Commission Implementing Regulation (EU) 2019/35 of 8 January 2019 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 (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2019/35

of 8 January 2019

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

(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) and 63(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 669/2009[(2)] 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 a designated point 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, Member States are required to submit to the Commission biannually a report on consignments of feed and food in the list, including details of each consignment, the number of consignments subjected to sampling for analysis and the results of the official controls carried out in accordance with Regulation (EC) No 669/2009. Certain Member States register the common entry documents issued by their respective competent authorities in accordance with Regulation (EC) No 669/2009 on a voluntary basis in the Trade Control and Expert System (TRACES) established by Commission Decisions 2003/24/EC[(3)] and 2004/292/EC[(4)], thus providing the Commission with details of each consignment, the number of consignments subjected to sampling for analysis and the results of the checks provided for in Regulation (EC) No 669/2009. The reporting obligation should therefore be deemed to be satisfied where Member States register in TRACES the common entry documents issued in accordance with Regulation (EC) No 669/2009 during the reporting period set out in that Regulation.

(3) Article 19(1) of Regulation (EC) No 669/2009 provides for a transitional period during which the minimum requirements for the DPEs may be progressively implemented

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and identity and physical checks may be carried out at control points other than DPEs. This transitional period was extended by Commission Implementing Regulation (EU) No 718/2014[(5)] until 14 August 2019, pending the outcome of the review of the provisions applicable to DPEs and to border controls in general. That review resulted in the adoption of Regulation (EU) 2017/625 of the European Parliament and of the Council[(6)], which is to apply from 14 December 2019. That Regulation provides that delegated acts are to be established concerning rules establishing the cases where and the conditions under which identity and physical checks on consignments of goods subject to a temporary increase of official controls may be performed by competent authorities at control points other than border control posts. Since those rules are to apply from 14 December 2019, it is appropriate to extend the transitional period until the day before that date.

(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, as established by Regulation (EC) No 178/2002[(7)] of the European Parliament and of the Council, information regarding official controls performed by Member States on feed and food of non-animal origin 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 aubergines from the Dominican Republic, beans from Kenya and peppers (other than sweet) from Uganda, the relevant sources of information indicate the emergence of new risks to human health due to possible pesticide residues contamination, requiring the introduction of an increased level of official controls. In addition, for consignments of black pepper from Brazil, sweet peppers from China and sesamum seeds from Ethiopia, the relevant sources of information indicate the emergence of new risks to human health due to possible *Salmonella* contamination requiring the introduction of an increased level of official controls. Entries concerning those consignments should therefore be included in the list.

(7) In addition, it is appropriate to delete 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 entry in the list concerning pineapples from Benin should therefore be deleted.

(8) Moreover, it is appropriate to increase the frequency of identity and physical checks on commodities for which the relevant sources of information indicate a degree of non-compliance with the relevant requirements provided for in Union legislation warranting an increased level of official controls. The entries in the list concerning sweet peppers and peppers (other than sweet) from Egypt, peppers (other than sweet) from India and Pakistan, peppers (sweet or other than sweet) from Sri Lanka and hazelnuts from Georgia should therefore be amended accordingly.

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(9) The scope of the entry concerning hazelnuts from Georgia should be amended to include forms of the product other than the ones currently listed, where those other forms present the same risk. It is therefore appropriate to amend the existing entry concerning hazelnuts from Georgia to include flour, meal and powder of hazelnuts and hazelnuts, otherwise prepared or preserved.

(10) 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 the Annex to this Regulation.

(11) 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 Regulation (EC) No 669/2009

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

(1) In Article 15, the following paragraph 4 is added:

4. The reporting obligations set out in paragraphs 1 and 2 shall be deemed to be satisfied where Member States have registered in TRACES the common entry documents issued by their respective competent authorities in accordance with this Regulation during the reporting period set out in paragraph 1.

(2) In Article 19, paragraph 1 is replaced by the following:

1. Until 13 December 2019, where a designated point of entry is not equipped with the facilities required to carry out identity and physical checks as provided for in Article 8(1)(b), those checks may be carried out at another control point in the same Member State, authorised for that purpose by the competent authority, before goods are declared for release for free circulation, provided that such control point complies with the minimum requirements laid down in Article 4.

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

Article 2

Entry into force and application

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.

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Done at Brussels, 8 January 2019.

For the Commission

The President

Jean-Claude JUNCKER

***Changes to legislation:** Commission Implementing Regulation (EU) 2019/35 is up to date with all changes known to be in force on or before 15 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

ANNEX

ANNEX I

Feed and food of non-animal origin subject to an increased level of official controls at the designated point of entry

Feed and food(intended use)	**CN code**[a]	**TARIC sub-division**	**Country of origin**	**Hazard**	**Frequency of physical and identity checks (%)**
— Groundnuts (peanuts), in shell	1202 41 00		**Bolivia (BO)**	Aflatoxins	50
— Groundnuts (peanuts), shelled	1202 42 00				
— Peanut butter	2008 11 10				
— Groundnuts (peanuts), otherwise prepared or preserved ***(Feed and food)***	2008 11 91; 2008 11 96; 2008 11 98				
— Black pepper (Piper) ***(Food – neither crushed nor ground)***	ex 0904 11 00	**10**	**Brazil (BR)**	*Salmonella*[b]	20
Goji berries (wolfberries) (*Lycium barbarum* L.) ***(Food — fresh, chilled or dried)***	ex 0813 40 95; ex 0810 90 75	**10** **10**	**China (CN)**	Pesticide residues[cd]	10
Sweet peppers (*Capsicum annuum*)	ex 0904 22 00	**11**	**China (CN)**	*Salmonella*[b]	20