

2003 No. 414

FOOD

**The Food (Pistachios from Iran) (Emergency Control)
(Scotland) Regulations 2003**

<i>Made</i>	<i>8th September 2003</i>
<i>Laid before the Scottish Parliament</i>	<i>9th September 2003</i>
<i>Coming into force</i>	<i>30th September 2003</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Food (Pistachios from Iran) (Emergency Control) (Scotland) Regulations 2003 and shall come into force on 30th September 2003.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990(b) and, subject to paragraph (2), any expression used in both these Regulations and in the Act has the meaning it bears in the Act;

“the Commission Decision” means Commission Decision 97/830/EC repealing Commission Decision 97/613/EC and imposing special conditions on the import of pistachios and certain products derived from pistachios originating in or consigned from Iran(c) as amended by Commission Decision 98/400/EC(d), Commission Decision 2000/238/EC(e) and Commission Decision 2003/551/EC(f);

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 1990 c.16.

(c) O.J. No. L 343, 13.12.97, p.30.

(d) O.J. No. L 176, 20.6.98, p.37.

(e) O.J. No. L 75, 24.3.00, p.59.

(f) O.J. No. L 187, 26.7.03, p.43.

“the Commission Regulation” means Commission Regulation (EC) No. 466/2001(a) setting maximum levels for certain contaminants in foodstuffs, as corrected by a corrigendum published on 30th November 2001(b) and as amended by Council Regulation (EC) No. 2375/2001(c), Commission Regulation (EC) No. 221/2002(d), Commission Regulation (EC) No. 257/2002(e), Commission Regulation (EC) No. 472/2002(f) as corrected by a corrigendum published on 23rd March 2002(g) and Commission Regulation (EC) No. 563/2002(h) as corrected by a corrigendum published on 14th June 2002(i);

“Directive 98/53/EC” means Commission Directive 98/53/EC laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs(j) as amended by Commission Directive 2002/27/EC(k);

“free circulation” has the same meaning as in Article 23.2 of the Treaty establishing the European Community; and

“Iranian pistachios” means—

- (a) pistachios falling within CN code 0802 50 00; and
- (b) roasted pistachios falling within CN code 2008 19 13 or code 2008 19 93, originating in, or consigned from, Iran and any products derived from such pistachios or roasted pistachios.

(2) Any term used in the definition of “Iranian pistachios” in paragraph (1) has the same meaning as in the Commission Decision.

Prohibition on import

3.—(1) Subject to paragraph (3), no person shall import into Scotland any Iranian pistachios unless—

- (a) the conditions specified in Article 2.1, 2.3 and 2.7 of the Commission Decision are satisfied in relation to those Iranian pistachios; and
- (b) on sampling and analysis by the food authority under regulation 4(3)(b) those Iranian pistachios are found not to contain higher levels of aflatoxin than those specified for such pistachios in Annex I of the Commission Regulation.

(2) Subject to paragraph (3), no person shall import into Scotland any Iranian pistachios, except through a point of entry listed in Annex II to the Commission Decision.

(3) Paragraphs (1) and (2) shall not be taken to prohibit the bringing into Scotland—

- (a) from another member State of the European Community of any Iranian pistachios which are in free circulation in that member State; or
- (b) from England, Wales or Northern Ireland of Iranian pistachios which have been imported into the United Kingdom in accordance with the Commission Decision.

(4) Any person who knowingly contravenes paragraph (1)(a) or (2) 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.

Enforcement

4.—(1) Subject to paragraph (2), it shall be the duty of each food authority to execute and enforce these Regulations within its area.

(a) O.J. No. L 77, 16.3.01, p.1.
(b) O.J. No. L 313, 30.11.01, p.60.
(c) O.J. No. L 321, 6.12.01, p.1.
(d) O.J. No. L 37, 7.2.02, p.4.
(e) O.J. No. L 41, 13.2.02, p.12.
(f) O.J. No. L 75, 16.3.02, p.18.
(g) O.J. No. L 80, 23.3.02, p.42.
(h) O.J. No. L 86, 3.4.02, p.5.
(i) O.J. No. L 155, 14.6.02, p.63.
(j) O.J. No. L 201, 17.7.98, p.93.
(k) O.J. No. L 75, 16.3.02, p.44.

(2) For the purposes of the exercise of the duty referred to in paragraph (1) an authorised officer of a food authority concerned shall—

- (a) ensure that the requirements referred to in paragraph (3) are adhered to; and
- (b) have the same powers of entry as an authorised officer of an enforcement authority under section 32 of the Act for purposes connected with the Act or Regulations or Orders made under the Act.

