Commission Implementing Regulation (EU) 2016/1842 of 14 October 2016 amending Regulation (EC) No 1235/2008 as regards the electronic certificate of inspection for imported organic products and certain other elements, and Regulation (EC) No 889/2008 as regards the requirements for preserved or processed organic products and the transmission of information (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1842

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91[(1)], and in particular Article 38 (a), (d) and (e) thereof,

Whereas:

(1) Commission Regulation (EC) No 1235/2008[(2)] lays down detailed rules for imports of organic products from third countries.

(2) A period for the control bodies and control authorities to submit their request for recognition for the purpose of compliance in accordance with Article 32 of Regulation (EC) No 834/2007 is provided for in Regulation (EC) No 1235/2008. As the implementation of the provisions regarding the import of compliant products is still under assessment and the related guidelines, models, questionnaires and the necessary electronic transmission system are still under development, the deadline for the submission of requests by control bodies and control authorities should be extended.

(3) Experience has shown diverging practices in Member States as regards the verification of the consignments of organic products prior to their release for free circulation into the Union. For the sake of consistent and effective controls, the types of checks necessary for the verification of the consignments should be clarified, in the light of the risk assessment to be carried out in accordance with Article 27(3) of Regulation (EC) No 834/2007. It is also appropriate to reword the definition of the authorities responsible for the verification of the consignments and the endorsement of the certificates of inspection in order to clarify that those authorities are a competent authority responsible for the organisation of official controls in the field of organic production and designated pursuant to Article 27(1) of Regulation (EC) No 834/2007.

(4) Diverging practices by control bodies and control authorities have also been observed as regards the classification of products to be imported under the product categories referred to in Annexes III and IV to Regulation (EC) No 1235/2008. For a more uniform classification under those product categories certain definitions should therefore be laid down in the interest of clarity and legal certainty for operators, to ensure uniform implementation of the rules by the control bodies and control authorities, and to facilitate supervision by the competent authorities.

(5) For product categories referring to unprocessed or processed, those terms should have the same meaning as in the definitions of processed and unprocessed products in Regulation (EC) No 852/2004 of the European Parliament and of the Council[(3)] with a view to simplification and consistency with the hygiene rules. However, it should be clarified that labelling and packaging operations are irrelevant for the qualification of the product as unprocessed or processed.

(6) The two import schemes provided for in Article 33(2) and (3) of Regulation (EC) No 834/2007 are, in principle, mutually exclusive. If a third country is recognised as equivalent in accordance with Article 33(2) of Regulation (EC) No 834/2007, there is no need to recognise a control authority or control body for that country in accordance with Article 33(3). As a consequence, Article 10(2)(b) of Regulation (EC) No 1235/2008 provides that a control authority or control body can only be recognised in accordance with Article 33(3) of Regulation (EC) No 834/2007 for a country that is not recognised in accordance with Article 33(2) of Regulation (EC) No 834/2007. However, in order to avoid any barrier to imports for organic products, it should be possible for control bodies or control authorities to be recognised for a recognised third country where the recognition of that third country does not cover the product to be imported. The existing derogation in Article 10(3) of Regulation (EC) No 1235/2008 should therefore be reworded to take into account the practice in place by referring to products rather than to the category of products.

(7) On the basis of Regulation (EC) No 834/2007 products imported from a third country may be placed on the Union market as organic if they, in particular, are covered by a certificate of inspection issued by the competent authorities, control authorities or control bodies of a recognised third country or by a recognised control authority or control body.

(8) In accordance with Action 12 of the Action Plan for the Future of Organic Production in the European Union[(4)] the Commission has developed a system of electronic certification for imports of organic products, as a module integrated into the electronic Trade Control and Expert System (TRACES) provided for in Commission Decision 2003/24/EC[(5)].

(9) Certain provisions of Regulation (EC) No 1235/2008 need to be amended in order to introduce the electronic certification system and to ensure the proper functioning of that system. Therefore, the rules for the release for free circulation by the relevant Member State's customs authority and the workflow for the issuing and endorsing of the certificate of inspection, including the verification of the link between the certificate of inspection and the customs declaration, should be clarified. In this context, the

workflow for the issue and endorsement of the certificate of inspection under special customs procedures should also be clarified. For the proper functioning of the electronic system, it is appropriate to refer to email addresses of recognised control bodies and control authorities.

(10) In order to ensure the integrity of the organic products imported into the Union, it is necessary to clarify that, as a general rule, the control body or control authority issuing the certificate of inspection is the control body or authority certifying the producer or the processor of the product. In case the operator carrying out the last operation for the purposes of preparation as defined in Article 2(i) of Regulation (EC) No 834/2007 is different from the original producer or processor of the product, the certificate of inspection should be issued by the control body or control authority having checked the last operation. Furthermore, it is necessary to clarify that control bodies or control authorities listed in Annex III to Regulation (EC) No 1235/2008 may only issue certificates of inspection according to the terms of their recognition, while those listed in Annex IV to that Regulation may only issue certificates of inspections for the products and origins for which they are listed for.

