

Statutory Instrument

S.I. No. 327 of 2003

EUROPEAN COMMUNITIES (SPECIAL CONDITIONS ON THE IMPORT OF BRAZIL NUTS IN SHELL ORIGINATING IN OR CONSIGNED FROM BRAZIL) REGULATIONS 2003

Dublin

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S.I. No. 327 of 2003

European Communities (Special Conditions for the Import of Brazil Nuts in Shell Originating in or Consigned from Brazil) Regulations 2003

I, Micheál Martin, Minister for Health and Children, in exercise of the powers conferred on me by Section 3 of the European Communities Act 1972 (No. 27 of 1972), having regard to Commission Regulation (EC) No. 466/2001¹ of 8 March 2001 setting maximum levels for certain contaminants in foodstuffs, as last amended by Regulation (EC) No. 563/2002², and having regard to Commission Directive 98/53/EC³ of 16 July 1998 laying down the sampling methods and methods of analysis for the official control of the levels for certain contaminants in foodstuffs, as amended by Directive 2002/27/EC⁴ of 13 March 2002, and for the purposes of giving effect to Commission Decision 2003/493/EC⁵ of 4 July 2003 imposing special conditions on the import of Brazil nuts in shell originating in or consigned from Brazil, hereby make the following Regulations:

⁵ OJ L 168, 5.7.2003, p. 33.

⁴ OJ L 75, 16.3.2002, p. 44.

³ OJ L 201, 17.7.1998, p. 93.

² OJ L 86, 3.4.2002, p. 5.

¹ OJ L 77, 16.3.2001, p. 1.

1. These Regulations may be cited as the European Communities (Special Conditions for the Import of Brazil Nuts in Shell Originating in or Consigned from Brazil) Regulations 2003 and they shall come into operation on 23 July 2003.

2. (1) In these Regulations:

"the Act of 1998" means the Food Safety Authority of Ireland Act, 1998 (No. 29 of 1998);

"authorised officer" means an authorised officer appointed under Section 49 of the Act of 1998;

"the Authority" means the Food Safety Authority of Ireland, established under Section 9 of the Act of 1998;

"Brazil nuts" means Brazil nuts in shell falling within category CN code 0801 21 00 originating in or consigned from Brazil;

"competent authority of Brazil" means the Ministério da Agricultura, Pecuária e Abastecimento (MAPA);

"the Decision" means Commission Decision 2003/493/EC⁶ of 4 July 2003 imposing special conditions on the import of Brazil nuts in shell originating in or consigned from Brazil;

⁶ OJ L 168, 5.7.2003, p.33.

"import" means importation from a country other than a Member State;
"Member State" means a Member State of the European Community
and shall be construed as including reference to those States that are Contracting Parties to
the EEA Agreement.

(2) A word or expression that is used in these Regulations and that is
also used in the Decision has, unless the context otherwise requires, the same meaning in
these Regulations as it has in the Decision.

(3) (a) A reference in these Regulations to a Regulation is to a
Regulation of these Regulations, unless it is indicated that reference to some other
Regulation is intended.

(b) A reference in these Regulations to a paragraph or subparagraph
is 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. (1) These Regulations impose special conditions for the
importation of Brazil nuts.

(2) The importation of Brazil nuts shall be carried out in accordance
with the requirements of these Regulations.

4. (1) Subject to paragraph 3, a person shall not import Brazil
nuts, unless the consignment is accompanied by:

(a) a report containing the results of official sampling and analysis for
aflatoxin B1 and total aflatoxin performed in accordance with the provisions of Commission
Directive 98/53/EC,⁷ and

⁷ OJ L 201, 17.7.1998, p.93.

(b) a health certificate issued in accordance with the model set out in
Annex I to the Decision and completed, signed and verified by a representative of the
competent authority of Brazil.

