or the website of the Centre for Food Safety (CFS) (www.cfs.gov.hk) announce a food alert or the possibility of making an order. Information will also be disseminated to the traders concerned through the Rapid Alert System of the CFS. Traders interested to join the system should approach the Risk Communication Section of CFS at 2867 5125 for details or visit the CFS’s website (http://www.cfs.gov.hk/english/whatsnew/whatsnew_rasi.html).

Enforce the order and monitor the progress

6.7 FEHD officers will contact parties concerned, if necessary, to check on the actions taken in relation to the order, or to request detailed information on the volume of import or distribution, time of import or distribution, stock remaining and distribution chain. As explained in paragraph 4.6, a person bound by a section 78B order is obliged under the law to provide the information requested. The Authority may, as necessary, require traders to submit interim reports at interval (e.g. within 2 weeks) on the relevant information, including the progress of meeting the requirements set out in the section 78B order. Depending on the circumstances in each case, the Authority may require the traders to take all, or some, of the steps listed in paragraph 7.13 or to include other requirements. FEHD officers may conduct checking at retail outlets to ensure that the section 78B order has been complied with and the remaining stocks are properly stored and protected.

Assess the adequacy of actions taken

6.8 FEHD may assess the adequacy of the traders' action, including the following:

- (a) prompt announcement of recall/ prohibition of supply or import through the media;
- (b) setting up of customer enquiry service;
- (c) agreement amongst the importers, distributors and retailers on recall/ prohibition of supply or import arrangement, such as convenient and adequate locations for return of the food concerned;
- (d) the promptness in withdrawing the food concerned from shelves at retail end and proper storage of food in locations which are inaccessible by the customers pending return to warehouse of importers or distributors;
- (e) the promptness in returning the food withdrawn to the warehouse of importers or distributors and the appropriate way of disposal; and
- (f) whether proper record of the recalled food is kept by traders concerned;
- (g) the investigation into the cause of defect and the remedial action taken (investigation report with improvement measures to be submitted to FEHD).

Request for information

6.9 Food traders concerned should provide FEHD with information or documents on results of further tests of relevant food and further available

information about the food from parties concerned (e.g. manufacturer of product or regulatory agency of the food exporting country).

Take samples of the food that is the subject of the order

6.10 Food traders concerned should offer assistance to the staff of FEHD to take sample of the relevant food for analysis, or for bacteriological or other examination.

Vary or revoke the order

6.11 Based on various factors, such as subsequent test results and professional judgment, the Authority may revoke a section 78B order, or vary the length of the order period, the manner of disposal, etc.

Monitor the disposal

6.12 The Authority may specify in a section 78B order the manner of the disposal of the relevant food and its proper storage in locations which are inaccessible by the customers before disposal. In the case of a section 78B order which does not include a direction to dispose of the relevant food, the trader concerned should upon request, inform FEHD of the quantity of the food concerned and the intended way of disposal in writing before taking action for the disposal. The trader should also seek permission and advice from the Environmental Protection Department before disposal at landfills, and to invite FEHD officers to supervise the disposal at landfills to ensure the recalled food are properly destroyed. For permission to return the recalled food to the country / place of origin or deliver to other destination for reprocessing or disposal, FEHD will consider the request on a case-by-case basis and the applicant will be informed of the way of disposal acceptable to FEHD accordingly.

Audit the effectiveness of a section 78B order

6.13 The food traders concerned should, upon request by FEHD, submit interim reports with relevant information and at intervals as specified. Information that may be required in the report include details on the volume of import or distribution, time of import or distribution, stock remaining, distribution chain, all steps taken for compliance with a section 78B order. FEHD may also assess the effectiveness of the order by conducting checks at retail outlets to ensure withdrawal of the relevant food from shelves, requesting the food traders to report on the compliance of requirements as stipulated in the relevant order, prompt return of the recalled food to distributors, sufficiency of customer hotlines and adequate points for receiving recalled food from the customers, etc. Enforcement action such as marking and sealing the food specified in the order to restrict its further

movement may be taken if FEHD finds that the requirements as stipulated in the section 78B order are not complied with.

