VEJ No 9985 of 29/11/2023 (in force)

Guidance on authorisation of grazing on contaminated areas with special nature conservation considerations

Ministry: Ministry of Food, Agriculture and Fisheries

File number: Ministry of Food, Agriculture and Fisheries,

Danish Veterinary and Food Administration, Ref. No 2023-29-33-00388

Guidance on authorisation of grazing on contaminated areas with special nature conservation considerations;

contents

1. Introduction

This guideline supplements the Order on the authorisation of grazing on contaminated areas with special nature conservation considerations. The Order is relevant for food-producing animals, which includes animals that are fed, bred or kept for the production of food for human consumption. Including animals not used for human consumption but belonging to species normally used for human consumption.[1]

The Order provides for food-producing animals to be included in the nature conservation of contaminated areas. This applies to areas with specific nature conservation considerations and where the contamination of the area may pose a risk to food safety but not a risk to animal health and welfare when grazed by food-producing animals.

When the area is contaminated to such an extent that grazing with food-producing animals may pose a risk to food safety, the grass is considered dangerous feed under EU feed and food law, and the areas may therefore in principle not be grazed by food-producing animals.

As it may be necessary to maintain the possibility of grazing these areas in the interests of nature conservation,

this will be subject to authorisation of the animals to graze the areas and, at the same time, that restrictions on the animals apply so that the animals or products derived from the animals cannot enter the food chain. Subsequently, there will no longer be a risk to food safety and the grass will therefore no longer be considered dangerous feed under EU feed and food law.

An animal that is restricted from food use, or products derived from such an animal, shall not be processed into or placed on the market as food. However, the Order provides for the possibility for the animals later to have the restriction on use as food lifted if it can be documented that the animal does not pose a risk to the food chain.

2. Concepts and abbreviations

Identification code of the animal:	As defined in Commission Delegated Regulation (EU) 2019/2035 of 28 June 2019.
CHR:	The Central Livestock Register.
CHR number:	A unique registration number a company is assigned in the CHR.
Dangerous feed[3]:	Feed shall be considered as dangerous for the intended use if it is considered to: 1) have an adverse effect on human and animal health; or 2) make a food derived from food-producing animals unsafe for human consumption.
Food producing animals:	As defined in Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009.
Field block:	As defined in the Order on applications etc. for certain schemes for farmers in "Type yourself" (a digital self-service solution).
Marketing:	As defined in Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002.
Operator:	As defined in Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016.
PFAS:	Per- and polyfluorinated alkylated substances.
Designated laboratory:	Laboratory, which according to the European Parliament and Council Regulation (EU) 2017/625 of 15 March 2017 has been designated to carry out analyses on samples taken in the context of official controls and other official activities.
Unique code:	As defined in Commission Delegated Regulation (EU) 2019/2035 of 28 June 2019.

[3] See Article 15 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002.

3. Authorisation for the grazing on contaminated areas with special nature conservation concideration

3.1. Which grazing areas are covered by the Order

The possibility of grazing on contaminated areas by food-producing animals is specifically linked to the following types of areas:

– *Natura 2000 sites*: Areas protected under the EU nature conservation directives. These areas are designated in accordance with the Order on the designation and administration of international nature conservation areas[4] (under the authority of the Environmental Protection Agency).
– *Section 3 areas:* Protected habitats under section 3 of the nature conservation act[5] (under the authority of the Danish Environmental Protection Agency).
– *Areas covered by a grant commitment for the care of grassland and natural areas:* Areas for which commitments have been made under the Order on subsidies for the care of grassland and natural areas[6] (under the Danish Agricultural Agency's authority).

The above areas are subject to special nature conservation considerations. In practice, there is often an overlap between the areas mentioned.

The contamination of the area must be such that animals grazing on the area and exposed to the contamination may pose a risk to food safety. Therefore, grazing will only be possible for food-producing animals that are subject to a restriction on food use. At the same time, the contamination must not pose a risk to the health and welfare of the animal, as this would involve the feeding of hazardous feed. It would not be in accordance with EU feed and food law[7], just as it follows from the animal welfare act[8], that animals must be protected from, among others, suffering and lasting harm.