(3) The requirements are those specified in—

- (a) Article 2.4 of the Commission Decision (which is concerned with documentary checks relating to consignments of Iranian pistachios);
- (b) Article 2.5 and 2.6 of the Commission Decision (which provisions are concerned with the sampling and analysis of such consignments), other than the requirement under Article 2.5 to supply the Commission with specified information; and
- (c) Article 2.7 of the Commission Decision (which is concerned with the case where consignments are split).

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

Application of various provisions of the Food Safety Act 1990 and sampling and analysis

5.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall be construed as a reference to these Regulations:—

- (a) section 20 (offences due to fault of another person);
- (b) section 33 (obstruction etc. of officers);
- (c) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33(1) and (2) as applied by sub-paragraph (b);
- (d) section 36 (offences by bodies corporate);
- (e) section 36A (offences by Scottish partnerships); and
- (f) section 44 (protection of officers acting in good faith).

(2) Section 29 of the Act (procurement of samples) shall apply for the purposes of these Regulations with the modifications that—

- (a) for “an enforcement authority” there shall be substituted “a food authority”;
- (b) for subsection (b)(ii) there shall be substituted the following:—
“*(ii) is found by the authorised officer at any premises which the officer is authorised to enter by virtue of regulation 4(2)(b) of the Food (Pistachios from Iran) (Emergency Control) (Scotland) Regulations 2003*”;
- (c) the power to take samples under subsections (b) and (d) shall be limited to the taking of samples in accordance with the methods of taking samples described or referred to in Annex I to Directive 98/53/EC;
- (d) subsection (c) shall be omitted; and
- (e) for “any of the provisions of this Act or of regulations or orders made under it” in subsection (d) there shall be substituted “the Food (Pistachios from Iran) (Emergency Control) (Scotland) Regulations 2003”.

(3) Where, pursuant to section 29(b) of the Act as applied for the purposes of these Regulations by paragraph (2), an authorised officer has taken a sample of any Iranian pistachios, that officer shall ensure that—

- (a) the sample is prepared in accordance with—
 - (i) paragraphs 1.1, 2 and 3 of Annex II to Directive 98/53/EC; and
 - (ii) in the case of whole nuts, paragraph 1.2 of that Annex;
- (b) an analysis of the sample is carried out by a laboratory which complies with Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs(a);

(a) O.J. No. L290, 24.11.93, p.14.

- (c) that analysis of the sample is carried out as soon as practicable by a suitably qualified analyst in accordance with methods of analysis which–
 - (i) so far as practicable, comply with paragraphs 1 and 2 of the Annex to Council Directive 85/591/EEC concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption^(a); and
 - (ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 98/53/EC as read with the notes thereto; and
 - (d) the reporting of the result of that analysis of the sample–
 - (i) makes use of the definitions in paragraph 4.1 of Annex II to Directive 98/53/EC; and
 - (ii) is in accordance with paragraph 4.4 of that Annex.
- (4) Before an analyst agrees to analyse a sample in accordance with paragraph (3)(c) the analyst may demand the payment in advance of such reasonable fee as the analyst may require.
- (5) An analyst who has analysed a sample in accordance with paragraph (3)(c) shall give to the person by whom it was submitted a certificate which shall both specify the result of the analysis and be signed by the analyst.
- (6) In any proceedings under these Regulations, the production by one of the parties of–
 - (a) a document purporting to be a certificate given by an analyst under paragraph (5); or
 - (b) a document supplied to that party by the other party as being a copy of such a certificate,
 shall be sufficient evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the analyst shall be called as a witness.
- (7) Where a sample procured under section 29 of the Act as applied for the purposes of these Regulations by paragraph (2) has been analysed in accordance with paragraph (3)(b) and (c), the owner shall be entitled on request to be supplied with a copy of the certificate of analysis by the food authority.
- (8) Nothing in paragraph (3)(c) shall be taken as preventing an analysis being made by a person acting under the analyst's direction.

