

To: Interested parties – see attached list

25 November, 2009

Reference: OCR 005

Dear Sir/Madam,

COMMISSION REGULATION (EC) No 669/2009 AS REGARDS THE INCREASED LEVEL OF OFFICIAL CONTROLS ON IMPORTS OF CERTAIN FEED AND FOOD OF NON-ANIMAL ORIGIN (NON-POAO) AND AMENDING DECISION 2006/504/EC

1. I wrote to you about the above implementing rules on 3 August. I am now writing to update you on developments following a Commission Working Group meeting in Brussels on 30 October.

Annex I of EC Regulation 669/2009

2. The Commission advised that there would not be a further opportunity to amend the list of “high- risk” food of non-animal origin in Annex I of Regulation 669/2009 before the Regulation comes into force on 25 January 2010. This is because making changes while the new Regulation is being implemented would create additional burdens. In addition, the Commission thought it was important to wait and consider the quarterly reports data which would reflect controls carried out at the Designated Points of Entry. Suggestions from Member States, regarding the review of Annex I, will then be considered.

Technical guidance document

3. The Commission, prior to the Working Group meeting, circulated to Member States the draft Technical Guidance Document prepared by Dutch and Irish representatives with the support of the Food Law Enforcement Practitioners committee (FLEP). This is an informal grouping of European food law enforcement practitioners, where consistent enforcement in the European Union is discussed and established.

4. The draft Technical Guidance Document aims to support the consistent interpretation of Regulation (EC) No 669/2009 and the Commission has invited comments from Member States.

5. We would welcome your views on whether the draft guidance, which is at Appendix 1 to this letter, sufficiently explains the requirements of the Regulation. I shall be grateful to receive any comments or views **by 18 December**. My contact details are given below.



Training Course for Officials on EC Regulation 669/2009

6. The Commission said that the first workshop on the new imports controls will most likely to be delivered in mid January 2010 in Rome and one participant per Member State is expected to attend.

UK application measures

7. The FSA carried out a full public consultation on the draft Official Feed and Food Controls Regulations 2009 and associated guidance between 14 September and 6 November. We are grateful for the comments that we have received and a summary of the responses will be published on the Agency's website in due course.

8. We will keep you informed of further developments but, in the meantime, please get in touch with me or with Donatella Howe on 020 7276 8720 (email: Donatella.Howe@foodstandards.gsi.gov.uk) if you wish to discuss any of the above.

Yours faithfully,

Rufina Acheampong
Official Control and Enforcement Policy Team

DRAFT

Guidance Document (27th October 2009)

**TECHNICAL GUIDANCE ON THE IMPLEMENTATION
OF COMMISSION REGULATION (EC) No 669/2009
IMPLEMENTING REGULATION (EC) No 882/2004 OF
THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AS REGARDS THE INCREASED LEVEL OF OFFICIAL
CONTROLS ON IMPORTS OF CERTAIN FEED AND
FOOD OF NON-ANIMAL ORIGIN**

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1. INTRODUCTION

This document has been developed to support all stakeholders in the consistent approach to the interpretation of Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the council as regards the increased level of official controls on imports of certain feed and food of non-animal origin.

This guidance is to be used by competent authorities and food business operators in conjunction with Regulation (EC) No. 669/2009 to facilitate the effective organization of the increased controls required for certain feed and food of non-animal origin.

This guidance complements the DG SANCO Guidance Document: Key questions related to import requirements and the new rules on food hygiene and official controls. Section 6 relates to imports of food of non-animal origin.

http://ec.europa.eu/food/international/trade/interpretation_imports.pdf

2. GENERAL REMARKS

This document addresses questions that came up during discussions within a group of food control authorities and during meetings with stakeholders.

This is intended to be a dynamic document. As issues arise regarding the implementation of this Regulation, this guidance document will be updated. This guidance will be regularly reviewed in light of changing circumstances.

This document has no formal legal status.

3. FREQUENTLY ASKED QUESTIONS

Article 2: Update to Annex I

How will food business operators be informed of the developments regarding the Regulation, in particular changes to Annex I?

All relevant information can be found on the DG SANCO website [Insert link to DG SANCO webpage on Import Controls]. It is strongly recommended that authorities in member states publish all relevant information on their own websites (including this Guidance Document).

Annex 1 will be published in the Official Journal of the European Union and on the websites of the member states food agencies (see also Article 5).

Is the information which determines the exact frequency of physical and identity checks to be published?

This will be subject of discussion between Commission and member states (see also next question).

What is the mechanism for updating Annex I?

