Commission Regulation (EC) No 163/2009 of 26 February 2009 amending Annex IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (Text with EEA relevance)

COMMISSION REGULATION (EC) No 163/2009

of 26 February 2009

amending Annex IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies

(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[(1)], and in particular the first paragraph of Article 23 thereof,

Whereas:

(1) Regulation (EC) No 999/2001 lays down rules for the prevention, control and eradication of transmissible spongiform encephalopathies (TSEs) in animals. It applies to the production and placing on the market of live animals and products of animal origin and in certain specific cases to exports thereof.

(2) Article 7(1) and (2) of Regulation (EC) No 999/2001 provide that the feeding to ruminants and other animals of animal proteins is prohibited. Annex IV to that Regulation sets out derogations from that prohibition.

(3) Commission Directive 2003/126/EC of 23 December 2003 on the analytical method for the determination of constituents of animal origin for the official control of feedingstuffs[(2)] provides that official analysis of feedingstuffs with a view to officially controlling the presence, identification and/or estimation of the amount of constituents of animal origin in feedingstuffs is to be carried out in accordance with that Directive.

(4) For these purposes, the Community Reference Laboratory for the detection of animal proteins in feed (CRA-W) carried out proficiency testing of laboratories as part of its annual work programme, which have demonstrated the good performance of laboratories for detecting small amounts of constituents of animal origin in feedingstuffs using the analytical method as described in Directive 2003/126/EC.

(5) That improvement in laboratory performance has resulted in the detection of the adventitious presence of bone spicules, particularly in tuber and root crops. Pursuant to Regulation (EC) No 882/2004 of the European Parliament and of the Council of

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 163/2009. (See end of Document for details)*

29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules[3], appropriate measures are to be taken in case of non-compliance, which may include the destruction of the consignment.

(6) Point A(d) of Part II of Annex IV to Regulation (EC) No 999/2001 provides for a derogation from the prohibition laid down in Article 7(1) and (2) of that Regulation so that the feeding to farmed animals of tuber and root crops and feedingstuffs containing such products following the detection of bone may be permitted by the Member States if there has been a favourable risk assessment.

(7) It has been demonstrated that environmental contamination during harvesting of feed materials of plant origin by for example bone spicules cannot be avoided. Accordingly, the derogation set out in point A(d) of Part II of Annex IV to Regulation (EC) No 999/2001 concerning tuber and root crops should be extended to cover all feed materials of plant origin under certain conditions.

(8) Regulation (EC) No 999/2001 should therefore be amended accordingly.

(9) 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

In Part II of Annex IV to Regulation (EC) No 999/2001, point A(d) is replaced by the following:

(d) the feeding to farmed animals of feed materials of plant origin and feedingstuffs containing such products following the detection of insignificant amounts of bone spicules may be permitted by the Member States if there has been a favourable risk assessment. The risk assessment shall take into account at least the amount and possible source of contamination and the final destination of the consignment.

Article 2

This Regulation shall enter into force on the 20th day following 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, 26 February 2009.

For the Commission

Androulla VASSILIOU

Member of the Commission