

2005 No. 1265

AGRICULTURE, ENGLAND

The Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005

Made - - - - *29th April 2005*

Coming into force *30th April 2005*

To be laid before Parliament

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the control and regulation of genetically modified organisms, in exercise of the powers conferred on him by that section, makes the following Regulations:

Title, commencement and application

1.—(1) These Regulations may be cited as the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005 and shall come into force on 30th April 2005.

(2) These Regulations apply in relation to England only.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Agriculture Act 1970(c) and, subject to paragraph (2), any expression used both in these Regulations and in the Act has the meaning it bears in the Act;

“the Commission Decision” means Commission Decision 2005/317/EC on emergency measures regarding the non-authorised genetically modified organism Bt 10 in maize products(d);

“controlled products” means —

(a) corn gluten feed containing or produced from genetically modified maize within CN code 2309 90 20 originating from the United States of America; and

(b) brewers grains containing or produced from genetically modified maize within CN code 2303 30 00 originating from the United States of America;

“enforcement authority” means the council of a county, metropolitan district or London borough; the Common Council of the City of London; and the health authority of the Port of London which, for the purposes of these Regulations, shall be treated as not forming part of the area of any of those councils; and

(a) S.I. 1991/755.

(b) 1972 c. 68.

(c) 1970 c. 40.

(d) OJ No. L101, 21.4.2005, p.14.

“feed” means feed as defined in Article 3.4 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(a).

(2) Any term used both in these Regulations and in the Commission Decision has the meaning it bears in the Commission Decision.

Prohibition on first placing on the market

3.—(1) No person shall first place on the market any controlled products unless —

- (a) the conditions specified in Article 2 of the Commission Decision relating to analytical reports are satisfied in relation to those products; and
- (b) the costs incurred in the implementation of Articles 2 and 4 in relation to that first placing on the market have been met by the operators responsible for that activity.

(2) Any person who knowingly contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

Enforcement

4.—(1) Each enforcement authority shall, within its area, enforce and execute the provisions of these Regulations.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an inspector of the authority concerned shall ensure that the requirements referred to in paragraph (3) are adhered to.

(3) The requirements are those specified in —

- (a) Article 3 of the Commission Decision (which is concerned with measures including the sampling and analysis of controlled products), other than the requirement to supply the Commission with specified information; and
- (b) Article 4 of that Decision (which is concerned with measures to be taken to ensure that controlled products that are found to contain Bt 10 maize or feed produced from Bt 10 maize are not placed on the market).

(4) Each enforcement authority shall give such assistance and information to the Secretary of State and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

Application of various provisions of the Act

5.—(1) The provisions of the Act listed in paragraph (2) shall apply for the purposes of these Regulations subject to the modification set out in paragraph (2)(a) and as if —

- (a) any reference in those provisions to a feeding stuff were a reference to feed;
- (b) any reference in those provisions to the Act or any Part of it were a reference to these Regulations;
- (c) any reference in those provisions to samples taken in a prescribed manner were a reference to samples taken in a manner prescribed in Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999(b); and
- (d) any reference in those provisions to a prescribed manner of analysis were a reference to a method that is suitable and validated for the purposes of Article 2.1 of the Commission Decision.

(a) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

(b) S.I. 1999/1663, amended by S.I. 1999/1871, S.I. 2001/541, S.I. 2002/892, S.I. 2003/1296, S.I. 2003/1503, S.I. 2003/2912, S.I. 2004/1301, S.I. 2004/2146 and S.I. 2004/2688.

(2) The provisions referred to in paragraph (1) are—

- (a) section 76 (inspector's power to enter premises and take samples), which shall apply as if paragraph (b) of subsection (2) included power to require production of and to take copies of any documentation relating to the feed concerned;
- (b) section 77 (division of samples and analysis by agricultural analyst);
- (c) section 78(2), (3), (4), (5), (6), (7), (8) and (10) (further analysis by the Government Chemist);
- (d) section 79(4), (5), (6), (8) and (10) (supplementary provisions relating to samples and analysis);
- (e) section 80 (institution of prosecutions);
- (f) section 81 (offences due to fault of other person);
- (g) section 82 (defence of mistake, accident, etc.);
- (h) section 83 (exercise of powers by inspectors); and
- (i) section 110 (offences by bodies corporate).

Application of various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999

6.—(1) The provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999 listed in paragraph (2) shall apply for the purposes of these Regulations subject to the modifications set out in that paragraph and as if any reference in those provisions to a feeding stuff were a reference to feed.

