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Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 8 December 2015**

Proposed regulation of edible fats and oils and recycling of "waste cooking oils"

Purpose

This paper provides background information on the Administration's legislative proposals on the regulation of edible fats and oils and recycling of "waste cooking oils", and summarizes major views and concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the subject.

Background

2. According to the Administration, although the current food safety legislation and regulatory mechanism exercise some form of control over the ingredients, production and supply of edible fats and oils in Hong Kong, there are no specific regulatory provisions for edible fats and oils. Section 54 of the Public Health and Municipal Services Ordinance (Cap. 132) ("PHMSO") stipulates that all food for sale in Hong Kong must be fit for human consumption¹. Section 52 of PHMSO also provides that any person sells to the prejudice of a purchaser any food which is not of the nature, substance or quality of the food demanded by the purchaser shall be guilty of an offence. The Centre for Food Safety ("CFS") under the Food and Environmental Hygiene Department ("FEHD") has been monitoring the quality of local edible oils to ensure that the oils meet legal requirements and are fit for human consumption. There is also no specific licensing system in place for regulating the recycling of

¹ According to the Administration, CFS had adopted the international practice for ascertaining the quality of cooking oils, i.e. by conducting tests on the amount of B[a]P, aflatoxins and metal contaminants contained in the oils. In 2014, a total of 800 edible fat and oil samples were tested for different chemicals under the food surveillance programme and two samples were found to have excessive peroxide value.

"waste cooking oils" in Hong Kong. Subject to their respective business scope and practices, individual recyclers are required to comply with the relevant environmental protection legislation, such as obtaining a licence for discharge of wastewater.

3. When the Panel discussed with the Administration issues relating to substandard cooking oil ("gutter oil") at its special meeting on 3 January 2013, a motion was passed at the meeting, urging the Government to expeditiously amend the legislation to regulate the carcinogen Benzo[a]pyrene ("B[a]P") so as to guarantee the safe consumption of cooking oils by the public. Subsequently, the Administration advised the Panel in June 2013 that CFS had established an action level of 10 µg/kg for B[a]P in cooking oils (LC Paper No. CB(2)1431/12-13(01))².

4. Following the "substandard lard incident"³ in September 2014, the Panel discussed with the Administration food safety issues relating to the incident at its meetings on 25 September and 11 November 2014. Members were advised that the Food and Health Bureau and the Environment Bureau had agreed in principle to amend the law to safeguard food safety of edible oils, and CFS would step up the inspection of edible oils from other places (including Taiwan) by increasing the number of oil samples by at least 20% over the previous year.

Legislative proposals

5. On 7 July 2015, the Government released a consultation document to launch a three-month public consultation exercise on its legislative proposals to regulate the safety of edible fats and oils and the recycling of "waste cooking oils". The Panel discussed with the Administration on 14 July 2015 the legislative proposals as set out in the consultation document, and held a special meeting on 6 October 2015 to receive public views on the proposals.

Regulation of edible fats and oils

6. In gist, the Government proposes to make it a statutory requirement that "waste cooking oils" and oils not intended for human consumption should not be used as ingredients for production of edible fats and oils manufactured locally

² If a B[a]P level higher than 10 µg/kg but lower than 20 µg/kg was detected in cooking oil, CFS would take enforcement action in accordance with section 52 of PHMSO although the public health concern was low under the risk assessment. If a B[a]P level of 20 µg/kg was detected in cooking oil, indicating a public health concern under risk assessment, CFS would take enforcement action in accordance with section 54 of PHMSO and initiate a mandatory recall of the cooking oil concerned.

³ On 4 September 2014, the Taiwanese authorities announced the detection of "substandard lard" and the use of it in the production of food for sale in the Taiwan market. The follow-up actions taken by the Administration are detailed in its paper provided for the Panel meeting on 25 September 2014 (LC Paper No. CB(2)2310/13-14(01)).

and imported into/exported from Hong Kong. The Government also proposes to revise the statutory safety standards for edible fats and oils (please refer to **Appendix I** for details) in the light of Hong Kong circumstances.

