

Refined Regulatory Framework for Pesticide Residues in Food in Hong Kong

Pesticide

- ✿ The use of pesticides and other chemicals has become a common agricultural practice
- ✿ Small amounts of pesticide residues may remain in the crops or animal food
 - ✦ The adverse health effects of pesticides depend on the nature of the pesticide, as well as the amount and duration of individual exposure
 - e.g. methamidophos and triazophos may affect the nervous system
- ✿ Most of the international regulatory authorities and the Mainland authority have already introduced statutory control on pesticide residues in food

Food supplies in Hong Kong

✿ Import statistics on semi-processed fruits, vegetables and cereals were imported (2010) :

- ✦ Mainland China ~ 33%
- ✦ Thailand ~ 30%
- ✦ USA ~ 13%
- ✦ Other countries <5%

(Census and Statistics Department)

✿ Local production accounted for only 2.5% of fresh vegetables consumed (2010)

(Agriculture, Fisheries and Conservation Department)

Current regulatory control on the use of pesticides

- ✿ Pesticides Ordinance (Cap. 133) – Agriculture, Fisheries and Conservation Department (AFCD)
 - ✦ Import, manufacture, sale and supply of pesticides in Hong Kong
- ✿ Public Health and Municipal Services Ordinance (Cap. 132) – Food and Environmental Hygiene Department (FEHD)
 - ✦ All food on sale for human consumption must be wholesome, unadulterated and fit for human consumption
 - ✦ Currently no specific legal provision that regulates the level of pesticide residues in food

International practice

- ✿ Regulation of pesticide residues in food is well developed in the international arena
 - ✿ e.g. Australia, the European Union, Japan, the Mainland, New Zealand, Singapore and the USA

The Refined Regulatory Framework

Background

- ✿ To address growing concern about safe use of pesticide in food, the Government conducted a public consultation exercise on a proposal for regulatory framework for pesticide residues in food in November 2007
- ✿ Since then collected views from a wide range of stakeholders, experts and the public
- ✿ Conducted a Regional Symposium on Regulation of Pesticide Residues in Food, jointly organized with the European Commission in 2009
- ✿ Have consulted the Expert Committee on Food Safety
- ✿ Based on the refined framework, we have further consulted the stakeholders
 - ✦ Since January 2011, we have conducted a total of 14 briefings and consultation sessions
 - Trade associations, food manufacturers, food importers, food distributors, retailers, Consulate Generals, local farmers, private laboratories, pesticide suppliers and food safety experts

諮詢文件

香港食物中殘餘除害劑的 修訂後規管方案

二零一一年七月



Consultation Document

Refined Regulatory Framework for **Pesticide Residues in Food** in Hong Kong

July 2011



Objectives

- ✿ We propose that DFEH should make a Regulation on Pesticide Residues in Food (the proposed Regulation) under section 55 of the Public Health and Municipal Services Ordinance (Cap. 132)
 - ✿ better protect public health;
 - ✿ facilitate effective regulation; and
 - ✿ promote harmonisation between local and international standards.

The Government is mindful of the need to maintain a stable supply of food in Hong Kong

Salient features of the refined regulatory framework

- ✿ to define “pesticide” and other related terms in a way consistent with Codex;
- ✿ to provide a list of MRLs/EMRLs, to adopt MRLs/EMRLs recommended by Codex as the backbone as well as the Codex’s classification of foods;
- ✿ to prohibit the import and sale of the concerned food for which no MRL/EMRL has been specified, unless DFEH is satisfied that the detected level will not be dangerous or prejudicial to health;
- ✿ to provide a list of exempted substances;
- ✿ to accept applications for adding/revising MRLs and exempted substances;
- ✿ to dovetail the proposed Regulation with the registration of pesticides for use on food crops under the Pesticides Ordinance (Cap. 133); and
- ✿ to commence the proposed Regulation after a two-year grace period.

To adopt Codex's definition of “pesticides” and other related terms

- ✿ The main structure of the framework has taken reference from that of Codex
- ✿ Definition of terms in the proposed Regulation is consistent with those of Codex
 - ✿ e.g. “pesticide”, “pesticide residue”, “MRL” and “EMRL”
 - ✿ promote harmonisation of local and international standards

To regulate pesticide residues by a list of MRLs/EMRLs (1)

- ✿ The proposed Regulation will specify in its First Schedule a list of MRLs/EMRLs for certain pesticide-food pairs (i.e. the maximum concentration of specified pesticide residues permitted in specified food commodities)
 - ✿ The presence of any of these pesticide residues in food at levels exceeding the MRLs/EMRLs will contravene the proposed Regulation

To regulate pesticide residues by a list of MRLs/EMRLs (2)

- ✿ The formulation of the list of MRLs/EMRLs is based primarily on the available standards recommended by Codex, supplemented by related standards of the Mainland and other major food exporting countries to Hong Kong (the USA and Thailand).
- ✿ These standards will further be scrutinised by conducting risk assessment to ensure that they are adequate to protect public health in Hong Kong.
- ✿ This approach is considered pragmatic, taking into account the heavy reliance of Hong Kong on imported food.
 - ✦ Strike a balance between protecting public health and maintaining stable supply of food in Hong Kong.

