COMMISSION REGULATION (EC) No 1234/2003

of 10 July 2003

amending Annexes I, IV and XI to Regulation (EC) No 999/2001 of the European Parliament and of the Council and Regulation (EC) No 1326/2001 as regards transmissible spongiform encephalopathies and animal feeding

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (TSEs) ([1]), as last amended by Commission Regulation (EC) No 1139/2003 ([2]), and in particular Article 23 thereof,

Whereas:

(1) Article 7 of Regulation (EC) No 999/2001 lays down certain prohibitions concerning animal feeding. By way of a transitional measure, Commission Regulation (EC) No 1326/2001 ([3]), as amended by Regulation (EC) No 270/2002 ([4]), provides that Article 7 of Regulation (EC) No 999/2001 is not to apply to a Member State until the coming into force of the decision determining the bovine spongiform encephalopathy (BSE) status of that Member State, and until the Community provisions on animal feeding relevant to TSEs are effectively enforced in the Member State.

(2) Council Decision 2000/766/EC of 4 December 2000 concerning certain protection measures with regard to transmissible spongiform encephalopathies and the feeding of animal protein ([5]), as last amended by Commission Decision 2002/248/EC ([6]), provides for the prohibition of feeding of processed animal protein to farmed animals which are kept fattened or bred for the production of food. However, under certain conditions, that prohibition does not apply to a number of processed animal proteins such as fishmeal, hydrolysed proteins and dicalcium phosphate, the use of which does not present a risk of TSEs nor hampers controls of proteins potentially posing a risk of TSEs.

(3) Accordingly, Commission Decision 2001/9/EC of 29 December 2000 concerning control measures required for the implementation of Council Decision 2000/766/EC concerning certain protection measures with regard to transmissible spongiform encephalopathies and the feeding of animal protein ([7]), as last amended by Decision 2002/248/EC, established the conditions for the use of processed animal protein in feed not covered by the prohibition provided for in Decision 2000/766/EC.

(4) Regulation (EC) No 1774/2002 of the European Parliament and of the Council of 3 October 2002 laying down health rules concerning animal by-products not intended for human consumption ([8]), as amended by Commission Regulation (EC) No 808/2003 ([9]), lays down animal and public health rules for the collection, transport, storage, handling, processing and use or disposal of animal by-products, including conditions for their use in animal feeding. That Regulation became applicable on 1 May 2003.

(5) Taking into account the fact that it is possible, although difficult, to differentiate between fishmeal and other processed animal proteins potentially posing a risk of TSEs, and also that Regulation (EC) No 1774/2002 introduced new provisions on the controls of all processed animal proteins, the conditions on the use of fishmeal as currently set out in Decision 2001/9/EC, should be simplified.

(6) The Scientific Steering Committee (SSC) indicated in its opinion of 17 September 1999 on intra-species recycling, and again in its opinion of of 27 and 28 November 2000 on the scientific basis for banning animal protein from feed for all farmed animals, that there is no evidence of the natural occurrence of TSE in non-ruminant farmed animals producing food, such as pigs and poultry.

(7) Animal proteins from such non-ruminant farmed animals are presently prohibited or restricted under Decisions 2000/766/EC and 2001/9/EC because they cannot be differentiated from prohibited ruminant proteins by current tests. However, certain proteins do not jeopardise the control of potentially infective processed animal protein in feedingstuffs and their use in animal feeding should therefore be authorised.

([1]) OJ L 147, 31.5.2001, p. 1.
([2]) OJ L 160, 28.6.2003, p. 22.
([3]) OJ L 177, 30.6.2001, p. 60.
([4]) OJ L 45, 15.2.2002, p. 4.
([5]) OJ L 306, 7.12.2000, p. 32.
([6]) OJ L 84, 28.3.2002, p. 71.
([7]) OJ L 2, 5.1.2001, p. 32.
([8]) OJ L 273, 10.10.2002, p. 1.
([9]) OJ L 117, 13.5.2003, p. 1.

