

2006 No. 3120

AGRICULTURE, ENGLAND

**The Feed (Specified Undesirable Substances) (England)
Regulations 2006**

<i>Made</i> - - - -	<i>22nd November 2006</i>
<i>Laid before Parliament</i>	<i>28th November 2006</i>
<i>Coming into force</i> - -	<i>26th December 2006</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on her by sections 66(1), 68(1), 69(1), 74(1), 74A and 84 of the Agriculture Act 1970(a), as read with regulation 14 of the Food Standards Act 1999 (Transitional and Consequential Provisions and Savings) (England and Wales) Regulations 2000(b) and with Articles 2 and 6 of the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002(c).

In so far as these Regulations cannot be made under the powers in the Agriculture Act specified above, the Secretary of State makes these Regulations in exercise of her powers as a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(d) in relation to measures in the veterinary and phytosanitary fields for the protection of public health(e).

There has been consultation during the preparation of these Regulations in accordance with the requirements of section 84(1) of the Agriculture Act 1970 or as appropriate of Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(f) 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.

Title and Commencement

1. These Regulations may be cited as the Feed (Specified Undesirable Substances) (England) Regulations 2006 and come into force on 26th December 2006.

(a) 1970 c.40. Section 66(1) contains definitions of the expressions “the Ministers”, “prescribed” and “regulations”; the definition of “the Ministers” was amended by the Transfer of Functions (Wales) (No. 1) Order 1978 (S.I. 1978/272), Schedule 5, paragraph 1. Functions of “the Ministers”, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672. Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46). By virtue of S.I. 1999/3141, functions of the Secretaries of State for Wales and Scotland previously exercisable in relation to England ceased to be so exercisable and were transferred to the Minister of Agriculture, Fisheries and Food. Section 74A was inserted by the European Communities Act 1972 (1972 c. 68), Schedule 4, paragraph 6.

(b) S.I. 2000/656.

(c) S.I. 2002/794.

(d) 1972 c.68.

(e) S.I. 1999/2027.

(f) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3).

Amendments to the Feeding Stuffs (England) Regulations 2005

2.—(1) The Feeding Stuffs (England) Regulations 2005(a) are amended in accordance with paragraphs (2) to (4).

(2) In Part B of Schedule 4 (limits of variation), after the entries relating to methionine insert the entries for moisture as set out in Schedule 1 to these Regulations.

(3) In relation to the table in Chapter A of Schedule 5 (prescribed limits for undesirable substances) —

- (a) for the entries in that table relating to cadmium, dioxin, fluorine and lead respectively substitute the entries for those substances as set out in the table in Part 1 of Schedule 2 to these Regulations;
- (b) after the entries for dioxin insert the entries for sum of dioxins and dioxin-like PCBs as set out in the table in Part 1 of Schedule 2 to these Regulations, and
- (c) as footnotes to that table add the footnotes to the table in Part 1 of Schedule 2 to these Regulations.

(4) In relation to the table in Chapter D of Schedule 5 —

- (a) for the entries in that table relating to camphechlor (toxaphene) substitute the entries as set out in the table in Part 2 of Schedule 2 to these Regulations, and
- (b) as a footnote to that table add the footnote to the table in Part 2 of Schedule 2 to these Regulations.

Amendments to the Feed (Hygiene and Enforcement) (England) Regulations 2005

3.—(1) The Feed (Hygiene and Enforcement) (England) Regulations 2005(b) are amended in accordance with paragraphs (2) and (3).

(2) After regulation 24, insert the following regulation —

“**24A.**—(1) For the purpose of carrying out investigations, in accordance with Article 4.2 of Directive 2002/32, to determine the source of those undesirable substances listed in Annex II to that Directive where action thresholds specified in that Annex have been reached, an authorised officer may, at all reasonable times and on producing if requested some duly authenticated document showing his authority, enter any premises (not being premises used only as a dwelling) on which he has reasonable cause to believe that feed has been or is being manufactured or produced, has been placed on the market or is being kept for the purpose of being placed on the market, incorporated into another product or used.

