



## JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX COMMITTEE ON FOOD LABELLING

### Forty-seventh Session

Palais des Congrès, Gatineau, Canada

### DISCUSSION PAPER ON FOOD LABELLING EXEMPTIONS IN EMERGENCIES

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#### Introduction

1. Supply chain disruptions caused by emergency situations in recent years, such as the COVID-19 pandemic, caused many countries to consider implementing certain temporary exemptions to food labelling requirements, to ensure a safe and adequate food supply. Current Codex Committee on Food Labelling (CCFL) texts do not provide guidance on whether and how countries may consider such exemptions in emergency situations, when deemed necessary.
2. This discussion paper outlines the issues and feedback received from Codex members on the potential need for new work to develop such guidance in CCFL, noting that such feedback was significant but varied and therefore, supportive of considering proposed new work in this area. A project document is also included for the Committee's consideration.

#### Background

3. At its 46th session, CCFL (CCFL46) discussed the possibility of future work to assist countries in establishing flexibilities in food labelling requirements when necessary to assure supply chain resilience during national or global public health emergencies, such as the current COVID-19 pandemic. CCFL46 agreed that the United States of America would prepare a discussion paper to outline possible new work for consideration by CCFL and that a Circular Letter (CL) would be issued to request information to support the development of this discussion paper.
4. Some countries or regions have considered and implemented a variety of temporary labelling flexibilities to address supply chain challenges caused by the COVID-19 pandemic. This variance supports the need for a common and structured framework for such labelling flexibilities to ensure both consumer protection and fair trade.
5. To assist in developing a discussion paper on possible labelling exemptions in emergencies, a set of questions were developed and circulated to Codex members in March 2022 through CL 2022/09-FL. The questions were intended to obtain input from the Codex membership and to share their experience, if any, with labelling flexibilities, and to guide and inform the types of labelling flexibilities to be considered as part of the future work. Feedback received was also intended to help assess whether those labelling flexibilities are best provided for by amendments to the *General Standard for the Labelling of Pre-packaged Foods* (GSLPF) (CXS 1-1985) or through a separate guideline document.
6. This discussion paper summarizes responses from Codex members to CL 2022/09-FL and proposes elements for CCFL consideration to guide discussions on potential work regarding labelling exemptions in emergencies. 27 member countries and six Codex observers responded to the Circular Letter issued in March 2022.<sup>1</sup>

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<sup>1</sup> Australia, Brazil, Canada, Chile, Colombia, Cuba, Cyprus, Ecuador, European Union, Honduras, India, Indonesia, Japan, Kenya, Malaysia, Mexico, New Zealand, Paraguay, Peru, Philippines, Saudi Arabia, South Africa, Switzerland, Thailand, United Kingdom, Uruguay, USA and ALAIAB, European Federation of Allergy and Airways Diseases Patients' Associations, Food Industry Asia, FoodDrinkEurope, ICBA, IMACE

## Summary of Comments

**Question 1:** *To address COVID-related or other supply chain disruptions, has your country/region offered flexibilities (including exemptions) in labeling food products to maintain availability to consumers? If so, what flexibilities did you offer? If you did not offer flexibilities, why not?*

### Response Summary

7. 17 countries stated that they offered flexibilities in food labelling to address COVID related or other supply chain disruptions, while nine countries stated that they did not offer such flexibilities.

8. Countries provided a number of examples of approaches to using enforcement discretion during the COVID pandemic, to maintain the food supply amid supply chain disruptions and avoid food waste. Some countries indicated that these measures should be temporary, justified and proportionate, risk-based so as not to compromise food safety, continue to protect consumers from false and misleading food labels, and continue to require basic product information to be provided to consumers (e.g. product common name, net quantity, ingredients and allergen content, company name and contact information). In some cases, flexibilities were provided with respect to labelling format and how the information was provided. Some countries established a body to provide a mechanism for food businesses to raise prospective compliance challenges and implemented public outreach such as webinars and websites to ensure transparency and public awareness.

