Guidance Notes for Feed and Food Business Operators on the import provisions for “high-risk” feed and food of non-animal origin

Regulation (EC) No. 669/2009

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Summary

Intended audience:	This Guidance is intended for feed and food business operators, who import feed and/or food of non-animal origin that is regarded by the EU Commission to be “high-risk”.
Regional coverage:	This Guidance is applicable in England. Similar Guidance has been prepared for the Devolved Administrations.
Purpose:	The intention is to provide information to relevant feed and food business operators regarding the increased level of controls of “high-risk” feed and food imported into England from certain Third Countries.
Legal status:	This Guidance is intended to assist relevant importers of “high-risk” feed and food of non-animal origin, to understand the import requirements.
Essential actions to comply with regulation(s):	Relevant importers should ensure that they become familiar with the requirements and, liaise with the relevant local authority, when appropriate.

REVISION HISTORY

This guidance follows the Government Code of Practice on Guidance. If you believe this guidance breaches the Code for any reason, please contact us using the number on the front sheet. If you have any comments on the guidance, again please contact us on the number on the front sheet.

Revision No.	Revision date	Purpose of revision	Revised by
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INTRODUCTION

Regulation (EC) No 882/2004 establishes a harmonised framework of general rules for the organisation of official controls to ensure compliance with feed and food law, and animal health and animal welfare rules. The Official Feed and Food Controls (England) Regulations 2007 implemented Regulation 882/2004 in England.

Regulation 882/2004 includes requirements for the official control of feed and food of non-animal origin being imported from third countries. Article 15(5) of Regulation 882/2004 provides that a list of certain feed and food products be drawn up on the basis of known or emerging risk and be subject to increased controls at points of entry into the EU, and that fees related to these controls should be established. On 25 July 2009 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 and amending Decision 2006/504/EC ('Regulation 669/2009') was published. Regulation 669/2009 sets out rules for the increased level of official controls for products which represent a known or emerging risk ('high-risk') under Article 15(5) of Regulation 882/2004. The Official Feed and Food Controls (England) Regulations 2009 ('the Regulations') provide for the execution and enforcement of Regulation 669/2009. The Regulations also revoke and re-enact, with changes, the Official Feed and Food Controls (England) Regulations 2007. This has been applied in the England by national regulations. Similar legislation has been introduced in the Devolved Administrations.

INTENDED AUDIENCE

Feed and food business operators (FBOs) and their representatives who are, or intend to, import "high-risk" products from certain non-EU countries as listed in Annex I of Regulation 669/2009.

PURPOSE OF GUIDANCE

Regulation 669/2009 requires an increased level of controls on imports of certain feed and food at designated points of entry (DPEs) into England. These controls will be reviewed by the Commission based on the outcome of these controls and other sources of information under Article 2 of Regulation 669/2009. To assist FBOs and their representatives we have produced this

Guidance, using a question and answer format, to explain the purpose and the legal requirements applicable to businesses importing “high-risk” products from non-EU countries as listed in Annex I of Regulation 669/2009, and the enforcement arrangements in place. It should be read together with the Regulations.

GUIDANCE ON REGULATION (EC) No 669/2009

This Q & A guidance has been produced to provide informal, non-binding advice on the legal requirements of Regulation 669/2009 regarding the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC and should be read in conjunction with the legislation itself. The answers should not be taken as an authoritative statement or interpretation of the law, as only the courts have this power. Every effort has been made to ensure that the Q & As are as helpful as possible. However, it is ultimately the responsibility of individual businesses to ensure their compliance with the law. Businesses with specific queries may wish to seek the advice of their local enforcement agency, which will usually be the Authority responsible for enforcement at the relevant DPE or other Authorities in certain cases.

