

2008 No. 1079

AGRICULTURE, ENGLAND

FOOD, ENGLAND

**The Specified Products from China (Restriction on First Placing
on the Market) (England) Regulations 2008**

<i>Made</i> - - - -	<i>14th April 2008</i>
<i>Laid before Parliament</i>	<i>14th April 2008</i>
<i>Coming into force</i> - -	<i>15th April 2008</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972 (a).

The Secretary of State has been designated for the purpose of that section in relation to measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals(b).

As required by Article 9 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(c) there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1. These Regulations may be cited as the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008, apply in relation to England only and come into force on 15th April 2008.

Interpretation

2.—(1) In these Regulations—

“the Agency” means the Food Standards Agency;

“authorised officer”, in relation to a feed authority or a food authority, means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specially, to act in matters arising under these Regulations;

(a) 1972 c. 68.

(b) SI 2003/2901.

(c) OJ No. L31, 1.2.2002, p.1, as last amended by Commission Regulation (EC) No. 575/2006 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority (OJ No. L100, 8.4.2006, p.3).

“the Commission Decision” means Commission Decision 2008/289/EC on emergency measures regarding the unauthorised genetically modified organism “Bt 63” in rice products(a) ;

“feed” has the meaning given to it in Article 3.4 of Regulation 178/2002;

“feed authority” means the authority required by section 67(1) of the Agriculture Act 1970(b) to enforce that Act within its area or as the case may be district;

“food” has the meaning given to it in Article 2 of Regulation 178/2002;

“first placing on the market” has the meaning that it bears in the Commission Decision;

“food authority” has the meaning that it bears by virtue of section 5(1) of the Food Safety Act 1990(c) except that it does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner and Middle Temple);

“operator” has the meaning that it bears in the Commission Decision;

“specified product” means any product listed in the Annex to the Commission Decision that originates from or has been consigned from China; and

“Regulation 178/2002” means 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.

(2) Where any functions under the Food Safety Act 1990 are assigned—

- (a) by an order under section 2 or 7 of the Public Health (Control of Disease) Act 1984(d), to a port health authority;
- (b) by an order under section 6 of the Public Health Act 1936(e), to a joint board for a united district; or
- (c) by an order under paragraph 15(6) of Schedule 8 to the Local Government Act 1985(f), to a single authority for a metropolitan county,

any reference in these Regulations to a food authority shall be construed, so far as relating to those functions, as a reference to the authority to whom they are so assigned.

Restriction on first placing on the market of specified products

3.—(1) The first placing on the market of any specified product is prohibited unless—

- (a) the conditions specified in paragraphs (1) and (3) and the second and third sentences of paragraph (2) of Article 2 of the Commission Decision are complied with in relation to that product; and
- (b) arrangements have been made to ensure compliance with the condition specified in the first sentence of paragraph (2) of Article 2 of that Decision in relation to that product.

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

Notification of positive results

4.—(1) An operator who becomes aware of a positive result of a test for the presence of the genetically modified rice “Bt 63” in a specified product that is under his control shall inform the Agency of that result immediately.

(a) OJ No. L96, 9.4.2008, p.29.

(b) 1970 c. 40.

(c) 1990 c.16.

(d) 1984 c.22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990.

(e) 1936 c.49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.

(f) 1985 c.51; paragraph 15(6) was amended by paragraph 31(b) of Schedule 3 to the Food Safety Act 1990.

(2) Any person who without reasonable excuse fails to comply with the obligation in paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding three months or to both.

Enforcement

5.—(1) It shall be the duty of each feed authority to execute and enforce these Regulations within its area or as the case may be district in relation to feed.

(2) It shall be the duty of each food authority to execute and enforce these Regulations within its area in relation to food.

(3) For the purposes of enabling the feed authority to exercise its duty under paragraph (1) and the food authority to exercise its duty under paragraph (2), an authorised officer of the authority concerned shall ensure that the requirements referred to in paragraph (4) are adhered to.

