

2005 No. 233

AGRICULTURE

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

Made - - - - - *29th April 2005*

Coming into operation *3rd May 2005*

The Department of Health, Social Services and Public Safety(a) being a Department designated(b) for the purposes of section 2(2) of the European Communities Act 1972(c) in relation to the control and regulation of genetically modified organisms, in exercise of the powers conferred on it by the said section and of every other power enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) Regulations (Northern Ireland) 2005 and shall come into operation on 3rd May 2005.

Interpretation

2.—(1) In these Regulations –

“the Act” means the Agriculture Act 1970(d) 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(e);

“controlled products” means –

- (a) corn gluten feed containing or produced from genetically modified maize within CN code 2309 9020 originating from the United States of America; and
- (b) brewers grains containing or produced from genetically modified maize within CN code 2303 3000 originating from the United States of America;

“the Department” means the Department of Agriculture and Rural Development;

“inspector” means a person appointed by the Department under section 67(2) of the Act(f)

“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

(a) Formerly the Department of Health and Social Services; see S.I. 1999/283 (N.I. 1), Article 3(6)

(b) S.I. 1991/755

(c) 1972 c. 68

(d) 1970 c. 40

(e) O.J. No. L101, 21.4.2005, p. 14

(f) Section 67 in its application to Northern Ireland is substituted by section 86(3) of the Act

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.

(3) The Interpretation Act (Northern Ireland) 1954^(b) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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) The Department shall 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 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) The Department shall give such assistance and information to the Department of Health, Social Services and Public Safety 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 of the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 1999^(c); 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.

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

(a) O.J. 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 (O.J. No. L245, 29.9.2003, p. 4)

(b) 1954 c. 33 (N.I.)

(c) S.R. 1999 No. 296, the relevant amendment is S.R. 2002 No. 263

- (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 Chief Agricultural Analyst);
- (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 (Northern Ireland) 1999

6.—(1) The provisions of the Feeding Stuffs (Sampling and Analysis) Regulations (Northern Ireland) 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(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;
 - (d) regulation 6 (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;
 - (e) regulation 7 (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;
 - (f) Schedule 1 (manner of taking, preparing, marking, sealing and fastening of samples); and
 - (g) 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 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 Regulations (Northern Ireland) 2004(a) as failing to comply with a specified Community provision, subject to the modification that in paragraph (4)(a) of that regulation the

(a) S.R. 2004 No. 386

reference to “regulation 5” shall be deemed to be a reference to regulation 3 of these Regulations.

Amendment to the Genetically Modified Animal Feed Regulations (Northern Ireland) 2004

8.—(1) The Genetically Modified Animal Feed Regulations (Northern Ireland) 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 “Subject to paragraphs (5A), (5B) and (6),”;
and

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

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

“(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) Regulations (Northern Ireland) 2005.”.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 29th April 2005.

(L.S.)

Don Hill

A senior officer of the Department of Health, Social Services and Public Safety

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations implement Commission Decision 2005/317/EC on emergency measures regarding the non-authorised genetically modified organism Bt 10 in maize products (O.J. 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 (Northern Ireland) 1999 (S.R. 1999 No. 296) 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 Regulations (Northern Ireland) 2004 (S.R. 2004 No. 386) 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 of that material (*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 (O.J. No. L256, 7.9.87, p. 1).

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