

# 食品攙偽假冒之類型化 ——美國法的啟示

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## 摘 要

邇來攙偽相關之食品安全事件頻傳，與攙偽、假冒刑罰構成要件有關之條文，亦即食品安全衛生管理法第 15 條第一項第七款和同法第 49 條之適用與討論也逐漸增加，然由於食品安全衛生管理法第 15 條第一項第七款條文用字過於精簡，導致實務與學說有諸多相異之觀點，至今無法統一。美國聯邦食品、藥品與化妝品法對於攙偽之規範採取比較詳盡的定義模式，共列有數十種攙偽之行為樣態，值得我國借鑑，本文將以比較法研究之方式，分析其內涵、適用狀況與相關批評，再與我國現行食品安全衛生管理法第 15 條第一項各款進行對照，以期能以立法論之角度，提供關於攙偽、假冒內涵之修法建議，而於未修法前，亦試圖透過比較法之對照，得出較為適切的條文解釋。

關鍵詞：攙偽、食品安全衛生管理法、「美國聯邦食品、藥品與化妝品法」、食品安全、攙偽假冒

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# **Typification of Food Adulteration — A Perspective on the Federal Food, Drug, and Cosmetic Act of the United States of America**

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## Abstract

Due to the increasing frequency of food adulteration incidents, the issue of adulteration has been greatly discussed. However, as the Section 15 Paragraph 1 Subparagraph 7 of the Act Governing Food Safety and Sanitation (the acts of adulteration and counterfeit) is not worded with precision, the indications of application of Section 15 Paragraph 1 Subparagraph 7 of the Act Governing Food Safety and Sanitation and the definition of adulteration as interpreted by scholars and courts are oftentimes not uniformed. This article therefore discusses in depth the core of adulteration and counterfeit from the perspective of criminal legislation. Federal Food, Drug, and Cosmetic Act of the United States of America comprehensively defines the acts and punishments of adulteration. By analyzing the regulations in the USA, and comparing them with the regulations in Taiwan, this article hopes to

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clarify the definitions of adulteration and propose suggestions for future amendments of Section 15 Paragraph 1 of the Act Governing Food Safety and Sanitation.

**Keywords:** Adulteration, Act Governing Food Safety and Sanitation, “Federal Food, Drug, and Cosmetic Act,” Food Safety, Adulterated