Consider the need to tighten up the licensing requirements

6.14 If the defects of the relevant food are caused by insufficient licensing control of local licensed food businesses, FEHD may review the licensing requirements or conditions and consider imposing additional licensing requirements or conditions to the licensee in order to prevent recurrence of similar problem in future.

Seizure, marking or destruction of food

6.15 Under the new section 78I, if it appears to a public officer authorized in writing in that behalf by the Authority that a term of a section 78B order has been contravened by a person bound by the order, the public officer may –

- (a) seize and remove from the person any such food or any package in which it is contained;
- (b) affix to any such food that is in the person's possession a mark, seal or other designation; or
- (c) destroy or otherwise dispose of any such food that is in the person's possession or cause it to be destroyed or otherwise disposed of.

6.16 It means that unless a food trader fails to comply with a term of a section 78B order, FEHD will not exercise the power under section 78I to seize, mark or destroy his food. For example, if a food product that is prohibited for supply under a section 78B order is seen on a market shelf in a supermarket, FEHD will consider invoking the power under section 78I.

6.17 Under most circumstances, FEHD would only affix to the food a mark, seal or other designation such that the food concerned would continue to be held at the traders' premises; but the traders would not be allowed to sell the food or remove, alter or obliterate the mark, seal or designation affixed by a public officer. Such arrangement would facilitate the processing of food by the traders once FEHD decides to release the food to the traders. However, if the traders refuse to cooperate with the Authority, FEHD will need to invoke the power to seize the food. In such cases, the food products will be properly handled and stored by FEHD to ensure that they remain, as far as possible, as the same conditions at the time when they are seized.

CHAPTER 7: ROLE OF FOOD INDUSTRY

7.1 Once any food trader is aware of the possibility of his food being unsafe, the trader, who may be an importer, distributor or retailer, should inform the FEHD of the situation (except for quality or similar reasons or as a precautionary measure in the absence of ground for an official recall), take all reasonable steps to stop import/ supply of the food, or to recall the food, and keep the FEHD informed of the developments, even in the absence of a section 78B order. Traders should inform FEHD in advance for any voluntary recall action if the company intends to make public announcement about the action, whether or not the action is only a precautionary measure. For voluntary suspension/ recall action, it should be undertaken in consultation with the FEHD, and preferably with prior agreement on the recall strategy. **The food industry bears the primary responsibility of implementing a suspension of import or supply or a recall, including follow-up checks to ensure that recalls are successful and that subsequent batches of the food are safe for human consumption.**

7.2 Traders should keep all relevant parties informed of the latest developments. If the suspension/ recall involves food exported overseas, the trader concerned should notify, as soon as practicable, overseas recipients of the food concerned. For both mandatory and industry-driven suspension (voluntary suspension) of import or supply or recall, the trade should observe the following principles –

- (a) handle the matter with urgency and transparency;
- (b) take all reasonable steps to inform all persons who may possess food that is unsafe or potentially unsafe; and
- (c) retrieve the food or have it disposed of in a suitable manner.

7.3 Along with the particulars of the food concerned, and the description of the problem, actions required from the traders and the time frame will be specified in the relevant section 78B order. The actions generally required are elaborated below.

Prohibition of import

7.4 Food importers concerned should cease immediately the importation into Hong Kong the food in question once a prohibition of import order is made.

7.5 If a consignment of the food concerned is being transported into Hong Kong at the time when an order is in force, FEHD may bar it from entry, mark and seal, or seize the food. Depending on the circumstances, FEHD may permit, on a case-by-case basis, special arrangement allowing the consignment to return to its country/place of origin in its original transporting

media or directing the consignment to a designated place for temporary storage in a specified period of time, for the purpose of re-exporting to its place/country of origin or other places as accepted by FEHD. In some cases, the person in possession of such food products may consider surrendering the food to FEHD for disposal.

Prohibition of supply

7.6 Importers and distributors should immediately cease supplying the food in question, while retailers should remove the relevant food from the shelves immediately. The food retrieved should be stored in a place not accessible by the customers while pending return to the suppliers concerned. Manufacturers should store the food separately and should not make them available for use in any production processes.