(2) An authorised officer entering any premises by virtue of this regulation may —

- (a) take with him such other persons and such equipment as may appear to him to be necessary;
- (b) inspect anything that he has the right to inspect under regulation 24(5), and
- (c) take on those premises a sample of any material appearing to him to be a feed manufactured, produced, placed on the market or intended to be placed on the market or to be material used or intended for use as feed.

(3) Where for the purposes of taking a sample pursuant to paragraph (2)(c) an authorised officer takes material from one or more containers each of which weighs no more than six kilograms, and which are exposed for sale by retail, the owner of the container or containers may require the authorised officer to purchase the container or containers on behalf of the authority for which he acts.

(4) An authorised officer entering any premises by virtue of this regulation has the same rights to production, inspection and copying of records, including records kept on or

(a) S.I. 2005/3281, as amended by S.I. 2006/113 and S.I. 2006/2808.

(b) S.I. 2005/3280

produced by a computer, as are specified in paragraphs (9)(a) and (b) and (10)(c) of regulation 24.

(5) Paragraph (14) of regulation 24 applies to the power of entry under this regulation as it does to such powers under that regulation.

(6) Directive 2002/32 means Directive 2002/32/EC of the European Parliament and of the Council(a) on undesirable substances in animal feed, as amended by Commission Directive 2003/57/EC(b), Commission Directive 2003/100(c), Commission Directive 2005/8/EC(d), Commission Directive 2005/86/EC(e), Commission Directive 2005/87/EC(f) and Commission Directive 2006/13/EC(g).”

(3) In paragraph (4) of regulation 27, after the expression “regulation 24” insert “or regulation 24A”.

Signed by authority of the Secretary of State for Health

22nd November 2006

Caroline Flint
Minister of State
Department of Health

(a) OJ No. L140, 30.5.2002, p.10.
(b) OJ No. L151, 19.6.2003, p.38.
(c) OJ No. L285, 1.11.2003, p.33.
(d) OJ No. L27, 29.1.2005, p.44.
(e) OJ No. L318, 6.12.2005, p.16.
(f) OJ No. L318, 6.12.2005, p.19.
(g) OJ No. L32, 4.2.2006, p44. This amending Directive introduced action thresholds and the requirement to investigate.

SCHEDULE 1

Regulation 2(2)

Entries to be added in Part B of Schedule 4 to the Feeding Stuffs (England) Regulations 2005

<i>Analytical constituents</i>	<i>Limits of variation (absolute value in percentage by weight, except where otherwise specified)</i>
Moisture	If present in excess— 3 for declarations of 40% or more 7.5% of the amount stated for declarations of 20% or more but less than 40% 1.5 for declarations less than 20%

SCHEDULE 2

Regulation 2(3) & (4)

PART 1

Entries to be substituted or added in Chapter A of Schedule 5 to the Feeding Stuffs (England) Regulations 2005

<i>Column 1: Undesirable substances</i>	<i>Column 2: Products intended for animal feed</i>	<i>Column 3: Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i>
Cadmium ⁽¹⁾	Feed materials of vegetable origin Feed materials of animal origin Feed materials of mineral origin except: – phosphates Additives belonging to the functional group of compounds of trace elements except: – copper oxide, manganous oxide, zinc oxide and manganous sulphate monohydrate Additives belonging to the functional groups of binders and anti-caking agents Premixtures Mineral feeding stuffs: – containing less than 7% phosphorus – containing 7% or more phosphorus Complementary feeding stuffs for pet animals	1 2 2 10 10 30 2 15 5 0.75 per 1% phosphorus, subject to a maximum of 7.5 2

