Statutory Instrument 2003 No. 1956

The Food (Pistachios from Iran) (Emergency Control) (England) Regulations 2003

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STATUTORY INSTRUMENTS

2003 No. 1956

FOOD, ENGLAND

The Food (Pistachios from Iran) (Emergency Control) (England) Regulations 2003

Made	*29th July 2003*
Laid before Parliament	*30th July 2003*
Coming into force	*31st July 2003*

The Secretary of State, being a Minister designated[1] for the purposes of section 2(2) of the European Communities Act 1972[2] in relation to the common agricultural policy of the European Community, 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 Food (Pistachios from Iran) (Emergency Control) (England) Regulations 2003 and shall come into force on 31st July 2003.

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

Interpretation

2. - (1) In these Regulations -

"the Act" means the Food Safety Act 1990[3] and, save where the context otherwise requires 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[4] as amended by Commission Decision 1998/400/EC[5], Commission Decision 2000/238/EC[6] and Commission Decision 2003/551/EC[7];

"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;

"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[8] as amended by Commission Decision 2002/27/EC[9];

"food authority" includes neither the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner and Middle Temple) nor a port health authority;

"free circulation" has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community; and

"port health authority" means -

(a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984[10] by section 7(1) of that Act), the Common Council of the City of London; and

(b) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act.

(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 England any Iranian pistachios unless the conditions specified in Article 2.4, 5 and 7 of the Commission Decision are satisfied in relation to those pistachios.

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

(3) Neither paragraph (1) nor paragraph (2) shall be taken to prohibit the import into England from a member State of any Iranian pistachios which are in free circulation in that State.

(4) Any person who knowingly contravenes paragraph (1) 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 port health authority to execute and enforce these Regulations within its district.

(2) In relation to any place which is not situated in the district of a port health authority, these Regulations shall be executed and enforced by the food authority for the area in which that place is situated.

(3) For the purposes of the exercise of the duty referred to in paragraph (1) or, as the case may be, (2), an authorised officer of the authority concerned shall -

(a) ensure that the requirements referred to in paragraph (4) are adhered to; and

(b) have the same powers of entry as are bestowed on an authorised officer of an enforcement authority by section 32 of the Act for purposes connected with the Act or Regulations or Orders made under the Act.

(4) 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 that Decision (which is 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 that Decision (which is concerned with the case where consignments are split).

(5) Each port health authority and food 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 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(1) (obstruction etc. of officers);

(c) 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 (b);

(d) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (b);

(e) section 35(2) and (3), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (c);

(f) section 36 (offences by bodies corporate); and

(g) 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 the words "an enforcement authority" there shall be substituted the words "a food authority or as the case may be a port health authority";

(b) for subsection (b)(ii) there shall be substituted the following provision -

" (ii) is found by him at any premises which he is authorised to enter by virtue of regulation 4(3)(b) of the Food (Pistachios from Iran) (Emergency Control) (England) 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 the words "any of the provisions of this Act or of regulations or orders made under it" in subsection (d) there shall be substituted the words "the Food (Pistachios from Iran) (Emergency Control) (England) 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, he 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 at a laboratory which complies with Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs[11];

(c) that analysis 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[12], 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 -

(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) he may demand the payment in advance of such reasonable fee as he 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 him 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 authority which, by virtue of regulation 4(1) or (2), has the duty of enforcing them.

(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 port health authority or as the case may be food authority that they have been imported in contravention of regulation 3(1) or (2) he may after appropriate consultation with a person appearing him 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 his opinion involve serious risks to human health) the destruction of the Iranian pistachios within such reasonable period as shall be so specified.

(2) In any case where such an appeal as is mentioned in paragraph (3) may be brought the notice served under paragraph (1) shall state -

(a) the right of appeal to a magistrates' court; and

(b) the period within which such an appeal may be brought.

(3) Any person who is aggrieved by a decision of an authorised officer to serve a notice under paragraph (1) may appeal to a magistrates' court, which shall determine whether or not the notice was lawfully served.

(4) The period within which such an appeal as is mentioned in paragraph (3) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and Public Holidays and the making of the complaint shall be deemed for the purpose of this paragraph to be the bringing of the appeal.

(5) The procedure on an appeal to a magistrates' court under paragraph (3) shall be by way of complaint for an order and the Magistrates' Court Act

1980[13] shall apply to the proceedings.

(6) If the court allows an appeal brought under paragraph (3) 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.

(7) Any disputed question as to the right to or the amount of any compensation payable under paragraph (6) shall be determined by arbitration.

(8) 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 tem not exceeding three months.

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

7. The Food (Pistachios from Iran) (Emergency Control) Order 1997 [14] and the Food (Pistachios from Iran) (Emergency Control) (Amendment) Order 1997 [15] are revoked in so far as they apply in relation to England.

Signed by authority of the Secretary of State for Health

Warner
Parliamentary Under Secretary of State, Department of Health

29th July 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to England 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. That 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 (OJ No. L248, 11.9.97, p.33), and in its amended form implemented Commission Decision 1997/830/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 (OJ No 343, 13.12.97, p. 30).

These Regulations implement Commission Decision 1997/830/EC as amended by Commission Decision 1998/400/EC (OJ No. L176, 20.6.98, p.37), Commission Decision 2000/238/EC (OJ No. L75, 24.3.2000, p.59) and Commission Decision 2003/551/EC (OJ No. L187, 26.7.2003, p.43). The categories of products which are subject to the special conditions referred to above are specified in Article 2(1) of Commission Decision 1997/830/EC.

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 though 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 1997/830/EC is modified by providing that -

(i) a sample of each consignment must be analysed for aflatoxin and total aflatoxin before release onto the market from the point of entry into the Community,

(ii) the period of detention should not exceed 15 working days, and

(iii) an authorised officer of the relevant enforcement authority must issue a notice in writing stating that sampling has taken place and the results of the analysis of the sample; and

(b) an authorised officer of the relevant enforcement authority is empowered (subject to a right of appeal to a magistrates' court) 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 Customs tariff (OJ No. L256, 7.9.87, p.1).

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

Notes:

[1] S.I. 1972/1811.back

[2] 1972 c. 68.back

[3] 1990 c. 16.back

[4] OJ No. L343, 13.12.1997, p.30.back

[5] OJ No. L176, 20.6.1998, p.37.back

[6] OJ No. L75, 24.3.2000, p.59.back

[7] OJ No. L187, 26.7.2003, p.43.back

[8] OJ No. L201, 17.7.1998, p.93.back

[9] OJ No. L75, 16.3.2002, p.44.back

[10] 1984 c. 22.back

[11] OJ No. L290, 24.11.93, p.14.back

[12] OJ No. L372, 31.12.85, p.50.back

[13] 1980 c. 43.back

[14] S.I. 1997/2238, amended by S.I. 1997/3046.back

[15] S.I. 1997/3046.back

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