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►**B** **COMMISSION IMPLEMENTING REGULATION (EU) No 351/2011**

of 11 April 2011

amending Regulation (EU) No 297/2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station

(Text with EEA relevance)

(OJ L 97, 12.4.2011, p. 20)

Corrected by:

►**C1** Corrigendum, OJ L 98, 13.4.2011, p. 16 (351/2011)

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COMMISSION IMPLEMENTING REGULATION (EU) No 351/2011

of 11 April 2011

amending Regulation (EU) No 297/2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station

(Text with EEA relevance)

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) (b)(ii) thereof,

Whereas:

(1) Article 53 of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Union emergency measures for food and feed imported from a third country in order to protect public health, animal health or the environment, where the risk cannot be contained satisfactorily by means of measures taken by the Member States individually.

(2) Following the accident at the Fukushima nuclear power station on 11 March 2011, the Commission was informed that radionuclide levels in certain food products originating in Japan such as milk and spinach exceeded the action levels in food applicable in Japan. Such contamination may constitute a threat to public and animal health within the Union and therefore Commission Implementing Regulation (EU) No 297/2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station ([2]) was adopted on 25 March 2011.

([1]) OJ L 31, 1.2.2002, p. 1.
([2]) OJ L 80, 26.3.2011, p. 5.

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(3) Regulation (EU) No 297/2011 provides for the requirement for pre-export control by the competent authorities of Japan. Action levels for iodine, caesium and plutonium in food have been established by the competent authorities of Japan. The Commission was informed on 17 March 2011 of these action levels applicable in Japan but it was indicated that these action levels were adopted for the time being as provisional regulation values. The authorities from Japan also informed the Commission that products that are not allowed to be placed on the Japanese market, are also not allowed to be exported. It becomes now evident that these action levels will be applied in Japan for a longer term. It is therefore appropriate in order to provide consistency between the pre-export controls performed by the Japanese authorities and the controls on the level of radionuclides performed on feed and food originating in or consigned from Japan at the entry into the EU, to apply on a provisional basis the same maximum levels in the EU for radionuclides in feed and food from Japan as the action levels applicable in Japan as long as these are lower than the EU values.

(4) This Regulation is without prejudice to the scientifically established levels laid down in Council Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90 for application in case of a future nuclear accident or any other case of radiological emergency affecting the EU territory. This Regulation applies for isotopes of strontium the values established in Regulation (Euratom) No 3954/87, since there are no such values laid down in Japan.

(5) Given that for the time being, there is evidence that feed and food from certain regions from Japan is contaminated by the radionuclides iodine-131, caesium-134 and caesium 137 and that there is no indication that feed and food originating in or consigned from Japan is contaminated with other radionuclides, it is appropriate to restrict the obligatory controls to iodine-131, caesium-134 and caesium-137. Member States may also perform analysis on a voluntary basis for the presence of other radionuclides in view of gathering information on the possible presence of these other radionuclides. It is therefore appropriate to mention the existing maximum levels in EU legislation or action levels applied in Japan for the radionuclides strontium, plutonium and trans-plutonium elements in Annex II to this Regulation.

(6) It is therefore appropriate to amend Regulation (EU) 297/2011 accordingly.

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

HAS ADOPTED THIS REGULATION:

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Article 1

Regulation (EU) 297/2011 is amended as follows

(1) Article 2 is amended as follows:

(a) In Paragraph 3, the third indent is replaced by the following:

'— in case the product is originating in or consigned from the prefectures Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamagata, Niigata, Nagano, Yamanashi, Saitama, Tokyo and Chiba, the product does not contain levels of the radionuclides iodine-131, caesium-134 and caesium-137 above the maximum levels provided for in Annex II to this Regulation. This provision applies also to products originating in the coastal waters of these prefectures, irrespective of where such products are landed.'

(b) Paragraph 4 is replaced by the following:

'4. The model of the declaration referred to in paragraph 3 is set out in the Annex I. The declaration shall be signed by an authorised representative of the Japanese competent authorities and shall for the products falling under paragraph 3, third indent be accompanied by an analytical report.'

