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AGRICULTURE, ENGLAND

FOOD, ENGLAND

The Specified Products from China (Restriction on First Placing on the Market) (England) (Amendment) Regulations 2012

<i>Made</i> - - - -	<i>9th January 2012</i>
<i>Laid before Parliament</i>	<i>11th January 2012</i>
<i>Coming into force</i> - -	<i>12th January 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972(a).

The Secretary of State has been designated for the purposes of that section in relation to measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals(b).

Title and commencement

1. These Regulations may be cited as the Specified Products from China (Restriction on First Placing on the Market) (England) (Amendment) Regulations 2012 and come into force on 12th January 2012.

Amendment of the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008

2.—(1) The Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008(c) are amended in accordance with paragraphs (2) to (7).

(2) In regulation 2 (interpretation) —

(a) in paragraph (1) —

(i) for the definition of “the Commission Decision” substitute the following definition

—

““the Commission Decision” means Commission Implementing Decision 2011/884/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China and repealing Decision 2008/289/EC(d);”,

(ii) omit the definition of “first placing on the market”,

(a) 1972 c.68.
(b) S.I. 2003/2901.
(c) S.I. 2008/1079.
(d) OJ No. L343, 23.12.2011, p.140.

- (iii) after the definition of “operator” insert the following definition —
 - ““placing on the market” has the meaning given to it in Article 3.8 of Regulation 178/2002;”, and
 - (iv) in the definition of “specified product”, for “the Annex” substitute “Annex I”; and
 - (b) insert the following paragraph immediately after paragraph (2) —
 - “(3) Any expression used in the Commission Decision and in these Regulations has the same meaning in these Regulations as it bears in the Commission Decision.”.
- (3) For the heading to and paragraph (1) of regulation 3 (restriction on first placing on the market of specified products), substitute the following —

“Restriction on placing on the market of specified products

- 3.—(1) The placing on the market of any specified product is prohibited unless —
- (a) the conditions specified in Article 4 of the Commission Decision have been complied with in relation to the product; and
 - (b) where the consignment of the specified product has been split following official control, an authenticated copy of the health certificate and the analytical report accompanies each part of the split consignment.”.
- (4) Regulation 4 (notification of positive results) is omitted.
- (5) For paragraph (4) of regulation 5 (enforcement) substitute the following —
- “(4) The requirements are those specified in —
- (a) Article 5 of the Commission Decision (which is concerned with the conditions under which specified products may be placed on the market, the official controls to be carried out and the measures to be taken with regard to non-compliant consignments); and
 - (b) the first sentence of Article 7 of that Decision (which is concerned with the control of splitting of consignments).”.
- (6) In paragraph (b) of regulation 6 (application of various provisions of the Food Safety Act 1990), for “first placing on the market” substitute “placing on the market”.
- (7) Insert the following regulations immediately after regulation 6 —

“Expenses arising from official controls

7. Expenses charged by a feed authority or a food authority to an operator pursuant to Article 8 of the Commission Decision shall be payable by the operator on the written demand of the authority.

Transitional provision

8. The prohibition in regulation 3(1) does not apply in relation to any specified product which left China prior to 1st February 2012 provided that —
- (a) the sampling and analysis have been conducted in accordance with Article 4(3) of the Commission Decision; and
 - (b) the placing on the market of the product would not have constituted an offence under these Regulations as they stood immediately before the coming into force of the Specified Products from China (Restriction on First Placing on the Market) (England) (Amendment) Regulations 2012.”.

Statutory review

- 3.—(1) The Food Standards Agency must from time to time —
- (a) carry out a review of regulation 2;

- (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) In carrying out the review the Agency must, so far as is reasonable, have regard to how the Commission Decision is implemented in other Member States.
- (3) The report must in particular —
- (a) set out the objectives intended to be achieved by the regulatory system established by the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008 as they have been amended by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Health.

9th January 2012

Simon Burns
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which come into force on 12th January 2012, amend the Specified Products from China (Restriction on First Placing on the Market) (England) Regulations 2008 (S.I. 2008/1079) (“the 2008 Regulations”) in order to implement Commission Implementing Decision 2011/884/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China and repealing Decision 2008/289/EC (OJ No. L343, 23.12.2011, p.140) (“the Commission Decision”). The Commission Decision provides for import restrictions that previously applied to Bt 63 genetically modified rice to apply, with modifications, to all unauthorised GM rice.

2. In particular these Regulations amend the 2008 Regulations by —

- (a) inserting in regulation 2 a definition of the Commission Decision and amending, adding or removing certain other definitions (*regulation 2(2)*);
- (b) amending regulation 3(1), by imposing conditions under which specified products (rice and rice products originating in or consigned from China) may be placed on the market (*regulation 2(3)*);
- (c) omitting regulation 4, which required operators to notify the Food Standards Agency of certain test results (*regulation 2(4)*);
- (d) amending regulation 5(4), which identifies the provisions of the Commission Decision that an enforcement officer of a feed or food authority must ensure are observed (*regulation 2(5)*);
- (e) inserting as new regulation 7 a provision to implement the requirement in Article 8 of the Commission Decision that all costs resulting from the official controls and from any non-compliance must be borne by the food or feed business operator concerned (*regulation 2(7)*); and
- (f) inserting as new regulation 8 a provision implementing the transitional arrangements contained in Article 9 of the Commission Decision (*regulation 2(7)*).

3. These Regulations contain provisions requiring the Food Standards Agency to carry out a review of the 2008 Regulations as amended by these Regulations at intervals of not more than 5 years (*regulation 3*).

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