



STATUTORY INSTRUMENTS.

S.I. No. 153 of 2010



EUROPEAN COMMUNITIES (MARKETING STANDARDS) (CROPS
AND OILS) REGULATIONS 2010

(Prn. A10/0520)

EUROPEAN COMMUNITIES (MARKETING STANDARDS) (CROPS AND OILS) REGULATIONS 2010

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving full effect to Commission Regulation (EC) No. 2257/1994 of 16 September 1994¹ (as amended by Commission Regulation (EC) No. 1135/1996 of 24 June 1996², Commission Regulation (EC) No. 386/1997 of 28 February 1997³ and Commission Regulation (EC) No. 228/2006 of 9 February 2006⁴), Commission Regulation (EC) No. 2898/1995 of 15 December 1995⁵ (as amended by Commission Regulation (EC) No. 465/1996 of 14 March 1996⁶, Commission Regulation (EC) No. 1135/1996 of 24 June 1996⁷ and Commission Regulation (EC) No. 386/1997 of 28 February 1997⁸), Council Regulation (EC) No. 1234/2007 of 22 October 2007⁹ (as amended by Council Regulation (EC) No. 247/2008 of 17 March 2008¹⁰, Council Regulation (EC) No. 248/2008 of 17 March 2008¹¹, Council Regulation (EC) No. 361/2008 of 14 April 2008¹², Council Regulation (EC) No. 470/2008 of 26 May 2008¹³, Commission Regulation (EC) No. 510/2008 of 6 June 2008¹⁴, Council Regulation (EC) No. 13/2009 of 18 December 2008¹⁵, Council Regulation (EC) No. 72/2009 of 19 January 2009¹⁶ and Commission Regulation (EC) No. 183/2009 of 6 March 2009¹⁷), Commission Regulation (EC) No. 1580/2007 of 21 December 2007¹⁸ (as amended by Commission Regulation (EC) No. 292/2008 of 1 April 2008¹⁹, Commission Regulation (EC) No. 352/2008 of 18 April 2008²⁰, Commission Regulation (EC) No. 1221/2008 of 5 December 2008²¹ and Commission Regulation (EC) No. 771/2009 of 25 August 2009²²) and Commission Regulation

¹O.J. No. L245 of 20.9.1994, p.6.

²O.J. No. L150 of 25.6.1996, p.38.

³O.J. No. L60 of 01.03.1997, p.53.

⁴O.J. No. L39 of 10.2.2006, p.7.

⁵O.J. No. L304 of 16.12.1995, p.17.

⁶O.J. No. L65 of 15.03.1996, p.5.

⁷O.J. No. L150 of 25.06.1996, p.38.

⁸O.J. No. L60 of 01.03.1997, p.53.

⁹O.J. No. L299 of 16.11.2007, p.1.

¹⁰O.J. No. L76 of 19.03.2008, p.1.

¹¹O.J. No. L76 of 19.03.2008, p.6.

¹²O.J. No. L121 of 07.05.2008, p.1.

¹³O.J. No. L140 of 30.05.2008, p.1.

¹⁴O.J. No. L149 of 07.06.2008, p.61.

¹⁵O.J. No. L5 of 09.01.2009, p.1.

¹⁶O.J. No. L30 of 31.01.2009, p.1.

¹⁷O.J. No. L63 of 07.03.2009, p.9.

¹⁸O.J. No. L350 of 31.12.2007, p.1.

¹⁹O.J. No. L90 of 02.04.2008, p.3.

²⁰O.J. No. L109 of 19.04.2008, p.9.

²¹O.J. No. L336 of 13.12.2008, p.1.

²²O.J. No. L223 of 26.08.2009, p.3.

Notice of the making of this Statutory Instrument was published in "Iris Oifigiúil" of 16th April, 2010.

(EC) No. 1019/2002 of 13 June 2002²³ (as amended by Commission Regulation (EC) No. 1176/2003 of 1 July 2003²⁴), hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Marketing Standards) (Crops and Oils) Regulations 2010.

