

Measures for the Administration of Food Circulation Permits

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The Measures for the Administration of Food Circulation Permits, which were deliberated and adopted at the executive meeting of the State Administration for Industry and Commerce of the People's Republic of China, are hereby promulgated and shall come into force on the date of promulgation.

Director-general Zhou Bohua

July 30, 2009

Measures for the Administration of Food Circulation Permits

Chapter I General Provisions

Article 1 For the purposes of regulating the food circulation licensing activities and strengthening the administration of Food Circulation Permits, these Measures are formulated in accordance with the Food Safety Law of the People's Republic of China (hereinafter referred to as the "Food Safety Law"), the Administrative License Law of the People's Republic of China, the Regulation on the Implementation of the Food Safety Law of the People's Republic of China (hereinafter referred to as the "Regulation on the Implementation of the Food Safety Law") and other relevant laws and regulations.

Article 2 The applications for, acceptance, examination and approval of applications for, and supervisory inspection, etc. relevant to the food circulation permits shall be governed by these Measures.

Article 3 Whoever is engaged in the food circulation business operations shall obtain a food circulation permit according to law.

A food producer which has obtained a food production permit need not obtain a food circulation permit when selling self-produced food at its production place. A catering service provider which has obtained a catering service permit need not obtain a food circulation permit when selling self-made or self-processed food at its catering service place.

Article 4 The local industry and commerce administrative departments at and above the county level shall be the organs carrying out the food circulation licensing, and the specific work shall be carried out by the functional departments in charge of the food circulation safety supervision and administration. The division of licensing jurisdictions of the local industry and commerce administrative departments at various levels shall be determined by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government.

Article 5 The food circulation licensing shall follow the principle of legality, openness, fairness, impartialness, convenience for the people and high efficiency.

Article 6 A food dealer shall, after legally obtaining a Food Circulation Permit, apply for industrial

and commercial registration to the industry and commerce administrative department having the registration jurisdiction. No food dealer shall be engaged in food business operations without a Food Circulation Permit and a business license.

If a law or administrative regulation provides otherwise for food stalls, such provisions shall prevail.

Article 7 Where the business operation conditions of a food dealer change and the requirements for food business operations are no longer met, the food dealer shall immediately take rectification measures. If there is any potential risk of a food safety accident, the food dealer shall immediately stop its food business operations, and report to the local industry and commerce administrative department at the county level. If the food dealer is required to handle the licensing formalities anew, it shall handle such formalities according to law.

The local industry and commerce administrative department at or above the county level shall strengthen the routine supervisory inspection of the business operations of food dealers; and after finding any violation of the requirements for food business operations, order the food dealer to make a correction immediately, and impose punishment according to law; and if the conditions for a food circulation permit are no longer met, revoke the food circulation permit according to law.

Article 8 Any organization or individual shall have the right to report any illegal act committed during the examination, verification and granting of the Food Circulation Permit and the supervisory inspection relevant thereto, and the licensing organ shall timely verify and handle the illegal act.

Chapter II Application and Acceptance

Article 9 To apply for a Food Circulation Permit, the applicant shall comply with the food safety standards and meet the following requirements:

- (1) having the places for handling the raw materials of food, processing, packaging and storing food, etc., appropriate for the varieties and quantities of the food under its business operations, keeping the environment of the said places clean, and ensuring that the said places are at a prescribed distance from the toxic or hazardous sites and other pollution sources;
- (2) having the equipment or facilities appropriate for the varieties and quantities of the food under its business operations, and having the corresponding equipment or facilities for disinfection, changing clothes, toilet, lighting, illumination, ventilation, anti-corrosion, anti-dust, anti-fly, rat proof, moth proof, washing, disposal of waste water, and storage of garbage and waste;
- (3) having professional food safety technicians and managerial personnel and rules and regulations for ensuring the food safety; and
- (4) having reasonable equipment layout and technical flowchart to prevent the cross pollution between the food to be processed and ready-to-eat food and between raw materials and finished products and prevent the food from contact with toxic substances or unclean articles.