At the time of its entry into force, the order is expected to apply primarily to areas where contamination by per- and polyfluoroalkyl substances (PFAS) has been detected under the order on per- and polyfluoroalkyl substances (PFAS) in cattle and sheep[9]. If there is knowledge of other contaminants in the areas in question, which in a similar way could pose a risk to food safety, such contaminants will also be covered by the order on authorisation of grazing on contaminated areas with special nature conservation considerations.

For PFAS, the degree of contamination in the area can be assessed both on the basis of measurements of PFAS in the environment and on the basis of knowledge about PFAS content in animals that have previously grazed the area. For other chemical contaminants, the assessment must be based on the available information, e.g. EU limit values for content in food and knowledge of uptake and distribution in grazing animals.

There is no requirement for the entire grazing area to be protected or covered by commitments under the above rules. As long as part of the grazing area is subject to special nature conservation considerations, an operator may request authorisation to use food-producing animals for grazing the contaminated area. There is no lower limit to the proportion of a polluted grazing area that must be covered by special nature conservation considerations.

3.2 How to request permission

An operator must apply in writing to the Danish Veterinary and Food Administration for permission to graze

contaminated areas with special nature conservation considerations. The operator is obliged to document that the area to be grazed is within an area subject to special nature preservation considerations and that the area is contaminated, as described in section 3.1.

The request must be sent digitally to the local veterinary unit at least 30 days before the animal(s) is/are to be used for grazing the contaminated area. The animal(s) may only be released on the area in question when the Danish Veterinary and Food Administration has given permission for the animal(s) to graze the area and imposed a restriction on the use of the animal(s) as food. If animals are grazing a contaminated area before permission is granted, it will be a case of feeding with dangerous feed.

An operator shall, for a group of animals authorised to graze a contaminated area, create a new herd number associated with the CHR number of the contaminated grazing area. If the animals to graze the area are cattle, they must be moved to the new herd number. In the case of sheep intended for grazing the area, each animal must be entered in the operator's register for the new herd.

As an operator, you must state this in the request:

- the identification code or unique code of the animal(s);
- CHR number and herd number of the area,
- field block number(s) of the area, and
- evidence that the site and the pollution found on the area meets the requirements of the order, as described in section 3.1.

Information on the status of the area, i.e. whether the area or parts thereof are covered by special nature conservation considerations, may be sought from the landowner for the area or the relevant authority for the designation of areas with nature conservation considerations (the Danish Environmental Protection Agency, the Danish Agricultural Agency, etc.).

In relation to documentation on whether the contamination of the area may pose a risk to food safety[10], please contact the Danish Veterinary and Food Administration for further guidance.

Currently, indicator values have been established for when the presence of PFAS in either grass and/or surface water on the area is considered to pose a risk to food safety for grazing cattle and sheep in accordance with the order on per- and polyfluoroalkyl substances (PFAS) in cattle and sheep. These indicator values are set out in the Annex.

3.3 What does it mean to restrict food-producing animals from being used as food

When a food-producing animal is restricted from food use, the animal or its products shall not be processed into or placed on the market as food. Therefore, the animal must not be sent for slaughter and milk from the animal must not be placed on the market.

The operator shall inform the Danish Veterinary and Food Administration before placing on the market sheep subject to a restriction on use as food for living use. Bovine animals subject to a restriction may be marketed for living use without separate information to the Danish Veterinary and Food Administration.

You should also be aware that the offspring of restricted dams cannot enter the food chain. The offspring shall be restricted under the same conditions as the dam.

4. Lifting of restriction on use as food

4.1 The operator is responsible for documenting food safety

If the restriction on food use is to be lifted, evidence must be provided that the animal does not pose a risk to food safety. Since the animal has grazed an area which has been found to be contaminated, products derived from the animal are regarded as harmful to health and thus as dangerous food. In principle, therefore, the products may not be placed on the market.

It is up to the operator to demonstrate to the DVFA that the animal does not pose a risk to food safety. This can be done by chemical analysis of blood samples from animals that have grazed a contaminated area. It is up to the operator to bear the costs associated with sampling and the submission and analysis of blood samples.