As stated in Article 15, member states shall submit to the Commission a report on all controls and results every three months. Together with the sources of information as mentioned in Article 2, the European Commission and the member states will review and discuss the content of Annex 1. Changes to Annex 1 have to be agreed at the Standing Committee (SCoFCAH). The revised Annex 1 will be published in the Official Journal.

Is the information on which any review of Annex 1 is based, such as the RASFF-notifications, FVO-reports and scientific assessments, to be published on the Internet?

Most sources as mentioned in Article 2 are published on the DC SANCO or EFSA Website.

Will the justification grids or the criteria for determining Annex I be published?

The process involved in determining Annex 1 will be as transparent as possible. Factual information will be available to all stakeholders.

Article 3: Definitions

What is the definition of a consignment? Can more than one container be covered by one CED? Where the container contains mixed items, more than one of which is listed in Annex I are these to be listed on the same CED form or is a separate CED form required for each commodity?

See Article 3(c). A ‘consignment’ is any feed or food product listed in Annex I of the same class or description, covered by the same documents and means of transport coming from the same third country or part of the country. If these conditions are fulfilled, the consignment can comprise more than one container. The contents of all these containers, provided they meet the definition of a single consignment will be covered by a single CED form. See also under “General”.

Each separate ‘commodity’ as set out in Annex I is a separate consignment and therefore a separate CED form must be completed for each regardless of whether they are imported in the same container or not.

Article 4: Minimum requirements for designated Points of Entry

Can a designated laboratory be located in another MS?

Yes.

Article 5: List of Designated Points of Entry

How will food business operators be informed of the developments regarding the Regulation, in particular the Designated Points of Entry?

Member states are required to designate points of entry (DPEs) for the purposes of Regulation (EC) No 669/2009. Member states must maintain and make an updated list of DPEs available on the internet of their food safety authorities for each of the products listed in Annex I.

Member states must communicate the internet addresses to the Commission. There will be a link to the member state's websites on the DG SANCO website.

Article 6: Prior Notification

What control / action should be taken when products arrive without prior notification?

When a product arrives without prior notification as required in Article 6, the consignment cannot be placed on the market. This means that the consignment will be blocked at the DPE. Feed or food from third countries which does not comply with feed or food law must be dealt with in accordance with Article 19 of Regulation (EC) No 882/2004.

Can the Common Entry Document be completed / transmitted electronically?

This is up to the member states. However, the Regulation allows the use of a paper version of the Common Entry Document (CED) or an electronic equivalent (See Article 10).

If the common entry document is provided in paper version, is it allowed to print it two-sided?

Yes.

Who is responsible for transmitting the Common Entry Document to the authorities at the Designated Point of Entry?

The feed and food business operator or their representative must complete Part 1 of the CED and transmit this to the competent authority at the DPE.

Is it necessary for food business operators to provide the complete Common Entry Document or will Part I be sufficient?

Formally only Part I is to be provided. However, in order to keep the process of documents flowing, we advise to submit the complete document.

Article 8: Increased level of official Controls at Designated Points of Entry

What are the conditions for the authorisation of onward transportation of the consignment pending the results of physical checks (Article 8.2)?

This is a matter for the competent authorities in the Designated Points of Entry. Onward transportation may be authorised in cases where the number of selected consignments at a certain period of time is too high to guarantee a quick dispatch of all checks. Also for products such as fruit and vegetables this authorisation may be used.

What is meant by physical checks?

Physical checks means at least sampling and laboratory analysis, at the frequencies set out in Annex 1 and only in relation to the hazards set out in the Annex.

Are member states allowed to establish higher frequencies of checks than mentioned in Annex 1?

No

The documentary checks must be carried out on all consignments within 2 working days. What is the time period in which the identity and physical checks are to be carried out?

There are no time frames set down within which identity and physical checks are to be carried out. They must be carried out as soon as technically possible. However, the competent authorities are allowed, under circumstances, to authorise the onward transportation of the consignment pending the results of the checks (Article 8.2).

What are the “appropriate” arrangements, mentioned in Article 8.2?

This is a matter for the competent authorities at the DPE and the authorities at the point of destination to determine. However, one example could be “under customs control (T1)”, a certified copy of the original CED must be issued to the authorities at the point of destination, information exchanges on times of departure and arrival of consignments, how the consignment may be tracked, how tampering will be prevented etc. In any event, a consignment cannot be released for free circulation if the proper documents are not available (Article 10).

What authority informs the food or feed business operator of the results of the physical checks, the authority at the point of entry or the authority at the point of destination?