9. Some countries required food businesses to complete an assessment of risk for any proposed flexibilities, including consideration of impacts on nutrition or health claims and whether proposed substitute ingredients were already approved by the regulator, and provided a standardized checklist for regulators to ensure consistency in decision-making and oversight. For such countries, when a flexibility was granted, the food businesses were required to comply with all regulations where possible, assess alternative approaches to compliance, and maintain records available to regulatory agencies. In many cases, flexibilities were not granted for food businesses seeking to use an unapproved food additive or processing aid, introduce changes to a novel food or nutritive substance or certain foods deemed sensitive or unique (e.g. infant formula), or changes that could risk introducing undeclared allergens or any misleading claims.

10. Some countries offered permitted alternative ingredient lists for circumstances when an alternative food additive or ingredient had to be sourced, allowing formulation changes to be communicated through accompanying documents, websites, in-store materials, or stickering if labelling modification was not possible. Some countries allowed slight variations in nutrition information not reflected in nutrition information panels, and certain labels compliant with international markets. Multiple countries allowed food businesses to deplete existing labeling stocks, and some provided flexibilities around language labeling requirements. Some countries offered non-food safety labelling flexibilities to allow food made for hotels, restaurants and institutions to be sold at retail. A small number of countries relaxed front-of-pack nutrition labelling, and country of origin labelling requirements.

11. Countries that did not offer flexibilities indicated that no COVID-related supply chain disruptions were experienced, or not to the level that would warrant offering regulatory flexibilities. Some countries relied on existing flexibilities within their regulations or identified other current regulations governing international donations of human-use products for social and humanitarian purposes, including storage, packaging, shelf life, and documentation.

**Question 2:** *In particular, was there a need to redirect foods intended for catering purposes into the retail market? If so, how were differences in labeling requirements accommodated?*

12. **Response Summary:** Of the countries that responded to this question, 13 did not redirect foods intended for catering purposes to the retail market, and eight countries did redirect foods for such purposes. For some countries that did redirect foods to retail, temporary enforcement discretion was used to allow minor nutrition labelling exemptions, and one country noted that certain products (e.g. flour) were allowed to be packaged into smaller packages for retail. Countries that did not redirect foods to retail indicated that there was no need to do so.

**Question 3:** *Were there concerns related to either public health or transparency with providing flexibility regarding ingredient substitution? If your country or region did not provide such flexibilities, what guidance would be helpful for you to make provisions to address future supply chain disruptions?*

13. **Response Summary:** Of the countries that responded to the question, 18 stated that public health or transparency concerns were considered regarding ingredient substitution, whether such substitutions were allowed or not. Two countries responded that they did not entertain such concerns. For those countries that allowed ingredient substitution, some stated that food safety or public health concerns, including undeclared allergens,

could not be introduced into the product. Some countries required a risk assessment to demonstrate that permitted substitutions should not have a significant impact on consumer decisions, and sufficient communication with the public and industry, including certain unique solutions such as applying a red dot to products with ingredient substitutions.

**Question 4:** *Were there provisions in labelling developed to ensure consumers have the needed information on a temporary basis? (e.g. stickering)*

**14. Response Summary:** Of the countries that responded to this question, 15 indicated that provisions for stickering or similar temporary labelling flexibilities were not needed, while nine countries stated such flexibilities were implemented. Some countries noted that stickering was already available as an option under existing regulations, but under the COVID-19 pandemic, this option was either not needed or handled on an ad hoc basis.

**Question 5:** *Are there technology-based approaches to enable labeling flexibilities which could improve supply chain resilience that also support both trade and consumer transparency during emergencies or other supply chain disruptions?*

**15. Response Summary:** Of the countries that responded to this question, 17 stated that they did not implement technology-based approaches to labelling flexibilities, while five countries stated that they did implement such flexibilities. Some countries stated that technology should not be a substitute for the label, while others noted that technology-based approaches could be useful in emergency situations in the future. Some countries also indicated that such topics could be addressed in the CCFL work on innovation and technology in food labelling or e-commerce.

**Question 6:** *Which provisions of existing Codex texts provide for labelling flexibilities? If these provisions are not sufficient, which provisions (if any) might be amended to provide such flexibilities?*

**16. Response Summary:** Of the countries that responded to this question, nine identified existing Codex texts that may provide labelling flexibilities. 12 countries stated that existing texts do not accommodate labelling flexibilities.