Recall

Notification and progress updates to the FEHD

7.7 For transparency and best protection of public health, the trade should, upon request, keep the FEHD informed of the cause of recall by completing the Food Recall Notification at Appendix IV and submitting it to FEHD either by fax or by post. For details of the recall procedures, Superintendent (Food Surveillance)¹ can be contacted at 2867 5567.

Informing the consumers

7.8 The food traders concerned should inform the consumers of the recall at the earliest possible moment. Information dissemination may take the form of a press release, letter to the concerned parties or advertisement in the media. Sufficient telephone enquiry service should be made available. A section 78B order will set out the minimum action required by the persons bound by the order and such persons are recommended to take any other action deemed necessary. Some common actions required include the setting up of telephone enquiry service, making public announcement, putting up posters in stores, arranging with retailers for receiving the food concerned from customers.

Removal from shelves

7.9 Retailers should remove the relevant food from the shelves immediately and store them in a place which is inaccessible by the customers while pending return to the importer or distributor concerned. Manufacturers should store the food separately and should not make them available for use in any production processes.

Food recovery

7.10 Retailers should keep a proper record of the quantity of the withdrawn food for returning to the distributor. The recalled food, with proper identification, should be stored in a separate area away from other foods and with proper labelling or marking to prevent accidental delivery.

Follow-up action

7.11 Apart from the progress updates, the traders concerned should also, upon request by FEHD, provide a post-recall report within a period specified by FEHD. The reports should contain essential information such as:

- (a) the circumstances leading to the recall;
- (b) the action taken by the company including details of any publicity;
- (c) the extent of distribution of the relevant batch in Hong Kong and overseas;
- (d) the result of the recall (quantity of stock returned, outstanding, etc.);
- (e) the proposed method of disposal or otherwise record of destruction for returned food; and
- (f) investigation report on cause of defects and the action proposed to be implemented in future to prevent a recurrence of the problem.

7.12 The report helps to establish the effectiveness of the recall. To be effective, recall notification must reach as far as the food has been distributed. The effectiveness of the recall is assessed upon the amount of food returned as a percentage of the amount of food which has left the manufacturer while taking into account the retail turnover of the food. The FEHD may investigate and audit the recall process, if necessary. If the reports are unsatisfactory, extension of recall action may have to be considered.

Details on action required for a recall

7.13 To minimize the risk that may arise, recalls are usually carried out in the shortest time practicable. **Traders are encouraged to develop its own recall procedure beforehand so that it can respond promptly to any emerging situation.** The procedure should be able to achieve the purposes of stopping distribution and sale of an affected item, notifying the public and the FEHD of the problem, and effectively and efficiently retrieve from the market any food which is potentially unsafe. Steps which may be required from a trader in a section 78B order for conducting a recall are explained below for general reference. The list below is by no means exhaustive and the actual requirements may vary between orders according to the needs of each case.

(A) **Importer / local manufacturer**

1. Set up telephone enquiry service to handle enquiries related to the recall incident as soon as possible.
2. Within a specified time from the date of the order, arrange a press release, an announcement (not less than a specified size) in one of the Chinese newspapers and one of the English newspapers with wide circulation in Hong Kong for at least a specified period, **or** a public announcement in appropriate form. Depending on the actual circumstances, the Authority may specify the form(s) of announcement to be issued. The announcement shall have:
 - (a) the heading ‘Food/Product’s Name - Recall Announcement’;
 - (b) the description and brand (if any) of the food ;
 - (c) picture(s) of the food;
 - (d) details of the recall arrangement (such as period of recall, place of recall or return of the food);
 - (e) the full name, address and telephone number of the recalling trader(s)/organization(s) /person(s); and
 - (f) the telephone enquiry service for the recall.
3. Notify all known distributor(s), retailer(s) and consumers of the recall and its arrangement within a specified time.
4. Conduct a stock take of the in-house storage facilities and isolate any remaining stock that relates to the recalled food.
5. Inform FEHD of the list of parties involved (e.g., distributor(s), retailer(s), organization(s) or person(s) to whom the food has been supplied) within a specified time from the commencement.
6. Display posters of not less than a specified size, containing the information as referred to in paragraph 2(a) – (f) above at a conspicuous location on the importer’s or manufacturer’s premises and on the distributors’ and retailers’ premises for not less than a specified period from the date of announcement.
7. If the food concerned is returned by distributor(s), retailer(s) or consumers, the recalling trader(s) shall retract the unsafe food. The arrangement should last for at least a specified period after the

recall is first announced.

