

# Report No. 57 of the Director of Audit — Chapter 4

## NUTRITION LABELLING OF INFANT AND SPECIAL DIETARY FOODS

### 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.

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 requires all prepackaged foods to label 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. It aims to assist consumers in making informed food choices, and to regulate misleading or deceptive labels and claims. However, the scheme does not apply to infant and special dietary foods, namely: (a) formula intended to be consumed by children under the age of 36 months; (b) food intended to be consumed principally by children under the age of 36 months; and (c) other food for special dietary uses.

3. The Centre for Food Safety (CFS), under the Food and Environmental Hygiene Department, 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) nutrition labelling of infant and

special dietary foods (the subject matter of this summary); and (b) food labelling (Chapter 3 of the Director of Audit's Report No. 57). To support the audit work in this Report, Audit has examined various types of infant and special dietary foods (with the results of 12 case studies included in this Report). Audit has also commissioned a local university to conduct laboratory tests to verify the information on nutrition labels of such foods.

### **Infant and special dietary foods not covered by the 2008 Amendment Regulation**

5. The nutrition labelling scheme in Hong Kong was developed with reference to the principles adopted by the Codex Alimentarius Commission (Codex — an international authority to develop food standards and guidelines), local health conditions and international practices. According to the Administration, infant and special dietary foods were not included in the scheme because the consumers of these products had different nutritional requirements and concerns vis-à-vis the general population, and these foods were regulated by different Codex standards and guidelines. Nonetheless, as early as 2005, the Administration undertook to review the need for introducing nutrition labelling requirements covering these foods in the future.

6. *Importance of nutrition labelling.* Good nutrition is very important in every stage of life. Infants, young children and people with special dietary needs are generally more vulnerable and, therefore, foods for them have to be more strictly regulated. Apart from the general standards and guidelines on nutrition labelling that generally apply to infant and special dietary foods, Codex has developed specific additional standards to govern such foods. Taking infant formula as an example, Codex has laid down comprehensive standards on its compositional, quality and safety requirements to ensure its nutritional safety and adequacy to support the growth and development of infants. In particular, Codex has suggested the prohibition of the use of nutrition and health claims for foods for infants and young children, except where specifically provided for in relevant Codex standards or national legislation.

7. *Compliance with Codex standards and guidelines not mandatory.* Given that compliance with the Codex standards and guidelines is not mandatory, unless compliance is made as a requirement, infant and special dietary foods marketed in Hong Kong cannot be effectively regulated by the Codex standards and guidelines. The Administration has however neither set any separate law or regulations to govern nutrition labelling of such foods, nor required them to comply with relevant Codex standards and guidelines.

8. *Audit examination of selected infant and special dietary foods.* Audit examined selected infant and special dietary foods marketed in Hong Kong to ascertain the extent to which such foods had followed the Codex standards and guidelines. Audit found that a few infant and follow-up formulae did not strictly follow the Codex standards and guidelines in that: (a) there were deviations from the Codex standards and guidelines in nutritional

composition and labelling. For example, the ratio of “≥ 1 : 1” for arachidonic acid (AA/ARA) to docosahexaenoic acid (DHA) as required by Codex was not adopted for two imported infant formulae; and (b) nutrition and health claims, and other claims were commonly used by formula traders to promote infant and follow-up formulae. Audit examination of selected special dietary foods also revealed that some of such products contained claims which might not be in line with the Codex standards and guidelines. To safeguard public health, Audit considers that the Administration needs to critically consider whether it is in the public interest for the Government to continue relying on the trade to comply with the Codex standards and guidelines at their discretion (see para. 19).

### **Regulation of nutrition information**

9. The regulation of nutrition information for infant and special dietary foods is important because such foods are targeted at the more vulnerable subgroups of the population with special dietary needs. Six years have however passed since the Administration undertook in 2005 to review the need for introducing nutrition labelling requirements for infant and special dietary foods (see para. 5).

10. ***No verification of nutrition information.*** Since its establishment in 2006 and up to mid-2011, the CFS had not conducted any risk assessment studies on nutrition of infant and special dietary foods. In its food surveillance, the CFS had also not selected any such foods for verifying the correctness of the nutrition information declared.

11. ***Powers under section 61 of the PHMSO not invoked.*** In the absence of specific law and regulations, the Administration mainly relies on the general provisions of the PHMSO to regulate infant and special dietary foods marketed in Hong Kong. Section 61 of the PHMSO, which disallows a label or advertisement that falsely describes the food or misleads as to the nutritional or dietary value of the food, can be invoked against malpractices identified in relation to infant and special dietary foods. However, the CFS had so far not invoked section 61 in any case in relation to such foods.

12. ***Proactive actions not taken.*** Codex has prohibited the use of nutrition and health claims for foods for infants and young children (see para. 6). The World Health Organization (WHO) in its International Code of Marketing of Breast-milk Substitutes issued in 1981 (the WHO Code) has also recommended no advertisement or other form of promotion of breast-milk substitutes (which include infant formula). Audit however notes that the use of claims to promote foods for infants and young children is common in Hong Kong (see para. 8). There was no evidence that the CFS had taken proactive actions to verify the validity of claims by seeking scientific evidence from the food traders, or to stop them from using the claims. The possible use of misleading or exaggerated claims in foods for infant and young children, particularly infant and follow-up formulae, is a cause for concern.

