

4th May 2006

Philip Flaherty
Food Standards Agency Enforcement Division
Room 115 Aviation House
125 Kingsway
London WC2B 6NH



Dear Mr Flaherty,

Public Consultation on Priorities for Local Authority

Thank you for inviting us to comment on the above consultation. I am responding on behalf of GM Freeze.

GM Freeze is an alliance of 50 organisations calling for a moratorium on GM foods, the growing of GM crops for any purpose and on patents on genetic resources in agriculture, food production and forestry until the need for and safety of GM technology has been established and alternative approaches have been fully evaluated.

Our members include consumer groups, farming organisations, environmental groups, development agencies, religious groups, animal welfare groups and food companies.

Our response will look at the overall approach used in the consultation and make specific comments on the enforcement of the GMO Traceability and Labelling Regulations 2004/05.

General Comments

GM Freeze recognises that the work load of local authorities on food law enforcement is complex and growing as the sources of food entering the food chain become more varied and the chain itself has become more complicated. The UK's legislative framework has had to adapt to the fast changing world of food and feed supply often as a result of EU regulations and directives.

GM Freeze also recognises that these pieces of legislation do not necessarily get approved in any logical order and some times are introduced in response to a crisis.

In 2005, GM Freeze published a report on the enforcement of the GMO Traceability and Labelling Regulations by UK local authorities in which one respondent reported that trading standards departments have "in excess 60 Acts of Parliament and many more Regulations" to enforce covering a very diverse range of issues from sales of alcohol to food labelling. Environmental Health Officers are similarly faced with a growing and complex set of demands for law enforcement and routine monitoring of food preparation premises.

GM Freeze assumes that the legislative bodies in Brussels, Westminster, Cardiff, Edinburgh and Belfast, who passed these laws, felt they were important and did so in the belief that they should be enforced. However there does not appear to be any mechanism within the regulatory process to assess the impact of new rules on local authority workloads in marked contrast to the regulatory impact assessment which are now routinely carried out to look at the impact on businesses. We feel that such

an assessment would enable adequate additional staff and resources to be assigned to each new regulation as it comes into force instead of the present situation where existing staff and budgets are spread thinner and thinner.

The need for this consultation arises from the failure of the legislators to recognise that enforcement of food laws take time, expertise and money and that the burden of enforcement often falls to local authority departments which are already over extended.

GM Freeze believes that there is a need to review how food law is enforced at the local level to ensure that it is more effective in maintaining standards and achieving outcomes. GM Freeze seeks re-assurance from the FSA and Treasury that this exercise will not be used to bring in cost-cutting measures which compromises public safety and standards of enforcement.

We suggest that greater transparency of the whole process of selecting the proposed measures is required.

The Current Consultation

The current consultation prioritises the following activities:

- Foodborne disease prevention.
- Tackling rogue businesses on adulteration, contamination, fraud and misdescription.
- Advice on food hygiene to maximizes compliance with Regulations.
- Promote public health and healthier life styles and consumer choice.
- The investigation of consumer complaint.

The consultation lists the following activities as being “not a priority”:

- Local authority radiation monitoring routine microbiological sampling.
- Routine inspection of food premises.
- Routine checks on food labels that are not risk-based.
- On targeted advice and information not linked to maximizing compliance or a specific campaign.

Respondents are requested to comment on the proposal in one of three ways:

Option 1 – do nothing.

Option 2 – adopt the FSA proposals without amendment.

Option 3 - amend the lists by adding or deleting priorities or changing the scope but this would have to be offset by adding or deleting areas elsewhere.

GM Freeze believes that the way these choices are presented could lead to the impression that the decision is a *fate accompli*. Based on the information provided it is difficult to make a reasoned response because there is no definitive list of which Regulations will be in the prioritised list of activities and which will be de-prioritised.

For instance the enforcement of the GMO Traceability and Labelling Regulations 2004 and 2005 across the UK could be included in both lists.

It could be a priority under “tackling rogue businesses” because of the need to prevent contamination of food and feed with unauthorised GMOs (a la the Bt10 incident revealed in 2005 – see later) and to ensure that food and feed are accurately

labelled as to their GM content. These Regulations could also come under the proposed priority activity of investigating consumer complaints.

