Commission Implementing Regulation (EU) 2018/941 of 2 July 2018 amending Regulation (EC) No 669/2009 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 Commission Implementing Regulation (EU) No 885/2014 (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2018/941

of 2 July 2018

amending Regulation (EC) No 669/2009 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 Commission Implementing Regulation (EU) No 885/2014

(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 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[(1)], and in particular Article 15(5) thereof,

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[(2)], and in particular Article 53(1)(b)(ii) thereof,

Whereas:

(1) Commission Regulation (EC) No 669/2009[(3)] lays down rules concerning the increased level of official controls to be carried out on imports of feed and food of non-animal origin listed in Annex I thereto (‘the list’), at designated points of entry (‘DPE’) into the territories referred to in Annex I to Regulation (EC) No 882/2004.

(2) Pursuant to Regulation (EC) No 669/2009, in the case of consignments entering the Union by sea, which are unloaded for the purposes of being loaded on another vessel for onwards transportation to a port in another Member State (transhipped consignments), the designated point of entry is the latter port. For the purposes of an efficient organisation of official controls at Union borders, while ensuring a high level of human, animal and plant health protection, the same rule should apply to consignments entering the Union by air transport from a third country, which are transhipped for onward travel to another airport into the Union. In those cases, the designated point of entry should be the latter airport. For the same reasons, this rule should also apply where the consignments are transhipped for onward travel in the same Member State. The terminology used in relation to transhipped consignments should be changed

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from 'onwards transportation' to 'onward travel', to reflect the distinct situation of transhipped consignments compared to that of consignments authorised for onwards transportation pending the results of the physical checks. It is therefore appropriate to amend Regulation (EC) No 669/2009 accordingly.

(3) Regulation (EC) No 882/2004 requires competent authorities to notify the Commission and the other Member States of border rejections. As regards pesticides, it is appropriate to clarify that where the competent authorities reject a consignment of feed and food listed in Annex I to Regulation (EC) No 669/2009, such notification should be made where a maximum residue level set out in Regulation (EC) No 396/2005 of the European Parliament and the Council[(4)] has not been complied with, irrespective of whether the acute reference dose has been exceeded.

(4) Article 2 of Regulation (EC) No 669/2009 provides that the list in Annex I to that Regulation is to be reviewed on a regular basis, and at least biannually, taking into account the sources of information referred to in that Article.

(5) The occurrence and relevance of recent food incidents notified through the Rapid Alert System for Food and Feed, the findings of audits to third countries carried out by the Directorate for Health and Food Audits and Analysis of the Commission Directorate-General for Health and Food Safety, as well as the biannual reports on consignments of feed and food of non-animal origin submitted by Member States to the Commission in accordance with Article 15 of Regulation (EC) No 669/2009, indicate that the list should be amended.

(6) In particular, for consignments of goji berries from China and of turnips prepared or preserved by vinegar or acetic acid ('pickled turnips') from Lebanon and from Syria, the aforementioned sources of information indicate the emergence of new risks to human health requiring the introduction of an increased level of official controls. Entries concerning those consignments should therefore be included in the list.

(7) In particular, the list should be amended by deleting the entries for commodities for which the available information indicates an overall satisfactory degree of compliance with the relevant safety requirements provided for in Union legislation and for which an increased level of official controls is therefore no longer justified. The entries in the list concerning *Brassica oleracea* from China, strawberries from Egypt, dried grapes from Iran, peas with pods from Kenya, yardlong beans from Thailand and aubergines and Ethiopian eggplant from Uganda should therefore be deleted.

(8) Moreover, the list should be amended by decreasing the frequency of identity and physical checks on commodities for which the relevant sources of information indicate an overall improvement of compliance with the relevant requirements provided for in Union legislation and for which the current frequency of such checks is therefore no longer appropriate. The entries in the list concerning pineapples from Benin and lemons and pomegranates from Turkey should therefore be amended accordingly.

(9) The scope of certain entries in the list should be amended to include forms of the commodity other than the ones currently listed, where those other forms present the

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same risk. It is therefore appropriate to amend the existing entries concerning okra from Vietnam, to include frozen okra.

