

Report No. 57 of the Director of Audit — Chapter 3

FOOD LABELLING

Summary

1. Food labelling provides an important channel of communication between manufacturers and consumers on information about individual food products. It is governed by the Food and Drugs (Composition and Labelling) Regulations (the Regulations — Cap. 132W) made under the Public Health and Municipal Services Ordinance (PHMSO — Cap. 132). The Regulations require that all prepackaged foods (including infant and special dietary foods) should be legibly marked or labelled with information such as name of food, list of ingredients, indication of durability, and count, weight or volume (the general food labelling requirements).

2. *The 2008 Amendment Regulation.* In 2008, the Regulations were amended to introduce a mandatory nutrition labelling scheme for prepackaged foods. The scheme, which came into operation in July 2010, covers nutrition labelling and nutrition claims. It aims to assist consumers in making informed food choices, and to regulate misleading or deceptive labels and claims. The scheme applies to all prepackaged foods, except infant and special dietary foods.

3. The Centre for Food Safety (CFS), under the Food and Environmental Hygiene Department (FEHD), is the food safety authority in Hong Kong. It is responsible for enforcing food-related legislations, including overseeing the implementation of the food-labelling-related law and regulations.

4. *Audit review.* The Audit Commission (Audit) has recently conducted a review of the CFS's work in the regulatory control of food labelling, with focus on the implementation of the nutrition labelling scheme under the 2008 Amendment Regulation, and the adequacy of the nutrition labelling of infant and special dietary foods. The audit findings are contained in two separate reports, namely: (a) food labelling (the subject matter of this summary); and (b) nutrition labelling of infant and special dietary foods (Chapter 4 of the Director of Audit's Report No. 57).

Accuracy and legibility of food labels

5. ***Accuracy of nutrition information on food labels.*** The nutrition labelling scheme requires all prepackaged foods to label “1+7”, including energy plus seven core nutrients (i.e. protein, carbohydrates, total fat, saturated fat, trans fat, sodium and sugars), and any other nutrient for which a claim is made. The CFS conducts visual checking of nutrition labels and chemical analysis of declared nutrients on labels in selected prepackaged food products to ensure the trade’s compliance with the scheme. For the first year of implementation of the scheme, the CFS checked 16,245 food labels, with 111 found not complying with the scheme (e.g. no nutrition label or inappropriate nutrition claims). The overall compliance rate was 99.3%. Audit however found that the CFS’s compliance tests conducted were subject to limitations, including: (a) most of the food samples selected for visual checking were chosen from large chain supermarkets, which generally had a lower risk of non-compliance; (b) of the 505 food samples chosen for chemical analysis, only 30 had been tested for “1+7”, with 70% tested for only one nutrient; (c) the nutrients selected for chemical analysis were not necessarily the most essential ones or of higher risk of non-compliance; and (d) the fact that the tolerance limits for considering enforcement action was used in assessing whether a food product had complied with the scheme was not disclosed in reporting the compliance rate.

6. Audit conducted independent tests to evaluate the trade’s compliance with the nutrition labelling scheme. Audit’s visual checking of nutrition labels in 55 retail outlets in three districts showed that 46 of them were suspected to have committed one or more non-compliances in their food products. Audit also commissioned a local university to provide accredited laboratory services for testing selected food samples purchased from the market. Of the 70 samples tested, 42 (60%) were suspected to be non-compliant. *Audit has recommended that the Director of Food and Environmental Hygiene should: (a) improve the CFS’s compliance tests for both visual checking and chemical analysis; (b) adopt a more risk-based approach in selecting food samples and nutrients to be tested; (c) disclose the tolerance limits adopted when reporting the compliance rate; and (d) take appropriate follow-up actions on the suspected non-compliant cases identified by Audit.*

7. ***Legibility requirements for nutrition information.*** The 2008 Amendment Regulation does not have adequate provisions (e.g. font size) to ensure the legibility of the nutrition information. Audit’s market surveys found that the nutrition labels of some prepackaged foods were too small in font size, and the text and background of some were not shown in distinct contrast, thus making the nutrition information very difficult to read. Audit also noted that illegibility was one of the major obstacles to have hindered people from reading the nutrition labels. *Audit has recommended that the Director of Food and Environmental Hygiene should properly address the legibility issue for the effective implementation of the nutrition labelling scheme.*