Re-dispatch or destruction of illegal imports

- 6.—**(1) If on an inspection or examination of any Iranian pistachios it appears to an authorised officer of a food authority that they have been imported in contravention of regulation 3(1) or (2) the authorised officer may after appropriate consultation with a person appearing to be the importer serve on that person a notice ordering–
- (a) the re-dispatch of the Iranian pistachios outside the European Community within such reasonable period as shall be specified in the notice; or
 - (b) (where such re-dispatch would in the opinion of the authorised officer involve serious risks to human health or where the period specified in a notice issued under this paragraph for the re-dispatch of Iranian pistachios has elapsed and the Iranian pistachios have not been re-dispatched) the destruction of the Iranian pistachios within such reasonable period as shall be specified in the notice.
- (2) Any notice served under paragraph (1) shall state–
- (a) the right of appeal to the sheriff under paragraph (4); and
 - (b) the period within which such an appeal may be brought.
- (3) The person on whom a notice has been served under paragraph (1) shall ensure that the Iranian pistachios to which the notice applies are stored until re-dispatch or destruction under the supervision of the authorised officer at such places and under such conditions as the authorised officer may in the notice direct.
- (4) Any person who is aggrieved by a decision of an authorised officer to serve a notice under paragraph (1) may appeal to the sheriff, who may confirm or cancel the notice.
- (5) The period within which such an appeal as is mentioned in paragraph (4) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and public holidays.

(a) O.J. No. L 372, 31.12.85, p.50.

(6) Pending determination of an appeal under paragraph (4), paragraph (3) shall apply to the storage of the Iranian pistachios concerned.

(7) If the sheriff allows an appeal brought under paragraph (4) the authority concerned shall compensate the owner of the Iranian pistachios concerned for any depreciation in their value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(9) Any person who breaches the terms of a notice served under 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.

(10) The costs of re-dispatch, storage and destruction of Iranian pistachios under this regulation shall be borne by the importer.

Revocation of the Food (Pistachios from Iran) (Emergency Control) Order 1997

7. The Food (Pistachios from Iran) (Emergency Control) Order 1997(a) is revoked so far as it extends to Scotland.

TOM McCABE

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
8th September 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, revoke and re-enact with changes the Food (Pistachios from Iran) (Emergency Control) Order 1997 (S.I. 1997/2238, as amended by S.I. 1997/3046), which extends to the whole of Great Britain. The revocation is effected by regulation 7.

The 1997 Order implemented Commission Decision 97/613/EC on the temporary suspension of imports of pistachios and certain products derived from pistachios originating in or consigned from Iran (O.J. No. L 248, 11.9.97, p.33), and in its amended form implemented Commission Decision 97/830/EC repealing Commission Decision 97/613/EC and imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran (O.J. No. L 343, 13.12.97, p. 30).

These Regulations implement Commission Decision 97/830/EC as amended by Commission Decision 98/400/EC (O.J. No. L 176, 20.6.98, p.37), Commission Decision 2000/238/EC (O.J. No. L75, 24.3.2000, p.59) and Commission Decision 2003/551/EC (O.J. No. L 187, 26.7.2003, p.43). The categories of products which are subject to the special conditions referred to above are specified in Article 2 of Commission Decision 97/830/EC as so amended.

These Regulations—

- (a) prohibit the importation of “Iranian pistachios” (defined in regulation 2(1)), except where—
 - (i) they are accompanied by an Iranian Government health certificate and the results of official sampling and analysis, the importation takes place only through a specified point of entry and each consignment is identified with a code corresponding with that specified on the health certificate and the accompanying report containing the sampling and analysis results;
 - (ii) they are subject to specified documentary checks; and
 - (iii) each consignment is subjected to analysis of aflatoxin B1 and total aflatoxin levels before release onto the market (regulation 3);
- (b) provide for their enforcement (regulation 4);
- (c) apply with modifications certain provisions of the Food Safety Act 1990 for the purposes of the Regulations and provide for sampling and analysis (regulation 5); and
- (d) provide for the re-dispatch or destruction of illegal imports of Iranian pistachios (regulation 6).

The principal changes effected by these Regulations are that—

- (a) the previous requirement that each consignment of Iranian pistachios be subjected to systematic sampling and analysis in order to ensure compliance with Commission Decision 97/830/EC is modified by providing that—
 - (i) the period of detention to allow sampling and analysis should not exceed 15 working days;
 - (ii) an authorised officer of the relevant enforcement authority must issue a notice stating that sampling has taken place and the results of the analysis of the sample; and
 - (iii) copies of the health certificate and the results of sampling and analysis must accompany each part of a split consignment.
- (b) an authorised officer of the relevant enforcement authority is empowered (subject to a right of appeal to the sheriff) to issue a notice ordering the re-dispatch of illegal imports of Iranian pistachios.

The CN codes referred to in the definition of “Iranian pistachios” are the code numbers of the combined nomenclature established by Council Regulation 2658/87 on the tariff and statistical nomenclature and on the common customs tariff (O.J. No. L 256, 7.9.87, p.1).

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

2003 No. 414

FOOD

**The Food (Pistachios from Iran) (Emergency Control)
(Scotland) Regulations 2003**

£2.00

© Crown Copyright 2003

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
150 09/03 19593