Article 10 To apply for a Food Circulation Permit, the applicant shall submit the following materials:

- (1) an Application Form for a Food Circulation Permit;
- (2) a photocopy of the Notice of Pre-approval of Name;
- (3) a certificate of use of business premises appropriate for the food business operations;

- (4) the identity certifications of the person in charge and food safety managerial personnel;
- (5) a list of business equipment and tools appropriate for the food business operations;
- (6) the documents on the spatial layout and operating processes of the business facilities appropriate for food business operations;
- (7) the text of the food safety management rules; and
- (8) other materials as prescribed by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government.

Where an applicant authorizes any other person to make an application for a permit, the agent shall submit a power of attorney and the identity certification of the agent or a designated representative.

Where a dealer having obtained a lawful entity status applies for adding the food business operation to its business scope, it shall submit its business license and other evidential materials on its entity status, and need not submit a photocopy of the Notice of Pre-approval of Name.

Where a new enterprise engaged in food business operations applies for a food circulation permit, the investors of this enterprise shall be the applicant for the permit. If an enterprise having obtained an entity status applies for a food circulation permit, this enterprise shall be the applicant for the permit. If a branch of an enterprise applies for a food circulation permit, the enterprise which sets up this branch shall be the applicant for the permit. If an individual applies for a food circulation permit for a new establishment or an individual industrial and commercial household applies for a food circulation permit, the owner shall be the applicant for the permit. An applicant shall affix its/his signature or seal to the application form and other materials.

Article 11 The materials submitted by an applicant for the application for a Food Circulation Permit shall be authentic, legal and valid, and conform to the relevant laws and regulations. The applicant shall be responsible for the legality, authenticity and validity of the materials submitted.

Article 12 Where the branches of an enterprise are engaged in food business operations, the branches shall apply for the Food Circulation Permit respectively.

Article 13 After receiving an application, the licensing organ shall examine the application matter, and handle it according to the following circumstances respectively:

- (1) Where a Food Circulation Permit is not required according to law for the application matter, the licensing organ shall immediately notify the applicant that the application is rejected;
- (2) Where the application matter is not within the extent of functions of the licensing organ, the licensing organ shall immediately decide to reject the application, and notify the applicant to apply to the relevant administrative department;
- (3) Where the application materials contain any error which may be corrected on the spot, the licensing organ shall allow the applicant to make the correction on the spot, and the applicant shall affix its/his signature or seal to the place of correction and indicate the date of correction;
- (4) Where the application materials are not complete or are not in the statutory form, the licensing organ shall, on the spot or within five days, notify the applicant at one time of all necessary supplements and corrections. At the time of notification on the spot, the licensing organ shall return the application materials to the applicant. If the notification is to be made within five days, the licensing organ shall accept the application materials and issue a receipt of the application materials;

if the notification is not made within the time limit, the application shall be deemed as being accepted on the date of receipt of the application materials; or

(5) Where the application materials are complete and in the statutory form, or the applicant has submitted all the supplements and corrections as required, the licensing organ shall accept the application.

Where, after the licensing organ accepts an application for a permit and before it makes a decision on the permit, an applicant files a written request for withdrawing the application for a food circulation permit, the licensing organ shall approve its/his request. If an application for a permit is withdrawn, the licensing organ shall terminate the handling thereof.

Article 14 Where a licensing organ decides to accept an application submitted by an applicant, it shall issue an Acceptance Notice. If it decides to reject an application, it shall issue a Rejection Notice, give reasons for rejection and notify the applicant of its/his right to apply for an administrative reconsideration or institute an administrative lawsuit according to law.

Chapter III Examination and Approval

Article 15 The food circulation licensing matters shall include the business premises, person in charge, licensing scope, etc.

The licensing scope in the food circulation licensing matters shall include the business items and business mode. The business items shall be determined in two categories: pre-packed food and food in bulk; the business mode shall be determined in three categories: wholesale, retail, and wholesale plus retail.

