

立法會
Legislative Council

LC Paper No. CB(2)1621/14-15(04)

Ref: CB2/PL/FE

Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by
the Legislative Council Secretariat for the meeting on 9 June 2015**

Implementation of the Nutrition Labelling Scheme

Purpose

This paper provides background information on the Nutrition Labelling Scheme ("the Scheme") and summarizes the main concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the implementation of the Scheme.

Background

2. The Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 ("the Amendment Regulation"), which introduces the Scheme for prepackaged food¹, came into operation on 1 July 2010 after a two-year grace period. The Scheme requires all prepackaged food to label the content of energy plus seven core nutrients, namely: (i) protein, (ii) carbohydrates, (iii) total fat, (iv) saturated fat, (v) trans fat, (vi) sodium, and (vii) sugars, as well as any nutrient for which a claim is made, and regulates different types of nutrition claims². Failure to

¹ "Prepackaged food" means any food packaged, whether completely or partially, in such a way that (a) the contents cannot be altered without opening or changing the packaging; and (b) the food is ready for presentation to the ultimate consumer or a catering establishment as a single food item.

² These include nutrient content claim, nutrient comparative claim and nutrient function claim. A nutrient content claim describes the energy value or the level of a nutrient contained in a food, e.g. "High calcium"; "Low fat"; and "Sugar-free". A nutrient comparative claim compares the energy value or the nutrient levels of two or more different versions of the same food or similar food, e.g. "Reduced fat - 25% less than the regular product of the same brand". A nutrient function claim describes the physiological role of a nutrient in growth, development and normal functions of the body, e.g. "Calcium aids in the development of strong bones and teeth".

comply with the statutory requirements of the Scheme is an offence for which the maximum penalty is a fine of \$50,000 and imprisonment for six months.

3. To facilitate the food trade and to minimize the impact on food choice, a number of exemptions from the nutrition labelling requirements are provided in the Amendment Regulation, e.g. exemption for prepackaged food packed in a container which has a total surface area of less than 100 cm². In addition, a small volume exemption ("SVE") scheme has been introduced to exempt food products with annual sales volume of 30 000 units or below which do not carry nutrition claims³. According to the Administration, as at 4 April 2014, there were 16 061 products with valid SVE in the market.

4. As advised by the Administration at the Panel meeting on 13 May 2014, between 1 July 2010 and 4 April 2014, the Centre for Food Safety ("CFS") had inspected 30 552 prepackaged food products and found 399 cases not complying with the Scheme. Of the 399 non-compliant cases, 201 were identified by visual checking for not complying with the statutory requirements of the Scheme and 198 by chemical analysis for discrepancy between the nutrient contents and the claims made on the nutrition labels. CFS had issued warning letters to the food traders concerned, and the traders had either withdrawn the non-compliant products from the shelf or rectify the nutrition labels according to the statutory requirements of the Scheme.

Members' concerns

5. The subject of the implementation of the Scheme was discussed at five Panel meetings between 2009 and 2014. Members' main views and concerns on the subject are summarized in the ensuing paragraphs.

Enforcement actions against non-compliant cases

6. Members noted that as of 4 April 2014, CFS had not initiated any prosecution against non-compliant cases. Concern was raised as to whether the Administration had been overly lenient to the trade. Members were of the view that as the Scheme had been effective since July 2010, the Administration should consider tightening up its enforcement action and initiating prosecution against the food traders concerned immediately, instead of issuing warning

³ Food manufacturers/importers need to apply to the Director of Food and Environmental Hygiene ("DFEH") for SVE, which is subject to conditions set by DFEH, including the requirement of monthly reporting of sales volume at the importer's/manufacture's level. Traders will be notified when the sales volume has reached 70% of the 30 000 level, and once the sales volume exceeds the limit, i.e. 30 000 units per year, all food items currently being put on the market will have to be labelled in accordance with the legal requirements within 30 days.

letters to non-compliant food traders and allowing them time for rectifying irregularities.