17. Existing Codex texts identified included the *General Standard on the Labelling of Pre-packaged Food* (CXS 1-1985), Section 4.2 (List of Ingredients), Section 7 (Optional Labelling), Section 8 (Presentation of Mandatory Information); and Section 5.2.2.5 (Product development and change) in the *Code of Practice on Food Allergen Management for Food Business Operators* (CXC 80-2020).

18. Most countries, regardless of whether they identified flexibilities in existing texts, noted that existing texts are not adequate for flexibilities that may be needed in emergencies, and recommended amendments to those texts or new guidelines to address this gap. For example, GSLPF Section 8 is restricted to the label, and does not contemplate flexibilities in emergencies (e.g. minimum elements required in emergencies) or technology-based approaches, noting again the link to CCFL's innovation and technology work. Furthermore, some countries noted that the GSLPF Section 4.2 does not address ingredient substitution, and that class names could be interpreted as offering some flexibilities or expanded to create a greater range of options. Some countries recommended that guidelines on flexibilities related to imported foods in emergencies could be useful, while others stated that general guidelines on food labelling exemptions in emergencies are needed, but at a high level (e.g. principles and criteria) rather than as a detailed standard, to accommodate the need for flexibility in specific contexts. 11 countries did not recommend specific amendments to existing Codex texts.

**19. Other issues:** In addition to responses on the six questions above, Codex members raised other pertinent issues for consideration:

- *Definitions and Scope:* Some countries highlighted that definitions for the term “emergency” exist within various international organizations (e.g. United Nations World Food Programme) and that defining the scope of any new work by Codex should consider such existing definitions. These countries stated that different emergency situations would likely require different approaches with regards to labelling exemptions. For example, emergencies that may negatively impact food production/manufacturing of a certain country or region (as a result of localized/regional natural disasters or war), versus an emergency like the COVID-19 pandemic which has resulted in supply challenges for certain foods, ingredients, and packaging. Some countries recommended that any proposed work should clearly define the types of emergency situations that would be in scope and encompass labeling exemptions that impact international trade, and not domestic-specific exemptions. Certain countries recommended that criteria may need to be considered to determine which foods, in which circumstances, would be eligible for consideration under regulatory flexibilities.

- *Other Codex committees:* It was also noted that the *Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations* (CXG 19-1995) developed by the Codex Committee on Food Inspection and Certification Systems (CCFICS) should be considered, with the understanding the scope of this text is somewhat different in applying to “food safety emergencies” defined as “A situation, whether accidental or intentional, that is identified by a competent authority as constituting a serious and as yet uncontrolled foodborne risk to public health that requires urgent action.” However, certain aspects of CXG 19-1995’s structure and approach could be adapted to CCFL’s potential work in food labelling exemptions in emergencies (e.g. organization by principles, definitions, high-level roles and processes/criteria in identifying, considering, and implementing flexibilities).

### Key Considerations

20. In light of the responses received by Codex members and observers, the following key considerations may further inform discussions on the potential need for future work on food labelling exemptions in emergencies:

- Purpose:* Given members’ feedback on the need for flexible, high-level guidelines, the United States suggests that the work, if pursued by the Committee, could consist of principles and criteria aimed at assisting countries experiencing an emergency in considering and implementing exemptions to labeling requirements, to ensure a safe and adequate food supply. It may not be feasible or helpful to develop more detailed and technical amendments or text that may not be adaptable to the changing and unknowable circumstances arising from future emergencies.
- Scope:* The United States suggests that the scope of any future work in this area focus on achieving safe and fair international trade of prepackaged foods (as defined in the GSLPF) that are imported or exported from one country to another in emergencies, excluding any domestically focused flexibilities offered in such circumstances.
- Definitions:* The United States suggests that the most critical definitions to consider at the outset of this proposed work are “emergency,” and “exemption” or “flexibilities.” Emergencies may encompass human pandemics, animal disease outbreaks, natural disasters, disruption of critical infrastructure networks, war, or famine, as well as combinations of these and other scenarios. However, the United States notes that a primary negative impact of any emergency, as it relates to CCFL, is disruption to the international supply chain that enables safe and fair trade in food for human consumption. Therefore, the United States recommends a broad definition of the term “emergency” to capture the wide range of scenarios that may cause substantial disruption to the international supply chain, necessitating consideration of food labelling flexibilities by government authorities to help ensure a safe and adequate food supply. Any definitions should be developed with current international organizations’ and countries’ definitions in view.<sup>2</sup>
- Principles and Criteria:* The United States notes Codex members’ feedback that guidelines including high-level principles and decision-making criteria could be useful when considering proposed food labelling exemptions in emergencies. To that end, such principles and criteria may focus on the following non-exhaustive list of proposed elements, among others, recommending that any flexibilities or exemptions should:
  - *Be tailored to proportionally address significant negative impacts, such as food shortage risk, demonstrated [by the food business operator] to result from an emergency,*
  - *Be effective only for the period in which significant negative impacts are experienced;*
  - *Be based on an assessment of risk relative to the emergency, using all relevant available information;*

<sup>2</sup> WHO: <https://www.who.int/news-room/questions-and-answers/item/emergencies-international-health-regulations-and-emergency-committees>

WFP: <https://www.wfp.org/emergency-relief>

CCFICS: [https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B19-1995%252FCXG\\_019e.pdf](https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B19-1995%252FCXG_019e.pdf)

INFOSAN: <https://www.fao.org/food-safety/emergencies/en/>

FAO Emergencies: <https://www.fao.org/emergencies/en/>

U.S. Stafford Act: [https://emilms.fema.gov/is\\_0011a/groups/52.html](https://emilms.fema.gov/is_0011a/groups/52.html)

- *Arise from issues identified by food business operators and communicated to competent authorities;*
  - *Be communicated in a transparent manner, as far in advance as possible using all effective means, to food business operators, trading partners, stakeholders, and the general public;*
  - *Not compromise food safety or introduce foods or ingredients that are known to cause hypersensitivity;*
  - *Leverage technology-based approaches where feasible to enhance the availability of food information;*
  - *Not substantially change the nature of the product without providing truthful and not misleading labelling;*
  - *Be standardized and made consistent across commodities, food business operators, and trading partners, as far as possible;*
  - *Be coordinated with other countries [formal agreements where possible]*
  - *Be considered as part of a broader national or international framework to enhance food supply chain resilience in emergencies.*
- v. *Roles and Processes:* The United States suggests that new guidelines on food labelling flexibilities in emergencies could include a section on the roles of actors in the food supply chain (e.g. food business operators, government authorities, trading partners, consumers). Such guidelines could also outline high-level processes or mechanisms that may be recommended in emergencies to facilitate the efficient, transparent and deliberate adjudication of proposed food labelling exemptions; development of plans to enhance the resiliency of supply chains related to food labelling; and communication of critical information related to food labeling exemptions with stakeholders, international organizations, trading partners, and the general public.

## **Conclusion**

21. The United States' assessment is that the significant and varied responses received by Codex members in response to the circular letter support the need for future work in this area, noting the necessity of further discussion at CCFL47.

## **Recommendation**

22. The Committee is invited to:

- i. consider the key considerations noted in this discussion paper;
- ii. consider initiating new work on guidelines on food labelling exemptions in emergencies (see Project Document in Appendix I).

## PROPOSAL FOR NEW WORK ON GUIDANCE ON FOOD LABELING EXEMPTIONS IN EMERGENCIES

### Project Document

**Background:** CCFL46 agreed that the United States would prepare a discussion paper to explore possible work on food labeling exemptions in emergencies, to assist the Committee in deciding whether there was value or need for new work in this area. A Circular Letter (CL) was issued to gain a better understanding of the implementation of emergency food labeling exemptions among countries. Responses to the CL were summarized in the attached discussion paper and used to inform this project document.

