

[BFAR FISHERIES ADMINISTRATIVE ORDER NO. 228, S. 2008, November 20, 2008]

RULES GOVERNING THE ORGANIZATION AND IMPLEMENTATION OF OFFICIAL CONTROLS ON FISHERY AND AQUATIC PRODUCTS INTENDED FOR EXPORT TO THE EU MARKET FOR HUMAN CONSUMPTION

WHEREAS, general hygiene rules are appropriate for business operators producing and handling all foods; the WTO SPS Agreement recognizes the right of member countries to implement SPS measures necessary to protect human, animal or plant life or health;

WHEREAS, certain fishery and aquatic products may present specific microbiological and chemical hazards, the EU therefore imposes additional and specific hygiene rules for the production and handling of such products, including shellfish;

WHEREAS, rules for Official Controls on fishery and aquatic products are therefore necessary; these rules should mirror the scope of the hygiene rules for business operators and cover all aspects important for protecting public and, where appropriate, fish and shellfish health; they should be based on the most recent relevant information and adaptable to new information as necessary;

WHEREAS, specific Official Controls on the production of fishery and aquatic products are also necessary to check for compliance with the specific criteria and targets laid down in EU legislation;

WHEREAS, EU specifies that authorities performing Official Controls must operate to criteria that ensure their impartiality and effectiveness, such as having a sufficient number of suitably qualified, trained and experienced staff with access to adequate facilities and equipment;

WHEREAS, Official Controls should be carried out using appropriate techniques, including routine surveillance and more intensive controls such as inspections, audits, sampling and testing, and should be based on documented procedures to ensure they are carried out to a uniform and consistent high quality;

WHEREAS, the frequency of Official Controls should be regular and proportionate to the risk, and include random Controls, taking into account results of checks carried out by business operators under HACCP-based control programmes, designed to meet requirements of food law and animal health rules;

WHEREAS, laboratories analyzing official samples should work in accordance with internationally-approved procedures or criteria-based performance standards, using validated analytical methods, and should in particular be equipped to enable the correct determination of legally-defined standards;

WHEREAS, reference laboratories should be designated to contribute to a high quality and uniformity of analytical results, for example through the application of validated methods, availability of reference materials, the organization of comparative testing and the training of laboratory staff; reference laboratories should cover all the areas of feed and food law and animal health;

WHEREAS, a number of national, regional and/or international standards appropriate for use in Official Controls have been developed by bodies such as ISO and IU PAC, relating to the operation and assessment of testing laboratories and to the operation and accreditation of control bodies;

WHEREAS, provision should be made to delegate certain Control tasks from the competent authority to a control body, and to define conditions under which such delegation can take place;

WHEREAS, BFAR must ensure appropriate and effective coordination between Authorities responsible for regulating non-food aspects that may impact on the safety of fishery and aquatic products, and between competent bodies to whom responsibilities may have been delegated under this Order;

WHEREAS, EU does not limit import checks to veterinary aspects but also includes Controls on aspects such as additives, labelling, traceability, irradiation of food and materials in contact with food;

WHEREAS, RP may also be requested to provide information on its control systems; this information, which should be established on the basis of EU guidelines, should form the basis for subsequent EU inspection visits and controls;

WHEREAS, DA-BFAR is mandated by RA 8550 Section 65 (I) to implement an inspection system for the export of fishery and aquatic products and fish processing establishments; by Section 107 to promulgate fisheries administrative orders for purposes of fishery regulation; and by Section 119(d) to establish and maintain quality laboratories in major fish ports and prescribe the highest standards for the operation and maintenance of such post-harvest facilities;

WHEREAS, European Commission Decision 95/190 recognizes DA-BFAR as the Competent Authority to effectively ensure that fishery and aquatic products exported to the EU comply with EU legislation;

WHEREAS, classification of shellfish harvesting areas in accordance with EU requirements has not yet been carried out, it is necessary to introduce an extended implementation period for these specific rules;

NOW THEREFORE, the following rules and regulations governing the organization and implementation of official controls on fishery and aquatic products intended for export to the EU are hereby promulgated:

Article 1 **Scope**

1. This Order lays down specific rules for the organization and implementation of Official Controls on FABO, their establishments and products to verify their compliance with the specific EU hygiene, safety and other technical requirements set out in Fisheries Administrative

Order No. 227, Series of 2008, "Rules and Regulations Governing the Export of Fish and Aquatic Products to the European Union".

2. This Order applies only in respect of the products, premises and management activities of business operators intending to export FA products to the European Union, as defined in Chapter VIII of the Implementing Code of Practice accompanying this Order.

3. Official Controls pursuant to this Order shall be without prejudice to the business operator's responsibility for ensuring food safety and compliance with relevant EU requirements, as laid down in Articles 3 to 9 in Administrative Order No 227, Series of 2008.