To regulate pesticide residues by a list of MRLs/EMRLs (3)

- ✿ The proposed list of pesticides to be included in the proposed regulation is at Annex I of the Consultation Document
- ✿ The full list of proposed MRLs/EMRLs is available at CFS's website
 - ⊕ This is a preliminary list
 - ⊕ CFS is updating the MRLs/EMRLs according to the latest changes in the international standards

To regulate pesticide residues by a list of MRLs/EMRLs (4)

- ✿ Dried, dehydrated, concentrated, processed or compounded food:
 - ✦ the MRLs/EMRLs shall apply to any food in a dried, dehydrated or concentrated form with adjustment determined with respect to the weight of the food after dilution or reconstitution, where appropriate;
 - ✦ apart from food in a dried, dehydrated or concentrated form, the MRLs/EMRLs shall apply equally to primary food commodities and processed food;
 - ✦ compounded food may contain amount of pesticide residue which does not exceed, in relation to the quantity of the relevant food ingredient used, the level permitted by the MRLs/EMRLs.

To adopt Codex's classification of foods

- ✿ Adopted Codex's food classification system for consistency
 - ✿ As Codex standards form the backbone of the refined regulatory framework
 - ✿ Has the added benefit of adopting the uniform nomenclature used in international markets

Pesticide residues with no specified MRL/EMRL in the proposed Regulation

- ✿ Except for exempted substances, import and sale of the concerned food will be prohibited unless DFEH is satisfied that the detected level of pesticide residue is not dangerous or prejudicial to health.
- ✿ DFEH will conduct risk assessment, taking into account a host of factors including safety reference values (i.e. acceptable daily intake and acute reference dose) and local situation

To establish a list of exempted substances (1)

- ✿ Proposed to specify a list of exempted substances in the Second Schedule of the proposed Regulation
 - ✦ To facilitate the trade to use pesticides that are natural and the residues of which are identical to or indistinguishable from natural food components
- ✿ Exempted substances must fall under the definition of pesticide and meet one of the following criteria:
 - ✦ the use of the pesticides does not result in residues occurring in food;
 - ✦ the residues are identical to or indistinguishable from natural food components; or
 - ✦ the residues are of no toxicological significance or will not pose any public health risk.

To establish a list of exempted substances (2)

- ✿ We have made reference to the lists adopted by major food exporting countries to Hong Kong in drawing up our own list
 - ✿ Such a list of exempted substances is not available from Codex
- ✿ The proposed list of exempted substances in Hong Kong is at Annex III of the Consultation Document
 - ✿ CFS is updating the list according to the latest changes in the international standards

To update the lists of MRLs/EMRLs and exempted substances regularly

- ✿ The lists of MRLs/EMRLs and exempted substances specified in the proposed Regulation will be updated by DFEH regularly
 - ✿ As new pesticides and new applications on crops keep emerging

To allow application for revising/adding MRLs and exempted substances (1)

- ✿ Import tolerance is a trade facilitation measure commonly found in overseas jurisdictions
 - ✦ Purpose: to cater for pesticide-food pairs or pesticides respectively that have been found to be acceptable from public health perspective in other jurisdictions but not yet included in the local lists of MRL / exempted substances
 - ✦ Canada, the EU, Japan and the USA
- ✿ We propose to adopt a similar measure which would allow a person to apply to DFEH for:
 - ✦ adding a new MRL to the First Schedule or
 - ✦ revising an existing MRL therein, or
 - ✦ adding an exempted substance to the Second Schedule
- ✿ Application fee will be charged on the basis of full-cost recovery and will not be refundable.

To allow application for revising/adding MRLs and exempted substances (2)

- ✿ Applications must be accompanied by sufficient information, e.g.
 - ✦ current or anticipated availability of the concerned food product in Hong Kong
 - ✦ relevant toxicological data and safety reference values of the concerned pesticide,
 - ✦ pesticide supervised field trial data,
 - ✦ pesticide residue data, analytical methods, information on availability of analytical reference standards,
 - ✦ reports of food processing studies, and
 - ✦ relevant information if MRLs have been established by Codex or overseas jurisdictions or exemption from establishing MRL for the concerned pesticide has been granted by overseas jurisdictions.