The authority at the Designated Point of Entry will inform the feed or food business operator. Where there has been onward transportation of the consignment pending the results of physical checks, the competent authority at the DPE must also inform the competent authority at the point of destination of the results of the physical checks.

Article 9: Special Circumstances

On request, the Commission may authorise the competent authorities of certain designated points of entry under special geographical constraints to carry out physical checks at the premises of the food or feed business operator (under conditions set out in Article 9). What are the criteria?

Specific criteria for such authorisation are not laid out in this Regulation. However, it could for instance be applied where a particular point of entry (small port or airport, possibly located in an inaccessible area or an area with difficult terrain) cannot reasonably meet the requirements set out in Article 4. Adequate and suitable facilities to store consignments in appropriate conditions may not be available. In these cases storage and sampling may be performed at the premises of the operators. Nevertheless, this is subject to Commission approval.

Are the premises of the feed and food business operator, as mentioned in Article 9.2 to be hired or do the premises have to be owned by the food or feed business operator?

Both options are possible.

In what way will arrangements be put in place by the competent authorities at the Designated Point of Entry and the competent authorities at the place of destination as mentioned in Article 9.2(b)?

This is a matter for the competent authorities at the DPE and the competent authorities at the place of destination to determine. In the future, the use of an electronic system such as TRACES could be considered.

Article 10: Release for free Circulation

Who is responsible for passing on the Common Entry Document to the customs authorities once all required official controls have been carried out (Article 10)?

The feed and food business operator or their representative must present the CED form, once completed by the competent authority, to the customs authority for release for free circulation.

Article 11: Obligations of feed and Food Business Operators

What are the legal obligations on importers to assist with specialist sampling?

In normal situations the inspectors of the food control authority are equipped with instruments for sampling of regular products such as groundnuts, etc. Only in special circumstances, for consignments with special characteristics e.g. hazelnut paste, sufficient human resources and/or appropriate equipment for sampling etc. should be made available by the feed and food business operator.

See also "[Guidance document for competent authorities for the control of compliance with EU legislation on aflatoxins](#)".

Article 14: Costs

Will fees be collected in the same way and same levels in all member states with outside borders?

No. The collection of fees will be harmonised insofar as possible but differences will exist between member states.

General:

Interpretation of analytical results must be harmonised in all member states

Where general legislation exists for products which are also subject to Annex I, e.g. contaminants legislation, the analytical methods, interpretation etc set out in the general legislation will also apply to the products listed in Annex I.

For the interpretation of analytical results, a guidance document has been published, discussing issues such as the use of measurement uncertainty.

See also "[Guidance document for competent authorities for the control of compliance with EU legislation on aflatoxins](http://ec.europa.eu/food/plant/protection/resources/publications_en.htm#residues)" and the Guidance document on the controls on pesticide residues (http://ec.europa.eu/food/plant/protection/resources/publications_en.htm#residues).

Are composite / compound products subject to Regulation (EC) No 669/2009?

Products listed in Annex I for aflatoxins include derived products thereof. Composite / compound products are not subject to this Regulation. Examples of derived products as mentioned in Annex 1 are peanut butter or hazelnut paste (included in the CN codes). A composite product is a product which contains more than 20% of the agriculture commodity.

In some cases fruit and vegetables will also be controlled by inspectors of plant health bodies (phyto-sanitary controls). Will there be any co-operation between control bodies in order to avoid unnecessary delay in transport of selected consignments?

This is a matter for the competent authorities in member states. However, an integrated approach to all official controls is highly recommended. In some member states both types of controls are undertaken by the same competent authorities.

How are multiple consignments in one container to be dealt with?

If one of the commodities is selected for control under the Regulation, the other products can be transported onwards without any delay. If the selection of one lot will delay the whole container the competent authorities can make use of the provisions set out in Article 8.2(b).

How are mixed consignments to be dealt with?

By definition, a consignment relates to the same class or description, covered by the same documents and means of transport coming from the same third country (Article 3(c)). As a consequence the consignment cannot be 'mixed'. However, if the above conditions are fulfilled, the consignment can comprise more than one container. More than one

consignment can be transported in a 'mixed' container, but they must be treated as individual consignments with separate CED forms. See Article 3 above.

Where a container contains 'mixed' commodities some of which are subject to Regulation (EC) No 669/2009 and some of which are not, the commodities not subject to the Regulation should not appear on the CED form (appear on the manifest / commercial invoices only) and can be released for free circulation subject to the general import provisions of Article 15(1) of Regulation (EC) No 882/2004 and any other relevant feed or food law which may apply.

How are bulk commodities to be dealt with?

Bulk commodities have to be transported to a DPE equipped with the relevant facilities to fulfill the demands of the Regulation.