7. The Government will require edible fats and oils manufactured locally and those imported into and exported from Hong Kong to be accompanied by an official certificate issued by the place of origin or a certificate issued by an officially recognized independent testing institution (such as institutions which can perform the relevant tests under the Hong Kong Laboratory Accreditation Scheme), certifying that the edible fats and oils fulfil the relevant statutory safety standards and are fit for human consumption. The relevant requirements will be incorporated into the conditions of licences issued under the Food Business Regulation (Cap. 132X). The licences of those who are found to be in breach of the condition may be cancelled. Importers of edible fats and oils should provide copies of certificates or other supporting documents to their downstream distributors, retailers or food premises for FEHD's inspection.

Strengthening the regulation of the recycling of "waste cooking oils"

8. The Environmental Protection Department ("EPD") proposes to amend the Waste Disposal Ordinance (Cap. 354) by introducing licences for the collection, disposal and import/export of "waste cooking oils". Persons who collect (including buying and selling), dispose of or import/export "waste cooking oils" without a licence will be liable to a fine and/or imprisonment. Any persons, including "waste cooking oil" producers like restaurants and food factory operators, who allow or cause "waste cooking oils" to be sold, delivered, collected or handed over to a party without a licence will commit an offence and will be subject to a fine and/or imprisonment once convicted.

9. To tie in with the above new mechanism, FEHD will require all restaurants, factory canteens, food factories and bakeries to hand over their "waste cooking oils" to collectors licensed by EPD for further disposal, and to keep records accordingly. Otherwise, they will be in breach of the licensing conditions and liable to penalties such as cancellation of licences. Prior to the amendments to the Waste Disposal Ordinance, FEHD and EPD propose to implement administrative measures⁴ to regulate the recycling of "waste cooking oils".

⁴ FEHD will impose an additional licensing condition on food premises operating under a licence for a restaurant, factory canteen, food factory or bakery, requiring that any "waste cooking oils" produced during the cooking process on the licensed premises must be handed over to a collector, disposer or exporter registered by EPD for disposal. EPD will register eligible local collectors, disposers and exporters of "waste cooking oils". FEHD will require food premises issued with the above licences to record the dates on which "waste cooking oils", grease trap waste and other waste cooking oils and fats are collected from their premises, their respective quantities, and the names and addresses of the collectors and recyclers. The licence holders will be required to keep the relevant records for at least 12 months for FEHD's inspection.

Members' concerns

10. Members' major views and concerns on the regulation of edible fats and oils and recycling of "waste cooking oils" are summarized in the ensuing paragraphs.

Regulation of edible fats and oils

11. Members in general were supportive of the establishment of statutory safety standards for edible fats and oils, which would cover arsenic, lead, erucic acid, aflatoxins and B[a]P for edible fats and oils. However, there was a concern that the proposed regulatory standard for B[a]P in edible fats and oils in Hong Kong (i.e. a statutory limit of 5 µg/kg) was more stringent than that of the Mainland but laxer than those set by the European Union, Korea and Taiwan. A question was raised on whether the adoption of different safety standards by overseas jurisdictions would render the proposed regulatory control of edible fats and oils ineffective to safeguard public health. Some members, while supporting a tightened control on B[a]P and aflatoxins levels in edible fats and oils, considered that the Administration should explain to the public the rationale for setting the proposed regulatory standards for edible fats and oils.