To allow application for revising/adding MRLs and exempted substances (3)

- ✿ Upon receiving the application, DFEH will conduct risk assessment.
- ✿ The proposed Regulation will provide that DFEH may approve the application if he is satisfied, among other things, that the level of residue is not dangerous or prejudicial to health.
- ✿ For applications related to MRLs, DFEH may set up or revise an MRL with the same or different limits from the overseas MRL cited by the applicant.
- ✿ For applications related to exempted substances, DFEH may add the pesticide concerned into the list of exempted substances.

To allow application for revising/adding MRLs and exempted substances (4)

- ✿ DFEH would revise the lists of MRLs and exempted substances regularly by incorporating all MRLs/exempted substances approved during the period.

To dovetail with registration of pesticides for use on local food crops (1)

- ✿ To ensure that a newly registered pesticide for use on local food crops under Cap. 133 would be properly regulated under the proposed Regulation, there is a need to introduce a dovetailing mechanism.

To dovetail with registration of pesticides for use on local food crops (2)

- ✿ Propose that DAFC shall collect, for the purpose of application for registration of pesticide under Cap. 133, any information relevant to the proposed Regulation for consideration of setting up MRLs or adding exempted substances.
- ✿ Empower DFEH in the proposed Regulation to obtain from DAFC such information.
- ✿ On the basis of the information submitted by the applicant, DFEH would advise DAFC whether the pesticide in question could be regulated by way of setting up a MRL or adopted as an exempted substance in the proposed Regulation.
- ✿ If so, DFEH would amend the First or Second Schedule in the proposed Regulation to incorporate the new standard.

To dovetail with registration of pesticides for use on local food crops (3)

- ✿ DAFC will decide whether to approve the registration of the pesticide, having regard to DFEH's advice and other relevant considerations under Cap. 133.
- ✿ Application fee will be charged on the basis of full-cost recovery and will not be refundable.
 - ✿ as if the applicant is applying for adding MRLs or exempted substances under the proposed Regulation

Penalty

- ✿ It would be an offence to import, manufacture or sell for human consumption any food containing –
 - ✦ pesticide residue at a level exceeding that specified in the First Schedule of the proposed Regulation; or
 - ✦ pesticide not specified in the First or Second Schedule of the proposed Regulation, or though so specified, but are found in other kinds of food, i.e., not in the stated pesticide – food pairs, unless the DFEH is satisfied that the detected level will not be dangerous or prejudicial to health.
- ✿ The maximum penalty for contravention will be a fine at level 5 (\$50,000) and imprisonment for six months
 - ✦ in line with the penalty for selling food which is unfit for human consumption under section 54 of Cap.132.

Statutory defences (1)

- ✿ Section 71 of Cap. 132 stipulates conditions under which warranty may be pleaded by the defendant as defence in any proceedings for an offence under the relevant part of the Ordinance.
- ✿ This would also be applicable to the offences under the proposed Regulation.
 - ✦ e.g. a vendor charged under the proposed Regulation may produce evidence such as invoices to demonstrate that the food concerned is in the original state as obtained from the supplier without any further treatment and the supplier's earlier confirmation of safe food supply.

Statutory defences (2)

- ✿ Section 70 of Cap.132 provides that if the defendant could prove that the contravention was due to the act or default of some other person, and that he has used all due diligence to secure that the provisions in question were complied with, he may plead this as a defence.
- ✿ This is applicable to offences under the proposed Regulation.

Legislative timetable

- ✿ Plan to table the proposed Regulation at the Legislative Council towards the end of 2011

Grace period

- ✿ Propose that there should be a two-year grace period prior to the commencement of the proposed Regulation
 - ✿ To allow sufficient time for the trade to comply with the proposed Regulation
 - ✿ During this period, CFS will provide briefings, training and guidelines for different sectors to familiarise them with the proposed Regulation

Public consultation (1)

- Public consultation document can be downloaded from the website of the Food and Health Bureau (<http://www.fhb.gov.hk>) or the Centre for Food Safety (http://www.cfs.gov.hk/english/whatsnew/whatsnew_fstr/whatsnew_fstr_21_Pesticide.html).

Public consultation (2)

✿ Please send your comments by letter, facsimile or e-mail to the Centre for Food Safety before **19 September 2011**:

- ✦ Centre for Food Safety
(Attn.: Consultation on Pesticide Residues in Food)
Food and Environmental Hygiene Department
43/F, Queensway Government Offices,
66 Queensway, Hong Kong
- ✦ Facsimile: (852) 2893 3547
- ✦ E-mail address: pesticide_consultation@fehd.gov.hk
- ✦ Enquiry tel. no.: (852) 2867 5699

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