2. (1) In these Regulations—

“authorised officer” means—

- (a) a person appointed under Regulation 4 of the European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009),
- (b) a member of an Garda Síochána, or
- (c) an Officer of Customs and Excise;

“Banana Regulation” means Commission Regulation (EC) No. 2257/1994 of 16 September 1994 (as amended by Commission Regulation (EC) No. 1135/1996 of 24 June 1996, Commission Regulation (EC) No. 386/1997 of 28 February 1997 and Commission Regulation (EC) No. 228/2006 of 9 February 2006);

“Commission Regulation” means Commission Regulation (EC) No. 1580/2007 of 21 December 2007 (as amended by Commission Regulation (EC) No. 292/2008 of 1 April 2008, Commission Regulation (EC) No. 352/2008 of 18 April 2008, Commission Regulation (EC) No. 1221/2008 of 5 December 2008 and Commission Regulation (EC) No. 771/2009 of 25 August 2009);

“Council Regulation” means Council Regulation (EC) No. 1234/2007 of 22 October 2007 (as amended by Council Regulation (EC) No. 247/2008 of 17 March 2008, Council Regulation (EC) No. 248/2008 of 17 March 2008, Council Regulation (EC) No. 361/2008 of 14 April 2008, Council Regulation (EC) No. 470/2008 of 26 May 2008, Commission Regulation (EC) No. 510/2008 of 6 June 2008, Council Regulation (EC) No. 13/2009 of 18 December 2008, Council Regulation (EC) No. 72/2009 of 19 January 2009 and Commission Regulation (EC) No. 183/2009 of 6 March 2009);

“Olive oil Regulation” means Commission Regulation (EC) No. 1019/2002 of 13 June 2002 as amended by Commission Regulation (EC) No. 1176/2003 of 1 July 2003;

“crop or oil” means a fruit, vegetable or other plant or an oil referred to in these Regulations;

“Minister” means Minister for Agriculture, Fisheries and Food;

“premises” includes land (with or without buildings), buildings, vehicle, wagon, aircraft and vessel.

²³O.J..No. L155 of 14.06.2002, p.27.

²⁴O.J. No. L164 of 02.07.2003, p.12.

(2) A word or expression that is used in these Regulations and is also used in the Council Regulation, the Commission Regulation, the Olive oil Regulation, the Banana Regulation or Commission Regulation (EC) No. 2898/1995 of 15 December 1995 has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Council Regulation, the Commission Regulation, the Olive oil Regulation, the Banana Regulation or Commission Regulation (EC) No. 2898/1995 of 15 December 1995.

Fruit and Vegetables

3. (1) A person who—

- (a) markets a fruit or vegetable in contravention of Article 113a(1),
- (b) displays a fruit or vegetable in contravention of Article 113a(3), or
- (c) otherwise contravenes a provision (mentioned in this Regulation),

of the Council Regulation commits an offence.

(2) A person who—

- (a) fails to comply with a general marketing standard referred to in Article 2a(1),
- (b) markets a fruit or vegetable that does not comply with a general marketing standard referred to in Article 2a(1),
- (c) fails to comply with a specific marketing standard referred to in Article 2a(2),
- (d) markets a fruit or vegetable that does not comply with a specific marketing standard referred to in Article 2a(2),
- (e) fails to provide information as required by Article 4,
- (f) markets a fruit or vegetable without information required by Article 4,
- (g) fails, at retail stage, to give information as required by Article 5,
- (h) markets, at retail stage, a fruit or vegetable without information required by Article 5,
- (i) in marketing a package containing mixes of fruit and vegetables, contravenes Article 6,
- (j) fails, when requested by an authorised officer, to provide information as required by Article 9(5), 10(4) or 20, or
- (k) otherwise contravenes a provision (mentioned in this Regulation),

of the Commission Regulation commits an offence.

Bananas

4. A person who contravenes a marketing standard laid down in Article 1 of the Banana Regulation or a person who contravenes Commission Regulation (EC) No. 2898/1995 of 15 December 1995 commits an offence.

Hops

5. A person who-

- (a) markets or exports a product of the hops sector in contravention of Article 117, or
- (b) imports a product of the hops sector other than in accordance with Article 158,

of the Council Regulation commits an offence.

Olive Oil, etc.

6. (1) A person who markets olive oil or pomace oil in contravention of Article 118, or otherwise contravenes that Article, of the Council Regulation commits an offence.

(2) A person who, at the retail stage, markets olive oil or pomace oil-

- (a) packaged other than in accordance with Article 2,
- (b) labelled other than in accordance with Article 3,
- (c) marked with a designation of origin other than in accordance with Article 4,
- (d) uses an optional indication referred to in Article 5 other than in accordance with that Article,
- (e) in a blend other than in accordance with Article 6(1) or (3),
- (f) in a foodstuff other than in accordance with Article 6(2) or (3),
- (g) fails to supply documentation in accordance with Article 7,
- (h) otherwise contravenes a provision (mentioned in this paragraph),

of the Olive Oil Regulation commits an offence.