13. *Enquiries/complaints not always properly followed through.* From time to time, the CFS received complaints and enquiries from various sources relating to nutrition of infant and special dietary foods. However, the complaints and enquiries were not always properly followed through by the CFS. Audit considers that the inadequacy in the follow-up actions might result in the Government's delay or inability to timely detect potential threats to public health.

14. *Audit examination of selected infant and special dietary foods.* Audit examined selected infant and special dietary foods marketed in Hong Kong to ascertain the accuracy of the nutrition information displayed on their food labels. For some of such foods examined, Audit found that there were obvious deviations between the nutrition information displayed on the nutrition labels and their nutrient contents. Some of the deviations would have fallen outside the CFS's tolerance limits had the nutrition labelling scheme been applied to the products concerned. Besides, the products examined did not meet some of the scheme requirements. Had such products been covered by the scheme, some of the deviations and non-compliances identified would have triggered the issue of warning/enquiry letters and enforcement actions by the CFS. Given these, Audit considers that the Administration needs to critically consider whether it is in the public interest to continue relying on the trade to self-regulate (see para. 19).

15. *Difficulties to differentiate special dietary food from others.* The Regulations have not provided any definition of "food for special dietary uses". To assist the trade and consumers to determine whether a food product should be classified as "food for special dietary uses", the CFS has specified some principles and guidelines on its website. Audit is however concerned that in the absence of a legal definition, there were food products serving special population subgroups, but not regarded by the CFS as "food for special dietary uses" under its principles and guidelines. As such, they should have fallen within the scope of the nutrition labelling scheme. However, Audit found that some of these products might not have complied with the scheme in various areas.

### **Development of a Hong Kong Code of Marketing of Breast-milk Substitutes**

16. *The WHO Code.* The aim of the WHO Code (see para. 12) is to contribute to the provision of safe and adequate nutrition for infants by, among others, ensuring the proper use of breast-milk substitutes on the basis of adequate information and through appropriate marketing and distribution. The WHO Code contains recommendations to regulate the advertising and marketing of breast-milk substitutes and on the ways governments should implement the Code. In May 2010, the WHO urged its member states to end all forms of inappropriate promotion of foods for infants and young children, and ensure that nutrition and health claims should not be permitted for such foods, except where specifically provided for in relevant Codex standards or national legislation.

17. With reference to the WHO Code, many countries have developed their advertising and marketing guidelines applicable to their own countries for compliance by the trade. In Hong Kong, the Government has not yet made it a mandatory requirement for the trade to comply with the WHO Code. In other words, the Government mainly relies on the trade to self-regulate.

18. *Setting up a task force to develop the Hong Kong Code.* In June 2010, the Administration set up a task force to develop the Hong Kong Code. The objective of the Hong Kong Code was to regulate the manufacturers and distributors of breast-milk substitutes and related products, and to prohibit malpractices in advertising and marketing such products. According to the Administration, the Hong Kong Code would be put into implementation within 2012. After its implementation, the Department of Health would monitor the situation and canvass the views of various parties to consider if there would be a need to step up enforcement and regulation.

19. Audit welcomes the Administration's efforts to develop the Hong Kong Code, but considers that, because compliance with the Hong Kong Code would be voluntary, the development of the Hong Kong Code alone may not be sufficient for regulating the nutritional composition of foods for infants and young children, including infant and follow-up formulae. The Administration needs to conduct a review to critically consider introducing appropriate law or regulations to govern nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong. Paragraphs 8 and 14 are also relevant.

### **The way forward and audit recommendations**

20. Audit welcomes the implementation of the nutrition labelling scheme. However, the scheme does not apply to infant and special dietary foods. This audit has revealed various inadequacies in the nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong. The Administration needs to take actions to address these issues as a matter of urgency.

21. *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:*

- (a) *conduct a review to critically consider introducing appropriate law or regulations to govern nutritional composition and labelling of infant and special dietary foods marketed in Hong Kong;*

- (b) *step up the regulation of nutrition information on infant and special dietary foods marketed in Hong Kong, including enhancing the CFS food surveillance programme to cover laboratory tests of more infant and follow-up formulae to ensure their nutritional safety and adequacy;*
- (c) *urge the CFS to:*
  - (i) *before specific law or regulations in (a) above is/are introduced, encourage food traders to comply with the Codex standards and guidelines, verify the validity of claims used by food traders to promote their foods and, where necessary, take appropriate action under section 61 of the PHMSO;*
  - (ii) *step up its actions to follow through enquiries/complaints;*
  - (iii) *provide further clarifications on the definition of “foods for special dietary uses” and step up its publicity efforts to help the trade and consumers determine whether a food product is a “food for special dietary uses”; and*
  - (iv) *take appropriate follow-up actions on Audit’s observations in the case studies reported;*
- (d) *introduce appropriate monitoring and sanction mechanisms to support the effective implementation of the Hong Kong Code, taking into account the development of specific law or regulations in (a) above; and*
- (e) *closely monitor the implementation of the Hong Kong Code and plan for the conduct of a post-implementation review in due course.*

### **Response from the Administration**

22. The Secretary for Food and Health, the Director of Food and Environmental Hygiene and the Director of Health, agree with the audit recommendations. The Secretary has said that, subject to the responses of the trade to the Hong Kong Code (see para. 18), the Government will consider whether specific law or regulation governing nutritional composition and labelling of infant foods is necessary.

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