Commission Implementing Decision of 13 June 2013 amending Implementing Decision 2011/884/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China (Text with EEA relevance) (2013/287/EU)

COMMISSION IMPLEMENTING DECISION

of 13 June 2013

amending Implementing Decision 2011/884/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China

(Text with EEA relevance)

(2013/287/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety[(1)], and in particular Article 53(1) thereof,

Whereas:

(1) Commission Implementing Decision 2011/884/EU of 22 December 2011 on emergency measures regarding unauthorised genetically modified rice in rice products originating from China and repealing Decision 2008/289/EC[(2)] provides for a review of the emergency measures provided therein in order to assess whether they continue to be necessary and adapted to the objective pursued.

(2) Since the entry into force of Implementing Decision 2011/884/EU, there have been 56 notifications from Member States to the Rapid Alert System for Food and Feed (RASFF) as established by Regulation (EC) No 178/2002 concerning unauthorised genetically modified rice in rice products originating from China. Under those conditions, the emergency measures set out in Implementing Decision 2011/884/EU have to be maintained in order to prevent the placing on the market of genetically modified food and feed which is not covered by an authorisation granted in accordance with Regulation (EC) No 1829/2003 of the European Parliament and of the Council[(3)].

(3) From the experience gained by Member States in Implementing Decision 2011/884/EU and from information collected from stakeholders by the Commission, it appears also necessary to adjust some of the requirements set out in that Decision.

(4) In particular, official controls carried out by the Member States have shown that other products which may contain rice should be added to the scope of Implementing Decision 2011/884/EU. The possibility for the competent authorities to carry out physical checks on other products should also be provided.

(5) In addition, some Member States have highlighted during the review process that the requirements set out in Implementing Decision 2011/884/EU as regards the prior notification of consignments are not fully aligned with the requirements provided for in Commission Regulation (EC) No 669/2009 of 24 July 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 and amending Decision 2006/504/EC[(4)] and, where applicable, in Commission Regulation (EC) No 136/2004 of 22 January 2004 laying down procedures for veterinary checks at Community border inspection posts on products imported from third countries[(5)]. Regulation (EC) No 669/2009 provides the obligation for the feed and food business operators to complete Part 1 of the common entry document detailed in its Annex II when importing feed and food of non-animal origin covered in that Regulation. Similarly, Regulation (EC) No 136/2004 provides for an obligation to complete the common veterinary entry document detailed in its Annex III when importing products falling under the scope of that Regulation. In view of improving the efficiency of official controls, it is therefore appropriate to align the requirements on prior notification set out in Implementing Decision 2011/884/EU with those set in Regulation (EC) No 669/2009 and, where applicable, in Regulation (EC) No 136/2004. To avoid misunderstanding, it should also be detailed in that Decision that prior notifications should be addressed to the competent authorities at the Border Inspection Post or at the designated point of entry.

(6) Sampling methodologies play a crucial role in obtaining representative and comparable results. Annex II to Implementing Decision 2011/884/EU defines a common protocol for sampling and analysis for the control of the absence of genetically modified rice. Experience to date has shown that the majority of imports covered by the Decision are processed products. In such cases the presence of unauthorised genetically modified rice is expected to be distributed homogenously throughout the lot. In the light of those elements, it appears necessary to add an additional sampling protocol more appropriate for such products.

(7) It is necessary to provide a new transitional period for the application of the new provisions contained in this Decision in order to let food and feed business operators time to adapt to the new situation created by this Decision.

(8) The situation concerning the possible contamination of rice products with unauthorised genetically modified rice lines should continue to be reviewed regularly in order to assess whether the measures provided for in this Decision are still necessary and adapted to the objective pursued and to ensure that it takes into account new scientific and technical developments.

(9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Implementing Decision 2011/884/EU is amended as follows:

(1) Article 1 is replaced by the following:

Article 1

Scope

1 The Decision shall apply to products originating in or consigned from China listed in Annex I.

2 Member States may carry out random physical checks in accordance with Annex II to this Decision on food and feed originating in or consigned from China other than those mentioned in paragraph 1 but which may consist, contain or be produced from rice, in order to ensure compliance with Articles 4(3) and 16(3) of Regulation (EC) No 1829/2003.