	Other complementary feeding stuffs	0.5
	Complete feeding stuffs for cattle, sheep and goats and feeding stuffs for fish	1
	except:	
	– complete feeding stuffs for pet animals	2
	– complete feeding stuffs for calves, lambs and kids, and other complete feeding stuffs	0.5
Dioxins (sum of polychlorinated dibenzo- <i>para</i> -dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs)) expressed in World Health Organisation (WHO) toxic equivalents, using the WHO-TEFs (toxic equivalency factors) 1997 ⁽²⁾ ⁽³⁾	Feed materials of plant origin with the exception of vegetable oils and their by-products	0.75 ng WHO-PCDD/F-TEQ/kg
	Vegetable oils and their by-products	0.75 ng WHO-PCDD/F-TEQ/kg
	Feed materials of mineral origin	1.0 ng WHO-PCDD/F-TEQ/kg
	Animal fat, including milk fat and egg fat	2.0 ng WHO-PCDD/F-TEQ/kg
	Other land animal products, including milk and milk products and eggs and egg products	0.75 ng WHO-PCDD/F-TEQ/kg
	Fish oil	6.0 ng WHO-PCDD/F-TEQ/kg
	Fish, other aquatic animals, their products and by-products, with the exception of fish oil and fish protein hydrolysates containing more than 20% fat ⁽⁴⁾	1.25 ng WHO-PCDD/F-TEQ/kg
	Fish protein hydrolysates containing more than 20% fat	2.25 ng WHO-PCDD/F-TEQ/kg
	The additives kaolinitic clay, calcium sulphate dihydrate, vermiculite, natrolite-phonolite synthetic calcium aluminates and clinoptilolite of sedimentary origin belonging to the functional groups of binders and anti-caking agents	0.75 ng WHO-PCDD/F-TEQ/kg
	Additives belonging to the functional group of compounds of trace elements	1.0 ng WHO-PCDD/F-TEQ/kg
	Premixtures	1.0 ng WHO-PCDD/F-TEQ/kg
	Compound feeding stuffs, with the exception of feed for fur-	0.75 ng WHO-PCDD/F-TEQ/kg

	producing animals, pet foods and feed for fish Feed for fish and pet foods	2.25 ng WHO-PCDD/F-TEQ/kg
		Note in respect of all entries in column 3: upper bound concentrations are calculated on the assumption that all values of the different congeners below the limit of quantification are equal to the limit of quantification
Sum of dioxins and dioxin-like PCBs (sum of polychlorinated dibenzo- <i>para</i> -dioxins (PCDDs), polychlorinated dibenzofurans (PCDFs) and polychlorinated biphenyls (PCBs)) expressed in World Health Organisation (WHO) toxic equivalents, using the WHO-TEFs (toxic equivalency factors) 1997 ⁽²⁾	Feed materials of plant origin with the exception of vegetable oils and their by-products	1.25 ng WHO-PCDD/F-PCB-TEQ/kg
	Vegetable oils and their by-products	1.5 ng WHO-PCDD/F-PCB-TEQ/kg
	Feed materials of mineral origin	1.5 ng WHO-PCDD/F-PCB-TEQ/kg
	Animal fat, including milk fat and egg fat	3.0 ng WHO-PCDD/F-PCB-TEQ/kg
	Other land animal products, including milk and milk products and eggs and egg products	1.25 ng WHO-PCDD/F-PCB-TEQ/kg
	Fish oil	24.0 ng WHO-PCDD/F-PCB-TEQ/kg
	Fish, other aquatic animals, their products and by-products, with the exception of fish oil and fish protein hydrolysates containing more than 20% fat ⁽⁴⁾	4.5 ng WHO-PCDD/F-PCB-TEQ/kg
	Fish protein hydrolysates containing more than 20% fat	11.0 ng WHO-PCDD/F-PCB-TEQ/kg
	Additives belonging to the functional groups of binders and anti-caking agents	1.5 ng WHO-PCDD/F-PCB-TEQ/kg
	Additives belonging to the functional group of compounds of trace elements	1.5 ng WHO-PCDD/F-PCB-TEQ/kg
Premixtures	1.5 ng WHO-PCDD/F-PCB-TEQ/kg	
Compound feeding stuffs, with the exception of feed for fur-producing animals, pet foods and feed for fish	1.5 ng WHO-PCDD/F-PCB-TEQ/kg	