(2) The provisions referred to in paragraph (1) are—

- (a) regulation 3(a) (manner of taking, preparing, marking, sealing and fastening of samples);
- (b) regulation 4 (methods of sending part of a sample) with the modification that the reference to “subsection (1)(b) or (2) of section 77 of the Act” shall be deemed to be a reference to these Regulations;
- (c) regulation 5 (qualifications of agricultural analysts and deputy agricultural analysts) with the modification that the reference to “The prescribed qualifications for an agricultural analyst or a deputy agricultural analyst for the purposes of section 67(5) of the Act, insofar as it relates to feeding stuffs” shall be deemed to be a reference to the qualifications required by a person analysing feed for the purposes of these Regulations;
- (d) regulation 6(4) (application of methods of analysis) with the modification that the reference to “the Act” shall be deemed to be a reference to these Regulations;
- (e) regulation 7 (form of certificate of analysis) with the modification that the reference to “section 77(4) of the Act” shall be deemed to be a reference to section 77(4) of the Act as applied for the purposes of these Regulations by regulation 5;
- (f) regulation 8 (period within which analysis of the oil content of a feeding stuff must be carried out) with the modification that the reference to “in the prescribed manner” shall be deemed to be a reference to a method that is suitable and validated for the purposes of Article 2.1 of the Commission Decision;
- (g) Schedule 1 (manner of taking, preparing, marking, sealing and fastening of samples); and
- (h) Schedule 3 (form of certificate of analysis) with the modification that the reference in Part I to “Part IV of the Agriculture Act 1970” shall be deemed to be a reference to these Regulations.

Inspection, seizure and detention of corn gluten feed or brewers grains illegally first placed on the market

7.—(1) An inspector of the relevant enforcement authority may at all reasonable times inspect any corn gluten feed or brewers grains; and on such an inspection the inspector may, taking

account of all the information available to him, certify that the corn gluten feed or brewers grains are controlled products that have been first placed on the market in contravention of regulation 3(1).

(2) Where any corn gluten feed or brewers grains have been certified as mentioned in paragraph (1) they shall be treated for the purposes of regulation 8 of the Genetically Modified Animal Feed (England) Regulations 2004^(a) as failing to comply with a specified Community provision, subject to the modification that in paragraph (4)(a) of that regulation the reference to “regulation 5” shall be deemed to be a reference to regulation 3 of these Regulations.

Amendments to the Genetically Modified Animal Feed (England) Regulations 2004

8.—(1) The Genetically Modified Animal Feed (England) Regulations 2004 shall be amended in accordance with paragraph (2).

(2) In regulation 8 (inspection, seizure and detention of suspected animal feed) —

(a) in paragraph (5) —

(i) there shall be inserted at the beginning the words “Subject to paragraphs (5A), (5B) and (6),” and

(ii) the words “subject to paragraph (6) below” shall be deleted; and

(b) immediately after paragraph (5) there shall be inserted the following paragraphs —

“(5A) When the material which is condemned pursuant to paragraph (5) constitutes controlled products the expenses reasonably incurred in connection with the destruction or disposal of those products shall be defrayed by the operator responsible for their first placing on the market.

(5B) In paragraph (5A) “controlled products” means controlled products as defined in regulation 2(1) of the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (England) Regulations 2005.”.

Signed by authority of the Secretary of State for Health

29th April 2005

Warner
Parliamentary Under Secretary of State,
Department of Health

(a) S.I. 2004/2334.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, implement Commission Decision 2005/317/EC on emergency measures regarding the non-authorised genetically modified organism Bt 10 in maize products (OJ No. L101, 21.4.2005, p.14).

2. The Regulations —

- (a) prohibit the first placing on the market of certain maize products originating from the United States of America (defined as “controlled products” in regulation 2(1)) unless, as required by Article 2 of Commission Decision 2005/317/EC, it can be demonstrated that the products do not contain Bt 10 maize or feed produced from Bt 10 maize (*regulation 3(1)*);
- (b) make it an offence to breach that prohibition (*regulation 3(2)*);
- (c) apply with modifications certain provisions of the Agriculture Act 1970 (1970 c. 40) for the purposes of the Regulations (*regulation 5*);
- (d) apply with modifications certain provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999 (S.I. 1999/1663) for the purposes of the Regulations (*regulation 6*);
- (e) provide for the inspection, seizure and detention of corn gluten feed or brewers grains illegally first placed on the market (*regulation 7*); and
- (f) amend the Genetically Modified Animal Feed (England) Regulations 2004 (S.I. 2004/2334) to provide that where material which is condemned pursuant to those Regulations constitutes controlled products as defined in regulation 2(1) of these Regulations, the expenses reasonably incurred in connection with the destruction or disposal of those products shall be defrayed by the operator responsible for their first placing on the market (*regulation 8*).

3. The CN codes referred to in the definition of “controlled products” are the code numbers of the combined nomenclature established by Regulation 2658/87 on the tariff and statistical nomenclature and on the customs tariff (OJ No. L256, 7.9.87, p.1).

4. No regulatory impact assessment has been prepared in relation to these Regulations.

STATUTORY INSTRUMENTS

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**The Feed (Corn Gluten Feed and Brewers Grains) (Emergency
Control) (England) Regulations 2005**

£3.00

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under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0812 5/2005 150812T 19585

ISBN 0-11-072843-2



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