(10) To protect human health in the Union, Commission Implementing Regulation (EU) No 885/2014[5] provides that consignments of okra (food, fresh and frozen) from India may only be imported into the Union if they are accompanied by a health certificate stating that the commodities have been sampled and analysed for the presence of pesticide residues and by the results of the sampling and analysis performed by the competent authorities of the third country to ascertain compliance with Union legislation on maximum residue levels of pesticides. Implementing Regulation (EU) No 885/2014 establishes also an increased frequency of official controls on the import of okra from India at Union borders. The results from these controls show a decrease of the frequency of non-compliance with the maximum residue levels of pesticide residues established in Regulation (EC) No 396/2005 for this commodity, providing evidence that the risk related to its import has significantly decreased. It is therefore appropriate to no longer subject okra from India to the special import conditions set out in Implementing Regulation (EU) No 885/2014. An increased level of official controls at Union borders should be maintained further to the discontinuation of pre-export sampling, testing and certification required by Implementing Regulation (EU) No 885/2014 for this commodity. Implementing Regulation (EU) No 885/2014 and Annex I to Regulation (EC) No 669/2009 should be amended accordingly.

(11) The existing entries concerning tea from China in the list in Annex I to Regulation (EC) No 669/2009 require the competent authorities to test this product for Triflurarin. However, Member States have not reported detections of this pesticide in this product and there are no relevant notifications under the Rapid Alert System for Food and Feed set out in accordance with Regulation (EC) No 178/2002. At the same time, frequent detections of Tolfenpyrad in tea from China have been reported. Similarly to Trifluralin, this pesticide is not listed in the control programme referred to in Article 29(2) of Regulation (EC) No 396/2005 and therefore the testing for this pesticide is not required in the framework of Regulation (EC) No 669/2009. It is therefore appropriate to amend the existing entries concerning tea from China in Annex I to Regulation (EC) No 669/2009 to delete the reference to Triflurarin and to require competent authorities to test this product for Tolfenpyrad.

(12) The specific characteristics of the aseptic packaging in barrels of 'Apricots, otherwise prepared or preserved' (apricot pulp) (CN Code 2008 50 61) listed in Annex I to Regulation (EC) No 669/2009 are such that the performance of sampling operations at the DPE could result in a serious risk to food safety or in the product being damaged to an unacceptable extent. It is therefore appropriate to amend the existing entries 'Apricots, otherwise prepared or preserved' (apricot pulp) in Annex I to Regulation (EC) No 669/2009 to provide that identity and physical checks on consignments of such products may be carried out by the competent authorities of the place of destination as indicated in the common entry document (CED), if appropriate at the premises of the food business operator, where the conditions referred to in Article 9(2) of that Regulation are met.

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(13) In order to ensure consistency and clarity, it is appropriate to replace Annex I to Regulation (EC) No 669/2009 by the text set out in Annex I to this Regulation.

(14) Regulation (EC) No 669/2009 and Implementing Regulation (EU) No 885/2014 should therefore be amended accordingly.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Commission Regulation (EC) No 669/2009

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

(1) in Article 3, the last sentence of point (b) is replaced by the following:

> in the case of consignments entering the Union by sea or by air transport from a third country, which are unloaded for the purposes of being loaded on respectively another vessel or aircraft in the same port or airport for onward travel to another port or airport in one of the territories referred to in Annex I to Regulation (EC) No 882/2004, the designated point of entry shall be the latter port or airport;;

(2) Article 13 is replaced by the following:

Article 13

Non-compliance

1 If the official controls establish non-compliance, the responsible official of the competent authority shall complete Part III of the common entry document and action shall be taken pursuant to Articles 19, 20 and 21 of Regulation (EC) No 882/2004.

2 Where the competent authority at the designated point of entry does not permit the introduction of a consignment of feed and food listed in Annex I due to non-compliance with a maximum residue level set out in Regulation (EC) No 396/2005, it shall immediately notify such border rejection in accordance with Article 19(3) of Regulation (EC) No 882/2004.;

(3) Annex I is replaced by the text in the Annex I to this Regulation.

Article 2

Amendments to Implementing Regulation (EU) No 885/2014

Implementing Regulation (EU) No 885/2014 is amended as follows:

(1) in Article 1, paragraph 1 is replaced by the following:

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1. This Regulation shall apply to consignments of the food of non-animal origin which is listed in Annex I.;

(2) Annex I is amended as set out in Annex II to this Regulation.

Article 3

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

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

Done at Brussels, 2 July 2018.

For the Commission

The President

Jean-Claude JUNCKER