(2) The analysis referred to at paragraph (1)(a) must be performed by
the official control laboratory for the analysis of aflatoxins in Brazil nuts in Belo Horizonte,
Brazil, the Laboratório de Controle de Qualidade de Segurança Alimentar (LACQSA).

(3) A person may import Brazil nuts not complying with paragraph
1, which left Brazil before 5 July 2003, provided that the operator can demonstrate by
sampling and analysis in accordance with the provisions of Directive 98/53/EC⁸ that the
consignments comply with the provisions of Regulation (EC) No. 466/20019 as regards
maximum permitted levels for aflatoxin B1 and total aflatoxin.

⁹ OJ L 77, 16.3.2001, p.1.

⁸ OJ L 201, 17.7.1998, p.93.

5. (1) A person seeking to import Brazil nuts shall ensure that
each consignment is identified with a code, which corresponds to the code on the report and
health certificate as provided for in Regulation 4(1).

(2) Brazil nuts may only be imported through one of the following
points of entry:

- (a) Cork Airport,
- (b) Cork Port,
- (c) Dublin Airport,
- (d) Dublin Port, or

(e) Shannon Airport.

6. (1) The Authority shall ensure that Brazil nuts sought to be imported, are subject to documentary checks to ensure that the requirements of Regulation 4(1) are complied with.

(2) Sampling and analysis for aflatoxin B1 and total aflatoxin shall be carried out on each consignment of Brazil nuts sought to be imported, in accordance with the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Level of Certain Contaminants in Foodstuffs) Regulations 2003 (S.I. No. 267 of 2003) before any such consignment is released onto the market from the point of entry.

(3) The sampling referred to at paragraph (2) shall be carried out by an authorised officer.

(4) Any consignment of Brazil nuts to be subjected to sampling and analysis should be detained before release onto the market from the point of entry for a maximum period of 15 working days.

(5) Subsequent to the carrying out of sampling and analysis in accordance with paragraph 2, the Authority or the appropriate official agency shall issue to the person seeking to import Brazil nuts a copy of the Certificate of Analysis issued in accordance with the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Level of Certain Contaminants in Foodstuffs) Regulations 2003 (S.I. No. 267 of 2003).

7. (1) Where a consignment of imported Brazil nuts is split, the following shall accompany each part of the split consignment:

(a) a copy of the report as provided for in Regulation 4(1),

(b) a copy of the health certificate as provided for in Regulation 4(1), and

(c) a copy of the Certificate of Analysis as provided for in Regulation 6(5).

(2) The copies referred to at paragraph 1 shall in each case be certified by the Authority.

8. (1) Where a consignment of imported Brazil nuts is found not to comply with the maximum levels for aflatoxin B1 and aflatoxin total established by Regulation (EC) No. 466/2001,¹⁰ it may only be returned to the country of origin where for each individual non-conforming consignment concerned, the competent authority of Brazil provides the following in writing:

¹⁰ OJ L 77, 16.3.2001, p. 1.

(a) explicit agreement for the return of the consignment concerned, indicating the consignment code,

(b) a commitment to put the returned consignment under official control from the date of arrival onwards, and

(c) a concrete indication of -

(i) the destination of the returned consignment,

(ii) the intended treatment of the returned consignment, and

(iii) the intended sampling and analysis to be performed on the returned consignment.

(2) If the conditions provided for at paragraph (1)(a), (b) and (c) are not complied with by the competent authority of Brazil, all subsequent consignments that do not comply with the maximum levels for aflatoxin B1 and aflatoxin total, established by Regulation (EC) No. 466/2001,¹¹ shall be destroyed by the Authority or the appropriate official agency.

¹¹ OJ L 77, 16.3.2001, p. 1.

9. Control of the foodstuffs affected by these Regulations shall be carried out in accordance with the provisions of these Regulations.

10. These Regulations shall be enforced by the Authority or by an official agency carrying out functions under a service contract with the Authority.

