

Statutory Instrument 2005 No. 208

The Food (Pistachios from Iran) (Emergency Control) (England) (Amendment) Regulations 2005

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STATUTORY INSTRUMENTS

2005 No. 208

FOOD, ENGLAND

The Food (Pistachios from Iran) (Emergency Control) (England) (Amendment) Regulations 2005

<i>Made</i>	<i>3rd February 2005</i>
<i>Laid before Parliament</i>	<i>4th February 2005</i>
<i>Coming into force</i>	<i>7th February 2005</i>

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 measures relating to food (including drink) including the primary production of food, in exercise of the powers conferred on him by that section, makes the following Regulations:

Title and commencement

1. These Regulations may be cited as the Food (Pistachios from Iran) (Emergency Control) (England) (Amendment) Regulations 2005 and shall come into force on 7th February 2005.

Amendments to the Food (Pistachios from Iran) (Emergency Control) (England) Regulations 2003

2. - (1) The Food (Pistachios from Iran) (Emergency Control) (England) Regulations 2003^[3] shall be amended in accordance with paragraphs (2) to (5).

(2) In paragraph (1) of regulation 2 (interpretation) -

(a) for the definition of "the Commission Decision" there shall be substituted the following definition -

" "the Commission Decision" means Commission Decision 2005/85/EC imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran^[4]"; and

(b) for the definition of "Directive 98/53/EC" there shall be substituted the following definition -

" "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^[5] as last amended by Commission Directive 2004/43/EC^[6]";.

(3) For paragraph (1) of regulation 3 (prohibition on import) there shall be substituted the following paragraph -

" (1) Subject to paragraph (3), no person shall import into England any Iranian pistachios unless -

(a) the conditions specified in Article 1.1, 3, 5 and (so far as applicable at the point of import) 7 of the Commission Decision are satisfied in relation to those pistachios; and

(b) the costs resulting from sampling, analysis, storage and issuing of accompanying official documents and of copies of health certificates and accompanying documents pursuant to Article 1.4 to 7 of the Commission Decision have been met."

(4) For paragraph (4) of regulation 4 (enforcement) there shall be substituted the following paragraph -

" (4) The requirements are those specified in -

(a) Article 1.4 of the Commission Decision (which is concerned with documentary checks relating to consignments of Iranian pistachios);

(b) Article 1.5 and 1.6 of that Decision (which is concerned with the sampling and analysis of such consignments), other than the requirement under Article 1.5 to supply the Commission with specified information; and

(c) Article 1.7 of that Decision (which is concerned with the case where consignments are split).".

(5) For regulation 6 (re-dispatch or destruction of illegal imports) there shall be substituted the following regulation -

" **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 paragraph (1) or (2) of regulation 3 he may after appropriate consultation with a person appearing to him to be the importer of the pistachios serve on that person a notice requiring -

(a) the re-dispatch of the pistachios outside the European Community within such reasonable period as shall be specified in the notice if all costs related to official measures taken in respect of those pistachios and identified in that notice have been met; or

(b) if -

(i) such re-dispatch would in his opinion involve serious risks to human health, or

(ii) such costs have not been met,

the destruction of the pistachios within such reasonable period as shall be specified in the notice.

(2) If a notice has been served under sub-paragraph (a) of paragraph (1) and the pistachios concerned have not been re-dispatched outside the European Community within the period specified in the notice, an authorised officer of the port health authority or food authority whose authorised officer served it may after appropriate consultation with the person appearing to him to be the importer of the pistachios serve on that person a notice requiring the destruction of the pistachios within such reasonable period as shall be specified in the notice.

(3) A notice served under paragraph (1) or (2) shall state -

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

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

(4) Any person who is aggrieved by a decision of an authorised officer to serve a notice under paragraph (1) or (2) may appeal to a magistrates' court, which shall determine whether the notice should be upheld or set aside.

(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 and the making of the complaint shall be deemed for the purpose of this paragraph to be the bringing of the appeal.

(6) The procedure on an appeal to a magistrates' court under paragraph (4) shall be by way of complaint for an order and the Magistrates' Court Act 1980[7] shall apply to the proceedings.

(7) If the court 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 arbitration.

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

Signed by authority of the Secretary of State for Health

Melanie Johnson
Parliamentary Under Secretary of State, Department of Health

3rd February 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations further amend the Food (Pistachios from Iran) (Emergency Control) (England) Regulations 2003 (S.I. 2003/1956, as amended by S.I. 2004/1265). Those Regulations 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 (OJ No. L343, 13.12.97, p.30) as last amended by Commission Decision 2004/429/EC (OJ No. L154, 30.4.2004, p. 20). The amendments made by these Regulations implement

Commission Decision 2005/85/EC imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran (OJ No. L30, 3.2.2005, p.12), "the new Decision". The new Decision repealed Commission Decision 97/830/EC.

2. The significant differences between the new Decision and Commission Decision 97/830/EC are that -

(a) Article 1.1 of the new Decision provides that the health certificate required to accompany a consignment of "Iranian pistachios" (defined in regulation 2(1) of S.I. 2003/1956) shall be valid for import carried out no more than 4 months after the issue date of the health certificate; and

(b) Article 3 of the new Decision provides that certain costs relating to the import controls on Iranian pistachios imposed by the Decision and the costs relating to official measures taken against non-compliant consignments of Iranian pistachios shall be borne by the person responsible for the consignment.

3. The change described in paragraph 2(a) above is effected by substituting a definition of the new Decision for the definition of Commission Decision 97/830/EC in regulation 2(1) of S.I. 2003/1956 and making consequential changes to regulations 3(1) and 4(4) of that instrument (*regulation 2(2)(a), (3) and (4)*).

4. The change described in paragraph 2(b) above is effected by amending regulations 3(1) and 6(1) of S.I. 2003/1956 to make it a condition of import that the costs relating to import controls have been met and a condition of re-dispatch of non-compliant consignments that the costs relating to official measures taken against them have been met (*regulation 2(3) and (5)*).

5. These Regulations insert a revised definition of Commission Directive 98/53/EC into regulation 2(1) of S.I. 2003/1956 to reflect the amendments made to that Directive (*regulation 2(2)(b)*).

6. These Regulations insert a new paragraph, (2), into regulation 6 of S.I. 2003/1956, which provides that illegal imports of Iranian pistachios may be destroyed if they are not re-dispatched within the period specified in a notice requiring re-dispatch (*regulation 2(5)*).

7. These Regulations remove unnecessary wording from the provision in S.I. 2003/1956 (now regulation 6(3)) which provides that a notice requiring the re-dispatch or destruction of illegal imports of Iranian pistachios has to contain information about the right of appeal (*regulation 2(5)*).

8. These Regulations also revise what is now regulation 6(4) of S.I. 2003/1956 to clarify that on an appeal to a magistrates' court against a notice ordering the re-dispatch or destruction of illegal imports of Iranian pistachios the court must uphold the notice or set it aside (*regulation 2(5)*).

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

Notes:

[1] S.I. 2003/2901.[back](#)

[2] 1972 c. 68.[back](#)

[3] S.I. 2003/1956, amended by S.I. 2004/1265.[back](#)

[4] OJ No. L30, 3.2.2005, p.12.[back](#)

[5] OJ No. L201, 17.7.98, p.93.[back](#)

[6] OJ No. L113, 20.4.2004, p.14.[back](#)

[7] 1980 c. 43.[back](#)

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