GLOSSARY

The following terms are used in the guidance:

Regulation 669/2009 - 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 and amending Decision 2006/504/EC

The Regulations – The Official Feed and Food Controls (England) Regulations 2009

FBOs - feed and food business operators and/or their representatives

FSA – Food Standards Agency

DPE – Designated Point of Entry

CED – Common Entry Document

EU – European Union

Authorised Officer – any person authorised to act in matters arising under Part 3 of the Regulations, Articles 15 to 24 of Regulation 882/2004 and Regulation (EC) No 882/2004

Third country – any non-EU country

Q & A Guidance

Q1 What is the purpose of Regulation (EC) No 669/2009?

A1 The purpose of Regulation 669/2009 is to provide a list of feed and food of non-animal origin imported from non-EU countries (known as "third" countries) that based on known or emerging risk to public health are subject to an increased level of official controls at points of entry to the EU. The increased controls are intended to enable the risk from these "high-risk" products to be controlled more effectively to protect public health.

The results of the controls will also assist the European Commission to assess whether additional controls should be applied. Such further controls may be applied either by increasing the level of identity and physical checks under Regulation 669/2009, or by applying emergency safeguard measures under Article 53 of Regulation (EC) No 178/2002. If the controls under Regulation 669/2009 indicate that there is a lower risk to public health, the frequency of identity and physical checks may be reduced. Alternatively, the products may be removed from the list at Annex I of Regulation 669/2009 in which case the products would be subject to routine checks based on risk under Articles 15 to 25 of Regulation 882/2004.

Q2 What does this new legislation do?

A2 Regulation 669/2009 comes into effect from 25 January 2010. FBOs will be required to pre-notify the relevant competent authorities of the arrival of "high-risk" consignments and will have to present these products at a specific DPE in order that the necessary official controls can be undertaken. Annex I of Regulation 669/2009 contains the list of these "high-risk" products and sets out the frequency and nature of the controls that must take place. Regulation 669/2009 also establishes a system of fees for these controls. Implementation of this framework will provide controls for the protection of public health based on the risks of the products. This will provide arrangements for "high-risk" products of non-animal origin similar to those for products of animal origin, which are considered "high-risk" products.

Q3 Will the existing controls under Article 53 of Regulation (EC) No 178/2002 still apply?

A3 Yes. (see below)

Q4 What is a "high-risk" product?

A4 A “high-risk” product is feed or food that is either known to be, or is an emerging risk to public health. This may be due to the presence of contaminants/undesirable substances such as aflatoxins, Sudan dyes, heavy metals or pesticides.

Q5 Why are increased controls required for “high-risk” products?

A5 Increased levels of controls will enable Member States to more easily identify potentially non-compliant products and prevent them from entering the feed and food chain, and facilitate the collection of accurate monitoring data in order to assess the risks to public health of such products.

Q6 When do these increased controls apply?

A6 These new controls come into force from 25 January 2010.

Q7 On what basis was it decided what should be on the list of “high-risk” products?

A7 Data from the Rapid Alert System for Feed and Food (RASFF); reports from the Commission’s Food and Veterinary Office on feed and food safety procedures in non-EU countries; reports and information received from non-EU countries; exchanges of information between the Commission, and Member States and the European Food Safety Authority, and scientific assessments were considered when the European Commission drew up the list.

Q8 Where can the list of “high-risk” products be found?

A8 The list can be found in Annex I of Regulation 669/2009.

Q9 Will the list of “high-risk” products be reviewed?

A9 Yes. Using the criteria and information above, the European Commission will be responsible for reviewing on a regular basis, at least quarterly, the list of “high-risk” products. They will publish any updates and the FSA will ensure that any updates are made publicly available.

Q10 Does the list cover both feed and food?

A10 Yes. The list covers any “high-risk” feed and food of non-animal origin. Annex I of Regulation 669/2009 specifies whether a product has been listed for feed or food.

Q11 Will any "high-risk" products be taken off the list?