Hemp

7. A person who imports hemp that does not conform to Article 157, or otherwise contravenes that Article, of the Council Regulation commits an offence.

Forgery

8. (1) A person shall not forge or utter knowing it to be forged—

- (a) a label, document or record referred to in the Council Regulation,

- (b) an entry in a register, an approval, authorisation or licence issued for the purposes of the Council Regulation,
- (c) a certificate referred to in Article 117 of the Council Regulation,
- (d) a requirement or direction of an authorised officer under Regulation 5 of the European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009) (if the requirement or direction is in writing) or a compliance notice,

(hereafter in this Regulation referred to as “a forged document”).

(2) A person shall not alter with intent to defraud or deceive, or to utter knowing it to be so altered—

- (a) a label, document or record referred to in the Council Regulation,
- (b) an entry in a register, an approval, authorisation or licence issued for the purposes of the Council Regulation,
- (c) a certificate referred to in Article 117 of the Council Regulation, or
- (d) a requirement or direction of an authorised officer under Regulation 5 of the European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009) (if the requirement or direction is in writing) or a compliance notice,

(hereafter in this Regulation referred to as “an altered document”).

(3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

(4) A person who contravenes this Regulation commits an offence.

Compliance Notice

9. (1) Without prejudice to Regulation 5 of the European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009) if an authorised officer has reasonable grounds to suspect that—

- (a) an act of the institutions of the European Communities or these Regulations is not being or has not been complied with or there are reasons to believe that an act of the institutions of the European Communities, will not be complied with, or
- (b) it is necessary, ancillary or supplementary for an act of the institutions of the European Communities to have full effect,

he or she may serve or cause to be served on the owner or person who appears to be in charge, possession or control of a premises or crop or oil a notice (“compliance notice”) stating that opinion and directing that—

- (i) a crop or oil be dealt with in a manner specified in the notice,

- (ii) such alterations be made to a premises or operations at a premises as the officer specifies in the notice,
- (iii) a crop or oil be disposed of in such manner as the officer specifies in the notice,
- (iv) a specified operation or activity cease on a premises,
- (v) a specified operation or activity take place only in a manner specified in the notice,
- (vi) a specified type or level of sampling and analysis be undertaken for a period specified in the notice, or
- (vii) a specified operation or activity may only be carried out under and in accordance with such terms and conditions as are specified in the compliance notice.

(2) A person who contravenes a compliance notice or a requirement of a compliance notice unless and until the notice is annulled under Regulation 10 commits an offence.

(3) A requirement contained in a compliance notice shall specify a time limit within which the notice is to be complied with.

(4) A requirement specified in a compliance notice (in this paragraph referred to as “the earlier compliance notice”) may be amended or withdrawn by a further notice in writing and the earlier compliance notice has effect subject to such amendment or withdrawal.

(5) A compliance notice, whether amended under paragraph (4) or not, may require the owner or person in charge of a crop or oil to choose between one or more of the requirements specified in the compliance notice and that person shall comply with the alternative requirement that he or she chooses.

Appeal against Compliance Notice

10. (1) A person affected by a compliance notice may, within 7 days of service of the compliance notice, apply to the Judge of the District Court having jurisdiction in the District Court District where the feed business or food business is situated or to the Judge of the District Court having jurisdiction in the District Court District where the person ordinarily resides on the grounds that the compliance notice or any term of the compliance notice are not reasonable, having regard to the Council Regulation, the Commission Regulation, the Olive oil Regulation, the Banana Regulation, Commission Regulation (EC) No. 2898/1995 of 15 December 1995 or these Regulations (in this Regulation referred to as “an appeal”).

(2) An appeal may be heard at any sitting of the District Court within the appropriate District Court Area.

(3) A person making an appeal shall serve notice of the appeal, which shall contain a statement of the grounds upon which it is alleged that the compliance notice or any term of the compliance notice is unreasonable having regard to the Council Regulation, the Commission Regulation, the Olive Oil Regulation, the Banana Regulation, Commission Regulation (EC) No. 2898/1995 of 15 December 1995 or these Regulations, on the appropriate registering authority at least 48 hours prior to the hearing of the appeal and a copy of the notice of appeal shall be lodged with the appropriate District Court Clerk.

(4) On the hearing of an appeal, a Judge of the District Court may confirm, with or without modification, or annul a compliance notice.

