

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 91/2013

of 31 January 2013

laying down specific conditions applicable to the import of groundnuts from Ghana and India, okra and curry leaves from India and watermelon seeds from Nigeria and amending Regulations (EC) No 669/2009 and (EC) No 1152/2009

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 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 ⁽¹⁾, and in particular Article 53(1)(b)(ii) thereof,

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽²⁾, and in particular Article 15(5) thereof,

Whereas:

- (1) Article 53 of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Union emergency measures for feed and food imported from a third country in order to protect human health, animal health and the environment, where the risk cannot be contained satisfactorily by means of measures taken by the Member States individually.
- (2) Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC ⁽³⁾, establishes an increased level of official controls on imports of certain feed and food of non-animal origin.
- (3) Amongst other, an increased frequency of official controls on import has been established for more than

two years on groundnuts from India as regards aflatoxins, curry leaves from India as regards pesticide residues, groundnuts from Ghana as regards aflatoxins and watermelon seeds from Nigeria as regards aflatoxins and for nearly two years on okras from India as regards pesticide residues.

- (4) The results from the of increased frequency of controls show a continuous high frequency of non-compliance with maximum levels of aflatoxins and maximum residue levels of pesticide residues established in Union legislation and several times very high levels were observed. These results provide evidence that the import of these foods and feeds constitute a risk for animal and human health. No improvement of the situation could be observed after this period of increased frequency of controls at Union borders. Furthermore, no concrete and satisfactory action plan to remediate the shortcomings and deficiencies in the production and control systems was received from the Indian, Nigerian and Ghanaian authorities, despite the explicit request from the European Commission.
- (5) To protect human and animal health in the Union, it is necessary to provide for additional guarantees in relation to those food and feed from India, Ghana and Nigeria. All consignments of groundnuts from India and Ghana, watermelon seeds from Nigeria and curry leaves and okras from India should therefore be accompanied by a certificate stating that the products have been sampled and analysed for the presence of, according to the case, aflatoxins or pesticide residues and have been found compliant with Union legislation.
- (6) For the protection of public and animal health compound feed and food containing to a significant amount the feed and food covered by this Regulation should also be included in the scope of the Regulation.
- (7) The sampling and the analysis of consignments should be performed in accordance with the relevant Union legislation. The maximum levels of aflatoxins in food are established by Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

⁽²⁾ OJ L 165, 30.4.2004, p. 1.

⁽³⁾ OJ L 194, 25.7.2009, p. 11.

levels for certain contaminants in foodstuffs⁽¹⁾ and in feed by Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed⁽²⁾. The maximum residue levels for pesticide residues are established by Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC⁽³⁾. The provisions on sampling and analysis for the control of aflatoxins in food are established by Commission Regulation (EC) No 401/2006 of 23 February 2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs⁽⁴⁾ and in feed by Commission Regulation (EC) No 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of feed⁽⁵⁾. The provisions on sampling for the official control of pesticide residues are established by Commission Directive 2002/63/EC of 11 July 2002 establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin and repealing Directive 79/700/EEC⁽⁶⁾.

- (8) In order to ensure an efficient organisation and ensure a degree of uniformity at the Union level of the controls at import, it is appropriate to provide in this Regulation measures which are equivalent to the existing measures as provided for in Regulation (EC) No 669/2009 for the physical control on pesticide residues on curry leaves and okra from India and Commission Regulation (EC) No 1152/2009 of 27 November 2009 imposing special conditions governing the import of certain foodstuffs from certain third countries due to contamination risk by aflatoxins and repealing Decision 2006/504/EC⁽⁷⁾ for the control of aflatoxins in groundnuts from India and Ghana and watermelon seeds from Nigeria.
- (9) In order to ensure an efficient organisation of the official controls, it is furthermore appropriate that the 'first point of introduction' referred to in Regulation (EC) No 1152/2009 is replaced by 'designated point of entry' as defined in Regulation (EC) No 669/2009.
- (10) With a view to minimise negative effects on trade and to enable the competent authorities of India, Ghana and Nigeria to set up an appropriate control system, it is appropriate to provide that the requirement of a health certificate only applies to consignments of products covered by this Regulation which have left the country of origin after a certain date. It is important for the protection of human and animal health to keep this period as short as possible.

- (11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation shall apply to consignments of the following food and feed falling within the CN codes and TARIC classifications set out in Annex I:

- (a) Groundnuts (peanuts) in shell and shelled and peanut butter (feed and food) originating in or consigned from Ghana;
- (b) Okra (food, fresh) originating in or consigned from India;
- (c) Curry leaves (food, herbs) originating in or consigned from India;
- (d) Groundnuts (peanuts) in shell and shelled, peanut butter, groundnuts (peanuts) otherwise prepared or preserved (feed and food) originating in or consigned from India;
- (e) Watermelon seeds and derived products (food) originating in or consigned from Nigeria.