A11 One aim of Regulation 669/2009 is to provide the Commission with information on the official controls carried out at DPEs on the listed products. The Commission will take the results of these controls into account when assessing whether changes should be made to the list of products in Annex I of Regulation 669/2009, including the risks to public health. Based on the Commission's assessment further additional controls may be applied to the products, or the existing controls may be retained or reduced. If, following consideration by the Commission, any product is no longer considered to represent a known or emerging risk then it may be removed from the list at the next available review. The frequency of physical and identity checks may be changed for products on the list based on the assessment of risk. If controls show that a product on the list poses a serious risk to public health, the Commission may issue an emergency safeguard measure under Article 53 of Regulation 178/2002.

Q12 What is an "emergency safeguard measure"?

A12 Where feed or food imported from a third country is likely to constitute a serious risk to public health, or the environment, then imports of the feed or food in question can be suspended from the third country concerned, and/or special conditions can be applied.

Q13 What do FBOs need to do to comply with these new increased controls?

A13 FBOs responsible for the importation into the EU of a consignment of "high-risk" feed or food must give adequate prior notification to the relevant feed or food authority at the DPE at which the product will first enter the EU. The information required to be supplied to the relevant authority is the estimated date and time of arrival of the consignment. Part I of the Common Entry Document (CED) must be completed by the FBO and sent to the enforcement authority at the DPE at least one working day prior to the physical arrival of the consignment. A model CED is available in Annex II of Regulation 669/2009. Products must be subject to import checks at a DPE at UK / EU borders.

Failure of a FBO or their representative to pre-notify a DPE, or attempt to bring in a consignment of "high-risk" feed or food to a point of entry that is not a DPE, would commit an offence and would result in action to place the

consignment(s) without delay under official detention to either be destroyed or re-dispatched (Articles 19 (2) (b) and 21 of Regulation (EC) No 882/2004).

Q14 What is a consignment?

A14 A "consignment" is defined in Article 3 (c) of Regulation 669/2009 as "a quantity of any of the feed or food of non-animal origin listed in Annex I to this Regulation of the same class or description, covered by the same document(s), conveyed by the same means of transport and coming from the same third country or part of such country". If these conditions are fulfilled, a consignment can comprise more than one container and a single CED can cover the consignment. However if a consignment consists of more than one of the products listed in Annex I of Regulation 669/2009, then a separate CED is required for each product.

Q15 What is a DPE?

A15 A DPE is a UK port (airport or seaport) which has access to the appropriate control facilities and is approved to handle the feed and food products listed in Annex I of Regulation 669/2009. Each DPE is required to have sufficient numbers of appropriately qualified staff, and checking and storage facilities, including cold store where a controlled temperature is required due to the nature of the consignment, appropriate equipment for unloading and sampling for analysis, and access to designated laboratories.

Q16 Who approves (i.e. designates) a DPE?

A16 The FSA, in the UK.

Q17 Where can the list of DPEs for the UK be found?

A17 The FSA is responsible for maintaining and making publicly available the list of DPEs for the UK, which can be found at http://www.food.gov.uk/foodindustry/imports/banned_restricted/highrisknonpoao

Q18 Can all products listed in Annex I of Regulation 669/2009 be imported through any designated DPEs?

A18 A DPE can be designated for some or all products listed in Annex I. Details will be given on the list of DPEs on the FSA's website.

Q19 Who completes the CED?

A19 Part I of the CED should be completed by the FBO and transmitted to the enforcement authority for the DPE so it is received at least one working day prior to the physical arrival of the consignment at the DPE.

Part II of the CED will be completed by the authorised officer at the relevant feed/food authority present at the DPE (normally the Port Health Authority unless the product is for feed use in which case it will be the local authority responsible for feed issues) if the product was found to be compliant following checks.

Part III of the CED is only completed by an authorised officer at the DPE if the consignment is non-compliant.

Q20 Can the CED be transmitted electronically?

A20 Yes, the CED can be sent electronically. This may include the future use of TRACES or an email.