The Danish Veterinary and Food Administration can give guidance on when the animals' content of the contaminants is expected to have decreased, if the animals are no longer exposed to the contamination in question, and if the animals are expected to excrete the contaminants over time. Animals contaminated with PFAS will slowly excrete PFAS if they are moved to an area that is not contaminated with PFAS.

4.2 Representative blood samples and analysis of samples

4.2.1 Sampling

Samples of blood shall be representative of the group of animals for which the restriction on food use is requested to be lifted.

In relation to PFAS, a representative sample means samples taken from at least 5 per cent of a group of animals that have grazed the same contaminated area during the same period. This is based on the principles laid down in Regulation (EU) No 1428/2022 laying down methods of sampling and analysis for the control of perfluoroalkyl substances in certain foodstuffs[12]. However, at least two animals shall be sampled and no more than sampling of 10 animals from the same group shall be required.

Thus, depending on the size of the group of animals, a representative sample shall be taken on the following basis:

1) Groups of 40 animals or less: at least two animals shall be sampled.
2) Groups of 41-200 animals: at least 5 % of the animals shall be sampled.
3) Groups of more than 200 animals: at least 10 animals shall be sampled.

Samples must be taken from the animals in the group that have grazed the contaminated area for the longest time during the total grazing period.

The same amount of blood must be collected from each animal in the sample group. Blood samples must be taken by a licensed veterinarian. Each sample must be marked with a unique identification of the day of sampling and the animal and population from which it was taken.

4.2.2 Laboratory analysis

Analyses of blood samples must be carried out by a laboratory designated by the Danish Veterinary and Food Administration to carry out those analyses. The Danish Veterinary and Food Administration can provide further information on which laboratories in Denmark or other EU countries that are designated to carry out a given analysis. The selected test laboratory can provide information on requirements for sample quantities, sample storage, sampling equipment, etc. The laboratory may pool samples from the same population to the extent permitted by the sensitivity of the analytical method. This is to perform as few tests as possible.

4.2.3 The Danish Veterinary and Food Administration can provide guidance on sampling

The Danish Veterinary and Food Administration can be contacted for guidance on when, on the basis of existing knowledge, it is recommended to take samples. The recommendation may be based, for example, on the length of time the animals have grazed a contaminated area, the type of contamination and the time that has elapsed since the animals have been exposed to the contamination.

In addition, the Danish Veterinary and Food Administration can provide information on the packaging types, minimum sample quantities and storage and transport conditions necessary to avoid contamination or deterioration of the samples, making them unsuitable for analysis for the substances in question.

The Danish Veterinary and Food Administration cannot be held responsible for whether the sampling and the results of subsequent analyses allow the restriction imposed on the animal(s) against use as food to be lifted.

4.3 Request for lifting of the restriction on use as food

If you as an operator have had analyses carried out on representative samples of blood from a group of animals that have been subject to a restriction on food use, you can ask the Danish Veterinary and Food Administration to lift the restriction.

The request must be sent digitally to the local veterinary unit of the Danish Veterinary and Food Administration no later than 14 calendar days before the animal(s) must enter the food chain.

The request shall contain the following information:

– CHR number of the operator.
– Identification code or unique code of the animal(s).
– Analysis results from the blood tests carried out.

4.4 The Danish Veterinary and Food Administration takes a decision

The DVFA compares the results of the submitted analyses with the applicable indicator or limit values for the relevant contaminants in blood. In the absence of limit values or indicator values for the pollutant(s) being analysed, a specific risk assessment shall be carried out on the basis of the analytical results.

So far, the order is expected to be primarily relevant for operators whose animals are to graze areas where contamination with per- and polyfluoroalkyl substances (PFAS) has been detected. For PFAS, the DVFA compares analytical results for blood samples with the DVFA indicator values for PFOS in blood (see Annex).

If the results of the analyses show that there is no risk to food safety, the Danish Veterinary and Food Administration takes the decision that the restriction on the animals can be lifted and the animals can then be placed on the market as usual.

