



Food Fraud Prevention THINK TANK

January 24, 2023

Title: Comments to the US Codex Delegation for the Food Fraud EWG Discussion Document Draft from August 5, 2022

From: Dr. John W Spink, Director, Food Fraud Prevention Think Tank LLC & Assistant Professor, Michigan State University

NOTE: the comments here are mine alone.

To: US Codex Delegation,

Thank you for the opportunity to review and comment on this draft. The Codex draft document was dated August 5, 2023, was distributed on January 15, 2023, and the comments are submitted here on January 24, 2023.

SUMMARY: The discussion draft seems very close to being complete. As the scope has narrowed to the more basic terminology – rather than expanding into recommended responses -- there have been fewer and fewer comments or edits. The updated draft has continued the helpful shift from reaction to the more proactive focus on prevention. The document has continued the shift from recommended actions to the more efficient and fundamental starting point of the definition of terms and the general emphasis on assessing and reducing vulnerability. / RECOMMENDATIONS: A summary of the key recommendations are provided here, and a line-by-line review is in the attachment. First, expand the definitions – or at least add glossary terms – such as adulterant/ adulterate/ adulterated, food security, intentional contamination/ intentional adulteration (food defense), and prevent/ prevention, mitigate/ mitigation, risk, and vulnerability. Fortunately, many codified definitions can be referenced, such as from the International Standards Organization. Specifically, ISO 31000 Risk Management includes risk analysis terms, and ISO 22380 Product Authenticity includes product fraud and prevention. Second, while the document has expanded the types of food fraud, it is recommended to include adulterant-substance (a commonly used term that includes substitution, dilution, and concealment), tampering (possibly also clarifying malicious tampering, which is a food defense act), and mislabeling or misbranding (as a specific type of misrepresentation). Otherwise, the other recommendations were minor. Some comments are also provided.

Thank you for the opportunity to participate in this process.

Sincerely, [Electronic Signature – John W Spink, 1/24/2023]

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Attachment – Detailed Line-by-Line Comments:

Here are recommendations or comments added by the section in the draft document.

- Section 1, Item 4: “Food fraud can be **prevented or minimized** using...”
 - Comment: This is a GREAT emphasis. This could be reminded early and often. The goal is to prevent first, and then to minimize the impact.
- Section 2, Item 9: “The purpose of the work is to provide guidance to competent authorities, other relevant regulators, and FBOs.”
 - Comment: This is a good, broad clarification. The scope now covers the industry and not only a regulators.
- Section 2, Item 9, Footnote: “[Furthermore, consideration should be given to controls related to the integrity and authenticity of input materials, including but not limited to feeds and seeds, used in food production. 1]” The footnote is “Issues of intellectual property, such as geographic indicators and related labeling restrictions which do not represent a risk to public health and are beyond the scope of Codex are not addressed within this guideline.”
 - Comment: The footnote comment contradicts the CODEX scope, which includes all trade issues. Codex has emphasized the negative impact on trade as a key to this food fraud work, but the footnote states that only public health issues are a concern. The footnote narrows the scope of action only to include situations with health harm. If Protected Designation of Origin (PDO) is the concern, possibly add to the document a clarification that it is expected that food products are legal in their country of origin and in the country where it is sold.
 - Comment: Why is this footnote only added to the feeds and seeds? If it is an important point, it should be in the document's main body. If the footnote applies there, then it applies to all products. If the clarification is so important to put in the footnote, then it should be in the body of the paper and explained in detail.
 - Recommendation: remove the intellectual property rights phrase from the footnote. The comment can stand on its own.
- Section3: Definitions:
 - Recommendation: Unless a glossary is added later, this section is missing several key terms. There are not enough of the most basic definitions. The lack of defining basic terms, especially at the start of a new concept being implemented, is critical.
 - Recommendation: These terms need to be defined -- they are used and critical to the scope but not defined.
 - Adulterant
 - Adulterate

- Adulterated (possibly note the confusing application of the FDA FDCA "adulterated foods.")
 - Adulteration
 - Contamination (use the Codex definition)
 - Food Security (WHO 2002 definition)
 - Intentional Contamination (use the Codex application of this term, and explain how it is different from an Adulterant)
 - Intentional Adulteration (clarify when this term is applied to food defense – not food fraud but the deliberate act with the intent to cause harm to public health, economy, or terror)
 - Prevent/ prevention (ISO has good definitions)
 - Mitigate/ mitigation (see ISO)
 - Risk vs. vulnerability (use ISO 31000)
 - Detect/ detection.
 - Deter/ deterrence.
 - Discourage/ dissuade.
- Section 3: Definitions: “Food Fraud: Any deliberate action of food business operators (FBO) or other individuals to deceive others in regard to the [prescribed specifications or expected characteristics] [integrity] of food to gain an unfair advantage.”
 - Comment: This definition of food fraud seems wordy and a bit disjointed but overall, it is complete. It almost seems like the writer -- or individual on a writing committee – was trying to avoid some terms and also to insert others. This definition seems like it was edited so many times that it is now awkward.
 - Recommendation: I recommend removing all parenthesis and reviewing if this definition is still clear.
- Section 3: Definitions, Definitions for Related Terms:
 - Recommendation: Clarify if these definitions should have a citation. If one citation is added, then there should be many. This doesn't look like a direct quote, so it is ok just to leave it.
 - Recommendation: Consider including the "food security" term (with reference to WHO, 2002) to clearly state that it is NOT part of food fraud or food protection.
- Section 3: Definitions, Economically Motivated Adulteration:
 - Comment: Possibly consider a commentary about the EMA term. / Economically motivated adulteration is a term widely used with one definition defined by the US FDA as a working definition for a public meeting that only focused on food, medical, dietary supplements and medical devices with a dangerous substance or additive that caused public health harm. The term was created to clarify what parts of the "Adulterated Foods" (and related) sections of the Food Drug & Cosmetics Act applied to the focus of that meeting. The term was not created to be used in the food fraud context. Generally, food fraud researchers and practitioners have moved away from using this term.
- Section 3: Definitions, Food Fraud Vulnerability & Food Fraud Vulnerability Assessment:

- Comment: These definitions are excellent additions. Also, the definitions are clear and consistent with the current usage. It is critical for the FFV and FFVA terms to be defined in the Codex document.
- Section 4: Types of food fraud:
 - Comment: The term "Adulterant-substance" is often used to cover addition, dilution, and concealment. Since Adulterant-Substance is a frequently used term, it would be helpful for CODEX to include and clarify it.
 - Recommendation: The term mislabeling should be added. Misrepresentation is similar but not exactly the same. There should be a specific mention of label problems. E.g., from GFSI: "Mislabeling/ Misbranding: the process of placing false claims on packaging for economic gain.
- Section 4: Types of food fraud, Tampering:
 - Comment: there is a difference between malicious tampering (e.g., a food defense act to create harm) and fraud tampering. Both terms should be defined in this document.
 - Recommendation: Tampering Definition "Legitimate product and packaging are used in a fraudulent way, e.g., changed expiry information, product up-labeling (a higher-grade label is put on a lower quality item), and so on (Reference: doi: 10.1111/j.1750-3841.2011.02417.x),
 - Or: Food tampering: Food tampering is the intentional contamination of a food product, with the intent to cause harm to the consumer or to a private company. Food tampering may affect any part of the food product, such as the product itself, or it can affect the packaging and the label. (Reference: <https://inspection.canada.ca/food-safety-for-consumers/fact-sheets/food-handling/food-tampering/eng/1331585126472/1331585217459>)
- Section 5: Principles, Principle 2: Protect the Integrity of the Food Supply Chain and Legitimate FBOs:
 - Comment: Clarify if this is the general integrity or food integrity. The integrity term alone has not been defined.
- Section 7: Relevant Activities for National Food Control Systems, Item14:
 - Recommendation: "Combat" is a new term. The previous "prevent and mitigate" phrase could be used here.
- Section 7: Relevant Activities for National Food Control Systems, Item 19: "Competent authorities should consider establishing surveillance activities to detect food fraud. "
 - Comment: Yes, "detect" is the correct term and action. Here that act is "detect." The regulators should monitor the end product for problems.

- Section 8: Cooperation and exchange of information between importing and exporting countries, Item 16; Question to the EWG: What key data elements should be included in these guidelines to supplement guidance in existing Codex text?
 - Comment: The document covers enough. Adding any new content would delay the publication.

- Section 8: Cooperation and exchange of information between importing and exporting countries, Item 17: “Depending on the competent authority’s enforcement activities, other enforcement agencies...”
 - Comment: Is this different from the regulators or competent authorities listed before and enforcement agencies? E.g., FDA to FBI? If so, then clarify. Possibly add these terms to the glossary.

- Section 8: Cooperation and exchange of information between importing and exporting countries, Item 17: “that actions of any given **party** may have been...”
 - Comment: Especially for a document that will be translated into many languages, the term “party” is confusing. Is this a Codex term? Possibly change to "agent" or "entity"?

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Reference: From Discussion Draft from April 5, 2022:

While there is continued recognition by Codex and CCFICS that addressing food fraud is important and timely, continued scope creep has slowed the process. While progress is being made and moving quickly from a Codex perspective, it is more than six years since the topic was on the agenda at CCFICS22, and then the creation of the Food Fraud EWG first sought members in August 2017.

SUMMARY –The Codex FF EWG has created a very comprehensive review of the topic and conclusion.¹ It stated as clear and agreed that addressing food fraud is an important Codex subject. Also, it was stated as clear and agreed that providing definitions of terms, and the relation to other Codex works and Committees, will reduce confusion and global inefficiencies. OUR RECOMMENDATION is to retain the original, narrow the scope to a basic guidance document that only addressed definitions of key terms, explains the types of food fraud, and the relation of these concepts to other Codex documents and Codex Committees. To expand beyond this narrow scope would further delay the important work – already it has been over SIX YEARS since the need for a food fraud definition was first on the CCFICS22 agenda. Other key concepts could be noted for future research including: National Food Control Systems, Information Sharing, “Roles and responsibilities of industry and government entities when addressing food fraud,” and “Guidance on how countries can modernize their national food control systems to address food fraud and intentional adulteration, e.g., an extension of HACCP and good manufacturing practices.” /END/