12. The Administration advised that in setting the safety standards for edible fats and oils, a proper balance had to be struck between protecting public health and effective market operation. The Administration had considered the ALARA (as low as reasonably achievable) principle in regulating contaminants in food, the Codex standards and the practices adopted by different jurisdictions in proposing the regulatory standards for B[a]P and aflatoxins in Hong Kong. The Administration proposed, after due consideration, to tighten control on B[a]P from the current action level of 10 µg/kg to the proposed safety standard of 5 µg/kg. According to CFS's surveillance results (2012-2014), about 1% of the edible fat and oil samples contained B[a]P level greater than 10 µg/kg (i.e. current local action level and Mainland standard), while about 5% and 9% of the samples exceeded 5 µg/kg and 2 µg/kg (i.e. the European Union and Korean standards respectively). In other words, 95% of samples met the proposed standard of 5 µg/kg for B[a]P in edible fats and oils. Regarding aflatoxins in edible fats and oils, the Administration proposed to lower its maximum level. The proposed maximum level (i.e. a statutory limit of 5 µg/kg) was on par with that of Singapore. The Administration stressed that it would take into account the public views received during the consultation period and other relevant considerations before finalizing the legislative proposals on the appropriate safety standards to be set for edible fats and oils. The Administration also proposed to provide a reasonable grace period for the trade to refine its product formula where necessary to meet the new requirements.

13. It was reported in the media that some manufacturers would process "gutter oils" in a way to meet the standards of individual harmful substances and pass the safety tests conducted by the relevant Mainland authorities. There were concerns that after certain refining process, "gutter oils" or "substandard oils" would be able to meet the proposed safety standards of edible fats and oils. Members enquired how the Administration could prevent the import of processed "gutter oils" from the Mainland if importers of edible fats and oils were only required to provide an official certificate or a certificate issued by an officially recognized independent testing institution certifying that the imported edible fats and oils fulfilled the relevant requirements. Members were particularly concerned about the measures to be taken by the Administration to verify the authenticity of the certificates to ensure that edible oils importers would not import problematic oils by using counterfeit certificates.

14. The Administration advised that there was no universal testing standard to identify the so-called "gutter oils" in the international community. Regulatory authorities could only focus on testing for or identifying harmful substances possibly present in the oils, and used the testing results as a reference indicator of whether the oils concerned were fit for human consumption. Apart from safety issues, the general public would have concerns about the hygiene condition of oils. The Administration therefore proposed a stringent control on the overall production and supply chain of edible fats and oils in the local market, and required that edible fats and oils imported into and exported from Hong Kong must meet the same food safety standards. The Administration further advised that it had met with Consulate Generals of major oil exporting countries/places to collect their views on the proposed legislative framework, in particular the proposed certification requirement. After the implementation of the requirement, verification would be conducted to ensure the authenticity of certificates. It was the Administration's intention to devise a mechanism that would, on the one hand, effectively regulate the quality of imported cooking oil products and, on the other hand, only bring minimal impact on the supply and prices of such products.

Regulation of used cooking oils

15. Some members were concerned whether the Administration would specify the criteria (such as the cooking method and the number of times these oils were used to cook) for used cooking oils that could be re-used for cooking before they had to be disposed of. Concerns were raised that the retail price of cooking oils would be pushed up due to the anticipated increase in the oil refining cost upon the implementation of the proposed safety standards for edible fats and oils, and restaurants and food premises would re-use cooking oils more often for food processing in order to save cost. An enquiry was raised on how the Administration would monitor the quality and safety of cooking oils used by restaurants.

16. According to the Administration, it was not practicable to specify unique criteria for the repeated use of cooking oils as the extent of harmful substances generated during the cooking process would vary with different cooking temperatures and cooking methods, etc. Nonetheless, the proposed safety standards for edible fats and oils would apply to all edible oils, be they used or unused. The Administration would conduct random checks on the quality of cooking oils used by restaurants and food premises. It would also engage with the academic sector and the trade to come up with some guidance on good practices relating to the use and storage of cooking oils for the trade's reference.

Strengthening the regulation of recycling of "waste cooking oils"

17. There was a concern on whether the implementation of the licensing system for the handling of "waste cooking oils" would increase the operational cost of "waste cooking oil" collectors. The Administration advised that the recovery price for "waste cooking oils" would depend on market situation. The licensing system might have some impact on the operational cost of "waste cooking oil" collectors and recyclers as they had to fulfill additional conditions. But the impact on operators was unlikely to be substantial as such costs would only constitute a small part of the overall operational costs.

