



JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX COMMITTEE ON GENERAL PRINCIPLES

Thirty-first Session

Bordeaux, France, 11 - 15 March 2019

USE OF EXAMPLES IN CODEX STANDARDS

(Prepared by the Codex Secretariat)

1 BACKGROUND

1.1 At the 23rd Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS23¹ (2017)), Brazil expressed discomfort with recommending the adoption of the draft Principles and Guidelines for Monitoring Performance of National Food Control Systems at Step 8 with Appendix B retained as part of the document, taking the view that Appendix B, providing examples, should be removed pursuant to previous decisions of the Commission and other committees regarding the inclusion of examples in Codex texts. Brazil further noted that examples should not be included in Codex standards since they may not be relevant in all areas of the food sector and may create unnecessary and inapplicable links to different contexts and that in light of its relevance, Appendix B should be made available as an information document on the Codex website. The Committee, however, agreed to forward the draft Principles and Guidelines, including Appendix B, to CAC40 for adoption at Step 8.

1.2 At the 40th Session of the Codex Alimentarius Commission (CAC40² (2017)) Brazil supported by other delegations reiterated the discomfort and also suggested that the question of what should be contained in standards versus information documents could be examined by the Codex Committee on General Principles (CCGP).

1.3 At CAC40 other delegations were in favour of retaining Appendix B, noting that CCFICS had already addressed concerns regarding the inclusion of examples during the development of the document by inserting text in Appendix B, reiterating that the examples were illustrative and that each country should establish appropriate indicators for their desired outcomes. It was further noted that decisions regarding what should be placed in an information document reside with the Committee and that there were no compelling public health, food safety, trade or procedural reasons that justified removal of the existing Appendix B as agreed by CCFICS23.

1.4 CAC40 agreed to: (i) adopt the Principles and Guidelines for Monitoring the Performance of National Food Control Systems at Step 8 as recommended by CCFICS; and (ii) discuss the development of guidance on the use of examples in Codex texts at a future meeting of CCGP.

1.5 The present document has been developed to facilitate the requested discussion on the topic at CCGP31.

2. PREVIOUS DISCUSSIONS ON USE OF EXAMPLES AND THEIR STATUS

2.1 CCGP12 (1996)³ addressed the use of explanatory material contained in Codex texts and noted that they covered a wide range of subjects and varied considerably in their content. Following the discussion at CCGP12, CAC22 (1997)⁴ concluded that “the degree of explanatory material contained in Codex texts should be adequate for the interpretation of the text”.

¹ REP17/FICS, para 16 - 17

² REP17/CAC, para 64 - 67

³ ALINORM 97/33, para 25 - 32

⁴ ALINORM 97/37, para 171

2.2 In the past, some Codex standards have been drafted with a disclaimer indicating that annexes (containing examples and other provisions) are intended solely for information and illustration and use between trading partners. This status of such annexes was discussed several times in Codex. CAC32 (2009)⁵ noted that the Committee on General Principles⁶ had agreed that “all Codex texts, including standards and their annexes, were covered by the definition of “international standard” contained in the WTO/TBT Agreement”. In this context, annexes and explanatory texts included in Codex texts, in whatever form, are considered to be an integral part of the Codex text.

3. CURRENT USE OF EXAMPLES IN CODEX TEXTS

3.1 General comments

3.1.1 Codex committees have used explanatory material/examples in Codex texts or during the development of Codex texts for a long time. Such explanatory examples vary in length, specificity and placement (body of the text, footnote, annex or appendix).

3.1.2 Some examples that are not considered as appropriate for inclusion in the standard have been included in information documents (see also section 4).

3.2 Cases from Codex Committees and Task Forces (non-exhaustive)

Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS)

3.2.1 CCFICS has used examples in its standards to further explain specific issues in the texts and provide clarity. For example, in the *Principles and Guidelines for Monitoring the Performance of National Food Control Systems* (CXG 91-2017) examples are provided in two extensive appendices (A and B) aimed at offering additional guidance to assist exporting and importing countries with a list of indicators for selected outcomes.

Codex Committee on Methods of Analysis and Sampling (CCMAS)

3.2.2 In the past, CCMAS has made extensive use of examples in its standards. Recently, however, CCMAS has focused on developing more easily understandable and readable texts, which will not require extensive use of illustrative examples. In some cases, when information was considered useful and members felt that the information should not be lost, CCMAS has agreed to publish examples in information documents. This is the case in new work to revise the *Guidelines on Measurement Uncertainty* (CXG 54 – 2004)⁷ which intends to place examples (that are presently included in the guidelines) in an information document.

Codex Committee on Food Hygiene (CCFH)

3.2.3 The Codex Committee on Food Hygiene (CCFH) has used examples in its recommended texts, as well during the drafting process to support the understanding of concepts and processes, without necessarily including them in the final text. However, efforts have been made to make these examples available through other means such as via the FAO and WHO webpages⁸ or through peer-reviewed literature⁹.

3.2.4 CCFH is guided by the Codex Procedural Manual (PM), Part II, *Guidelines on the elaboration and/or revision of Codes of Hygienic Practice for Specific Commodities*, which state that “provisions in Codex Codes of Hygienic Practice should be drafted in a sufficiently clear and transparent manner such that extended explanatory material is not required for interpretation”.