Q21 What language should be used for the CED?

A21 The CED must be completed in English for UK DPEs because it must be in the official language of the Member State (the UK) where the DPE in located.

Q22 What checks will be carried out on consignments and by whom?

A22 Enforcement officers at the DPE will carry out controls on consignments of “high-risk” products.

The Regulation requires documentary checks to be completed within 2 working days from the time of arrival at the DPE, unless exceptional and unavoidable circumstances arise.

Identity and physical (including sampling for testing) checks will be carried out at the frequencies specified in Annex I of Regulation 669/2009 which are according to the particular feed and food product and country of origin. Results of physical checks should be available as soon as possible.

Q23 Where are these checks carried out?

A23 Documentary, identity and physical checks will be carried out at the DPE.

Q24 Will consignments be sampled for analysis?

A24 The physical check will include sampling for laboratory analysis in order to test for the hazards listed in Annex I of Regulation 669/2009.

Q25 Will consignments be held at the port until the checks are completed?

A25 Article 8(2) of Regulation 669/2009 provides that the feed/food enforcement authority at the DPE may decide whether to authorise a consignment to be transported to the point of destination pending the results of the physical test. Therefore, the decision is one for the enforcement authority. As Regulation 669/2009 concerns products where there is evidence of a known or emerging risk to public health, enforcement authorities at DPEs may consider that the appropriate measure is to control the product at the DPE. Where the consignment is authorised to be transported to the destination there should be arrangements to ensure that the consignment remains under the continuous control of the competent (enforcement) authority for the place of destination, including clear separation from other products and maintaining the security of the product to prevent any tampering until the results of the physical checks are known.

Q26 Some imports of fresh produce have a short shelf life. Can checks on such a consignment take place at the food business?

A26 In some exceptional cases, when a product is listed in Annex I of Regulation 669/2009, the controls set down in Annex I may permit consignments of the product to leave the DPE and undergo the identity and physical checks at the point of destination shown on the CED. Such cases may include where the product is highly perishable so that sampling at the DPE would result in a serious risk to food safety or the product being damaged to an unacceptable extent.

Where such authorisation is possible, there will be liaison between the enforcement authority at the DPE and the competent authority at the point of destination which will undertake the identity and physical checks. Liaison will include ensuring that the point of destination meets the relevant minimum requirements for a DPE set out in Article 4 of Regulation 669/2009 and appropriate arrangements are made to ensure the consignment remains under continuous control of the competent authority until the results of the physical checks are available. The documentary check will take place at the DPE.

Similar controls may be specified in exceptional cases when a product is added to Annex I, where the nature of the packaging is such that the product cannot be sampled at the DPE without causing a serious risk to food safety or damaging the produce to an unacceptable extent. Authorised officers at DPEs are aware of the need to carefully control the sampling of large numbers of seasonings, spices, fresh products etc to avoid contamination.

There is also provision in Article 9(1) of Regulation 669/2009 under which the Commission may allow certain DPEs operating under specific geographical constraints to carry out physical checks at the premises of FBOs, as long as specific conditions are met.

Q27 What are the "specific geographical constraints" referred to in Article 9(1)?

A27 This is to allow small DPEs for example at land borders with third countries to carry out checks at business premises subject to the premises meeting certain conditions. Such cases can only be authorised by the Commission. These provisions are not expected to apply in the UK.

Q28 What assistance do FBOs have to provide feed and food authorities to assist official controls at the DPE?

A28 In some cases equipment at a DPE, which is otherwise sufficient for routine unloading or sampling of products, may not be sufficient due to special characteristics of a consignment. In such circumstances, FBOs may need to provide the DPE with sufficient human resources and logistics to unload consignments, and appropriate sampling equipment.

Q29 What happens once the checks are successfully completed?

A29 If a consignment is compliant, the enforcement authorities at the DPE will complete Part II, and stamp and sign, the CED. A copy will be retained by the DPE. The original CED must accompany the consignment on its onward transportation to its final destination.