8. Provide the FEHD progress reports periodically as specified with the following details:
 - (a) date and quantity of the food recalled;
 - (b) name, address and telephone number of the companies, organizations or persons from which the food have been returned;
 - (c) name, address and telephone number of the companies, organizations or persons from which the food has not been returned;
 - (d) quantity of the food concerned stored in warehouse before commencement of the recall;
 - (e) corrective action taken to improve effectiveness of the recall and the estimated time frame for the completion of the recall; and
 - (f) location(s) of keeping the recalled food.
9. Submit final report to FEHD within a specified time from the date of completion of recall and the report should contain the following information:
 - (a) the names of the organizations or persons from whom the food was returned;
 - (b) the amount of the food returned;
 - (c) a reconciliation between the delivered and recovered quantities of the food;
 - (d) the results of investigations on the cause of the defect of the food and result of further testing of the returned food, if required;
 - (e) the effectiveness of the recall and what corrective actions have been taken with respect to the recall;
 - (f) the decision on the disposal method of the returned food; and
 - (g) the means of preventing recurrence of the defect.

(B) Distributor

1. Set up a telephone enquiry service to handle enquiries related to the recall incident as soon as possible.
2. Immediately notify all known retailer(s) and consumers of the recall and its arrangement.
3. Display posters of not less than a specified size, containing the information as referred to in paragraph (A)2(a) – (f) above at a conspicuous location on the distributor's premises for not less than a specified period from the date of announcement.
4. Conduct a stock take of the in-house storage facilities and isolate any remaining stock that relates to the food concerned.
5. If the food is returned by retailer(s) or consumers, the recalling trader(s)/organization(s)/person(s) shall retract the unsafe food. The arrangement should last for at least a specified period after the recall is first announced.
6. To keep records of recalled food, which should contain:
 - (a) a description of the food returned such as brand and product name, size, identifying codes;
 - (b) the date and quantity of food returned; and
 - (c) what has been done with the food, for example, returned to the supplier(s).

(C) Retailer

1. Set up a telephone enquiry service to handle enquiries related to the recall incident as soon as possible.
2. Immediately notify all known consumers of the recall and its arrangement.
3. Display posters of not less than a specified size, containing the information as referred to in paragraph (A)2(a) – (f) above at a conspicuous location on the retailer's premises for not less than a specified period from the date of announcement.
4. Remove the food concerned from the shelves immediately and

store it in a place not accessible by the customers while pending return to the supplier concerned. Also, the food should be separately stored and not available for use in any production processes in case it is an ingredient for producing food product inside the premises.

5. If the food is returned by consumers, store the food in a place not accessible by customers while pending return to the supplier concerned.
6. Keep records of recalled food, which should contain:
 - (a) a description of the food returned such as brand and product name, size, identifying codes;
 - (b) the date and quantity of food returned; and
 - (c) what has been done with the food, for example, returned it to the supplier(s).

CHAPTER 8: APPEAL AND COMPENSATION

8.1 A person bound by a section 78B order (including a varied order) who is aggrieved by the order may appeal to the Municipal Services Appeals Board (MSAB) within 28 days from becoming bound by it. In order to protect public health, an appeal made to the MSAB would not suspend the order unless the Authority decides otherwise.

8.2 A person bound by a section 78B order may apply for an amount of compensation for losses arising as a direct result of compliance with the section 78B order or as a direct result of the exercise of a power under section 78I(1) which concerns -

(a) The total or partial loss of the food that is the subject of the order and that has been destroyed or otherwise disposed of; is no longer fit for human consumption; or is depreciated in value. The compensation must not exceed the market value of the food;

(b) The costs or expenditure actually and directly incurred. The compensation must not exceed the actual amount of the costs or expenditure incurred.

8.3 The person is entitled to compensation only if the person proves that –

(a) the Authority did not have reasonable grounds to make the order at the time of making the order or to vary the order at the time of a variation of the order; and

(b) the person has suffered the relevant loss.