4. This Order shall apply without prejudice to Republic Act No 8550, Philippine Fisheries Code of 1998, and the following Fisheries Administrative Orders as applied to the harvesting, production, preparation and processing of fisheries / aquatic products for domestic or non-EU markets:

a.) No 117, 1975, as amended by No 117_1, 1994: Rules and regulations governing the operation of processing plants for fish and fishery/aquatic products and prescribing/requiring standards, quality control and inspection or processed fish and fishery/aquatic products.

b.) No. 135, 1981: Rules and Regulations Governing Import of Fish and Fishery/Aquatic Products.

c.) No. 192, 1997: Establishing the Fisheries Quarantine Service (FQS) in BFAR and in the DA Regional Field Units, and prescribing rules, regulations and procedures thereof.

d.) No 209, 2001: Guideline on the Production, Harvesting, Handling and Transportation of Shellfish for Implementation of the Local Government,

e.) No 210, 2001: Rules and Regulations on the Exportation of Fresh, Chilled and Frozen Fish and Fishery/Aquatic Products;

f.) No 211, 2001: Requirements for Pre-processing and Processing Plants, the SSOP thereof and the Processing and Quality Requirements for Shellfish;

g.) No 212, 2001: Guideline on the Implementation of HACCP System;

h.) No 214, 2001: Code of Practice for Aquaculture;

i.) No 247, 2006, Powers and Functions of Regulatory Officers for the Safety and Quality Assurance of Fishery and Aquaculture Products Intended for Human Consumption.

5. This Order establishes the requirement for cooperation and co-ordination between DA-BFAR and other authorities on the enforcement of

requirements related to aqua-feed and with other relevant agencies or control bodies mandated to perform delegated tasks.

6. This Order shall apply without prejudice to EU rules on Organic ("Bio") foods, for which specific inspection, control and certification may be required, to Administrative Order 13, 2003: "Guidelines in the Accreditation of Certifying Bodies for Standards on Organic Agriculture" or to Executive Order No. 481, 2005: Promotion and Development of Organic Agriculture in the Philippines.

Article 2

Definitions of Terms and Acronyms

1. For the purpose of this Order, the terms, phrases and acronyms defined in Section 4 of the Introduction to the Implementing Code of Practice accompanying this Order ("The Code of Good Practice for the Organization and Implementation of Official Controls for the Export of Fish and Aquatic Products from the Philippines to the European Union, 2008") shall apply and have legal effect as if they were an integral part of this Order.

2. The general terms defined in Section 4 of the Introduction to the Implementing Code of Practice for Fisheries Administrative Order No. 227, 2008, ("The Code of Good Manufacturing Practice for Business Operators Exporting Fish and Aquatic Products from the Philippines to the EU, 2008") shall also apply.

3. The definitions specific to the harvesting and treatment of bivalve molluscs in Chapter IV of these Implementing Codes of Practice shall also apply, as appropriate.

Article 3

General Obligations of DA-BFAR in the Enforcement of Official Controls

1. DA-BFAR shall carry out effective and appropriate Official Controls at all stages of production, processing and distribution of FA products, in accordance with the criteria established in Article 6.

2. DA-BFAR must ensure that products intended for export to the EU

(i) are despatched only from approved and inspected establishments, and are accompanied by an official sanitary / health certificate, in accordance with the provisions of this Order;

(ii) do not pose a risk to the health of fish and aquatic animals in the EU.

In addition, DA-BFAR shall inform the EU Commission within 24 hours of any outbreak of a fish disease listed in the OIE International Aquatic Animal Health Code, or any such disease as required by the EU.

3. DA-BFAR shall ensure that it has the necessary legal powers to:

- (a) grant Authorized Officers appropriate access to FABO premises and relevant documentation;
- (b) carry out Official Controls and to take the measures provided for in this Order;
- (c) oblige FABO to undergo any inspection carried out in accordance with this Order and to assist staff of DA-BFAR to carry out their tasks; and
- (d) prevent the export of any FA product that does not comply with the requirements.

4. DA-BFAR must ensure that adequate financial resources are available to provide the necessary staff and other resources for Official Controls.

Article 4

Delegation of Specific Tasks related to Laboratory Services

1. DA-BFAR may delegate specific tasks related to laboratory services to one or more reputable laboratory recognized by DA-BFAR in accordance with paragraphs 2 to 4. However, the activities referred to in Articles 20 and 21 shall not be delegated.

2. DA-BFAR may delegate specific tasks to a particular laboratory only if there is a precise definition of:

- (a) tasks that the laboratory may carry out and the conditions under which it may carry them out;

- (b) the extent of the legal responsibilities of the laboratory in respect of the delegated tasks; and

- (c) there is proof that the laboratory:

- (i) has the expertise, equipment and infrastructure necessary to perform the tasks delegated to it;

- (ii) has a sufficient number of suitably qualified and experienced staff; and

- (iii) is impartial and free from any conflict of interest as regards the tasks delegated to it;

- (d) the laboratory works and is accredited in accordance with European Standard EN 45004 'General criteria for the operation of various types of bodies performing inspection' and/or another standard if more relevant to the delegated tasks in question;

- (e) the designated laboratory operates and is assessed and accredited in accordance with the following standards, taking into account criteria for different testing methods laid down in relevant EU feed and food law. Accreditation and assessment may relate to individual tests or groups of tests.

- (i) ISO/IEC 17025: 'General requirements for the competence of testing and calibration laboratories';

- (ii) EN 45002: 'General criteria for the assessment of testing laboratories';