### 1. PURPOSE AND SCOPE OF THE NEW WORK

The purpose of the proposed work is to provide guidance to assist governments in considering development and implementation of food labelling exemptions in emergencies. The scope of the proposed work is to develop high-level principles and criteria to assist governments experiencing an emergency in considering and implementing exemptions to food labelling requirements, to ensure a safe and adequate food supply while facilitating trade. It may not be feasible or helpful to develop more detailed, technical amendments to existing text, or new text, that would not be adaptable to the changing and unknowable circumstances arising from future emergencies. The scope of the new work in this area should focus on achieving safe and fair international trade of prepackaged foods (as defined in the *General Standard for the Labelling of Pre-packaged Foods* (GSLPF) (CXS 1-1985) that are imported and exported from one country to another in emergencies, excluding any domestically focused flexibilities offered in such circumstances.

### 2. RELEVANCE AND TIMELINESS

Supply chain disruptions caused by emergency situations in recent years, such as the COVID-19 pandemic, caused many countries to consider implementing certain temporary exemptions to food labelling requirements, to ensure a safe and adequate food supply. Current CCFL texts do not provide guidance on whether and how countries may consider such exemptions in emergency situations, when deemed necessary. Many countries or regions have considered and implemented a variety of temporary labelling flexibilities to address supply chain challenges caused by the COVID-19 pandemic. This variance supports the need for a common and structured framework to facilitate decision-making regarding such labelling flexibilities to ensure both consumer protection and fair trade. There is currently no global guidance for governments to facilitate decision-making on food labelling exemptions in times of emergency and, given continued and potential supply chain disruptions due to emergencies, this proposed work would be timely. This proposed work would also support Goal One of the Codex Strategic Plan for 2020-2025, by addressing current, emerging and critical issues in a timely manner.

### 3. MAIN ASPECTS TO BE COVERED

It is proposed the high-level guidance covers the following aspects:

- Purpose (see Section 1.)
- Scope (see Section 1.)
- Definitions of “emergency” and “exemption” (if needed and appropriate)
- General principles and/or high-level criteria for considering food labeling exemptions in emergencies.
- Roles and Processes

The placement of this guidance (standalone or as an amendment to existing text) is proposed to be considered at a later stage.

### 4. CRITERIA FOR ESTABLISHMENT OF WORK PRIORITIES

#### General criterion

*Consumer protection from the point of view of health, food safety, ensuring fair practices in the food trade and taking into account the identified needs of developing countries:* Given the range and diversity of food labelling exemptions provided during the COVID-19 pandemic and other emergencies, global decision-making principles and criteria would assist governments in considering such exemptions in a manner that mitigates risk of consumers being misled and lacking the ability to make informed choices in purchasing food products. Furthermore, such guidance would increase harmonization and facilitate fair trade in an area where no global guidance exists despite significant divergence in approach and practice among countries in emergencies.

### Criteria applicable to general subjects

a) *Diversification of national legislations and apparent resultant or potential impediments to international trade:* A wide range of approaches to considering and implementing food labeling exemptions in times of emergency currently exists. This global divergence indicates a lack of harmonization in such situations, though it is likely that emergencies disrupting supply chains will continue and occur again. Global principles and criteria for decision-making in emergencies will facilitate trade and protect consumers.

b) *Scope of work and establishment of priorities between the various sections of the work.*

It is recommended that guidance provide principles and high-level decision-making criteria for considering exemptions to food labelling requirements in times of emergency to assist governments in such situations. The guidance would focus on food in international trade.

c) *Work already undertaken by other international organizations in this field and/or suggested by the relevant international intergovernmental body(ies)*

There is no known work already undertaken by other international organizations in this area or suggested by other international intergovernmental bodies. Work undertaken in this area should consider the wide range of scenarios that may cause substantial disruption to the international supply chain, necessitating consideration of food labelling flexibilities by government authorities to help ensure a safe and adequate food supply. The work should also keep in view the efforts of other international organizations and countries' efforts to prepare for, address, and respond to emergencies more broadly.<sup>3</sup>

d) *Amenability of the subject of the proposal to standardization*

It is recommended that guidance be developed regarding principles and high-level decision-making criteria. At this level, the guidance will be amenable to standardization and balance the need for flexibility among countries given the range of emergencies that may arise. More detailed or technical standards are not recommended since these would provide less flexibility and offer less opportunity for standardization in Codex.