(8) On 6 and 7 March 2003, the SSC adopted an opinion and report on the safety of dicalcium phosphate and tricalcium phosphate from bovine bones, used as animal feed or as fertiliser. Since tricalcium phosphate is not considered to present a TSE risk provided that certain processing conditions are complied with, and since it does not jeopardise the control of potentially infective animal protein, the use of tricalcium phosphate should be authorised.

(9) As no decision has yet been taken concerning the determination of the BSE-status of Member States, and in the interests of clarity, the provisions set out in Decision 2000/766/EC should apply to all Member States regardless of their future BSE status. In addition, those provisions should be updated to take account of Regulation (EC) No 1774/2002.

(10) In order to ensure that BSE is not transmitted to third countries through potentially contaminated processed animal protein, and to prevent the risk of their fraudulent re-introduction in the Community, the export of processed animal protein of ruminant origin, except when used in petfood, should be prohibited.

(11) As and when the necessary control tools and reasonable evidence that the implementation of the current provisions is satisfactory in all Member States become available, the prohibition on the use of fishmeal to ruminants, the use of avian protein to farmed animals other than ruminants and the use of porcine protein to farmed animals other than ruminants should be reviewed.

(12) Regulation (EC) No 999/2001 should therefore be amended accordingly. In addition, Decisions 2000/766/EC and 2001/9/EC should be repealed.

(13) 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

Annexes I, IV and XI to Regulation (EC) No 999/2001 are amended in accordance with the Annex to this Regulation.

Article 2

In Article 1 of Regulation (EC) No 1326/2001, point 2 is deleted.

Article 3

Decisions 2000/766/EC and 2001/9/EC are repealed. References to the repealed Decisions shall be construed as references to this Regulation.

Article 4

This Regulation shall enter into force on 1 September 2003.

The provisions of this Regulation shall be reviewed in the light of emerging scientific evidence and new control methods.

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

Done at Brussels, 10 July 2003.

For the Commission

David BYRNE

Member of the Commission

ANNEX

Annexes I, IV and XI to Regulation (EC) No 999/2001 are amended as follows:

1. Annex I is replaced by the following:

'ANNEX I

SPECIFIC DEFINITIONS

1. For the purpose of this Regulation, the following definitions set out in Regulation (EC) No 1774/2002 of the European Parliament and of the Council (*), Regulation (EC) No 178/2002 of the European Parliament and of the Council (**) and Council Directive 79/373/EEC (***) shall apply:
   (a) Regulation (EC) No 1774/2002:
      (i) "farmed animal" in Article 2(1)(f);
      (ii) "petfood" in point 41 of Annex I;
      (iii) "processed animal protein" in point 42 of Annex I;
      (iv) "gelatine" in point 26 of Annex I;
      (v) "blood products" in point 4 of Annex I;
      (vi) "bloodmeal" in point 6 of Annex I; and
      (vii) "fishmeal" in point 24 of Annex I.
   (b) the definition of "feedingstuff" in Article 3(4) of Regulation (EC) No 178/2002;
   (c) the definition of "complete feedingstuff" in Article 2(d) of Directive 79/373/EEC.
2. For the purpose of this Regulation, the following definitions shall also apply:
   (a) "indigenous case of BSE": means a case of bovine spongiform encephalopathy which has not been clearly demonstrated to be due to infection prior to importation as a live animal;
   (b) "discrete adipose tissue": means internal and external body fat removed during the slaughter and cutting process, in particular fresh fat from the heart, caul and kidney of bovine animals, and fat from cutting rooms;
   (c) "cohort": means a group of bovine animals which were,
      (i) born in the same herd as the affected bovine animal, and within 12 months preceding or following the birth of the affected animal; or
      (ii) reared together with the affected bovine animal at any time during the first year of their life and which may have consumed the same feed as that which the affected bovine animal consumed during the first year of its life.

(*) OJ L 273, 10.10.2002, p. 1.
(**) OJ L 31, 1.2.2002, p. 1.
(***) OJ L 86, 6.4.1979, p. 30.'

