

Statutory Instruments.

S.I. No. 424 of 2004.

**EUROPEAN COMMUNITIES (FEEDINGSTUFFS)
(GENETICALLY MODIFIED FEED) REGULATIONS 2004**

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S.I. No.424 of 2004

European Communities (Feedingstuffs) (Genetically Modified Feed) Regulations 2004

I, Joe Walsh, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving effect to Regulation (EC) No. 1829/2003 of the European Parliament and of the Council of 22 September 2003¹ and Regulation (EC) No. 1830/2003 of the European Parliament and of the Council of 22 September 2003² insofar as such Regulations relate to feed hereby make the following regulations-

1. These Regulations may be cited as the European Communities (Feedingstuffs) (Genetically Modified Feed) Regulations 2004.

2.(1) In these Regulations –

“authorised officer” means-

- (a) an authorised officer appointed under the European Communities (Animal Nutrition Inspections) Regulations 2003 (S.I. No. 238 of 2003),
- (b) a person appointed under Regulation 5, or
- (c) an officer appointed by the Revenue Commissioners as a Customs officer;

“EC Regulation 1829/2003” means Regulation (EC) No. 1829/2003 of the European Parliament and of the Council of 22 September 2003¹;

“EC Regulation 1830/2003” means Regulation (EC) No. 1830/2003 of the European Parliament and of the Council of 22 September 2003²;

“EC Regulations” means Regulation (EC) No. 1829/2003 and Regulation (EC) No. 1830/2003;

“Minister” means the Minister for Agriculture and Food;

“premises” includes any place, vehicle, ship or other vessel, aircraft, railway wagon or other means of transport or any container used in transport;

“product” means feed as defined in the EC Regulations.

¹ O.J. No. L268, 18.10.2003, p.1.

² O.J. No. L268, 18.10.2003, p.24.

(2) In these Regulations –

- (a) a reference to a Regulation is to a Regulation of these Regulations, unless it is indicated that reference to some other Regulation is intended, and
- (b) a reference to a paragraph or a subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(3) A word or expression that is used in the EC Regulations and is also used in these Regulations has, in these Regulations, the same meaning as it has in the EC Regulations.

Authorisation

3.(1) A person, applying for authorisation under Article 17 of EC Regulation 1829/2003 shall submit the application to the Minister.

- (2) A person submitting an application under paragraph (1) shall submit the information required under the EC Regulations and such other information or samples as the Minister may reasonably request.

Place on the market

4. A person shall not place on the market or use a product unless it complies with the EC Regulations.

Appointment of authorised officers

5.(1) The Minister may appoint in writing such and so many persons as he or she thinks necessary to be authorised officers.

- (2) (a) An authorised officer shall be furnished with a warrant of his or her appointment.
- (b) When exercising a power conferred on him or her under these Regulations an authorised officer shall, if requested by any person affected, produce the warrant to that person for inspection.

Powers of authorised officers

6.(1) Subject to paragraph (2), an authorised officer may, for the purposes of ensuring that these Regulations and the EC Regulations are being complied with -

- (a) at all reasonable times, enter any premises where he or she has reason to believe there is a product and inspect the premises,
 - (b) require any person in charge of the premises connected with any equipment or other device at that premises to produce to him or her any books, documents or records (and in the case of such information in a non-legible form to reproduce it in permanent legible form) relating to the product and to give to him or her such information as he or she may reasonably require in relation to the product,
 - (c) inspect and take copies of, or take extracts from, any such books, documents or records including in the case of information in a non-legible form a copy of or extract from such information in permanent legible form in whatever form kept,
 - (d) there or at any other place carry out such examinations, inspections or tests of the product, equipment or other device found on the premises or at the place as the officer considers appropriate and, if the officer so thinks fit, remove or have removed from there any product, equipment or other device and retain it for a reasonable period to facilitate such examination, testing or inspection,
 - (e) examine any procedure connected with the manufacture, installation or maintenance of the product,
 - (f) take, without payment, such samples of the product or of any other substance as the officer may reasonably require and carry out or have carried out on such samples there or elsewhere such checks and inspections as he or she considers necessary,
 - (g) secure for later inspection the premises or place or part of it,
 - (h) seize and detain the product,
 - (i) dispose of or have disposed any product, at the expense of the owner or any other person the Minister considers appropriate, where the authorised officer has reasonable belief that the product does not comply with these Regulations or the EC Regulations, and
 - (j) require the appropriate person to bring the product into compliance with the provisions of the EC Regulations at the cost of the owner or any other person the Minister considers appropriate.
- (2) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (5) authorising such entry.
- (3) An authorised officer, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an authorised officer by this Regulation.

- (4) A member of the Garda Síochána not in uniform, when exercising any such power, shall, if so requested by any person affected, produce evidence in writing that he or she is such a member or officer.
- (5) If a judge of the District Court is satisfied, on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is a product on any premises or at any place, the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers or by a member or members of the Garda Síochána at any time or times within one month from the date of issue of the warrant, on production of the warrant requested, to enter those premises or part of it or that place, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer under these Regulations.

Sampling and analysis

- 7 (1) In proceedings for an offence under these Regulations, the result of any test examination or analysis of, or report on a sample shall not be adduced unless before the proceedings were instituted one of the final samples was left with or transmitted to the defendant.
- (2) The official laboratories responsible for carrying out analyses shall be The State Laboratory or any other laboratory nominated by the Minister.
- (3) A person requiring a second opinion in relation to an analysis may send an officially sealed final sample for analysis to a laboratory accredited under European Standard EN ISO/IEC 17025 for the particular type of analysis to be undertaken.
- (4) A certificate purporting to be from such a laboratory stating that the sample was received by the laboratory with its seals intact shall be evidence of that fact, unless the contrary is proved.

Failure to comply with requirements

8. A person who –
 - (a) obstructs or otherwise interferes with an authorised officer in the performance of his or her duties,
 - (b) without lawful excuse, refuses or fails to comply with a request of an authorised officer,
 - (c) gives information to an authorised officer that the person knows to be false or misleading in a material respect, or

- (d) fails to comply with the provisions of these Regulations or the EC Regulations

shall be guilty of an offence.

Offences and offences by bodies corporate

- 9.(1) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €3,000 or up to six months imprisonment.
- (2) An offence under these Regulations may be prosecuted by the Minister.
- (3) Where an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or a person who was purported to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she was guilty of the offence.

On the spot fine

- 10.(1) Where an authorised officer has reasonable grounds for believing that a person is committing or has committed an offence under these Regulations or the EC Regulations, he or she may serve a notice in writing on that person stating that –
 - (a) The person is alleged to have committed the offence,
 - (b) The person may during the period of 28 days from the date of the notice make to the Minister a payment of €100 accompanied by the notice, and
 - (c) A prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (2) Where notice is given under paragraph (1) –
 - (a) The person to whom the notice applies may, during the period specified in the notice, make to the Minister at the address specified in the notice the payment specified in the notice accompanied by the notice;
 - (b) The Minister shall receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it;
 - (c) A prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during

that period, no prosecution in respect of the alleged offence shall be instituted.

- (3) In a prosecution for an offence under these Regulations the onus of proving that a payment pursuant to a notice under this regulation has been made shall lie on the defendant.

GIVEN under my Official Seal,
May 2004

L.S.

Joe Walsh
Minister for Agriculture and Food

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation).

These Regulations give effect to the provisions of Regulation (EC) No 1829/2003 and Regulation (EC) No 1830/2003 of the European Parliament and of the Council of the 22 September 2003.

Pnn. 3101

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