On the other hand, enforcing the GMO Traceability and Labelling Regulations could easily fall into the de-prioritised list covered by "routine checks on food labels that are not risk based" or by dropping non-targeted consumer advice.

Such ambiguity will not help local authorities make decisions on which regulations to prioritise or help consumers be re-assured that the regulations are being enforced sufficiently to ensure compliance.

The question is asked whether enforcement could be more "passive" in the non-priority areas. There is no information as to what this actually means in practice – does it really mean non-existent?

The lack of information provided in the current consultation means that GM Freeze cannot come to a reasoned conclusion about whether such a prioritisation process is desirable or whether it will be effective across all aspects of food law.

A Different Approach

A different approach to the consultation would be to have set out which food legislation local authorities are charged with enforcing and what non- statutory activities they carry out (such as routine hygiene inspection and advice) in addition.

These could be grouped under specific headings such as prevention of foodborne disease or investigating rogue businesses or consumer information. For each activity the desired outcome and performance of local authority activity could have been provided along with the annual costs plus an assessment of the impact if the activity was de-prioritised.

From this list of activities the FSA could have put forward proposals to be prioritised and de-prioritised . Respondents would thus have sufficient information to assess whether the FSA's proposals made sense. They would also have been able to put forward their own list. ***Indeed having seen the full array of food legislation which local authorities enforce, consultees may have chosen a fourth option which is to review how the current legislation can be enforced more efficiently without having to prioritise.***

In the current consultation paper, insufficient information has been provided for GM Freeze to either endorse the FSA's proposals or reject them because there is no way to assess the overall impact of the proposals on the desired outcomes of the FSA's and local authority activity. GM Freeze believes that these outcomes should be:

- Safe, wholesome food and animal feed for all.
- Environmental sustainability of the food chain.
- A high standard of animal welfare.
- Accurate information so that people know exactly what they are purchasing and can make informed choices based on safety, ethics, animal welfare and sustainability.
- Sufficient levels of enforcement to ensure that safety, welfare and choice can be guaranteed.
- Maintenance of skills and capacity to deal with a food crisis quickly and efficiently from where ever it comes.

The Current Situation

Based on our survey of the enforcement of the GMO Traceability and Labelling Regulation 2004/05 in the UK, we concluded that the then level of local authority activity was not sufficient to guarantee that food and feed labelling was accurate or that no unauthorised GMOs were present in the UK chain. A copy of the report is enclosed and can be downloaded from http://www.gmfreeze.org/admin/uploads/report_doc.pdf

The latter conclusion was re-enforced by the revelation that Bt10 GM maize had been illegally entering the EU for 4 years from 2001 to 2005 without being detected and that, even when the contamination was made known to EU regulators, no analytical method was available to test for Bt10 for about 6 weeks. Furthermore there was an inexplicable delay of six months between the FSA being in possession of the analytical methods for Bt10 and them requesting local authorities to monitor imported cargoes and animal feed. Bt10 GM maize contains an ampicillin resistant marker gene which is one of a group banned by the EU because of concern that they may horizontally transfer to pathogenic gut bacteria compounding the current antibiotic resistant problems in human and veterinary medicine. Thus, although it is known that around 1000 tonnes of Bt10 maize illegally entered the EU, the FSA failed to act in time to determine whether any entered the UK or not.

In the future, the range of GM crops grown around the world may include those engineered to produce pharmaceuticals or industrial chemicals. The Bt10 incident, along with others such as Starlink GM maize in 2000¹ and Prodigen GM pharmaceutical maize contamination in 2002², shows the ease by which food or feed can be contaminated with unauthorised GM traits which could threaten human health.

Currently, across the whole of the UK three different local authority departments (Trading Standards, Environmental Health and Port Health Authorities) and one department of government (Department of Agriculture and Rural Development Northern Ireland) are involved (depending in which country you live) in enforcing the GMO Traceability and Labelling Regulations.