(11) Experience has shown diverging practices as regards checks to be carried out by the control body or control authority issuing the certificate of inspection. Therefore, it is necessary to specify the checks to be carried out prior to issuing the certificate. Control bodies or control authorities should only issue the certificate of inspection after full documentary checks and, as appropriate according to their risk assessment, physical checks of the products concerned. For processed agricultural products, control bodies and control authorities listed in Annex III to Regulation (EC) No 1235/2008 should check that all their ingredients have been submitted to a control system in accordance with the terms of recognition of the relevant third country, while control bodies and control authorities listed in Annex IV to that Regulation should check that ingredients have been controlled and certified by control bodies or control authorities recognised in accordance with Union legislation or produced in the Union. Similarly it is necessary to specify the checks to be carried out by control bodies or control authorities listed in Annex IV to Regulation (EC) No 1235/2008 that certify operators in the final stages of the production chain, such as those only carrying out labelling or packaging operations. In such cases, it should be verified that the products concerned have been controlled and certified by control bodies or control authorities listed in that Annex and recognised for the relevant country and product category.

(12) The authorities responsible for granting and updating the rights to access TRACES for the purpose of electronic certification of inspection should be identified. In addition, rules should be laid down to ensure that TRACES guarantees the authenticity, integrity and legibility over time of the information and the associated metadata throughout the period for which they are required to be kept.

(13) Provision should also be made for an effective and efficient exchange of information between Member States' authorities in cases of irregularities detected, in particular where products are labelled as organic, but are not accompanied by a certificate of inspection.

(14) As the last import authorisations issued by Member States expired on 30 June 2015, any reference to import authorisations should be deleted from Regulation (EC) No 1235/2008.

(15) Operators and Member States should have time to adapt their procedures to the electronic certificate of inspection provided by TRACES. Therefore it is necessary to provide for a transitional period in which the issue and endorsement of the certificate of inspection in paper form is still possible.

(16) For the sake of ensuring the proper functioning of the electronic certificate of inspection, and in particular to clarify that in-conversion products are excluded from the recognitions granted to third countries, to harmonise the wording regarding the origin of products coming from recognised third countries and to change product category C to cover algae, including micro-algae, it is appropriate to amend certain elements of Annexes III and IV to Regulation (EC) No 1235/2008 without changing the scope of the recognitions previously granted to third countries or to control bodies and control authorities.

(17) According to the information provided by the United States, the treatment with antibiotics of apples and pears to control fire blight is not allowed in that third country since October 2014. Therefore, it is justified to remove the relevant limitation for product categories A and D from Annex III to Regulation (EC) No 1235/2008.

(18) In the light of the experience gained with the implementation of the equivalence system, it is necessary to adapt the model of the certificate of inspection and extracts thereof as set out in Annexes V and VI to Regulation (EC) No 1235/2008, in order to provide information on the producer or processor of the product, as well as on the relevant country of origin, when different from the country of export of the product.

(19) Commission Regulation (EC) No 889/2008[(6)] lays down detailed rules relating to organic production, labelling and control.

(20) As the new definitions of ‘processed’ and ‘unprocessed’ inserted in Regulation (EC) No 1235/2008 would imply that some of the operations included in the definition of preparation in Article 2(i) of Regulation (EC) No 834/2007 are not to be considered as entailing processing, the rules set out in Article 26 of Regulation (EC) No 889/2008 for the production of processed food and feed would become unclear. Therefore, the rules on the precautionary measures to be taken to avoid the risk of contamination by unauthorised substances or products or mixtures or exchanges with non-organic products should be reworded to make clear that they apply, as appropriate, to operators carrying out preserving activities. For that purpose, it is also appropriate to include definitions of the terms ‘preserving’ and ‘processing’.

(21) The transmission of information on imported consignments in accordance with Regulation (EC) No 889/2008 should also be done through TRACES.

(22) A proper functioning of the electronic certification system requires that the information to be notified by the Member States to the Commission on the competent authorities and

control bodies or control authorities includes e-mails addresses and internet websites. It is appropriate to set a new ultimate date for the notification of that information.

(23) Regulations (EC) No 1235/2008 and (EC) No 889/2008 should therefore be amended accordingly.

(24) In order to ensure a smooth transition to the new electronic certification system, this Regulation should apply from a date which is six months after its publication. However, the amendment of product category C to cover algae, including micro-algae, should apply from the date of application of the relevant provision of Commission Implementing Regulation (EU) 2016/673[(7)] amending Regulation (EC) No 889/2008 to allow the use of micro-algae for food.

(25) The measures provided for in this Regulation are in accordance with the opinion of the Committee on organic production,

HAS ADOPTED THIS REGULATION:

Article 1

Amendment of Regulation (EC) No 1235/2008

Regulation (EC) No 1235/2008 is amended as follows:

(1) Article 2 is amended as follows:

(a) points 5 and 6 are replaced by the following:

5. "verification of the consignment" means the verification carried out by the relevant Member State's competent authority, in the framework of the official controls provided for in Regulation (EC) No 882/2004 of the European Parliament and of the Council[(8)], of the fulfilment of the requirements of Regulation (EC) No 834/2007, of Regulation (EC) No 889/2008 and of this Regulation through systematic documentary checks, random identity checks and, as appropriate according to its risk assessment, physical checks, prior to the release of the consignment for free circulation into the Union in accordance with Article 13 of this Regulation;

6. "relevant Member State's competent authority": means the customs authority, food safety authority or other authorities designated by the Member States pursuant to Article 27(1) of Regulation (EC) No 834/2007 responsible for the verification of the consignments and the endorsement of the certificates of inspection;;

(b) the following points 8 to 11 are added:

8. "aquaculture products": means aquaculture products as defined in point 34 of Article 4(1) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council[(9)];

9. "unprocessed": means unprocessed as used in the definition of unprocessed products in point (n) of Article 2(1) of Regulation