Commission Regulation (EC) No 571/2009 of 30 June 2009 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the establishment of a quota system in relation to the production of potato starch

COMMISSION REGULATION (EC) No 571/2009

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)[(1)], and in particular Article 85 and Article 95a(3) in conjunction with Article 4 thereof,

Whereas:

(1) Commission Regulation (EC) No 2236/2003 of 23 December 2003 laying down detailed rules for the application of Council Regulation (EC) No 1868/94 establishing a quota system in relation to the production of potato starch[(2)] has been substantially amended several times[(3)]. Since further amendments are to be made it should be recast in the interests of clarity.

(2) Those further amendments are necessary after amendments of Regulation (EC) No 1234/2007 and the adoption of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulation (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003[(4)].

(3) In order to benefit from the Community aid under the system of quotas laid down by Regulation (EC) No 1234/2007, undertakings producing potato starch should conclude cultivation contracts with potato producers.

(4) It is necessary to specify what matters should be covered by a cultivation contract between an undertaking producing potato starch and a producer so as to prevent the conclusion of contracts in excess of the undertaking's subquota. Such undertakings should be prohibited from accepting delivery of potatoes not covered by a cultivation contract, as this would put at risk the effectiveness of the quota system and the requirement that the minimum price set out in Article 95a(2) of Regulation (EC) No 1234/2007 be paid for all potatoes intended for starch production. Nevertheless, it should be possible, where climatic reasons lead to production in the areas covered by the cultivation contract of a larger quantity of potatoes or of potatoes with a higher

starch content than was originally foreseen, for an undertaking producing potato starch to accept such potatoes provided that it pays the minimum price.

(5) Potatoes having a starch content of less than 13 % cannot be considered potatoes intended for the manufacture of potato starch. Potatoes with a starch content of less than 13 % should not be accepted by starch-producing undertakings. The Commission should, where climatic reasons lead to a lower starch content, and at the request of a Member State, be able to authorise the acceptance of potatoes having a starch content lower than 13 % under certain conditions.

(6) Inspection measures should be introduced to ensure that only starch produced in accordance with the provisions of this Regulation gives rise to payment of the premium. In order to protect producers of potatoes intended for the production of starch, it is essential for the minimum price set out in Article 95a(2) of Regulation (EC) No 1234/2007 to be paid for all potatoes. It is therefore necessary to provide for sanctions where the minimum price has not been paid, or where starch-producing undertakings have accepted potatoes not covered by a cultivation contract.

(7) Rules are necessary to ensure that potato starch produced in excess of a starch-producing undertaking's subquota is exported without export refund, as is required by Article 84a(4) of Regulation (EC) No 1234/2007. Sanctions should be applied in the event of any breach.

(8) It is necessary to specify what will happen to the subquota of starch-producing undertakings which merge, change ownership or cease trading.

(9) It is necessary to enable the Member States and the Commission to control the operation of the quota system. The information to be communicated by undertakings producing potato starch to the Member State, and by the Member State to the Commission, should be specified.

(10) In accordance with Part I of Annex I to Regulation (EC) No 1234/2007 potato starch is a product covered by the rules for cereals. Therefore, the same marketing year as for cereals applies to potato starch. Article 204(5) of Regulation (EC) No 1234/2007 provides that as regards potato starch, Section IIIa of Chapter III of Title I of Part II of that Regulation applies until the end of the 2011/2012 marketing year for potato starch. Therefore, this Regulation should apply until that date.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS — QUOTA SYSTEM

Article 1

For the purposes of this Regulation, the following definitions shall apply:

(a) 'quota'	:	the quota laid down for each Member State by Article 84a(1) and Annex Xa of Regulation (EC) No 1234/2007;
(b) 'subquota'	:	that part of the quota allocated by the Member State to a starch-producing undertaking;
(c) 'starch-producing undertaking'	:	any natural or legal person established on the territory of the Member State concerned which receives the subquota and premium referred to in Article 95a(1) of Regulation (EC) No 1234/2007;
(d) 'producer'	:	any natural or legal person or group of such persons, which delivers to a starch-producing undertaking potatoes produced by itself or its members, in its own name and on its own behalf under a cultivation contract concluded by itself or in its own name;
(e) 'cultivation contract'	:	any contract concluded between a producer or group of producers and the starch-producing undertaking;
(f) 'potatoes'	:	potatoes intended for the manufacture of potato starch as referred to in Article 77 of Regulation (EC) No 73/2009 and having a starch content of at least 13 %;
(g) 'unprocessed starch'	:	starch produced under CN code 1108 13 00 which has not undergone any processing;
(h) 'merger of starch-producing undertakings'	:	the consolidation into a single undertaking of two or more starch-producing undertakings;
(i) 'transfer of ownership of a starch-producing undertaking'	:	the assignment or absorption of the assets of an undertaking holding a subquota, to one or more starch-producing undertakings;
(j) 'transfer of ownership of a starch factory'	:	the assignment of ownership of a technical unit, including all the plant required to manufacture starch, to one or more undertakings, resulting in the partial or total absorption of the outpost of the undertaking making the assignment;
(k) 'lease of a factory'	:	the leasehold contract of a technical unit including all the plant required for the manufacture of starch, with a view to its operation, concluded for a period of at least three consecutive marketing years with an undertaking which is established within the same Member State as the factory in question, if, after the lease takes effect, the undertaking which rents the factory can be considered a single starch-producing undertaking for its entire production;
(l) 'aid for starch potato'	:	aid established for farmers producing potatoes intended for the manufacturing of potato starch referred to in Article 77 of Regulation (EC) No 73/2009.