Where a consignment has been moved to a secure place, under the control of an inland local authority pending the results of physical checks, a certified copy of the CED will have been issued to accompany the consignment. The original CED will be retained at the DPE. On receipt of satisfactory results of the physical checks, the enforcement authorities at the DPE will complete and authorise the CED.

Q30 A consignment is due to go to several destinations, when can it be split?

A30 Consignments (as defined in Article 3 (c) of Regulation 669/2009) of "high-risk" products cannot be split until all the increased levels of controls have been completed, and the competent (enforcement) authorities, at either the DPE or the final destination of the consignment, have completed the CED.

However, where there are mixed container loads i.e. containers that contain "high-risk" products together with non "high-risk" products, then the products not subject to additional checks may be released into the Community.

To assist identifying products within mixed consignments, FBO's may wish to consider providing:

- labels/marks on the transport containers/packages of mixed consignments indicating the contents within each container, this should preferably be written in English.

- correct details of products on associated commercial documents e.g. the invoice should be in English and if possible provide a detailed description of products, not just described as a consolidation or using just the products' common name within the country of origin

Where consignments of "high-risk" products are found to have avoided official controls appropriate enforcement action will be taken.

Q31 When can the FBO request that the consignment be released for free circulation by Customs?

A31 Once the CED has been completed to indicate the favourable completion of all checks, the FBO can present the CED or its electronic equivalent to Customs to seek release for free circulation

Q32 What is the transitional period and what does it mean for FBOs?

A32 Article 19 of Regulation 669/2009 provides for a transitional period of five years from the coming into force of Regulation 669/2009. This is to allow authorised officers at DPEs in an EU Member State not equipped with the necessary facilities for carrying out physical checks (including sampling for testing), to arrange for the checks to be carried out at another point of control, which meets the minimum requirements in Article 4 of Regulation

669/2009, in the same Member State. However, it is not expected that any DPEs in the UK will be affected.

Q33 Do fees have to be paid?

A33 Yes. Under Article 14 of Regulation 669/2009 Member States must ensure that fees are collected to cover the costs incurred by carrying out the official controls provided for in Regulation 669/2009, including sampling, analysis, storage and any measures taken following non-compliance.

Q34 How much will the fees be?

A34 Under Article 27(4) of Regulation 882/2004 the fees collected for the purposes of official controls must not be higher that the costs borne by the responsible competent authority, taking into consideration staff salaries, costs of facilities, tools, equipment, training, travel, and associated costs, and laboratory analysis and sampling costs.

Q35 To whom are the fees paid?

A35 Fees should be paid to the competent authority at the DPE, or in cases where any sampling for testing checks were carried out outside the DPE, to the competent authority responsible.

Q36 What happens if a consignment fails the official feed and food controls ?

A36 If a consignment fails these controls then the authorised enforcement officer of the DPE will complete Part II of the CED and detain the goods to decide what appropriate enforcement action will be taken in accordance with Articles 19, 20 and 21 of Regulation 882/2004. These Articles allow the goods to be destroyed, subjected to special treatment, re-dispatched outside the Community or other appropriate measures. The enforcement officer at the DPE will discuss with the FBO the options available. FBOs will also be liable for any costs incurred by the DPE in respect of the actions taken as above.

Q37 What can I do if I disagree with action taken by the authorities at the DPE or elsewhere?

A37 The competent authority will provide information on rights of appeal in accordance with Articles 33 to 34 of the Regulations.

REFERENCES

- Commission Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.

- Commission Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 as regards the increased level of official controls on imports of certain feed and food of non-animal origin and, amending Decision 2006/504/EC.

- The current list of “high-risk” feed and food of non-animal origin in Annex I of this Regulation may be accessed at:

  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:194:0011:0021:EN:PDF

- The Official Feed and Food Controls (England) Regulations 2009.

CONTACTS

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