

S.I. No. 426 of 2011

EUROPEAN COMMUNITIES (OFFICIAL CONTROLS ON THE IMPORT OF FOOD OF NON-ANIMAL ORIGIN FOR PESTICIDE RESIDUES) REGULATIONS 2011.

Regulation 10 of S.I. No. 426 of 2011 requires that the Minister for Agriculture, Food & the Marine shall charge a fee in accordance with Article 14 of Regulation (EC) No 669/2009, as regards the increased level of official controls on imports of certain feed and food of non-animal origin.

The level of fees to be charged is dependent on the frequency of sampling and analysis, and is calculated on the basis of an **average** cost of certification for 10 consignments, as follows:

Fee of €75 where the sampling and analysis frequency is 10%;

Fee of €100 where the sampling and analysis frequency is 20% or greater;

FBO's are further reminded that the DAFF require

- (i) A minimum of 2 working days prior notification of import (Reg. 8(b) of SI 426);
- (ii) The FBO to organise unloading and reloading of any consignment in accordance with 8(f) of SI 42.



STATUTORY INSTRUMENTS.

S.I. No. 426 of 2011

EUROPEAN COMMUNITIES (OFFICIAL CONTROLS ON THE
IMPORT OF FOOD OF NON-ANIMAL ORIGIN FOR PESTICIDE
RESIDUES) REGULATIONS 2011.

(Prn. A11/1452)

EUROPEAN COMMUNITIES (OFFICIAL CONTROLS ON THE
IMPORT OF FOOD OF NON-ANIMAL ORIGIN FOR PESTICIDE
RESIDUES) REGULATIONS 2011.

I, SIMON COVENEY, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving further effect to Commission Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004¹ as amended by Council Regulation (EC) No. 301/2008 of 17 March 2008², Commission Regulation (EC) No. 1029/2008 of 20 October 2008³, and for the purpose of giving further effect to Commission Regulation (EC) No. 669/2009 of 24 July 2009⁴ as amended by Commission Regulation (EU) No. 212/2010 of 12 March 2010⁵ and Commission Implementing Regulation (EU) No. 433/2011 of 4 May 2011⁶ in so far as they relate to pesticide residues, hereby make the following regulations:

PART 1

INTERPRETATION

1. These Regulations may be cited as the European Communities (Official Controls on the Import of Food of Non-Animal Origin for Pesticide Residues) Regulations 2011.

2. (1) In these Regulations—

“Act of 1998” means the Food Safety Authority of Ireland Act 1998 (No. 29 of 1998);

“authorised officer” means—

(a) an authorised officer appointed under section 49 of the Act of 1998, or

(b) a person appointed by the Minister under Regulation 11;

“Commission Regulation 669/2009” means Commission Regulation (EC) No. 669/2009 of 24 July 2009 as amended by Commission Regulation (EU) No. 212/2010 of 12 March 2010 and Commission Implementing Regulation (EU) No. 433/2011 of 4 May 2011;

¹O.J. L165, 30.4.2004, p. 1

²O.J. L97, 9.4.2008, p. 85

³O.J. L278, 21.10.2008, p. 6

⁴O.J. L194, 25.7.2009, p. 11

⁵O.J. L65, 13.3.2010, p. 16

⁶O.J. L115, 5.5.2011, p. 5

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 16th August, 2011.*

“consignment” means a quantity of food of non-animal origin of the same class or description, covered by the same document, conveyed by the same means of transport and coming from a country other than a Member State;

“EC Regulation 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 as amended by Council Regulation (EC) No. 301/2008 of 17 March 2008 and Commission Regulation (EC) No. 1029/2008 of 20 October 2008;

“EC Regulations” means EC Regulation 882/2004 and Commission Regulation 669/2009;

“food legislation” has the same meaning as in the Act of 1998;

“General Food Law Regulation” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002⁷;

“Minister” means Minister for Agriculture, Fisheries and Food;

“official detention” has the meaning assigned to it by Article 2(13) of EC Regulation 882/2004.

(2) A word or expression which is used in these Regulations and which is also used in the EC Regulations or in the General Food Law Regulations has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EC Regulations or in the General Food Law Regulation.

(3) These Regulations shall not apply to food businesses engaged in activities which are subject to the European Communities (Food and Feed Hygiene) Regulations 2009 (S.I. No. 432 of 2009), only to the extent that the food business engages in those activities.

PART 2

GENERAL PROVISIONS

3. The Minister may carry out official controls on food of non-animal origin imported into the State from a country other than a Member State, in accordance with Chapter V of Title II of EC Regulation 882/2004 and Commission Regulation 669/2009.

4. The Minister may order, for as long as is necessary, the official detention of consignments of food of non-animal origin imported into the State from countries other than Member States where that is required to fulfil its obligations under Chapter V of Title II of EC Regulation 882/2004.

5. Where official controls carried out under Chapter V of Title II of EC Regulation 882/2004 establish non-compliance with food legislation, the Minister may detain and take further measures to deal with the non-compliant consignment in accordance with Article 19(1) of that Regulation.

⁷O.J. L31, 1.2.2002, p. 1

6. Where the official controls carried out under Chapter V of Title II of EC Regulation 882/2004 indicate that a consignment is injurious to human or animal health, or unsafe, the Minister may deal with the consignment in accordance with Article 19(2)(a) of that Regulation.

7. (1) The Minister may only allow the re-dispatch of consignments where the conditions laid down in Article 21 of EC Regulation 882/2004 are satisfied.

(2) The Minister may destroy a consignment referred to in paragraph (1) after the expiry of 60 days following the day on which it decided on the destination of the consignment, unless a delay in re-dispatch is justified to the Minister.