Is there a minimum consignment size?

There is no minimum consignment size prescribed in the Regulation, therefore all consignments listed in Annex I are subject to the increased controls as set out.

Organisation Name

ADAS	British Sugar plc
ADM Milling Ltd	British Trout Association
Agricultural Industries Confederation	British Veterinary Association
Agricultural Industries Confederation	Britvic plc
Agri-Food and Biosciences Institute	Cambridge Manufacturing Limited
Allied Bakeries Ltd	Campden BRI
Allied Technical Centre	Campden BRI
American Peanut Council	Cargill Europe Limited
Araches Ltd	CEFIC Avenue E Van Nieuwenhuysse 4, bte 2
Aspall Cider	Cereal Partner UK
Associated British Foods plc	Chamber of Shipping
Association of Convenience Stores	Chartered Institute of Environmental Health
Association of Frozen Food Producers & Ice Cream Federation	Chartered Institute of Environmental Health
Association of Port Health Authorities (APHA)	Chartered Institute of Environmental Health Wales
Association of Public Analysts of Scotland	Chemical Business Association
Assured Food Standards	Cheshire Scientific
Barrow Lane & Ballard Ltd	Chilled Food Association Ltd
BASILDON CHEMICAL CO LTD	City of London Corporation
Besana Group	CJ Wildbird Foods Limited
Besana UK Ltd	Clearspring Ltd
BEUC - The European Consumers' Organisation	Coca-Cola Great Britain & Ireland
BFP Wholesale	COCOA ASSOCIATION OF LONDON LTD
Booker Ltd	CoE Food Safety & Chemistry
Bourne Salads	Coffee Science Information Centre
Brent Council	Combined Edible Nut Trade Association (CENTA)
Brewers of Europe	COMMUNITY FOODS LTD
Bristol City Council Scientific Services	Confederation of British Industry
British Association of Feed Supplement & Additive Manufacturers Ltd	Confederation of British Industry
British Beer and Pub Association	Consumer Council for Northern Ireland
British Chambers of Commerce	Consumer Focus
British Coatings Federation	Consumer Focus Scotland
British Coffee Association	Consumer Focus Wales
British Equestrian Trade Association	Cookery & Food Association
British Food Importers and Distributors Association	Council of National Beekeeping Association in the
British Frozen Food Federation	Crop Protection Association
British Fruit Juice Association	Crop Services
British Hospitality Association	Crown Packaging UK PLC
British Independent Fruit Growersâ€™ Association	Dairy UK Ltd
British International Freight Association	Dairy UK Scotland
British Leafy Salads Association Ltd	DARDNI, Food Policy Branch
British Medical Association	DEL MONTE FOODS (UK) LTD
British Peanut Council Ltd	DEMOS CICLITRA LTD
British Pharmacopoeia Secretariat	Department of Agriculture and Rural
British Pharmacopoeia Secretariat	Developments
British Ports Association	Duskin Farm Ltd
British Retail Consortium	Ebrahimoff & Sons
British Retail Consortium	English Apples & Pears Ltd
British Soft Drinks Association Ltd	EU FOOD LAW
British Starch Industry Association	Eurofins Laboratories Limited
	European Snacks Association / SNACMA
	F Duerr & Sons Ltd
	Farm Animal Welfare Council (FAWC)