3.2.5 Concern was expressed at CCFH47 (2015) when the committee included an example of microbiological criteria in an Annex to the *Code of Hygienic Practice for Low-Moisture Foods* (CXC 75-2017)¹⁰ on the basis that it was the prerogative of each country to develop its own microbiological criteria. The committee, however,

⁵ ALINORM 09/32/REP, para 92 - 94

⁶ ALINORM 99/33A, para 61

⁷ REP18/MAS, para 55 - 60 and Appendix IV

⁸ Risk Profiles developed by the Committee to support the work to develop guidelines for the control of *Trichinella* spp. and *Cysticercus bovis* in meat were made available on the FAO webpage following a peer review of these documents <http://www.fao.org/food/food-safety-quality/a-z-index/foodborne-parasites/en/>

⁹ Examples on the development of microbiological criteria for foods developed in the course of the revision of the Principles for the Establishment and Application of Microbiological Criteria (CAC/GL 21/1997) were published in a special edition of the peer reviewed journal Food Control (available at: <https://www.sciencedirect.com/journal/food-control/vol/58>)

¹⁰ REP16/FH, para. 36 - 37

noting that the text emphasized that the criteria were examples and were not applicable in all cases, agreed to retain them in the standard. CAC39 subsequently adopted the standard¹¹.

Ad hoc Intergovernmental Task Force on Animal Feeding (TFAF)

3.2.6 The TFAF discussed during the development of the *Guidance for Governments on Prioritizing Hazards in Feed* (CXG 81-2013), TFAF7 (2013) the inclusion of two annexes with examples of hazards in feed and an example of the prioritization process respectively. Some Delegations were not in favour of retaining the Annex on examples of hazards in feed noting that the information therein was not complete; that it would be difficult to maintain; that such information was already available in an FAO/WHO report; and that the purpose of the Annex may be misinterpreted¹². However, the Task Force agreed to retain the Annex when the document was submitted for adoption.

3.2.7 At CAC36 (2013), the concerns expressed in the Task Force were reiterated. In order to allow the document to be adopted by the Commission¹³, it was proposed to remove the Annex from the document and to place it on a dedicated FAO website, noting that in this way the information would be available to everybody working on feed safety and that updates could be easily made.

4. PROVIDING EXAMPLES USING INFORMATION DOCUMENTS

4.1 Background

4.1.1 Codex committees make use of “Information Documents” to include examples and other materials that the committees do not wish to include in official Codex texts, but which are nevertheless considered useful to Codex members and observers.

4.1.2 The existing guidance for information documents was agreed by CCGP28 (2014) and endorsed by CAC37 (2014) as follows¹⁴:

“i. It is recognised that there is the occasional need for Codex committees to make available information documents, however Codex committees should not deliberately develop such documents and these documents should be by-products of ongoing work of the Committee.

ii. Documents are considered to be information documents if they:

- Have been developed and agreed upon by a Codex committee;*
- Have been determined by the Committee to contain information that is useful to national governments and/or Codex members and observers and Codex Committees; and*
- Are not considered appropriate by the Committee to be adopted as Codex standards, guidelines, or codes of practice or as recommendations for inclusion in the Procedural Manual.*

iii. Information documents will be made available on the Codex website of the relevant committee, clearly separated from official Codex documents and adopted texts.”

4.2 Referencing Information Documents

4.2.1 As mentioned in 3.2.2 above, CCMAS intends to make use of information documents containing examples related to the *Guidelines on Measurement Uncertainty* (CXG 54 – 2004). In this context, CCMAS36 (2015)¹⁵ requested clarification on any legal implications of referencing information documents in official Codex texts.

4.2.2 The FAO and WHO legal offices confirmed to the Codex Secretariat that it would not be advisable to reference information documents in a Codex standard in order to avoid any possible confusion as to the status of various elements within a Codex standard or other Codex text. The guidance provided by CCGP and endorsed by the CAC regarding “Information Documents” continues to be relevant for questions regarding supporting documentation.

¹¹ REP15/CAC, Appendix III

¹² REP13/AF, para 48 - 56

¹³ REP13/CAC, para 58 - 64

¹⁴ REP14/GP, para 86 and REP14/CAC, para 104

¹⁵ REP 15/MAS, para 77

5. CONCLUSIONS

5.1 Codex committees consider the inclusion of examples when developing draft standards, guidelines and codes of practice and the CAC subsequently decides on whether to adopt the texts. Examples are integral parts of the relevant Codex text, come in many different forms and serve different purposes. Examples may provide clarity and illustrate important concepts in Codex texts, in particular options available to members in implementing Codex texts. Specific concerns with the inclusion of examples have been raised on a limited number of occasions and have been dealt with in the relevant Committee and in the CAC.

5.2 In proposing the inclusion of examples, Codex committees are guided by the wish to make the text understandable and facilitate its application in line with the conclusions of CCGP12/CAC22 (see section 2). The additional guidance in the Codex PM on the '*elaboration and/or revision of Codes of Hygienic Practice for Specific Commodities*' (see para 3.2.4) clarifies that examples are not a substitute for a clearly drafted text. Hence that guidance could be appropriate for any Codex committee and text and not only CCFH and codes of hygienic practice.

5.3 For examples not considered appropriate for inclusion in a Codex text by the relevant committee or CAC, other options to make them available exist and have been used: e.g. information documents as defined by CCGP28/CAC37 (see also 4.1.2) or publication by FAO and WHO or in the peer reviewed literature. Information documents are still a relatively recent tool in Codex.

6. RECOMMENDATION

6.1 Taking into account the conclusions above, it appears that Codex committees are overall successfully using the different options available to them regarding the use of examples on a case by case basis. Because of the diverse nature of examples and their use, specific guidance to committees on this question would not seem to be practical.

6.2 However, if considered appropriate, a general principle could be formulated from the existing guidance mentioned in Section 2 and 3.2.4 above for inclusion in the Codex PM, Part II, Guidelines for Inclusion of Specific Provisions in Codex Standards and related Texts.