8. The Minister shall apply additional measures to certain food of non-animal origin imported from a country other than a Member State which is subjected to an increased level of official controls under Commission Regulation 669/2009 in relation to pesticide residues including—

- (a) food business operators may only import consignments of such food into the State through the designated point of entry for the particular product;
- (b) food business operators or their representatives shall, at least two working days prior to the arrival of a consignment of such food, notify the Minister at the particular designated point of entry of the pending arrival, by means of Part I of the common entry document;
- (c) where such food is not presented for official controls, or is not presented in accordance with any specific requirements established in accordance with Article 17 of EC Regulation 882/2004, the Minister may order that the consignment be recalled and placed under official detention without delay and that it then be either destroyed or re-dispatched in accordance with Article 21 of EC Regulation 882/2004;
- (d) consignments of such food shall be subject to an increased level of official controls at designated points of entry, in accordance with Article 8 of Commission Regulation 669/2009;
- (e) the release for free circulation of consignments of such food shall be in accordance with Article 10 of Commission Regulation 669/2009;
- (f) where the Minister believes that a consignment of such food has special characteristics within the meaning of Article 11 of Commission Regulation 669/2009, the food business operator shall make available to the Minister the resources, logistics and equipment referred to in that Article;
- (g) where official controls establish non-compliance, an authorised officer may complete Part III of the common entry document and apply Articles 19, 20 and 21 of EC Regulation 882/2004 as appropriate;

9. The Minister shall provide the food business operator concerned, or their representative with-

- (a) written notification of its decision concerning action to be taken together with the reasons for its decision, and
- (b) information on the right of appeal against such decision.

PART 3

FEES AND SANCTIONS

10. (1) The Minister shall charge a fee in accordance with Article 14 of Commission Regulation 669/2009.

(2) A fee payable under this Regulation may be recovered by the Minister from the food business operator or his or her representative responsible for a consignment as a simple contract debt in a court of competent jurisdiction.

(3) Moneys received under this Regulation shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(4) The Public Offices Fees Act 1879 (42 & 43 Vict. Cap 58) does not apply to a fee charged under this Regulation.

(5) The Minister may direct that a consignment be destroyed, or otherwise disposed of, where a food business operator or his or her representative has failed to pay a fee payable under this Regulation.

11. (1) The Minister may, by instrument in writing, appoint such and so many persons or a class of persons as he or she thinks fit to be authorised officers for the purposes of some or all of the functions of an authorised officer as may be specified in the instrument.

(2) The Minister may terminate the appointment of an authorised officer appointed by him or her and the Minister may terminate an appointment under paragraph (1), whether or not the appointment was for a fixed period.

(3) An appointment as an authorised officer ceases—

- (a) if it is terminated under paragraph (2),
- (b) if it is for a fixed period, on the expiry of that period, or
- (c) if the person appointed is an officer of the Minister on the person ceasing to be such an officer.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom paragraph (3) relates.

(5) The Minister shall furnish an authorised officer appointed by him or her with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer to the person.

(6) An authorised officer appointed under paragraph (1) may exercise the powers contained in section 50 of the Act of 1998.

12. (1) A person commits an offence if he or she fails without lawful excuse to comply with these Regulations.

(2) A person commits an offence if he or she, by act or omission—

- (a) obstructs or interferes with an authorised officer in the exercise of the officer's powers;
- (b) fails or refuses to state his or her name or address in compliance with a request of an authorised officer;
- (c) fails to comply with a request or notice of an authorised officer;
- (d) makes a statement to an authorised officer which the person knows is false or misleading;
- (e) gives information which is false or misleading;
- (f) imports products listed in Annex I to Commission Regulation 669/2009 but fails to submit a common entry document in accordance with Regulation 8(1)(b) and Article 6 of Commission Regulation 669/2009;
- (g) releases for free circulation in the State, products listed in Annex I to Commission Regulation 669/2009, not having presented to the customs authorities a common entry document, or its electronic equivalent in accordance with Article 10 of that Regulation;
- (h) forges or alters, or utters knowing it to be forged or altered a common entry document or other document required for the purposes of these Regulations;
- (i) tampers with any substance or sample with the result that the sample taken does not correctly represent the substance sampled;
- (j) tampers or interferes with any sample with intent to defraud or deceive;
- (k) fails to make available to the official agency resources, logistics and equipment required by the official agency pursuant to Regulation 8(1)(f);
- (l) fails to pay a fee required under Regulation 10;

- (m) splits a consignment of food listed in Annex I to Commission Regulation 669/2009 before the increased level of controls provided for in that Regulation have been completed and the common entry document has been completed by the Minister in accordance with Article 8 of that Regulation;
- (n) fails to ensure that an authenticated copy of the relevant common entry document accompanies each part of a consignment split in accordance with Article 12 of Commission Regulation 669/2009;
- (o) provides misleading information in relation to a proposed re-dispatch of a consignment in accordance with Article 21 of EC Regulation 882/2004.

(3) Where a body corporate, or a person acting on behalf of a body corporate, commits an offence under these Regulations and the offence is committed with the consent, connivance or approval of, or is attributable to any neglect or default on the part of any director, manager, secretary or any other officer of such body, or a person purporting to act in any such capacity, such person is also guilty of an offence and is liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(4) A person who commits an offence under these Regulations is liable on summary conviction, to a Class A fine or to imprisonment for a term not exceeding 6 months or both.

(5) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Minister the costs and expenses, measured by the court, incurred by the Minister in the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisors engaged by the Minister.

13. Notwithstanding section 57 of the Act of 1998, summary proceedings for an offence under these Regulations may be prosecuted by the Minister.



GIVEN under my Official Seal,
21 July 2011

SIMON COVENEY,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These regulations introduce additional levels of controls on the import of certain food of non animal origin from specific third countries with regard to pesticide residues.

BAILE ÁTHA CLIATH
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