

REFORM OF THE EC MARKETING STANDARDS CONCERNING THE MARKETING OF REGULATED FRESH FRUIT, SALADS, VEGETABLES AND NUTS IN ENGLAND AND WALES

Changes affecting traders in Fresh produce from 01 July 2009

Fundamental changes to EC Regulation 1580/2007 as amended by EC Regulation 1221/2008 alter the nature and number of marketing standards across the European Union. Specifically it reduces the number of products covered by Specific Marketing Standards (SMS) from 36 to 10, and at the same time introduces a General Marketing Standard (GMS) covering most other fresh products. The changes to the regulation has also required a new Statutory Instrument (S.I.) which relates to inspection and enforcement of Marketing Standards under English law.

This document aims to be a guide to the impact of these changes. Further detailed information is available on the HMI website, (address at end of document), at the log on to the HMI PEACH pages, from the CHIEF log on screens, and within the following new information leaflets:

“A guide for retailers”

“EC Marketing Standards for fresh Produce”

These new leaflets are available from your local Horticultural Marketing Inspector or via the links on the HMI webpage where further points of contact are also listed if you wish to talk to someone over any issues these changes raise.

Imported Fresh Produce

Summary

- **Specific Marketing Standard produce (SMS) – unchanged PEACH procedures for these 10 commodities**
- **General marketing Standard produce (GMS) - no notification required on PEACH for HMI purposes however this produce does need to meet the generic criteria in the standard**
- **Produce for processing - no longer requires notification or certification for HMI purposes**

There is a reduced number of commodities that require notification to the Horticultural Marketing Inspectorate (HMI) via the PEACH system.

These changes are applicable from 1 July 2009. From this date you will have to make PEACH applications to HMI for all varieties (where applicable) of the following products **only:**

Apples, Pears, Peaches and Nectarines, Kiwifruit, Grapes, Sweet Peppers, Lettuce, Citrus Fruit, Strawberries and Tomatoes.

These 10 commodities continue to have to meet the specific marketing standards for quality and labelling requirements. They will be subject to a risk analysis on entry and will continue, as now to be assigned a Green, Amber, or Red ball status. Where deemed necessary there will continue to be inspections of Red or Amber ball consignments. If you are importing material which is regulated jointly by the HMI and Plant Health then you must select the HMI & Plant Health authority (i.e. the Joint forms). Please note that the commodities listed as Jointly regulated are commodities found only on the Joint forms and NOT on the HMI only forms.

Please note that the Joint 6i should be used for:
Apples, Pears, Peaches and Nectarines, Citrus Fruit,

And use the 6i for:
Lettuce, Grapes, Strawberries, Kiwifruit, Tomatoes, Sweet Peppers,

Processing: The changes will also remove the need for HMI certification of fresh produce destined for processing, so no Processing applications will be required for HMI purposes from 1 July 2009.

Please note: FERA (Formerly Plant Health) requirements have not changed and all Plant Health consignments continue to need an application through PEACH.

There will be no requirement to notify commodities subject to the General Marketing Standard to HMI at import point through PEACH. However please note that some commodities such as Aubergines should continue to be notified to FERA (formerly Plant Health) through the PEACH system. Any Plant Health enquiries should be directed to FERA.

The existing PEACH helpline facilities will continue to be available.

Textural changes will be noticed on HMI forms to accommodate the new regulation and legislation titles and these will be explained by the inspector when the paperwork is issued.

Details will be available shortly on the Approved Trader Status Scheme (ATS) which is to be extended to Importers who can meet certain competency requirements.

The new regulation requires the control authority (HMI) to intervene if a General Marketing Standard commodity is found to have an increased risk of non-conformity at the import point. Therefore after the advisory period, based on risk evidence captured from in country inspections, GMS produce could, as a last resort, be subject to a "customs hold" for the purposes of an HMI quality control inspection. Detailed information on this procedure will be made available by 01 October 2009.

Impact for Retailers, Wholesalers, Producers and Distributors of fresh produce within England and Wales

Summary:

- **Premises will continue to be visited for inspection purposes on the basis of risk by HMI inspectors.**
- **Traders are obliged to ensure all produce subject to the regulations is SMS or GMS compliant as applicable**
- **Undertakings for bringing defective produce into conformity will still be required**
- **Some forms, official labels and Inspector authorisations ("warrants") will look different due to text changes**
- **Additional options for correcting defective produce will be available**
- **Mixed packages up to 5 kg have new options for origin labelling**