(2) Article 7 is replaced by the following:

'Article 7

Non-compliant products

Feed and food originating in or consigned from Japan which do not comply with the maximum levels referred to in Annex II, shall not be placed on the market. Such non-compliant feed and food shall be safely disposed of or returned to the country of origin.'

(3) The Annex is replaced by the text in Annex I to this Regulation.

(4) A new Annex II, the text of which is set out in Annex II to this Regulation, is added.

Article 2

Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union.*

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX I

Declaration for the import into the European Union of

..... (*)

Consignment Code ..... **Declaration Number** .....

According to the provisions of the Commission Implementing Regulation (EU) No 297/2011 imposing special conditions governing the import of feed and food originating in or consigned from Japan following the accident at the Fukushima nuclear power station the

.....

..... (competent authority referred to in Article 2(4))

DECLARES that the .....

..... (products referred to in Article 1)

of this consignment composed of: .....

.....

..... (description of consignment, product, number and type of packages, gross or net weight)

embarked at ..... (embarkation place)

on ..... (date of embarkation)

by ..... (identification of transporter)

going to ..... (place and country of destination)

which comes from the establishment .....

..... (name and address of establishment)

☐ has been harvested and/or processed before 11 March 2011

☐ is originating in or consigned from a prefecture other than Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamagata, Niigata, Nagano, Yamanashi, Saitama, Tokyo and Chiba

☐ is originating in or consigned from the prefectures Fukushima, Gunma, Ibaraki, Tochigi, Miyagi, Yamagata, Niigata, Nagano, Yamanashi, Saitama, Tokyo and Chiba and has been sampled on ..... (date), subjected to laboratory analysis on .....

(date) in the .....

(name of laboratory), to determine the level of the radionuclides, iodine-131, cesium-134 and caesium-137, and the analytical results are in compliance with the maximum levels referred to in Article 2 (3). The analytical report is attached.

Done at ..... on .....

Stamp and signature of
authorised representative of competent authority referred to in Article 2(4)

Part to be completed by the competent authority at the BIP or DPE

☐ The consignment has been accepted to be presented for release for free circulation by the custom authorities in the European Union

☐ The consignment has NOT been accepted to be presented for release for free circulation by the custom authorities in the European Union

.....

(Competent authority, Member State)

.....

Date Stamp Signature

(*) Product and country of origin.

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ANNEX II

Maximum levels for foodstuffs [1] **(Bq/kg)**

	Foods for infants and young children	Milk and dairy products	Other foodstuffs, except liquid foodstuffs	Liquid foodstuffs
Sum of Isotopes of strontium, notably Sr-90	75	125	750	125
Sum of Isotopes of iodine, notably I-131	100 [1]	300 [1]	2 000	300 [1]
Sum of Alpha-emitting isotopes of plutonium and trans-plutonium elements, notably Pu-239, Am-241	1	1 [1]	10 [1]	1 [1]
Sum of all other nuclides of half-life greater than 10 days, notably Cs-134 and Cs-137, except C-14 and H-3	200 [1]	200 [1]	500 [1]	200 [1]

[1] In order to ensure consistency with action levels currently applied in Japan, these values replace on a provisional basis the values laid down in Council Regulation (Euratom) No 3954/87.

Maximum levels for feedingstuffs [2] **(Bq/kg)**

	Feedingstuffs
Sum of Cs-134 and Cs-137	500 [1]
Sum of Isotopes of iodine, notably I-131	2 000 [2]

[1] In order to ensure consistency with action levels currently applied in Japan, this value replaces on a provisional basis the value laid down in Commission Regulation (Euratom) No 770/90.

[2] This value is laid down on a provisional basis and taken to be the same as for foodstuffs, pending an assessment of transfer factors of iodine from feedingstuffs to food products.

[1] The level applicable to concentrated or dried products is calculated on the basis of the reconstituted product as ready for consumption.

[2] Maximum level is relative to a feed with a moisture content of 12 %.