7. The Administration explained that according to the internal guidelines for inspection operation, where irregularities such as incomplete labels were identified, CFS would issue a warning letter to the food trader concerned requiring actions to be taken to comply with the requirements of the Scheme within 60 days before initiating prosecution. If discrepancy between the actual nutrient content based on test result and the stated value on the nutrition label was detected, CFS would issue a letter to the food trader concerned requiring an explanation within 21 days. If the explanation was not accepted by CFS, a warning letter requiring the trader concerned to take actions to comply with the requirements of the Scheme within 39 days would then be issued. In case the food item with detected discrepancy remained on sale after 39 days, CFS would initiate prosecution. As of April 2014, CFS had not initiated prosecution against any of the 399 non-compliant cases detected, as the food traders concerned had either withdrawn non-compliant products from the shelf or rectify the nutrition labels according to the statutory requirements of the Scheme after receiving the warning letters.

Legibility of nutrition labels

8. Members noted that CFS issued the Trade Guidelines on Preparation of Legible Food Label ("the Guidelines") in May 2012 to provide principles and examples of legible food labels for the trade's reference. Members also noted the results of the study, conducted by CFS in collaboration with the Consumer Council in 2013, on the legibility of the nutrition labels of prepackaged food products sold in Hong Kong with reference to the Guidelines. The results showed that the nutrition labels of around 60% of the samples (63 out of 100 samples) did not follow the recommendations of the Guidelines in that their legibility was not entirely satisfactory. Members expressed grave concerns that the Administration only required the trade to follow the Guidelines on a self-regulation basis and the trade had made slow progress in providing legible nutrition labels. The Administration was urged to set out a timetable requiring all food traders to mandatorily follow the Guidelines and introducing legislative amendments if necessary.

9. The Administration advised that the Guidelines provided recommendations on the key elements that constituted the legibility of food labels including the font size, and CFS would continue to make use of various channels to encourage the local trade to provide legible nutrition labels according to the Guidelines. Breaches of the Guidelines and subsequent enforcement action would be dealt with on a case-by-case basis. If self-regulation by the trade to follow the Guidelines did not yield the desired

outcome, the Administration would not rule out introducing relevant legislative amendments to further regulate the legibility of nutrition labels

Taste claims of food

10. Members expressed grave concerns that some prepackaged food claiming "less sweet" actually contained high amount of sugars. To prevent consumers from being misled by such taste claims, members suggested that "taste" of food be defined in the legislation. According to the Administration, given that the sense of taste depended on subjective factors of human feelings perception, it had been thoroughly discussed during the scrutiny of the Amendment Regulation and agreed that it could not be defined in the legislation the claims of such perceived taste. Education on taste claims such as "less sweet" and "light fat" were covered in the public education and publicity programmes. With the intensive public education and publicity activities, the public would understand how to make use of the information in nutrition labels to make healthier food choices.

Food choices for consumers

11. In response to members' concern about the impact of the Scheme on food choices for people with allergies, the Administration advised that according to the Chairman of The Hong Kong Allergy Association ("Allergy HK"), the Scheme had not brought any negative impact on food prices and choices for people with allergies. Allergy HK indicated that for people with food allergies, their food choices hinged on whether the food product contained substances that would cause allergy and its country of origin.

12. The issue of whether the Scheme had limited the food choices of consumers was raised. Concern was expressed about whether the food choices of ethnic groups might be significantly reduced as a result of the stepped-up surveillance efforts in small-scale operations. The Administration was requested to take a lenient approach in dealing with the non-compliant food items for ethnic minorities given its insignificant share of the prepackaged food market.