Article 16 The licensing organ shall examine whether the relevant materials submitted by an applicant meet the requirements of subparagraphs (1) to (4) of Article 27 of the Food Safety Law and these Measures. When necessary, it may, according to statutory functions and procedures, conduct an on-site inspection of the business premises of the applicant. The specific measures for the examination of materials and on-site inspection shall be formulated by the administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government.

The licensing organ shall designate two or more law enforcement officers to conduct an on-site inspection, who shall show their valid credentials, and the applicant and food dealer shall cooperate. For an on-site inspection, the On-site Inspection Form for a Food Circulation Permit shall be filled out.

Article 17 Where a licensing organ accepts an application for a food circulation permit submitted by an applicant, it shall decide whether to grant the permit within 20 days from the date of acceptance. If it cannot decide whether to grant the permit within 20 days, the time limit may be extended for ten days upon the approval of the person in charge of the licensing organ, and the applicant shall be notified of the reasons for the extension.

Article 18 Where the licensing organ decides to grant a permit, it shall issue a Notice of Granting a Permit, notifying the applicant to collect the Food Circulation Permit within ten days from the date of decision. If the licensing organ decides to approve the modification of a permit, it shall issue a Notice of Approving Modification of a Permit, notifying the applicant to replace its Food Circulation Permit with a new one within ten days from the date of decision. If the licensing organ decides to approve the cancellation of a permit, it shall issue a Notice of Approving Cancellation of a Permit, and take back and cancel the Food Circulation Permit. If the licensing organ decides to grant a permit, it shall publish such a decision.

Where the licensing organ decides not to grant a permit, it shall issue a Notice of Dismissal of Application, give reasons for not granting the permit, and notify the applicant of its/his right to apply for an administrative reconsideration or institute an administrative lawsuit according to law.

Article 19 Where the licensing organ considers that a hearing is necessary for a major licensing matter involving the public interests, it shall make a public announcement of the matter and hold a hearing.

Chapter IV Modification and Cancellation of Permits

Article 20 Where a food dealer plans to change any licensing matter, it shall apply to the original licensing organ for modifying the food circulation permit. It shall not change any licensing matter without approval.

Article 21 Where a food dealer applies for modifying a food circulation permit to the original licensing organ, it shall submit the following application materials:

- (1) an Application Form for Modification of a Food Circulation Permit;
- (2) the original and duplicate of its Food Circulation Permit; and
- (3) other materials relevant to the modification of the food circulation licensing matter.

Article 22 A food circulation permit shall be valid for three years.

Where a food dealer needs to renew the term of validity of a food circulation permit, it shall, 30 days before the expiry of the term of validity of its Food Circulation Permit, submit an application to the original licensing organ for replacing the Food Circulation Permit with a new one.

Where a permit is renewed, the serial number of the new Food Circulation Permit shall remain unchanged, but the year of issuance of the permit shall be entered according to the actual circumstances, and the term of validity shall be recalculated.

Article 23 Under any of the following circumstances, the licensing organ granting the Food Circulation Permit or the administrative department at a higher level thereof may revoke a granted food circulation permit:

- (1) any staff member of the licensing organ abuses his powers or neglects his duties to grant a Food Circulation Permit to any unqualified applicant;
- (2) any staff member of the licensing organ grants a Food Circulation Permit beyond his statutory powers;
- (3) any staff member of the licensing organ grants a Food Circulation Permit in violation of the statutory procedures; or
- (4) any other circumstance under which a food circulation permit may be revoked according to law.

Where a food dealer obtains a food circulation permit by fraud, bribery or any other illicit means, by concealing the truth or by providing false materials, such a permit shall be revoked.

Where the revocation of a food circulation permit under the preceding two paragraphs may cause significant damages to the public interests, the permit shall not be revoked.

Article 24 Under any of the following circumstances, the licensing organ shall handle the formalities for cancellation of a food circulation permit according to law:

- (1) the term of validity of a Food Circulation Permit expires, and the food dealer does not apply for renewal of it;
- (2) a food dealer fails to obtain a lawful entity status within the statutory time limit or its entity status is terminated according to law;
- (3) a food circulation permit is revoked according to law, or a Food Circulation Permit is forfeited according to law;
- (4) the food circulation licensing matter becomes impracticable for any force majeure; or
- (5) any other circumstance under which a Food Circulation Permit shall be cancelled according to law.