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Traders within the domestic market of England and Wales are obliged by the regulation to ensure SMS and GMS produce meets the requirements of the relevant standard. Prescriptive standards for quality and labelling apply to the 10 SMS crops and are very much “business as usual”. The GMS will apply to a very wide range of additional produce lines (but not all) so traders should become familiar with this extended commodity list. Information is available on the HMI website, within the EC Regulation, and within the advisory leaflets detailed earlier in this document. The GMS is a generic minimum standard with a labelling requirement. Broadly speaking the following must be observed. Products must be **sound, fair and marketable**. This is further defined:-

- Intact
- Sound (for example, not rotten, severely bruised or severely damaged)
- Clean
- Practically free from pests
- Practically free from damage caused by pests
- Free of abnormal external moisture
- Free of foreign smell or taste
- Sufficiently mature
- Additionally all GMS produce must state a country of origin

Procedures such as inspector visits, inspections, undertakings and the issue of official notices will continue. Changes to the text within official forms and the terminology will be apparent to accommodate regulatory requirements. The wording on the official orange coloured regrading labels will be noticeably changed and a new label to indicate a “labelling” defect will be used where necessary. HMI inspectors will advise of these changes to the forms and the labels, and to the meaning of the new terminology where applicable.

The amended EC Regulation creates a new category of produce which may be marketed, and allows a new option to be considered when an SMS product is subject to action. SMS produce that fails the criteria of that standard, but still meets the less exacting generic GMS criteria can be legitimately marketed further. It has to be clearly labelled and meet the following criteria as stated in the regulation- “products presented for retail sale to consumers for their personal use and labelled ‘product intended for processing’ or with any other equivalent wording”. Further guidance is provided in the HMI leaflet “A guide for retailers”, however it should be noted that where this option is exercised produce will require labelling in accordance with the regulatory requirements before being marketed any further through the distribution chain. As an example of this Strawberries which fail the SMS due to colouring defects could be offered at the retail point providing they remain compliant with GMS and are clearly labelled in line with the regulation, for example ‘strawberries for home jam making’ or similar wording.

Simplification for the marketing/labelling of mixed types of fruit and vegetables

The marketing of such packages is permitted if they weigh no more than 5kgs.

The products must be of uniform quality and comply with the relevant marketing standard. If the package contains produce from more than one EC country (Member State) or country outside the EC (Third Country) the origins may be replaced by the following:

- Mix of EC fruit and vegetables.
- Mix of Non-EC fruit and vegetables.
- Mix of EC and Non-EC fruit and vegetables.

HMI advisory and educational approach to enforcement –01 July to 30 September 2009

Given the complexity of the changes this regulatory reform brings about, and the fundamental nature of some of the new requirements, the HMI will modify its enforcement approach for a 3 month period. This will allow the industry the time and space to familiarise themselves with their new obligations and similarly for the inspectorate to work with our customers to advise and educate. It should however be noted that the regulation and its obligations become legally binding from 01 July 2009. The deregulatory aspects including the revised and new procedures will be fully available from that date, and traders should be marketing within the rules. Close contact and dialogue will be maintained with industry representative bodies to manage any issues that become disruptive to otherwise smooth and collaborative working.

In this 3 month period, the new forms and labels and the new undertakings (for “home processing” for example) will be used if an inspector decides it necessary. Whilst traders will be expected to co-operate with the inspectors, and provide undertakings and bring produce into conformity, HMI will not be considering heightened enforcement action on any firm, or collecting evidence for enforcement purposes. The inspections and procedures will be the vehicle for dialogue and advice to ensure the industry becomes familiar with the new regulatory environment. The extended range of produce subject to the new minimum standards within the GMS will need close collaboration and advice.

Further interpretive notes and guidance upon key GMS crops will be made available on the HMI website. Whilst this period will end on 30th September 2009, HMI data capture allows us to identify any firm receiving its first visit post 01 July, and this will be treated as advisory in nature. Inspections during the 3 month advisory period will be recorded but will not influence future risk based visits, this will start afresh from 01 October 2009. HMI reserve the right to exercise their wider powers of enforcement however if a flagrant or blatant disregard for the regulations, especially the “business as usual” SMS rules is evident. This would include the issue of a Stop Notice to restrict movement of defective produce.

Further contacts and advice

You can get copies of the UK and EC legislation, further new information leaflets and copies of the relevant marketing standards from the Rural Payments Agency website at www.rpa.gov.uk (then select the HMI link).

Import guidance is at the log on screen to PEACH for registered users.

A Customs Information paper will be available from the normal channels for importers using the HMRC CHIEF system

You can get further advice on how to apply the UK legislation, EC Marketing Standards and the EC regulations from:

Horticultural Marketing Inspection Queries:

Telephone: 0845 607 3224

E-mail: HMI-TDC@rpa.gsi.gov.uk

Tony Crouch HMI

RPA Inspectorate June 2009.