8.4 An application may be made to the Small Claims Tribunal, for claims up to the maximum jurisdiction of the Tribunal; or to the District Court, irrespective of the amount claimed. The compensation is recoverable as a civil debt due from the Government, and must be just and equitable in all the circumstances of the case.

CHAPTER 9: DEFENCE

9.1 Under section 78D, it is a defence for an employee charged with the offence of contravening the term of a section 78B order to show that –

- (a) the act done or omission made by the employee in contravention of a term of a section 78B order was done or made in the course of the employee's employment and under instructions given by the employer in the course of that employment; and
- (b) the employee was not, at the relevant time, in a position to make or influence a decision regarding that act or omission.

9.2 Under section 78J, an act done or omission made by -

- (a) an employee in the course the employee's employment, is treated as done or made by the employer, as well as by the employee; and
- (b) an agent of another person with the authority (whether express or implied and whether precedent or subsequent) of that other person, is treated as done or made by that other person, as well as by the agent.

However, if any proceedings are brought against a person in respect of an act or omission alleged to have been done or made by an employee or agent of the person, it is a defence for the person to show that the person has exercised all due diligence to prevent the employee or agent from doing the act or making the omission, or doing an act or making an omission of that description in the course of the employee's employment or the agent's authority.

9.3 In determining whether due diligence has been exercised, various factors may be taken into account, e.g. whether clear instructions have been given by the employers to the employees to remove the particular food from shelf, whether the employers have assigned appropriate staff to handle the job, and whether the employers have conducted checking or taken any measures to ensure that the employees have followed the instructions.

Centre for Food Safety

Food and Environmental Hygiene Department

May 2009

[SAMPLE ORDER]
PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)
(Section 78B)
Section 78B Order

Order No. : _____

FEHD Ref. : _____

TO : _____

This Order takes effect at _____ (specify the time) on _____
(specify the date).

I now have reasonable grounds to believe that the making of this order in relation to the food specified in Annex A is necessary to prevent or reduce a possibility of danger to public health, or to mitigate any adverse consequence of a danger to public health, the details of which are specified in Annex B. **I DO**, in exercise of my powers under section 78B(1) of the Public Health and Municipal Services Ordinance (Chapter 132), order that :

- a. you be prohibited from importing into Hong Kong the food specified in Annex A, that is intended for human consumption, for the period from _____ (specify the date and time) to _____ (specify the date and time).
- b. you be prohibited from supplying¹ within Hong Kong the food specified in Annex A, that is intended for human consumption, for the period from _____ (specify the date and time) to _____ (specify the date and time).
- c. the food specified in Annex A, that is intended for human consumption and has been supplied by you, be recalled in the manner specified in Annex C, within a period of _____ days from _____ (specify the date and time).

¹ “Supplying” means (a) selling the food; (b) offering, keeping or exhibiting the food for sale; (c) exchanging or disposing of the food for consideration; (d) transmitting, conveying or delivering the food in pursuance of (i) a sale; or (ii) an exchange or disposal for consideration; or (e) for commercial purposes, giving the food as a prize or making a gift of the food.

- d. the food specified in Annex A, that is intended for human consumption and is in your custody or possession, be impounded/ isolated/ destroyed/ _____

 (specify if to be otherwise disposed of)* in the manner specified in Annex D, within a period of _____ days from _____
 (specify the date and time).
- e. you be prohibited from carrying on/ be permitted to carry on* _____
 _____ (specify the activity) in relation to the food specified in Annex A, that is intended for human consumption, subject to the conditions specified in Annex E (in the case of permission), for the period from _____
 (specify the date and time) to _____ (specify the date and time).

(* Delete whichever is inapplicable)

(Complete whichever of paragraphs (a) to (e) is applicable and delete other paragraphs)

If you feel that you are aggrieved by this order, you may, within 28 days from becoming bound by it (that is the date and time specified in paragraph 1), appeal to the Municipal Services Appeals Board.

Note : A person bound by this order who contravenes a term of the order commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 12 months.