2. This Regulation shall also apply to compound food and feed, containing any of the food or feed referred to in paragraph 1 in a quantity above 20 %.

3. This Regulation shall not apply to consignments of food and feed referred to in paragraphs 1 and 2 which are destined to a private person for personal consumption and use only. In case of doubt, the burden of proof lies with the recipient of the consignment.

Article 2

Definitions

For the purposes of this Regulation, the definitions laid down in Articles 2 and 3 of Regulation (EC) No 178/2002, Article 2 of Regulation (EC) No 882/2004, Article 2 of Regulation (EC) No 1152/2009 and Article 3 of Regulation (EC) No 669/2009 shall apply.

For the purpose of this Regulation, a consignment corresponds to a lot as referred to in Regulations (EC) No 401/2006 and (EC) No 152/2009 and Directive 2002/63/EC.

⁽¹⁾ OJ L 364, 20.12.2006, p. 5.

⁽²⁾ OJ L 140, 30.5.2002, p. 10.

⁽³⁾ OJ L 70, 16.3.2005, p. 1.

⁽⁴⁾ OJ L 70, 9.3.2006, p. 12.

⁽⁵⁾ OJ L 54, 26.2.2009, p. 1.

⁽⁶⁾ OJ L 187, 16.7.2002, p. 30.

⁽⁷⁾ OJ L 313, 28.11.2009, p. 40.

*Article 3***Import into the Union**

Consignments of food and feed referred to in Article 1(1) and (2) may only be imported into the Union in accordance with the procedures laid down in this Regulation.

*Article 4***Results of sampling and analysis**

1. Consignments of the food and feed referred to in Article 1(1) and (2) shall be accompanied by the results of sampling and analysis performed by the competent authorities of the country of origin, or of the country where the consignment is consigned from if that country is different from the country of origin, to ascertain compliance with:

- (a) Union legislation on maximum levels of aflatoxins, for the food and feed referred to in Article 1(1)(a),(d) and (e), including compounds containing such food or feed in a quantity above 20 %;
 - (b) Union legislation on maximum residue levels of pesticides, for the food referred to in Article 1(1)(b) and (c) including compound food containing such food in a quantity above 20 %.
2. The sampling and the analysis referred to in paragraph 1 must be performed in accordance with Regulation (EC) No 401/2006, for aflatoxins in food, with Regulation (EC) No 152/2009, for aflatoxins in feed, and with Directive 2002/63/EC for pesticide residues.

*Article 5***Health certificate**

1. The consignments shall also be accompanied by a health certificate in accordance with the model set out in Annex II.
2. The health certificate shall be completed, signed and verified by an authorised representative of the competent authority of the country of origin or the competent authority of the country where the consignment is consigned from if that country is different from the country of origin.
3. The health certificate shall be drawn up in an official language of the Member State of arrival, or in another language that the competent authorities of that Member State have decided to accept.
4. The health certificate shall only be valid during four months from the date of issue.

*Article 6***Identification**

Each consignment of the food and feed referred to in Article 1(1) and (2) shall be identified with an identification code which corresponds to the identification code mentioned on the results of the sampling and analysis referred to in Article 4 and the health certificate referred to in Article 5.

Each individual bag, or other packaging form, of the consignment shall be identified with that identification code.

*Article 7***Prior notification of consignments**

1. Feed and food business operators or their representatives shall give prior notification of the estimated date and time of physical arrival of consignments of the food and feed referred to in Article 1(1) and (2) to the competent authorities at the Designated Point of Entry and of the nature of the consignment.
2. For the purpose of prior notification, they shall complete Part I of the common entry document (CED) and transmit that document to the competent authority at the Designated Point of Entry, at least one working day prior to the physical arrival of the consignment.
3. For the completion of the CED in application of this Regulation, feed and food business operators shall take into account:

- (a) for the food a referred to in Article 1(1)(b) and (c) of this Regulation including compound food containing such food in a quantity above 20 %, the notes for guidance for the CED laid down in Annex II to Regulation (EC) No 669/2009;
- (b) for the food and feed referred to in Article 1(1)(a), (d) and (e) of this Regulation, including compounds containing such food or feed in a quantity above 20 % the notes for guidance for the CED laid down in Annex II to Regulation (EC) No 1152/2009.