8. *Accuracy of other information displayed on food labels.* For the 12 months ended June 2011, the CFS checked some 40,000 food products to ascertain whether they complied with the general food labelling requirements (see para. 1). The overall compliance rate was 99.9%. Audit however noted that the CFS selected most of its food samples for compliance tests from large chain supermarkets which generally had a lower risk of non-compliance. In 27 of the 55 retail outlets visited by Audit (see para. 6), suspected non-compliance with the general food labelling requirements was quite commonly found in their food products marketed. *Audit has recommended that the Director of Food and Environmental Hygiene should improve the CFS compliance tests to enforce the general food labelling requirements.*

Nutrition and health claims

9. *Use of claims to appeal to consumers.* Food traders have increasingly used claims to promote conventional foods (foods or drinks customarily consumed). Such claims include nutrition and health claims. Nutrition claims are claims which suggest that a food has particular nutritional properties. Health claims are claims that imply or suggest a relationship between a food (or a constituent of that food) and health. While nutrition claims are governed by the nutrition labelling scheme, health claims are not governed by any specific law or regulations in Hong Kong.

10. As early as 2002, there were calls from the public and the Legislative Council that the Administration should tighten control of misleading or exaggerated health claims of so-called health food products. In 2005, the Undesirable Medical Advertisements (Amendment) Ordinance was enacted. However, it only governed the prohibition/restriction on advertising relating to six groups of undesirable health claims on orally consumed products which did not cover conventional foods. The Administration could only rely on the general provisions of the PHMSO to regulate health claims on conventional foods. Up to August 2011, no successful prosecution had been brought against any food traders for improper health claims. *Audit has recommended that the Secretary for Food and Health should, in collaboration with the Director of Food and Environmental Hygiene and the Director of Health, critically consider whether the provisions in the PHMSO (or other relevant provisions) are adequate to regulate health claims on conventional foods, and whether there is a need to introduce appropriate law and regulations to regulate health claims on such foods.*

11. *CFS's oversight of the trade's use of nutrition claims.* Audit noted that the CFS staff had not taken proactive actions (e.g. by seeking scientific evidence from food traders) to verify the validity of nutrition claims made by food traders, particularly those in advertisements. Up to June 2011, the CFS had only identified 12 inappropriate nutrition claims. Audit examined about 30 prepackaged foods with nutrition claims on food labels and some advertisements with claims, and found 17 cases which might call for the CFS's follow-up. *Audit has recommended that the Director of Food and Environmental Hygiene should step up the FEHD enforcement efforts on nutrition claims made on food labels and in advertisements, and follow up on the various suspected non-compliant cases on nutrition claims identified by Audit.*

Exemptions from nutrition labelling

12. To facilitate the food trade, the 2008 Amendment Regulation provides for the introduction of the small volume exemption (SVE) scheme under which the FEHD may exempt any prepackaged food from the nutrition labelling requirements if it is satisfied that the annual sales volume of the food in Hong Kong would not exceed 30,000 units. A food trader may apply to the CFS for SVE of a food product. If an application is in order, the CFS issues an approval-in-principle letter, together with an exemption number and the validity period of exemption. A formal approval letter is issued upon payment of the exemption fee. Up to June 2011, 35,301 applications had been approved in principle or formally approved.

13. Audit identified various problems in the implementation of the SVE scheme, including: (a) there was delay by some food traders in reporting the monthly sales volumes of their SVE products, rendering it difficult for the CFS to monitor whether the level of 30,000 units a year had been exceeded; (b) the CFS had not conducted any checking to verify the accuracy of the sales volumes reported by food traders; and (c) there was delay by some food traders in paying the exemption fees, and some products were put on the market without obtaining the CFS's formal approval. *Audit has recommended that the Director of Food and Environmental Hygiene should conduct a post-implementation review of the SVE scheme to evaluate its effectiveness, and take actions to improve the CFS's regulatory control over the scheme.*

Surveillance and enforcement work

14. The Food Labelling Unit of the CFS is responsible for enforcing the food labelling requirements. It conducts routine inspections and weekly blitz operations to check the trade's compliance with such requirements.