11. These Regulations shall be deemed to be food legislation for the purposes of the Act of 1998 and, subject to Regulation 9, the enforcement provisions contained in that Act shall accordingly apply for the purposes of ensuring compliance with these Regulations.

12. (1) An authorised officer may, for the purposes of these Regulations purchase or take without payment a sample of Brazil nuts.

(2) An authorised officer may for the purpose of taking a sample of Brazil nuts open any receptacle.

(3) Where an authorised officer purchases or takes without payment, with the intention of having it analysed, a sample of Brazil nuts which are suspected by him or her —

(a) to be diseased, contaminated or otherwise unfit for human consumption, or

(b) to fail to comply with the provisions of any other Regulations applicable to Brazil nuts,

he or she may, by notice in writing to the seller, owner or person in apparent charge or control of such Brazil nuts (as the case may be) prohibit the removal of the Brazil nuts except to any place which may be specified in the notice, during such period as may be specified in the notice, but not exceeding fourteen days from the date of the taking of the sample.

(4) Where an authorised officer purchases or takes without payment a sample of Brazil nuts with the intention of having it analysed, he or she shall after purchasing or taking the sample forthwith notify the seller, owner or person in apparent charge or control of the Brazil nuts (as the case may be) of his or her intention of having the sample analysed.

(5) Nothing in this Regulation shall authorise the examination or detention of Brazil nuts without the consent of an officer of the Revenue Commissioners where the duties of such officer in relation to such Brazil nuts have not been wholly discharged.

13. (1) A person who fails to comply with these Regulations shall be guilty of an offence.

(2) Paragraph (1) shall not apply to an authorised officer acting in the course of his or her duties pursuant to these Regulations.

(3) For the purposes of these Regulations, every contravention of a Regulation shall be deemed a separate contravention and every contravention of a paragraph or a sub-paragraph shall also be deemed to be a separate contravention and shall carry the same penalty as for a single contravention of any Regulation of these Regulations.

(4) A person who is guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €1,900 or at the discretion of the Court to imprisonment for a term not exceeding six months or both.

14. Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributed to any neglect or default on the part of, any director, manager, secretary or any other officer of such

body, or a person who was purporting to act in any such capacity, such person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first mentioned offence.

15. (1) Any person who forges, or utters knowing it to be forged, a certificate, report or other document required for the purposes of these Regulations, or purporting to be issued under these Regulations (hereafter in this Regulation referred to as a "forged document"), is guilty of an offence.

(2) Any person who alters with intent to defraud or deceive, or who utters knowing it to be so altered, a certificate, report or other document required for the purposes of these Regulations, or issued under these Regulations (hereafter in this Regulation referred to as "an altered document"), is guilty of an offence.

(3) Any person who, without lawful authority, has in his or her possession a forged document or an altered document, is guilty of an offence.

Given under the Official Seal of the Minister for Health and Children
this 22nd day of July, 2003.



Micheál Martin, T.D.
Minister for Health and Children

Explanatory Note

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

These Regulations give effect to Commission Decision 2003/493/EC¹² of 4 July 2003 imposing special conditions on the import of Brazil nuts in shell originating in or consigned from Brazil. In accordance with these Regulations, certain Brazil nuts may only be imported if the consignment is accompanied by certain documents, is identified with a code and if, following sampling and analysis, the consignment is found to comply with Commission Regulation (EC) No. 466/2001¹³ in terms of its levels of aflatoxin B1 and total aflatoxin. The Brazil nuts in question may only be imported through certain specified points of entry. Consignments of Brazil nuts found not to be in compliance may only be returned to the country of origin if certain requirements are met.

¹³ OJ L 77, 16.3.2001, p. 1.

¹² OJ L 168, 5.7.2003, p. 33.

These Regulations may be cited as the European Communities (Special Conditions for the Import of Brazil Nuts in Shell Originating in or Consigned from Brazil) Regulations 2003, and they come into effect on 23 July 2003.

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