*Article 8***Official controls**

1. The competent authority at the DPE shall carry out documentary checks on each consignment of the food and feed referred to in Article 1(1) and (2) to ascertain compliance with the requirements laid down in Articles 4 and 5.
2. The identity and physical checks on the food referred to in Article 1(1)(a), (d) and (e) and the related compound food referred to in Article 1(2) of this Regulation shall be carried out in accordance with Article 7 of Regulation (EC) No 1152/2009 at the frequency set out in Annex I of this Regulation. The provisions of Article 7 of Regulation (EC) No 1152/2009 are applied for the identity and physical checks on the feed referred to in Article 1(1)(a), (d) and (e) and the related compound feed referred to in Article 1(2) of this Regulation, whereby the sample for analysis of aflatoxin B1 is taken in accordance with Regulation (EC) No 152/2009 at the frequency set out in Annex I of this Regulation.
3. The identity and physical checks on the food referred to in Article 1(1)(b) and (c) and the related compound food referred to in Article 1(2) of this Regulation shall be carried out in accordance with Articles 8, 9 and 19 of Regulation (EC) No 669/2009 at the frequency set out in Annex I of this Regulation.

4. After completion of the checks, the competent authorities shall,

- (a) complete the relevant entries of Part II of the CED;
- (b) join the results of sampling and analysis carried out in accordance with paragraphs 2 and 3 of this Article;
- (c) provide and fill the CED reference number on the CED;
- (d) stamp and sign the original of the CED;
- (e) make and retain a copy of the signed and stamped CED.

5. The original of the CED and of the health certificate with the accompanying results of sampling and analysis shall accompany the consignment during its transport until it is released for free circulation. For food referred to in Article 1(1)(b) and (c), in case of authorisation of onward transportation of the consignments pending the results of the physical checks, a certified copy of the original CED shall be issued for that purpose.

Article 9

Splitting of a consignment

1. Consignments shall not be split until all official controls have been completed, and the CED has been fully completed by the competent authorities as provided for in Article 8.

2. In the case of subsequent splitting of the consignment, an authenticated copy of the CED shall accompany each part of the consignment during its transport until it is released for free circulation.

Article 10

Release for free circulation

The release for free circulation of consignments shall be subject to the presentation by the feed and food business operator or their representative to the custom authorities of a CED duly completed by the competent authority once all official controls have been carried out and favourable results from physical checks, where such checks are required, are known.

Article 11

Non-compliance

If the official controls establish non-compliance with the relevant Union legislation, the competent authority shall complete Part III of the CED and action shall be taken pursuant to Articles 19, 20 and 21 of Regulation (EC) No 882/2004.

Article 12

Reports

Member States shall submit to the Commission every three months a report of all analytical results of official controls on consignments of feed and food pursuant to this Regulation. That report shall be submitted during the month following each quarter.

The report shall include the following information:

- the number of consignments imported;
- the number of consignments subjected to sampling for analysis;
- the results of the checks as provided for in Article 8(2) and (3).

Article 13

Costs

All costs resulting from the official controls including sampling, analysis, storage and any measures taken following non-compliance, shall be borne by the feed and food business operators.

Article 14

Amendment to Regulation (EC) No 669/2009

Regulation (EC) No 669/2009 is amended in accordance with Annex III to this Regulation

Article 15

Amendment to Regulation (EC) No 1152/2009

Regulation (EC) No 1152/2009 is amended as follows:

1. In Article 2, the following point (b) is deleted:

‘(b) ‘first point of introduction’ means the point of first physical introduction of a consignment into the Community’

and replaced by:

‘(b) Designated point of entry (DPE): means the point of entry as defined in Article 3 (b) of Regulation (EC) No 669/2009’.

2. In Article 5, first and second paragraph, Article 7(2) and (3) and in Annex II, under General, Box I.4, Box I.9, Box II.5, Box II.6, Box II.8, Box II.9 and Box III.1 the term ‘first point of introduction’ is replaced by ‘DPE’.

Article 16

Transitional measures

By way of derogation from Articles 4(1) and 5 (1), Member States shall authorise the imports of consignments of feed and food referred to in Article 1(1) and (2) which left the country of origin prior to 18 February 2013 without being accompanied by a health certificate and the results of sampling and analysis.

Article 17

Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 18 February 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 31 January 2013.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Feed and food of non-animal origin subject to the measures provided for in this Regulation:

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%) at import
— Groundnuts (peanuts), in shell	— 1202 41 00		Ghana (GH)	Aflatoxins	50
— Groundnuts (peanuts), shelled	— 1202 42 00				
— Peanut butter	— 2008 11 10				
<i>(Feed and Food)</i>					
Okra	ex 0709 99 90	20	India (IN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods ⁽²⁾	20
<i>(Food — fresh)</i>					
Curry leaves (<i>Bergera/Murraya koenigii</i>)	ex 1211 90 86	10	India (IN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single residue methods ⁽³⁾	20
<i>(Food — herbs)</i>					
— Groundnuts (peanuts), in shell	— 1202 41 00		India (IN)	Aflatoxins	20
— Groundnuts (peanuts), shelled	— 1202 42 00				
— Peanut butter	— 2008 11 10				
— Groundnuts (peanuts), otherwise prepared or preserved	— 2008 11 91; 2008 11 96; 2008 11 98				
<i>(Feed and food)</i>					
Watermelon (<i>egusi, Citrullus lanatus</i>) seeds and derived products	ex 1207 70 00; ex 1106 30 90; ex 2008 99 99;	10 30 50	Nigeria (NG)	Aflatoxins	50
<i>(Food)</i>					

⁽¹⁾ Where only certain products under any CN code are required to be examined and no specific subdivision under that code exists in the goods nomenclature, the CN code is marked 'ex'.