Article 25 Where a food dealer applies for cancellation of its Food Circulation Permit, it shall submit the following application materials to the original licensing organ:

- (1) an Application Form for Cancellation of a Food circulation permit;
- (2) the original and duplicate of its Food Circulation Permit; and
- (3) the evidential documents relevant to the cancellation of its Food Circulation Permit.

The licensing organ shall, after accepting the application for cancellation, cancel the Food Circulation Permit according to law upon examination.

Article 26 Where a food dealer loses its Food Circulation Permit, it shall make a public declaration of invalidation of the permit in a newspaper or periodical, and apply for re-issuance of the permit to the original licensing organ on the basis of the relevant certificates. The original licensing organ shall re-issue the Food Circulation Permit within 20 days upon approval.

Chapter V Administration of Permits

Article 27 There shall be an original and a duplicate of a Food Circulation Permit, which shall be of equal legal effect.

The formats of the original and the duplicate of a Food Circulation Permit and the formats of an Application Form for a Food Circulation Permit, an Application Form for Modification of a Food Circulation Permit, an Application Form for Cancellation of a Food Circulation Permit, etc. shall be uniformly formulated by the State Administration for Industry and Commerce. The administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government shall be responsible for the printing, distribution and administration of the Food Circulation Permits and relevant application documents within its administrative region.

Article 28 A Food Circulation Permit shall expressly state: name, business premises, licensing scope, type of entity, person in charge, serial number, term of validity, issuing organ, and date of issuance.

Article 29 The serial number of a Food Circulation Permit shall comprise two letters and 16 digits, i.e., letters S and P + six-digit administrative division code + two-digit year of issuance + one-digit nature of entity + six-digit sequence number + one-digit computer check code.

The specific coding rules for a Food Circulation Permit shall be separately formulated.

Article 30 After obtaining a Food Circulation Permit, a food dealer shall properly keep it, and shall not forge, alter, sell, lease or lend it or illegally transfer it in any other form.

A food dealer shall hang or place the original of its Food Circulation Permit in a conspicuous position of its business premises.

Chapter VI Supervisory Inspection

Article 31 The local industry and commerce administrative department at or above the county level shall, according to its functions as prescribed by laws and regulations, conduct supervisory inspection of food dealers. The supervisory inspection shall mainly cover:

- (1) whether a food dealer has a Food Circulation Permit;
- (2) whether the dealer immediately takes rectification measures, where the business operation conditions of a food dealer change and the requirements for its business operations are no longer met; whether the dealer immediately stops its business operations and reports to the local industry and commerce administrative department at the county level, where there is any potential risk of a food safety accident; and whether the dealer handles the licensing formalities anew according to law, where it is required to do so;
- (3) whether the dealer applies for modification of the permit according to law or applies for a Food Circulation Permit anew, where any food circulation licensing matter changes;
- (4) whether the Food Circulation Permit is forged, altered, sold, leased, lent or illegally transferred in any other form;
- (5) whether there are certifications that the food dealer's employees are in good health;
- (6) whether there are measures for ensuring food quality and controlling contamination in the processes of storage, transportation and sale of food; and
- (7) other circumstances as prescribed by laws and regulations.

Article 32 The local industry and commerce administrative departments at and above the county level shall establish the credit files of food dealers to record the issuance of permits, results of routine supervisory inspection, investigation and punishment of illegal acts, etc.

When conducting a supervisory inspection of the food business operations of a food dealer, the industry and commerce administrative department shall record the supervisory inspection information and the handling results, and such a record shall be filed after the supervisory inspectors and the food dealer sign it for confirmation.

When conducting the annual inspection of enterprises and the examination of permits of individual industrial and commercial households, the industry and commerce administrative department shall, according to the relevant provisions on such annual inspection and examination of permits, examine whether the Food Circulation Permit has been revoked or forfeited or whether the term of validity thereof has expired. If a Food Circulation Permit has been revoked or forfeited or the term of validity thereof has expired, the registration organ shall, according to the relevant provisions, order the enterprise or household to handle the business scope modification registration or the cancellation registration.