(4) The requirements are those specified in –

- (a) Article 2 of the Commission Decision (which is concerned with the conditions under which consignments of specified products may first be placed on the market);
- (b) the first sentence of Article 3 of that Decision (which is concerned with control measures relating to specified products presented for importation or already on the market); and
- (c) Article 4 of that Decision (which is concerned with contaminated consignments).

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

Application of various provisions of the Food Safety Act 1990

6. The following provisions of the Food Safety Act 1990 shall apply for the purposes of these Regulations with the modification that any reference in those provisions to that 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 21 (defence of due diligence)(a), with the modification that subsections (2) to (4) shall apply in relation to an offence under regulation 3(2) as they apply in relation to an offence under section 14 or 15, that in subsections (2)(a) and (3)(b) the references to “food” shall be deemed to be references to feed or food and that in subsection (4)(b) the references to “sale or intended sale” shall be deemed to be references to “first placing on the market”;
- (c) section 32 (powers of entry), with the modification that in subsection (1) the reference to “an enforcement authority” shall be deemed to be a reference to a feed authority or a food authority, the references to “the authority’s area” shall be deemed to be references to the authority’s area or as the case may be district and the reference to “a food authority” shall be deemed to be a reference to a feed authority or a food authority;
- (d) section 33(1) (obstruction etc. of officers);
- (e) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” shall be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (d);
- (f) section 35(1) (punishment of offences)(b), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (d);

(a) Section 21 was amended by S.I. 2004/3279.

(b) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c. 44), Schedule 26, paragraph 42, from a date to be appointed.

- (g) section 35(2) and (3)(a), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (e);
- (h) section 36 (offences by bodies corporate);
- (i) section 36A (offences by Scottish partnerships)(b); and
- (j) section 44 (protection of officers acting in good faith), with the modification that the references to “food authority” shall be deemed to be references to feed authority or food authority.

Signed by authority of the Secretary of State for Health.

14th April 2008

Dawn Primarolo
Minister of State,
Department of Health

(a) Section 35(3) was amended by S.I. 2004/3279.
(b) Section 36A was inserted by the Food Standards Act 1999 (1999 c. 28), Schedule 5, paragraph 16.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in relation to England Commission Decision 2008/289/EC on emergency measures regarding the unauthorised genetically modified organism “Bt 63” in rice products (OJ No. L96, 9.4.2008, p.29).

These Regulations –

- (a) prohibit the first placing on the market of any “specified product” (defined in regulation 2(1)), except where –
 - (i) it is accompanied by—
 - (aa) an original analytical report based on a particular construct-specific method for detection of the genetically modified rice “Bt 63” issued by an official or accredited laboratory demonstrating that the product does not contain or consist of or is not produced from the genetically modified rice “Bt 63”, or
 - (bb) if it does not contain or consist of rice or is not produced from rice, a statement from the operator responsible for the consignment indicating that the food does not contain or consist of rice or is not produced from rice; or
 - (ii) the operator established in the Community who is responsible for the first placing on the market of the product has had the product tested and the analytical report in respect of that test demonstrates that it does not contain the genetically modified rice “Bt 63” (*regulation 3(1)(a)*); and
 - (iii) specified requirements for split consignments are complied with (*regulation 3(1)(b)*);
- (b) provide that a person who knowingly contravenes that prohibition is guilty of an offence and prescribe penalties for that offence (*regulation 3(2)*);
- (c) require an operator who becomes aware of a positive result of a test for the presence of the genetically modified rice “Bt 63” in a specified product that is under his control to inform the Food Standards Agency of that result immediately (*regulation 4(1)*);
- (d) provide that a person who without reasonable excuse fails to comply with that requirement is guilty of an offence and prescribe penalties for that offence (*regulation 4(2)*);
- (e) provide for their enforcement (*regulation 5*); and
- (f) apply with modifications certain provisions of the Food Safety Act 1990 (1990 c.16) for the purposes of the Regulations (*regulation 6*).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Novel Foods, Additives and Supplements Division of the Food Standards Agency, Aviation House, 125 Kingsway, London, WC2B 6NH and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

STATUTORY INSTRUMENTS

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