	Feed for fish and pet foods	7.0 ng WHO-PCDD/F-PCB-TEQ/kg
		Note in respect of all entries in column 3: upper bound concentrations are calculated on the assumption that all values of the different congeners below the limit of quantification are equal to the limit of quantification
Fluorine ⁽⁵⁾	<p>Feed materials except:</p> <ul style="list-style-type: none"> – feeding stuffs of animal origin other than marine crustaceans such as marine krill – marine crustaceans such as marine krill – phosphates – calcium carbonate – magnesium oxide – calcareous marine algae Vermiculite (E 561) Complementary feeding stuffs <ul style="list-style-type: none"> – containing 4% phosphorus or less – containing more than 4% phosphorus Complete feeding stuffs except: <ul style="list-style-type: none"> – complete feeding stuffs for cattle, sheep and goats <ul style="list-style-type: none"> – – in lactation – – other – complete feeding stuffs for pigs – complete feeding stuffs for poultry – complete feeding stuffs for chicks 	<p>150</p> <p>500</p> <p>3,000</p> <p>2,000</p> <p>350</p> <p>600</p> <p>1,000</p> <p>3,000</p> <p>500</p> <p>125 per 1% phosphorus</p> <p>150</p> <p>30</p> <p>50</p> <p>100</p> <p>350</p> <p>250</p>
Lead ⁽¹⁾	<p>Feed materials except:</p> <ul style="list-style-type: none"> – green fodder (including products such as hay, silage, fresh grass, etc) – phosphates and calcareous marine algae – calcium carbonate – yeasts Additives belonging to the functional group of compounds of trace elements except: 	<p>10</p> <p>30</p> <p>15</p> <p>20</p> <p>5</p> <p>100</p>

	– zinc oxide	400
	– manganous oxide, iron carbonate, copper carbonate	200
	Additives belonging to the functional groups of binders and anti-caking agents except:	30
	–clinoptilolite of volcanic origin	60
	Premixtures	200
	Complementary feeding stuffs except:	10
	– mineral feeding stuffs	15
	Complete feeding stuffs	5

(1) Maximum levels refer to an analytical determination of this substance, whereby extraction is performed in nitric acid (5% w/w) for 30 minutes at boiling temperature. Equivalent extraction procedures can be applied where it can be demonstrated that the procedure used has an equal extraction efficiency.

(2) WHO-TEFs for human risk assessment based on the conclusions of the World Health Organisation meeting in Stockholm, Sweden, 15-18 June 1997 (Van den Berg et al., (1998), Toxic Equivalency Factors (TEFs) for PCBs, PCDDs and PCDFs for Humans and for Wildlife, Environmental Health Perspectives, 106(12), 775).

(3) The separate maximum level for dioxins (PCDD/F) remains applicable for a temporary period. The products intended for animal feed mentioned in column 2 have to comply both with the maximum levels for dioxins and with the maximum levels for the sum of dioxins and dioxin-like PCBs during that temporary period.

(4) Fresh fish directly delivered and used without intermediate processing for the production of feed for fur-producing animals is not subject to the maximum levels, while maximum levels of 4.0 ng WHO-PCDD/F-TEQ/kg product and 8.0 ng WHO-PCDD/F-PCB-TEQ/kg product are applicable to fresh fish used for the direct feeding of pet animals, zoo and circus animals. The products, processed animal proteins produced from these animals (fur-producing animals, pet animals and zoo and circus animals) cannot enter the food chain and cannot be fed to farmed animals which are kept, fattened or bred for the production of food.