Article 2

Where Article 84a(5) of Regulation (EC) No 1234/2007 applies, the subquotas allocated shall be adjusted accordingly at the beginning of the marketing year following that in which the subquota was exceeded.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 571/2009. (See end of Document for details)*

CHAPTER II

PRICE AND PAYMENT SYSTEM

Article 3

1 A cultivation contract shall be concluded for each marketing year. Each contract shall have an identification number and include at least the following information:

a the name and address of the producer or group of producers;

b the name and address of the starch-producing undertaking;

c the areas cultivated, expressed in hectares with two decimals and identified in conformity with Commission Regulation (EC) No 796/2004[(5)] on the integrated administration and control system (IACS);

d the foreseen quantity of potatoes in tonnes to be harvested there and delivered to the starch-producing undertaking;

e the foreseen average starch content of the potatoes, based on the average starch content of the potatoes delivered by the producer to the starch-producing undertaking over the last three marketing years or, if such information is not available, on the average content for the area of supply;

f a commitment by the starch-producing undertaking to pay the producer the minimum price referred to in Article 95a(2) of Regulation (EC) No 1234/2007.

2 Each starch-producing undertaking shall forward to the competent authority before the beginning of the marketing year a summary of the contracts, including for each contract, the identification number, the name and address of the producer, the areas cultivated, and the tonnage contracted, expressed in terms of starch equivalent, before a date to be fixed by the Member State before the beginning of the marketing year, in order to ensure the necessary controls.

3 The total in starch equivalent of the quantities listed in the cultivation contracts shall not exceed the subquota established for the starch-producing undertaking concerned.

4 Where the quantity actually produced under the cultivation contract in starch equivalent exceeds the quantity stated in the contract, that quantity may be delivered, if the starch-producing undertaking so chooses, provided the minimum price referred to in Article 95a(2) of Regulation (EC) No 1234/2007 is paid for it.

5 A starch-producing undertaking may not take delivery of potatoes not covered by a cultivation contract.

Article 4

1 Delivery of potatoes shall take place either at the starch-producing undertakings themselves or at their delivery points.

2 The determination of the weight of the potatoes and the starch content, in conformity with Articles 5 and 6, shall be carried out at the time of delivery and under the authority of an inspector approved by the Member State.

Article 5

1 Where so required for the purposes of one of the methods referred to in Annex I to Commission Regulation (EC) No 2235/2003[(6)], the gross weight of the potatoes shall be determined for each load at the time of delivery by comparative weighing of the means of transport used, loaded and empty.

2 The net weight of the potatoes shall be determined by one of the methods described in Annex I to Regulation (EC) No 2235/2003.

3 Accepted consignments must have a starch content of not less than 13 %.

However, starch-producing undertakings may accept consignments of potatoes with a starch content below 13 %, provided that the quantity of starch that can be manufactured from these potatoes does not exceed 1 % of the subquota. The minimum price to be paid in this case shall be that valid for a starch content of 13 %.

Article 6

The starch content of the potatoes shall be determined on the basis of an underwater weight valid for 5 050 grams of potatoes supplied.

The water used shall be clean and without additives and its temperature shall be less than 18 °C.

Article 7

1 The premium shall be granted to starch-producing undertakings in respect of starch produced from potatoes of sound and fair marketable quality, on the basis of the quantity of potatoes used and their starch content, at the rates laid down in Annex II to Regulation (EC) No 2235/2003 up to the quantity of starch for which they hold a subquota. No premium shall be granted for starch produced from potatoes that are not of sound and fair marketable quality nor for starch produced from potatoes whose starch content is below 13 %, except where the second subparagraph of Article 5(3) applies.

Where the starch content of the potatoes is calculated by Reimann's or Parrow's scale and corresponds to a figure appearing on two or three lines in the second column in Annex II to Regulation (EC) No 2235/2003, the rates applicable shall be those for the second or third line.

2 Where the batches delivered contain 25 % or more of potatoes which can pass through a screen with a square mesh of 28 mm (hereinafter described as 'tailings'), the net weight used for determining the minimum price to be paid by the starch-producing undertaking shall be reduced as follows:

Percentage of tailings	**Percentage reduction**
25 to 30 %	10 %
31 to 40 %	15 %
41 to 50 %	20 %

If the batches contain more than 50 % of tailings, they shall be dealt with by mutual agreement and no premium shall be paid thereon.

The percentage of tailings shall be determined at the same time as the net weight.

3 Observance of the limits of the subquota by the starch-producing undertakings shall be determined on the basis of the quantity and starch content of the potatoes used, in accordance with the rates laid down in Annex II to Regulation (EC) No 2235/2003.