e) *Consideration of the global magnitude of the problem or issue.*

The COVID-19 pandemic was an emergency of global magnitude that significantly impacted the supply chains of many food businesses. Other emergencies that disrupt supply chains may be reasonably anticipated in the future, such as human pandemics, animal disease outbreaks, natural disasters, disruption of critical infrastructure networks, war, or famine. Such emergencies disrupting supply chains may occur in combination with one another and may be experienced globally or regionally, though even local or regional emergencies can have far-reaching global effects. Considering the plausibility of future emergencies, it is likely that governments will again experience a need to make timely, risk-based decisions on food labeling exemptions to ensure safe and adequate food supply, as well as to facilitate fair trade in such scenarios. Emergencies typically are not anticipated, involving critical time constraints and pressure on decision-makers. Therefore, it would be useful to have high-level global guidance and criteria in place to facilitate decision-making.

### 5. RELEVANCE TO CODEX STRATEGIC OBJECTIVES

The proposed work is aligned with the Commission's mandate for the development of international standards, guidelines and other recommendations for protecting the health of consumers and ensuring fair practices in food trade. In addition, the proposed work will support advancement of Codex Strategic Goals 1, 2, 3:

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<sup>3</sup>WHO: <https://www.who.int/news-room/questions-and-answers/item/emergencies-international-health-regulations-and-emergency-committees>

WFP: <https://www.wfp.org/emergency-relief>

CCFICS: [https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B19-1995%252FCXG\\_019e.pdf](https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXG%2B19-1995%252FCXG_019e.pdf)

INFOSAN: <https://www.fao.org/food-safety/emergencies/en/>

FAO Emergencies: <https://www.fao.org/emergencies/en/>

U.S. Stafford Act: [https://emilms.fema.gov/is\\_0011a/groups/52.html](https://emilms.fema.gov/is_0011a/groups/52.html)

*Strategic Goal 1: Address current, emerging and critical issues in a timely manner:* The proposed work will address a gap in Codex texts by responding to emerging and critical issues related to supply chain disruptions resulting from recent, current, and future emergencies.

*Strategic Goal 2: Develop standards based on science and Codex risk-analysis principles:* The proposed work will provide principles and criteria for considering food labelling exemptions, underlining the need for science-based decision making in emergencies, conducted using risk analysis principles.

*Strategic Goal 3: Increase impact through the recognition and use of Codex standards:* Since no global guidance exists to address consideration of food labelling exemptions in emergencies, the proposed work will raise awareness of the need for Codex guidance and facilitate greater understanding and implementation of Codex standards in an area where none currently exist.

## **6. RELATION BETWEEN THE PROPOSAL AND OTHER EXISTING CODEX DOCUMENTS**

Current CCFL texts do not address the need for risk-based decision-making on food labeling exemptions in times of emergency. It is noted that the *General Standard on the Labelling of Pre-packaged Foods* (CXS 1-1985) and *General Standard for the Labelling of Non-Retail Containers of Foods* (CXS 346-2021) include certain mandatory elements and provide for sharing information through means other than the label. However, existing texts do not contemplate the effects of supply chain disruptions caused by emergencies in recent years. Guidance on claims also includes certain mandatory elements, including that claims should be truthful and not misleading, but similarly do not envision the impacts of emergency scenarios and what factors governments should consider in approving or denying exemptions from existing requirements.

## **7. REQUIREMENT FOR AND AVAILABILITY OF EXPERT SCIENTIFIC ADVICE**

Expert scientific advice is not anticipated as necessary for this proposed work since the guidance would include general principles and high-level criteria and would not be a detailed technical standard.

## **8. NEED FOR TECHNICAL INPUT TO THE STANDARD FROM EXTERNAL BODIES**

Consultation with other relevant international bodies may be necessary to ensure alignment with broader work to prepare for, address, and respond to emergencies.

## **9. PROPOSED TIMELINE**

Subject to the Codex Alimentarius Commission approval at its next session (November 2023), it is anticipated that the proposed work can be completed in the course of three plenary sessions of the Codex Committee on Food Labelling.