15. ***Conduct of routine inspections.*** Routine inspections aim at checking food labels to ensure their compliance with the general food labelling and nutrition labelling requirements. In its assignment report of September 2010, the Independent Commission Against Corruption pointed out that the CFS's inspection resources were not effectively utilised because a risk-based approach was not adopted. It recommended that the CFS should revamp its inspection strategy and develop a database of retail outlets for risk profiling and identification of inspection targets. Audit examination of the CFS's work in March 2011 revealed that most of the food labels checked were still chosen from large chain supermarkets which generally had lower risk of non-compliance (see paras. 5 and 8). Up to May 2011, the CFS had set up a database of some 1,500 retail outlets inspected. The database was however not yet complete. *Audit has recommended that the Director of Food and Environmental Hygiene should urge the CFS to properly adopt a risk-based approach in conducting routine inspections and set up a comprehensive database as early as possible.*

16. ***Conduct of blitz operations.*** Weekly blitz operations aim at uncovering serious irregularities which might warrant immediate prosecution action. Two shopping centres and two streets are usually covered in each operation, and all retail outlets in the target area will be inspected. Audit examination of the CFS's work in March 2011 revealed that there were not many retail outlets along the streets selected for inspection. Audit staff also attended as observers in a blitz operation and noted that a few high-risk outlets were not visited in the operation. *Audit has recommended that the Director of Food and Environmental Hygiene should urge the CFS to improve the planning of its blitz operations.*

17. ***Follow-up on irregularities and prosecution cases.*** For the 18 months ended June 2011, the CFS had instituted prosecution for 54 cases involving breaches of general food labelling requirements. Although the CFS guidelines provide that its staff are required to take follow-up actions to ensure that the non-compliance does not persist, the guidelines contain no provisions on details of such actions, including the timeframe and frequency of follow-up inspections. For some completed prosecution cases, there was no record of follow-up inspections conducted. *Audit has recommended that the Director of Food and Environmental Hygiene should urge the CFS to provide its staff with guidelines on follow-up actions required for prosecution cases and monitor the proper follow-up actions of the prosecution cases.*

18. ***Food recalls and alerts.*** The CFS regularly takes samples of prepackaged foods at retail outlets for testing of the presence of food additives and allergens. For the 18 months ended June 2011, the CFS identified 19 samples with unsatisfactory results, with 4 samples found to contain unpermitted/excessive food additives or undeclared allergen. However, apart from requesting the food traders to recall the 4 products concerned, the CFS had not issued public alerts to draw the public's attention to the food safety problems in these products. *Audit has recommended that the Director of Food and Environmental Hygiene should urge the CFS to issue public alerts.*

Publicity and education

19. The CFS launched a three-year publicity and education campaign from June 2008 to June 2011 with a view to enhancing public awareness and understanding of the nutrition labelling scheme, and motivating the public to build up a healthy diet. In June and July 2011, Audit commissioned a local university to conduct an independent survey to gauge public views on food labelling. The audit survey involved a face-to-face interview of 1,070 people.

20. Audit survey revealed that: (a) although most respondents were aware of the nutrition labelling scheme, their understanding of the scheme was far from adequate. Besides, most respondents had not yet developed a habit of reading nutrition labels when purchasing prepackaged foods; (b) there were differences on the level of awareness, perception and attitude on nutrition labelling among different categories of respondents, especially for senior citizens; and (c) the major obstacles hindering the use of nutrition labels included “font size too small”, “the nutrition information could not be related to daily intake” and “the information provided was difficult to understand”. *Audit has recommended that the Director of Food and Environmental Hygiene should: (a) step up the CFS’s publicity and education efforts to promote the nutrition labelling scheme; and (b) take measures to address public concerns as identified in the audit survey, and improve the user-friendliness of the nutrition labels.*

Response from the Administration

21. The Secretary for Food and Health, the Director of Food and Environmental Hygiene and the Director of Health agree with the audit recommendations.

November 2011