If the analytical results show that a risk to food safety cannot be excluded, the restriction imposed on food use will continue to apply. As an operator, you have the opportunity to take and analyse new samples of blood from the same animal group at a later stage.

5. Sanction

Reference is made to the general principles on penalties set out in Chapter 13 of the Danish Veterinary and Food Administration's control guideline.

DVFA, 29 November 2023

Henrik Dammand Nielsen

1 See Article 3(2)(c) of Regulation (EC) No 767/2009 of the European Parliament and of the Council of 13 July 2009.
2 See Article 15 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002.
4 Order on the designation and administration of international nature conservation areas and the protection of certain species
5 Consolidation Act on Nature Conservation
6 Order on subsidies for the care of grassland and natural areas
7 See Article 15 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002.
8 Consolidation Act on Animal Welfare (Animal Welfare Act)
9 Order on per- and polyfluoroalkyl substances (PFAS) in cattle and sheep
10 See Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002.
11 See Article 14 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002.
12 See Table 4 of Commission Implementing Regulation (EU) No 1428/2022 of 24 August 2022 laying down methods of sampling and analysis for the control of perfluoroalkyl substances in certain foodstuffs

Annex

Indicator values and limit values for pollution with PFAS

DVFA indicator values for contamination with PFAS

The DVFA indicator values for PFAS in water, feed and blood indicate when there is a risk that the EU maximum levels of PFAS in meat are exceeded, as laid down in Commission Regulation (EU) 2023/915 of 25 April 2023 setting maximum levels for certain contaminants in food[13].

1. Contamination found in feed	
The indicator values for <u>PFOS</u> are: – 0.03 microgram/kg for bovine animals. – 0.15 microgram/kg for sheep.	The indicator values refer to the sum of linear and branched stereoisomers, regardless of whether they are chromatographically separated or not. The indicator values have been established on the basis of the total daily tolerance for the intake of PFAS by the animal species.
For the sum of <u>PFAS,</u> corresponding values are: – 0.12 microgram/kg for cattle. – 0.60 microgram/kg for sheep.	The indicator values refer to the sum of 4PFAS and their linear and branched stereoisomers, whether chromatographically separated or not, and to the sum of measured PFAS. The indicator values have been established on the basis of the total daily tolerance for the intake of PFAS by the animal species. For the sum of PFAS, the lower concentrations are calculated on the assumption that all the values below the limit of quantification are zero.
2. Contamination found in water	
The indicator values for <u>PFOS</u> are: – 0.02 microgram/liter for bovine animals. – 0.11 microgram/liter for sheep.	The indicator values refer to the sum of linear and branched stereoisomers, regardless of whether they are chromatographically separated or not. The indicator values have been established on the basis of the total daily tolerance for the intake of PFAS by the animal species.

For the sum of <u>PFAS,</u> corresponding values are: – 0.08 microgram/liter for cattle. – 0.44 microgram/liter for sheep.	The indicator values refer to the sum of 4PFAS and their linear and branched stereoisomers; whether chromatographically separated or not, and for the sum of PFAS measured. The indicator values have been established on the basis of the total daily tolerance for the intake of PFAS by the animal species. For the sum of PFAS, the lower concentrations are calculated on the assumption that all the values below the limit of quantification are zero.
3. Confirmed suspicion of contamination in blood	
The indicator values for <u>PFOS</u> are: – 3.3 microgram/liter for cattle. – 6.7 microgram/liter for sheep.	The indicator values refer to the sum of linear and branched stereoisomers, regardless of whether they are chromatographically separated or not.

EU maximum levels for PFAS in bovine and ovine meat under Commission Regulation (EU) 2023/915 of 25 April 2023 setting maximum levels for certain contaminants

	Maximum level, microgram/kg				
	PFOS	PFOA	PFNA	PFHxS	Sum of PFOS, PFOA, PFNA and PFHxS
Meat of bovine animals	0.30	0.80	0.20	0.20	1.3
Meat of sheep	1.0	0.20	0.20	0.20	1.6

[13] Commission Regulation (EU) 2023/915 of 25 April 2023 on maximum residue levels for certain contaminants