2. Annex IV is replaced by the following:

'ANNEX IV

ANIMAL FEEDING

Extension of the prohibition provided for in Article 7(1)

1. The prohibition provided for in Article 7(1) shall be extended to the feeding:
   (a) to farmed animals, with the exception of the feeding of carnivorous fur producing animals, of:
      (a) processed animal protein;
      (b) gelatine of ruminant origin;
      (c) blood products;
      (d) hydrolysed protein;
      (e) dicalcium phosphate and tricalcium phosphate of animal origin;
      (f) feedingstuffs containing the proteins listed in points (a) to (e);
   (b) to ruminants of animal protein and feedingstuffs containing such protein.

2. I. Derogations from the prohibitions provided for in Article 7(1) and (2), and specific conditions for the application of such derogations.

A. The prohibitions provided for in Article 7(1) and (2) shall not apply to:

(a) the feeding to non-ruminants of the proteins referred to in (i), (ii) and (iii), and of feedingstuffs derived from such proteins, provided that those proteins have been processed where applicable in accordance with Article 19 of Regulation (EC) No 1774/2002:

(i) fishmeal, in accordance with the conditions laid down in point B;

(ii) hydrolysed proteins derived from non-ruminants and ruminant hides and skins, in accordance with the conditions laid down in point C;

(iii) dicalcium phosphate and tricalcium phosphate, in accordance with the conditions laid down in point D;

(b) the feeding to ruminants of the proteins referred to in (i), (ii) and (iii), and of products derived from such proteins, provided that the proteins have been processed where applicable in accordance with the provisions in Article 19 of Regulation (EC) No 1774/2002:

(i) milk, milk-based products and colostrum;

(ii) eggs and egg products;

(iii) gelatine derived from non-ruminants;

(c) the feeding to fish of blood products and bloodmeal derived from non-ruminants, provided that they have been processed where applicable in accordance with Article 19 of Regulation (EC) No 1774/2002 and of feedingstuffs derived from such proteins, in accordance with the conditions laid down in point E.

B. Conditions for the use of fishmeal and feedingstuffs containing fishmeal in the feeding of non-ruminant farmed animals with the exception of carnivorous fur producing animals.

(a) The fishmeal shall be produced in processing plants dedicated exclusively to the production of fish derived products, which shall be approved for this purpose by the competent authority in accordance with Article 17 of Regulation (EC) No 1774/2002.

(b) Before release for free circulation in the Community, each consignment of imported fishmeal shall be analysed in accordance with Commission Directive 98/88/EC (*).

(c) Feedingstuffs containing fishmeal shall be produced in establishments which do not produce feedingstuffs for ruminants and which are authorised for this purpose by the competent authority.

However, by way of derogation from that condition:

(i) a specific authorisation for the production of complete feedingstuffs from feedingstuffs containing fishmeal is not required for home compounders:

— registered by the competent authority,

— keeping only non-ruminants,

— producing complete feedingstuffs for use only in the same holding, and

— provided that the feedingstuffs containing fishmeal used in the production contain less than 50 % crude protein;

(ii) the production of feedingstuffs for ruminants in establishments which also produce feedingstuffs containing fishmeal for other animal species may be authorised by the competent authority subject to the following conditions:

— bulk and packaged feedingstuffs destined for ruminants are manufactured in facilities physically separate from facilities where feedingstuffs containing fishmeal are manufactured,

— bulk feedingstuffs destined for ruminants are kept in facilities physically separate from facilities where bulk fishmeal and bulk feedingstuffs containing fishmeal are kept during storage, transport and packaging,

— records detailing the purchases and uses of fishmeal and the sales of feedingstuffs containing fishmeal are kept available to the competent authority for at least five years, and

— routine tests are carried out on feedingstuffs destined to ruminants to ensure that prohibited proteins including fishmeal are not present.

(d) The label and accompanying document of feedingstuffs containing fishmeal shall clearly indicate the words “contains fishmeal — cannot be fed to ruminants”.