Article 33 Where an applicant for a permit conceals the truth or provides false materials during the application for a food circulation permit, the industry and commerce administrative department shall reject the application or shall not grant a permit, and the applicant shall not apply for a food circulation permit again within one year.

Where a licensee obtains a food circulation permit by fraud, bribery or any other illicit means, the applicant shall not apply for a food circulation permit again within three years.

Where a food production or circulation permit or a catering service permit is forfeited, the directly responsible person in charge shall not be engaged in food business management within five years from the date when the punishment decision is made.

Where a food dealer employs any person forbidden to carry out food production or business management to carry out management, the original permit-issuing department shall revoke its permit.

Article 34 Under any of the following circumstances, a punishment shall be imposed according to laws and regulations. If the laws and regulations are silent, the violator shall be ordered to make a correction, given a warning and fined not more than 10,000 yuan; if the circumstances are serious, the violator shall be fined not less than 10,000 yuan but not more than 30,000 yuan:

- (1) altering any licensing matter without approval;
- (2) forging, altering, selling, leasing, or lending a Food Circulation Permit or illegally transfer a Food Circulation Permit in any other form;
- (3) applying for or obtaining a food circulation permit by concealing the truth or providing false materials; or
- (4) obtaining a food circulation permit by fraud, bribery or any other illicit means.

In accordance with the Law of the People's Republic of China on Administrative Punishment, whoever voluntarily eliminates or reduces the harmful results or falls under any other statutory circumstance may be given a lighter or mitigated punishment; whoever commits a minor illegal act and redresses it in a time manner, causing no harmful results, shall be exempted from punishment.

Article 35 Against a punishment decision made by the industry and commerce administrative department, a food dealer may apply for an administrative reconsideration or institute an administrative lawsuit according to law.

Article 36 Where a food circulation permit of a food dealer is cancelled, revoked or forfeited during the term of validity of its business license, or the term of validity of its Food Circulation Permit has expired, it shall apply for the modification registration or the cancellation registration within 30 days from the date of cancellation, revocation or forfeiture of the permit or the expiry date of the term of validity of the permit.

Article 37 Where any staff member of an industry and commerce administrative department neglects his duties, abuses his powers or practices favoritism, the relevant persons shall be subject to the administrative liability according to law; and if a crime is constituted, shall be subject to the criminal liability according to law.

Article 38 The industry and commerce administrative departments shall create files of food circulation permits according to law.

The borrowing, excerption, carrying and replication of file data shall be governed by the relevant provisions of laws and regulations and the State Administration for Industry and Commerce. No entity or individual shall alter, tamper, mark or damage the file data.

Article 39 The industry and commerce administrative departments shall strengthen the working contact with the food safety comprehensive coordination departments at the same level, and notify them of the relevant food circulation licensing information in a timely manner.

Chapter VII Supplementary Provisions

Article 40 Where a food dealer has obtained a Food Sanitation Permit before these Measures come into force, the original permit shall continue to be valid. If any licensing matter of the original permit changes or the term of validity of it expires, the food dealer shall submit an application according to these Measures, and upon the licensing organ's examination, surrender the Food Sanitation Permit for cancellation and collect a Food Circulation Permit, and the local industry and commerce administrative department shall conduct the supervisory inspection of it under the principle of territorial jurisdiction.

For a food dealer holding a Food Sanitation Permit which continues to be valid, the industry and commerce administrative department shall, in accordance with the Food Safety Law, the Regulation on the Implementation of the Food Safety Law and these Measures, conduct supervisory inspections on a regular or irregular basis.

Article 41 The funds necessary for carrying out the food circulation licensing shall be listed in an industry and commerce administrative department's own budget.

Article 42 The administration for industry and commerce of a province, autonomous region or municipality directly under the Central Government may formulate the specific implementation measures according to the local actualities.

Article 43 The power to interpret these Measures shall remain with the State Administration for Industry and Commerce.

Article 44 These Measures shall come into force on the date of promulgation.