3 This Decision shall not apply to consignments of food and feed referred to in paragraph 1 which are destined to a private person for personal consumption and use only. In case of doubt, the burden of proof lies with the recipient of the consignment.;

(2) Article 3 is replaced by the following:

Article 3

Prior notification

1 Feed and food business operators or their representatives shall give adequate prior notification of the estimated date and time of the physical arrival of the consignment and of the nature of the consignment to the competent authorities at the Border Inspection Post or at the Designated Point of Entry as appropriate. Operators shall also indicate the designation of the product as to whether it is food or feed.

2 For that purpose, they shall complete the relevant parts of the common entry document (CED) referred to in Annex II to Regulation (EC) No 669/2009, or the common veterinary entry document (CVED), as provided for in Article 2 of Commission Regulation (EC) No 136/2004[(6)], and transmit that document to the competent authority at the Border Inspection Post or at the Designated Point of Entry as appropriate, at least one working day prior to the physical arrival of the consignment.

3 Paragraphs 1 and 2 shall not apply to products referred to in Annex I which are not containing, consisting or produced from rice.;

(3) paragraphs 1 and 2 of Article 4 are replaced by the following:

1. Each consignment of product referred to in Article 1 shall be accompanied by an analytical report for each lot, and by a health certificate in accordance with the models set out in Annexes III and IV, completed, signed and verified by an authorised representative of the "Entry Exit Inspection and Quarantine Bureau of the People's Republic of China" (AQSIQ). The analytical report and the health certificate shall be drawn up in an official language of the Member State of import, or in another language that the competent authorities of that Member State have decided to accept.

2 Where a product referred to in Annex I does not contain, consist of or is not produced from rice, the analytical report and the health certificate may be replaced

by a statement from the operator responsible for the consignment indicating that the food or feed does not contain, consist or is produced from rice. This statement shall be drawn up in an official language of the Member State of import, or in another language that the competent authorities of that Member State have decided to accept.;

(4) Article 5 is replaced by the following:

Article 5

Official controls

1 Each consignment of products referred to in Article 1 is subject to documentary checks to ensure that the import conditions provided for in Article 4 are complied with.

2 Where a consignment of products other than those described in Article 4(2) is not accompanied by a health certificate and the analytical report provided for in Article 4, the consignment shall be re-dispatched to the country of origin or destroyed.

3 Where a consignment is accompanied by the health certificate and the analytical report provided for in Article 4 the competent authority shall take a sample for analysis in accordance with Annex II for the presence of unauthorised GMOs with a frequency of 100 %. If the consignment consists of several lots, each lot shall be submitted to sampling and analysis.

4 The competent authority may authorise onward transportation of the consignment pending the results of the physical checks. In such a case the consignment shall remain under the continuous control of the competent authorities pending the results of the physical checks.

5 After completion of the checks provided for in paragraphs 1 to 4, the competent authority shall:

a complete the relevant part of Part II of the CED or, where appropriate, the CVED; and the responsible official of the competent authority shall stamp and sign the original of that document.

The CED or, where appropriate the CVED, can be completed only when the result of the analysis referred to in paragraph 3 is available;

b make and retain a copy of the signed and stamped CED or, where appropriate, CVED.

The original of the CED or, where appropriate, the CVED shall accompany the consignment on its onward transport until it reaches its destination as indicated in the CED or the CVED.

6 The release for free circulation of consignments shall only be allowed when, following sampling and analyses performed in accordance with Annex II, all lots of that consignment are considered compliant with Union Law. This requirement also applies to consignments tested in accordance with Article 1(2).;

(5) Article 9 is replaced by the following:

Article 9

Transitional provisions

Until 5 August 2013, Member States shall authorise the imports of consignments of products referred to in Article 1(1) with the exception of the products of Annex I corresponding to Combined Nomenclature Codes 1905 90 60, 1905 90 90 and 2103 90 90, which have physically arrived in the Union before 4 July 2013, even if the CED has not been transmitted to the competent authority at least one working day prior to the physical arrival of the consignment as required by Article 3(2), provided that the other requirements set out in Article 3 are met.

Until 5 October 2013, Member States shall authorise the imports of consignments of products corresponding in Annex I to Combined Nomenclature Codes 1905 90 60, 1905 90 90 and 2103 90 90, which do not meet the conditions referred to in Articles 3 and 4, provided that the competent authority has conducted sampling and analysis in accordance with Article 5(3).;

(6) Annexes I and II are amended in accordance with Annexes I and II to this Decision.