Dated this _____

 ()
 Director of Food and Environmental Hygiene

FOOD SPECIFIED IN THE ORDER

| Brand Name & Food Name/ Designation | Manufacturer's/ Packer's Name & Address | Country of Origin/Place of Origin/ Distributor's Address | Count/ Weight/ Volume | Best Before/ Use By Date | Batch No./ Bar Code No. |
|-------------------------------------|-----------------------------------------|----------------------------------------------------------|-----------------------|--------------------------|-------------------------|
| | | | | | |

**REASON FOR MAKING THE ORDER AND
PRINCIPAL FACTORS THAT LED TO MAKING OF THE ORDER**

MANNER IN WHICH A RECALL SHOULD BE CONDUCTED

**MANNER IN WHICH THE FOOD SHOULD BE IMPOUNDED / ISOLATED /
DESTROYED / DISPOSED OF***

* Delete whichever is inapplicable

**CONDITIONS SUBJECT TO WHICH
THE SPECIFIED ACTIVITY IS PERMITTED**

[SAMPLE ORDER]
PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)
(Section 78B)
Revocation of Section 78B Order

Order No. : _____

FEHD Ref. : _____

TO : _____

This Order takes effect at _____ (specify the time) on _____
(specify the date).

For reason(s) and principal factors specified in Annex A, now I believe that the Order No. _____ that took effect at _____ (time) on _____ (date) is no longer necessary to prevent or reduce a possibility of danger to public health, or to mitigate any adverse consequence of a danger to public health, **I DO**, in exercise of my powers under section 78B(4) of the Public Health and Municipal Services Ordinance (Cap. 132), revoke that order with effect from _____ (specify the date and time).

Dated this _____

()
Director of Food and Environmental Hygiene

REASON FOR REVOKING THE ORDER AND
PRINCIPAL FACTORS THAT LED TO REVOKING THE ORDER

[SAMPLE ORDER]
PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(Chapter 132)
(Section 78B)
Variation of Section 78B Order

Order No. : _____

FEHD Ref. : _____

TO : _____

This Order takes effect at _____ (specify the time) on _____
(specify the date).

For reason(s) and the principal factors specified in Annex A, **I DO**, in exercise of my powers under section 78B(4) of the Public Health and Municipal Services Ordinance (Cap. 132), vary the Order No. _____ that took effect at _____ (time) on _____ (date)(the section 78B order) in the following manner :

If you feel that you are aggrieved by this variation, you may, within 28 days from becoming bound by this variation, appeal to the Municipal Services Appeals Board against the section 78B order as so varied.

Note : A person bound by the section 78B order as varied by this order who contravenes a term of the order commits an offence and is liable to a fine at level 6 and to imprisonment for 12 months.

Dated this _____

()
Director of Food and Environmental Hygiene

REASONS FOR VARYING THE ORDER AND
PRINCIPAL FACTORS THAT LED TO VARYING THE ORDER

Appendix IV

Food Recall Notification

To: Director of Food and Environmental Hygiene
(Attn: Superintendent (Food Surveillance)1)
43/F, Queensway Government Offices, 66 Queensway, Hong Kong.
(Facsimile: 2521 4784)

General

| | |
|-----------------------------------------------------------|-----------------------------------------------------------------------|
| Name & Address of Recalling Company : | |
| | |
| Contact Officer : (Position) : | Telephone : (mobile) (office) Fax : |
| | |
| Date of report/complaint to Company : | Date of notification to Food and Environmental Hygiene Department : |
| | |
| <u>Description of Food</u> | |
| Food Type : | Weight/Count : |
| | |
| Brand Name : | Product/Pack Size: |
| | |
| Date Marking : | Batch/Number code: |
| | |
| Quantity/ No. of Product Affected : | Origin/ Name, Address & Tel. No. of Local/ Overseas Manufacturer : |
| | |
| | |
| Name & Tel. No. of person and post reporting the problem: | Date of reporting: |
| | |

| | |
|--------------------------------------------------------------------|---------------------|
| Has any testing been undertaken : | Nature of problem : |
| | |
| Results : | |
| | |
| <u>Extent of Distribution of the Product</u> | |
| Hong Kong : | Overseas : |
| | |
| <u>Action Proposed and Actions Taken</u> | |
| (e.g. enquiry hotline, details of recall arrangement & plan, etc.) | |
| | |
| <u>Other Relevant Information</u> | |
| (Please attach extra sheets if space is insufficient) | |
| | |