13. The Administration advised that the Market Survey commissioned by CFS suggested that there was no considerable impact on the food choices available in the market after the commencement of the Scheme. The annual Food Expo had been regarded as a testing ground for bringing new prepackaged food products to the Hong Kong market. The Administration had commissioned survey in the Food Expos of both 2010 and 2011 to assess the impact of the Scheme on new-to-market prepackaged food products introduced at Food Expo. The results of the survey indicated that the implementation of

the Scheme had not brought any significant impact on the introduction of new prepackaged food products to Hong Kong via Food Expo. On members' concern about the possible impact of the Scheme on the food choices available in ethnic shops, members were advised that CFS had all along proactively managed communications with the trade. Although the number of prepackaged food products in ethnic shops was found to have reduced after the commencement of the Scheme, CFS would take appropriate actions to assist the traders in complying with the requirements of the Scheme.

Trans fat in non-prepackaged food

14. Noting that the Scheme had already covered the prepackaged food with trans fat, members raised concern as to whether there would be a mechanism enabling consumers to become aware of the amount of trans fat that they would take in from non-prepackaged food. The Administration advised that CFS had set up two working groups to develop two sets of guidelines for the trade to promote manufacturing foods containing low levels of sodium, sugar and fat (including trans fat). The Administration was of the view that thorough discussion and consideration would be required on whether more information could be provided about the amount of trans fat in non-prepackaged food at the levels of retailers and food service establishments, as well as the feasibility and coverage of food labeling scheme for trans fat. Though there was an overseas example in the United States where trans fat had been banned from restaurants in the New York City, it was difficult for restaurants in Hong Kong to indicate in their menus the amount of trans fat contained in the food they sold given that there was a wide variety of dishes in Hong Kong.

SVE Scheme

15. In response to members' concern about the verification of the annual sales volume of food products applying SVE, the Administration explained that apart from the requirement of monthly reporting of sales volume at the importer's and manufacturer's level, site inspection at importers and retailers would also be conducted by CFS on the food products applying for SVE. Retailers might be requested to provide receipts for verification.

16. Members asked how the Administration monitored those SVE products with valid exemption in the market. According to the Administration, prepackaged food with annual sales volume not exceeding 30 000 units which did not carry nutrition claims was exempted from the nutrition labelling requirements. Each exempted product would be assigned a number. Officers of CFS would verify the exemption number of the product during inspection. The exemption might be renewed for the following year if the 30 000-unit exemption limit was not exceeded at the end of one year. CFS would keep

track of the annual sales volume of the exempted products to prevent the SVE scheme from being abused.

Recent developments

17. Subsequent to the Panel meeting on 13 May 2014, the Administration advised in its letter to the Panel dated 9 June 2014 [LC Paper No. CB(2)1755/13-14(01)] that all prepackaged food should be legibly labelled unless otherwise exempted. According to the advice of the Department of Justice, the existing provisions in relevant legislation were sufficient for the department concerned to take effective action against failure to provide nutrition labels meeting the legibility requirement, as the word "legible" must be construed in its ordinary and natural meaning, i.e. clear enough to read. The Administration therefore considered that the existing provisions were sufficient for the department concerned to take effective enforcement action. In addition, CFS had decided to tighten up its enforcement such that if CFS identified any non-compliance with the requirements, including failure to provide labels meeting the legibility requirement, CFS would initiate prosecutions immediately.

18. The Administration will brief the Panel on the latest development of the implementation of the Scheme on 9 June 2015.

Relevant papers

19. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Relevant papers on the Nutrition Labelling Scheme

| Meeting | Date of meeting | Paper |
|--|------------------------|--|
| House Committee | 23.5.2008 | Final report of the Subcommittee on Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 |
| Panel on Food Safety and Environmental Hygiene | 22.6.2009 (Item II) | Agenda Minutes |
| | 13.4.2010 (Item V) | Agenda Minutes |
| | 12.7.2011 (Item IV) | Agenda Minutes |
| | 8.5.2012 (Item IV) | Agenda Minutes |
| | 13.5.2014 (Item V) | Agenda Minutes |