(5) A person, including a person on whom a compliance notice is served, who—

- (a) pending the determination of an appeal, deals with a crop or oil to which a compliance notice relates other than under and in accordance with the notice, or
- (b) after the appeal, deals with a crop or oil to which a compliance notice relates other than under and in accordance with the compliance notice or compliance notice as modified,

commits an offence.

Emergency Measures

11. (1) If—

- (a) a person, by act or omission, fails to comply, whether within the time specified therein or otherwise, with a compliance notice (including a compliance notice modified in accordance with Regulation 10(4)), or
- (b) an authorised officer has reasonable cause to suspect—
 - (i) that a compliance notice (including a compliance notice modified in accordance with Regulation 10(4)) is not or will not be complied with, or
 - (ii) that, pending the determination of an appeal, a premises or crop or oil to which the compliance notice relates is or will not be dealt with other than in accordance with Regulation 10(5),

an authorised officer may seize and detain a crop or oil in a manner that he or she thinks fit and sell or dispose of the crop or oil in a manner as the authorised officer considers appropriate.

(2) Subject to paragraph (4), the proceeds of the sale or disposal of a crop or oil under paragraph (1) shall be paid to the owner of the crop or oil as soon as may be after sale or disposal and after a person has satisfied the Minister that he or she is the owner or otherwise entitled to the proceeds of the sale or disposal of the crop or oil.

(3) The costs of seizure, sale or disposal of a crop or oil under this Regulation is recoverable by the Minister—

- (a) as a simple contract debt in a court of competent jurisdiction, or
- (b) by deducting the costs from any sum due by the Minister to a person on whom a notice has been served.

(4) The costs of any action required by a compliance notice shall be borne by the owner of a premises or crop or oil to which the notice relates.

Service of Compliance Notice

12. (1) A compliance notice shall, subject to paragraph (2), be addressed to the person concerned by name and may be served on a person—

- (a) by giving it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, where an address for service has been furnished, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, where an address for service has been furnished, at that address,
- (d) by electronic communication, or
- (e) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises.

(2) If a compliance notice is to be served on a person who is the owner or person in charge of a crop or oil and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to that person by using the words “the owner” or “the person in charge”.

(3) A person shall not, at any time within 6 months after a compliance notice is affixed under paragraph (1)(e), remove, damage or deface the notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Fixed Penalty Notice

13. (1) If an officer of the Minister authorised by the Minister in that behalf has reasonable grounds for suspecting that a person is committing or has committed an offence under these 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 €250 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) If notice is given under paragraph (1)—
- (a) a 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 may 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, and
 - (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 lies on the defendant.

Offences

14. (1) A person who commits an offence under these Regulations is liable, on summary conviction, to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 6 months or to both.
- (2) If an offence under these Regulations is committed by a body corporate and is proved to be so committed with the consent or connivance of or be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting 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 were guilty of the first-mentioned offence.
- (3) An offence under these Regulations may be prosecuted by—
- (a) the Minister, or
 - (b) in the case of a contravention of the Olive Oil Regulation or Regulation 6 of these Regulations, the Health Service Executive.

Application

15. (1) The European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009) apply to these Regulations and to—

- (a) the Banana Regulation,
- (b) Commission Regulation (EC) No. 2898/1995 of 15 December 1995,
- (c) the Commission Regulation,
- (d) the Council Regulation, and
- (e) the Olive Oil Regulation

(2) An authorised officer within the meaning of the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2002 (S.I. No. 483 of 2002) may, for the purposes of applying the Olive Oil Regulation or Regulation 6 of these Regulations exercise any or all of the powers conferred on an authorised officer by the European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009).

Amendment

16. The European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009) are amended—

- (a) in Regulation 5(8), by the substitution for “this Act”, of “these Regulations”, and
- (b) in Regulation 5(11), by the substitution for “this Act”, of “these Regulations”.

Revocations

17. The European Communities (Bananas) Regulations 1997 (S.I. No. 69 of 1997), the European Communities (Fruit and Vegetables) Regulations 1997 (S.I. No. 122 of 1997) and the European Communities (Marketing Standards for Olive Oil) Regulations 2004 (S.I. No. 397 of 2004) are revoked.



GIVEN under my Official Seal,
9 April 2010.

BRENDAN SMITH,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

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

These regulations supplement the provisions in the European Community Regulations related to the application of quality standards for crops and oils, including fresh fruit and vegetables, by providing the necessary powers for authorised officers and by prescribing penalties for offences.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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