18. Members were concerned about the impact of the licensing requirements on green groups and non-government organizations ("NGOs") engaging in "waste cooking oils" recycling activities. Some members opined that the Administration should consider granting exemption to green groups and NGOs from the licensing requirements. There were suggestions that the Administration should consider waiving the licence fees for these organizations if they recovered only a small amount of "waste cooking oils" each month or providing subsidies to help them absorb the additional cost arising from obtaining the licence. The Administration advised that it would carefully consider the views and suggestions of relevant stakeholders, including small companies, social enterprises and non-profit making organizations, before finalizing the licensing requirements.

19. There were also concerns on whether there would be adequate licensed collectors to cope with the demand of food premises, ensuring fair competition within the recycling market of "waste cooking oils". Some members were worried that some food premises only generated a small amount of "waste cooking oils" during the cooking process and collectors might refuse to recover oils from these food premises. The Administration advised that it hoped to kick start as early as practicable the registration process of eligible local collectors/disposers of "waste cooking oils", so as to have a clear picture of the geographical distribution of their services. The Administration would consider imposing a requirement for collectors to provide the collection service for all

"waste cooking oils" from food premises operating within their serving areas. As there had all along been "waste cooking oils" recovery activities in the market, the Administration believed that local collectors would have the capacities to meet the future demand.

20. Members noted that the proposed regulation regarding the recycling of "waste cooking oils" did not cover used cooking oils generated during the cooking process by individuals or households. Concerns were raised on whether it would create loophole for collectors to recover such kind of cooking oils for illegal purpose. The Administration advised that given the small amount of "waste cooking oils" involved and the difficulty in separating them from other kitchen waste, FEHD and EPD had no plan to regulate the recycling of used cooking oils from households for the time being.

Latest developments

21. The public consultation exercise on the legislative proposals on regulation of edible fats and oils and the recycling of "waste cooking oils" ended on 6 October 2015. The Administration will report on the results of the public consultation exercise at the forthcoming Panel meeting on 8 December 2015.

Relevant papers

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

Summary of Proposed Amendments to Standards for Edible Fats and Oils

	Proposed amendments	
	Description of food	Maximum level
Arsenic	Edible fats and oils	0.1mg total arsenic/kg
Lead	Edible fats and oils	0.1mg/kg
Erucic acid	Low-erucic acid rapeseed oil or any food to which low-erucic acid rapeseed oil but no other edible fats and oils has been added	2 per centum by weight of their fatty acid content
	Any food to which edible fats and oils or a mixture thereof has been added except any food to which low-erucic acid rapeseed oil but no other edible fats and oils has been added	5 per centum by weight of their fatty acid content
	Any edible fats and oils or any mixture thereof except low-erucic acid rapeseed oil	5 per centum by weight of their fatty acid content
Aflatoxins	Edible fats and oils	5 micrograms aflatoxins, total (B1+B2+G1+G2) per kilogram of the food
Benzo[a]pyrene	Edible fats and oils	5 micrograms per kilogram of the food
Acid value	Lard	1.3 mg KOH/g fat = ffa max 0.65%
Peroxide value	Lard	Up to 10 milliequivalents active oxygen/kg fat

**Relevant papers on
proposed regulation of edible fats and oils
and recycling of "waste cooking oils"**

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	3.1.2013 (Item I)	Agenda Minutes
Council meeting	23.1.2013	Question raised by Hon Paul TSE on "Regulation of the recovery of used cooking oil"
	27.3.2013	Member's motion on "Urging the Government to eradicate 'gutter oil' and take the lead in supporting biodiesel" Progress report
	26.3.2014	Question raised by Hon Tommy CHEUNG on "Regulation of the industry of collection and recycling of used cooking oil"
Panel on Food Safety and Environmental Hygiene	25.9.2014 (Item I)	Agenda Minutes
Council meeting	5.11.2014	Question raised by Dr Hon Helena WONG on "Safety of edible lard"
Panel on Food Safety and Environmental Hygiene	11.11.2014 (Item VI)	Agenda Minutes

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	14.7.2015 (Item II)	Agenda Minutes
	6.10.2015 (Item I)	Agenda Minutes (LC Paper No. CB(2)347/15-16)

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