Article 2

Article 10 is replaced by the following:

Article 10

Review of the measure

The measures provided for in this Decision shall be reviewed regularly to take into account, where appropriate, new developments as regards the presence of unauthorised GMOs in products originating in or consigned from China, or as regards scientific and technical progress in the methods for sampling and analysis provided in this Decision.

Article 3

Entry into force

This Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 13 June 2013.

For the Commission

The President

José Manuel BARROSO

ANNEX I

Annex I to Implementing Decision 2011/884/EU is replaced by the following:

ANNEX I LIST OF PRODUCTSProductCN codeRice in the husk (“paddy” or rough)1006 10Husked (brown) rice1006 20Semi-milled or wholly milled rice, whether or not polished or glazed1006 30Broken rice1006 40 00Rice flour1102 90 50Rice groats and meal1103 19 50Rice pellets1103 20 50Flaked rice grains1104 19 91Rolled or flaked cereal grains (excluding grains of oats, wheat, rye, maize and barley, and flaked rice)1104 19 99Rice starch1108 19 10Preparations for infant use, put up for retail sale1901 10 00Uncooked pasta, not stuffed or otherwise prepared, containing eggs1902 11 00Uncooked pasta, not stuffed or otherwise prepared, not containing eggs1902 19Stuffed pasta, whether or not cooked or otherwise prepared1902 20Other pasta (other than uncooked pasta, not stuffed or otherwise prepared, and other than stuffed pasta, whether or not cooked or otherwise prepared)1902 30Prepared foods obtained by swelling or roasting cereals or cereal products, obtained from rice1904 10 30Preparations of the muesli-type based on unroasted cereal flakes1904 20 10Prepared foods obtained from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals, obtained from rice (excluding preparations of the muesli-type on the basis of unroasted cereal flakes)1904 20 95Rice, pre-cooked or otherwise prepared, not elsewhere specified or included (excluding flour, groats and meal, food preparations obtained by swelling or roasting or from unroasted cereal flakes or from mixtures of unroasted cereal flakes and roasted cereal flakes or swelled cereals)1904 90 10Rice paperex 1905 90 20Biscuits1905 90 45Extruded or expanded products, savoury or salted1905 90 55Extruded or expanded products, sweetened (e.g. Fruit tarts, currant bread, panettone, meringues, Christmas stollen, croissants, and other baker’s wares)1905 90 60Extruded or expanded products neither sweetened nor savouried nor salted (e.g. Pizzas, quiches and other unsweetened baker’s wares)1905 90 90Sauces and preparations, mixed condiments and mixed seasonings2103 90 90Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of rice with a starch content not exceeding 35 % by weight2302 40 02Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of rice other than with a starch content not exceeding 35 % by weight2302 40 08

ANNEX II

Annex II to Implementing Decision 2011/884/EU is amended as follows:

(1) in point 2.2 the words ‘CEN/ISO 15568’ are replaced by ‘CEN/TS 15568:2007’;

(2) in point 3, the second paragraph is replaced by the following:

> In the case of grain samples, the designated control laboratory shall take from the homogenised laboratory sample four analytical samples of 240 grams (equivalent 10 000 rice grains). The four analytical samples shall be ground and further analysed separately. Two extractions shall be made from each analytical sample. One PCR test for each GM genetic element shall be made for each extraction in accordance with the screening methods detailed under point 4 below.
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> For processed products such as flour, pasta or starch one analytical sample of 125 g shall be prepared from the homogenised laboratory sample. This analytical sample

shall be ground, and from this sample two extractions shall be made with one PCR test for each GM genetic element for each extraction in accordance with the screening methods detailed under point 4.

The consignment shall be considered as non-compliant if at least one GM genetic element is detected in at least one analytical sample of the consignment according to the guidelines provided in the European Union Reference Laboratory for GMOs (EURL for GMOs) report.;

(3) in point 5, the words ‘the EU RL GMFF’ are replaced by ‘the EURL for GMOs’.

(**1**) OJ L 31, 1.2.2002, p. 1.

(**2**) OJ L 343, 23.12.2011, p. 140.

(**3**) OJ L 268, 18.10.2003, p. 1.

(**4**) OJ L 194, 25.7.2009, p. 11.

(**5**) OJ L 21, 28.1.2004, p. 11.

(**6**) OJ L 21, 28.1.2004, p. 11.’;