FDF
 Federation of Bakers
 Federation of Small Businesses
 Federation of Wholesale Distributors
 Feed Fat Association
 Findus Ltd
 Flagship Fruit & Nut Ltd
 Food Additives and Ingredients Association
 Food and Drink Federation
 Food and Drink Federation
 Food and Drink Federation
 Food and Drink Federation
 Food and Drink Federation
 Food and Environment Research Agency
 Food Chemical Risk Analysis (FCRA)
 FOOD DIALOG
 Foodaware
 FOSFA International
 Fresh Produce Consortium
 Friends of the Earth UK, Ltd
 Frozen and Chilled Potato Processors Association
 Gala Coffee Limited
 Gerber Foods
 Glasgow Caledonian University
 Grain and Feed Trade Association
 Greenangle Ltd
 Greencore Group
 H R Higgins (Coffee-Man) Ltd
 HAMPSHIRE SCIENTIFIC SERVICES
 Hapico
 Harper Adams University College
 Hayman Horticultural Consultancy
 Health Food Manufacturers' Association
 Health Food Manufacturers' Association
 Health Nutrition and Research UK Limited
 Health Protection Agency
 Health Protection Scotland
 Holland & Barrett Retail Limited
 Holland & Barrett Retail Limited
 Horticulture Development Company
 Horticulture Research International
 Humdinger Ltd
 Ice Cream Alliance
 ILS Ltd
 Infant and Dietetic Foods Association
 Institute of Food Research
 Institute Of Food Science & Technology
 International Food Hygiene Magazine
 International Pectin Producers' Association
 J Pao & Co Ltd
 J Sainsbury plc
 J Sainsbury plc
 James White Drinks
 Julian Graves Ltd
 K & S Fruit Washers Limited
 Kellogg Europe Trading Limited
 KETTLE FOODS
 Kinnersley Brothers Ltd
 Laboratory of the Government Chemist (LGC)
 Laboratory of the Government Chemist (LGC)
 LACORS
 LEAF - Linking Environment And Farming
 Leatherhead Food International
 Livestock and Meat Commission for Northern Ireland
 Local Authorities Co-ordinators of Regulatory Service
 Malaysian Palm Oil Board
 Maltsters Association of Great Britain
 McCormick (UK) Ltd
 Mexican Trade Commission
 Minerva Scientific Ltd
 Musgrave Retail Partners GB
 MYCOTOXIN LABORATORY LTD (UK)
 National Association of British and Irish Millers
 National Association of Cider & Perry Makers
 National Association of Health Stores
 National Cattle Association (Dairy)
 National Dried Fruit Trade Association (NDFTA)
 National Edible Oil Distributors Association
 National Farmers' Union
 National Farmers Union Scotland
 National Federation of Meat and Food Traders
 National Federation Of Women's Institutes
 NATIONAL OFFICE OF ANIMAL HEALTH (NOAH)
 National Pharmacy Association
 National Starch & Food Innovation
 Neogen Europe Ltd
 Nestle Confectionery (UK)
 Nestle Confectionery (UK)
 Neville Craddock Associates
 NFU Cymru
 Nickerson (UK) Ltd
 North Lanarkshire Council
 Northern Foods plc
 Northern Ireland Agricultural Producers' Association
 Northern Ireland Food & Drink Association
 Northern Ireland Grain Trade Association
 Northern Ireland Meat Exporters Association
 Nottingham University
 NPHS Microbiology Rhyl
 NRM
 Nut Company
 Orchard House Foods
 Percy Dalton (Holdings) Ltd
 Perrigo UK
 Pet Food Manufacturers Association
 Premier Analytical Services

Quaker Oats Ltd
Quality Meat Scotland
Rathbones Bakeries Ltd
R-Biopharm AG
R-Biopharm Rhone Ltd
Reading Scientific Services Ltd
Regulatory Solutions
Research Programme Advisor
ROTHER DISTRICT COUNCIL (106)
Royal Association of British Dairy Farmers
Royal Environmental Health Institute of Scotland
Royal Pharmaceutical Society of Great Britain
Royal Society for Public Health
S W Trading Ltd
Scientific & Regulatory Affairs
Scientific Analysis Laboratories Ltd
SCOTCH WHISKY RESEARCH INSTITUTE
Scottish Food and Drink Federation
Scottish Salmon Producers' Organisation
Seasoning and Spice Association
Seed Crushers & Oil Producers Association
SH Pratt & Co. (Bananas) Ltd
Shipton Mill Ltd
Shoreham Port
SITPRO
Smithfield Foods
Smiths Flour Mills Head Office
Society of Chief Officers of Trading Standards in
Soil Association
Solvay SA
Somerfield Stores Limited
Speedibrews
Spitfields Market Tenants Association
State General Laboratory (SGL)
Sustain: the alliance for better food and farming
Syngenta
Syngenta

T M DUCHE & SONS LTD
Taylors of Harrogate
Tesco Stores plc
Tesco Stores plc
The Cold Storage & Distribution Federation
The Co-Operative Food
The Co-operative Group
The Food and Environment Research Agency
The Food Commission
The Organic Herb Trading Company
The Scotch Whisky Association
The Vegan Society
Toximet Limited
Trading Standards Institute
Tropicana
UK Major Ports Group Ltd
Ulster Farmers' Union
Unilever plc
Uniq PLC
United Distillers & Vintners Brand Technical
Centre
University of Bristol
University of Reading
UNIVERSITY OF STRATHCLYDE
University of Sussex
Vegetarian Economy and Green Agriculture
Verner Wheelock Associates Limited
Veterinary Laboratory Agency
Vitrition UK Ltd
VOICEVALE LTD
Waitrose Ltd
Welsh Local Government Association
West Yorkshire Analytical Services
Which?
Wine and Spirit Trade Association
Worcestershire Scientific Services