GM Freeze believes that primary role for enforcement of the GMO Traceability and Labelling Regulations should be with the Port Health Authorities (PHA). They should test at risk cargoes and batches at ports of entry into the UK. This would be the most efficient way to stop contaminated or incorrectly labelled cargoes from entering the food chain. The PHAs would need to receive additional funds and technical assistance. In addition, the necessary analytical methods for a full range of GMOs currently being cultivated commercially or experimentally in the exporting countries would need to be made available by biotech companies.

We would urge the FSA to review the enforcement of the GMO Traceability and Labelling Regulations from the point of view of public health before any decisions relating to prioritisation are made. As part of this review the costs to the tax payer and industry of purging the food and/or food chain of unauthorised

¹ Schuff, S. 2001. *Major seed companies say they have StarLink isolated*. 12 March. Feedstuffs.

² <http://www.aphis.usda.gov/lpa/news/2002/11/prodigene.html>

GMOs should be assessed. Experience following the accidental contamination of human food with Starlink Maize in 2000³ suggests that these alone would run to millions of pounds before any costs of treating the harm to human or animal health are taken into account.

Maintaining capacity to deal with Unexpected

GM Freeze is concerned that the FSA's proposals on prioritising the enforcement of food by local authorities could lead to a loss of capacity to deal with the unexpected events and the ability to take swift action to protect public health, eg stopping local authority radiation monitoring and enforcement of the GMO Traceability and Labelling Regulations.

Whilst GM Freeze understands that efforts must be prioritised where problems are most likely to occur, we are also concerned that the focus within the priority options is on "targeted", "risk based", "intelligence led" enforcement. Aside from the fact that these terms are not defined, this is likely to lead to further reduced capacity to monitor for unexpected events, and assumes that target areas for enforcement are easily predicted.

It is also possible that any rogue operators in the food chain will be able to predict areas of enforcement and exploit any gaps left by any reduction/elimination of routine or random monitoring.

There have been numerous warning incidents in the past few decades which show the need to be prepared to be able to monitor and react quickly, for instance the Chernobyl disaster, Sudan Red food colourants, pesticides residues over the Maximum Residue Level and Bt10 GM maize. It is vital that levels of monitoring are consistent with a high level of compliance and that the FSA provides evidence that de-prioritisation will not reduce capacity to pick-up on harmful or unauthorised contamination of food as quickly as possible.

GM Freeze urges the FSA to avoid de-prioritisation of food and feed monitoring which will undermine the UK's ability to avoid harmful contamination incidents and to react appropriately should they occur.

Summary

GM Freeze supports a review of how food law is enforced by local authorities to ensure that it is more effective in maintaining standards and achieving outcomes. However, we are concerned that the current consultation may be used by the FSA and Treasury to identify cost cutting measures which compromises public safety and standards of enforcement.

GM Freeze recommends that for each new food regulation, a local authority impact assessment should be carried out to ensure adequate staff time and money are allocated to their enforcement.

GM Freeze would like to see far greater transparency of the whole consultation process including the methods behind the FSA's choices for prioritisation.

³ Elias, P.. Biotech firms pay \$110 million to settle StarLink lawsuit, 7th 2003 February, Associated Press. http://ipm.osu.edu/trans/023_071.htm

To achieve this more information has to be provided. At present GM Freeze is unable to either endorse the FSA's proposals or reject them because there is no way to assess the overall impact of the proposals on the desired outcomes across the range of laws which local authorities have to enforce.

GM Freeze proposes that the best outcome from the GMO Traceability and Labelling Regulations could be achieved by monitoring all at -risk cargoes and batches at ports of entry into the UK. Port Health Authorities should be the lead authority and receive sufficient funds and technical assistance to achieve this goal including assess to analytical methods for all GMO being cultivated experimentally or commercially.

GM Freeze calls upon the FSA to review the enforcement of the GMO Traceability and Labelling Regulations from the point of view of the food industry and public health before any decisions relating to prioritisation are made - including the costs of removing contaminants and treating victims.

GM Freeze urges the FSA to avoid de-prioritisation of routine food and feed monitoring which will undermine the UK's ability to avoid harmful contamination incidents and to react appropriately should they occur.

I confirm that GM Freeze is happy for this response to be made publicly available.

Yours sincerely

Pete Riley
Campaign Director