⁽²⁾ Certification by the country of origin and control at import by the Member States to ensure compliance with Regulation (EC) No 396/2005 in particular residues of: Acephate, Methamidophos, Triazophos, Endosulfan, Monocrotophos, Methomyl, Thiodicarb, Diafenthiuron, Thiamethoxam, Fipronil, Oxamyl, Acetamiprid, Indoxacarb, Mandipropamid.

⁽³⁾ Certification by the country of origin and control at import by the Member States to ensure compliance with Regulation (EC) No 396/2005 in particular residues of: Triazophos, Oxydemeton-methyl, Chlorpyrifos, Acetamiprid, Thiamethoxam, Clothianidin, Methamidophos, Acephate, Propargite, Monocrotophos.

ANNEX II

Health Certificate for the importation into the European Union of

..... (1)

Consignment Code **Certificate Number**

According to the provisions of Commission Implementing Regulation (EU) No 91/2013 laying down specific conditions applicable to the import of groundnuts from Ghana and India, okra and curry leaves from India and watermelon seeds from Nigeria and amending Commission Regulations (EC) No 669/2009 and (EC) No 1152/2009, the

.....

..... (competent authority referred to in Article 5(2) of Implementing Regulation (EU) No 91/2013)

CERTIFIES that the

..... (insert feed and food referred to in Article 1 of Implementing Regulation (EU) No 91/2013)

of this consignment composed of:

.....

..... (description of consignment, product, number and type of packages, gross or net weight)

embarked at (embarkation place)

by (identification of transporter)

going to (place and country of destination)

which comes from the establishment

..... (name and address of establishment)

have been produced, sorted, handled, processed, packaged and transported in line with good hygiene practices.

From this consignment, samples were taken in accordance with the Union legislation

Commission Regulation (EC) No 401/2006

Commission Regulation (EC) No 152/2009

Commission Directive 2002/63/EC

on (date), subjected to laboratory analysis on (date)

in the (name of laboratory).

The details of sampling, methods of analysis used and all results are attached.

This certificate is valid until

Done at on

Stamp and signature of
authorised representative of competent authority referred to in Article 5(2) of Implementing
Regulation (EU) No 91/2013

.....
(1) Product and country of origin.

ANNEX III

Regulation (EC) No 669/2009 is amended as follows:

1. In Annex I, the following entries are deleted:

'— Groundnuts (peanuts), in shell	— 1202 41 00		Ghana (GH)	Aflatoxins	50'
— Groundnuts (peanuts), shelled	— 1202 42 00				
— Peanut butter	— 2008 11 10				
(Feed and food)					
'Curry leaves (<i>Bergera/Murraya koenigii</i>)	ex 1211 90 86	10	India (IN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single residue methods ⁽⁵⁾	50'
(Food — fresh herbs)					
'— Groundnuts (peanuts), in shell	— 1202 41 00		India (IN)	Aflatoxins	20'
— Groundnuts (peanuts), shelled	— 1202 42 00				
— Peanut butter	— 2008 11 10				
— Groundnuts (peanuts), otherwise prepared or preserved	— 2008 11 91; 2008 11 96; 2008 11 98				
(Feed and food)					
'Okra	ex 0709 99 90	20	India (IN)	Pesticide residues analysed with multi-residue methods based on GC-MS and LC-MS or with single-residue methods ⁽²⁾	50'
(Food — fresh)					
'Watermelon (<i>egusi</i> , <i>Citrullus lanatus</i>) seeds and derived products	ex 1207 70 00;	10	Nigeria (NG)	Aflatoxins	50'
	ex 1106 30 90;	30			
	ex 2008 99 99	50			
(Food)					

2. In Annex I, the following endnote (2) is deleted:

⁽²⁾ In particular residues of: Acephate, Methamidophos, Triazophos, Endosulfan, Monocrotophos, Methomyl, Thiodicarb, Diafenthiuron, Thiamethoxam, Fipronil, Oxamyl, Acetamiprid, Indoxacarb, Mandipropamid.'

3. In Annex I, the following endnote (5) is deleted:

⁽⁵⁾ In particular residues of: Triazophos, Oxydemeton-methyl, Chlorpyrifos, Acetamiprid, Thiamethoxam, Clothianidin, Methamidophos, Acephate, Propargite, Monocrotophos.'