(5) Maximum levels refer to an analytical determination of fluorine, whereby extraction is performed with hydrochloric acid 1 N for 20 minutes at ambient temperature. Equivalent extraction procedures can be applied where it can be demonstrated that the procedure used has an equal extraction efficiency.

PART 2

Entries to be substituted in Chapter D of Schedule 5 to the Feeding Stuffs (England) Regulations 2005

<i>Column 1: Undesirable substances</i>	<i>Column 2: Products intended for animal feed</i>	<i>Column 3: Maximum content in mg/kg of feeding stuffs referred to a moisture content of 12%</i>
Camphechlor (toxaphene) — sum of indicator congeners CHB 26, 50 and 62 ⁽¹⁾	Fish, other aquatic animals, their products and by-products with the exception of fish oil	0.02
	Fish oil	0.2
	Feeding stuffs for fish	0.05

(1) Numbering system according to Parlar, prefixed by either “CHB” or “Parlar #”:

- CHB 26: 2-endo,3-exo,5-endo, 6-exo, 8,8,10,10-octochlorobornane,
- CHB 50: 2-endo,3-exo,5-endo, 6-exo, 8,8,9,10,10-nonachlorobornane,
- CHB 62: 2,2,5,5,8,9,9,10,10- nonachlorobornane.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations make further amendments to the Feeding Stuffs (England) Regulations 2005 (SI 2005/3281 as already amended by SI 2006/113 and SI 2006/2808 (“the Feeding Stuffs Regulations”), and also amend the Feed (Hygiene and Enforcement) (England) Regulations 2005 (SI 2005/3280) (“the Feed Hygiene Regulations”).

2. These Regulations provide for the implementation of the following EC Directives —

- (a) Commission Directive 2005/86/EC amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed as regards camphechlor (OJ No. L318, 6.12.2005, p.16);
- (b) Commission Directive 2005/87/EC amending Annex I to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed as regards lead, fluorine and cadmium (OJ No. L318, 6.12.2005, p.19); and
- (c) Commission Directive 2006/13/EC amending Annexes I and II to Directive 2002/32/EC of the European Parliament and of the Council on undesirable substances in animal feed as regards dioxins and dioxin-like PCBs (OJ No. L32, 4.2.2006, p.44).

3. The Regulations also implement a provision contained in Council Directive 79/373/EEC on the circulation of compound feedingstuffs (OJ No. L86, 6.4.1979, p.30), as last amended by Council Regulation (EC) No. 807/2003 (OJ No. L122, 16.5.2003, p.36). This provision relates to the limits of variation for the declaration of the moisture content of compound pet foods.

4. The Regulations amend the Feeding Stuffs Regulations —

- (a) in Part B of Schedule 4 by inserting limits of variation for declarations of the moisture content of compound pet foods (*regulation 2(2) and Schedule 1*);
- (b) in Chapter A of Schedule 5 by amending the existing entries for cadmium, dioxin, fluorine and lead, and by adding new entries relating to the sum of dioxins and dioxin-like PCBs (*regulation 2(3) and Part 1 of Schedule 2*); and
- (c) in Chapter D of Schedule 5 by amending the existing entries for camphechlor (toxaphene) (*regulation 2(4) and Part 2 of Schedule 2*).

5. The Regulations amend the Feed Hygiene Regulations —

- (a) by inserting a new regulation 24A to give authorised officers of a feed authority powers of entry, sampling, inspection and associated activities in order to carry out the investigative functions required by Directive 2002/32/EC as amended by Commission Directive 2006/13/EC (*regulation 3(2)*); and
- (b) by amending regulation 27(4) (which deals with disclosure of information related to sampling) so as to extend its application to sampling conducted under regulation 24A (*regulation 3(3)*).

6. A full regulatory impact assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the library of each House of Parliament together with a transposition note setting out how the operative provisions of Commission Directives 2005/86, 2005/87 and 2006/13 are transposed into domestic law by these Regulations. Copies may be obtained from the Primary Production Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

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