Commission Regulation (EC) No 1020/2008 of 17 October 2008 amending Annexes II and III to Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin and Regulation (EC) No 2076/2005 as regards identification marking, raw milk and dairy products, eggs and egg products and certain fishery products (Text with EEA relevance)

COMMISSION REGULATION (EC) No 1020/2008

of 17 October 2008

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 853/2004 of the European Parliament and the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin[(1)], and in particular Article 9 and Article 10(1) thereof,

Whereas:

(1) The provisions regarding identification marking laid down in Annex II to Regulation (EC) No 853/2004 have created confusion in the identification of products produced within the Community and products produced outside the Community. It is therefore appropriate to clarify those provisions in order to ensure their smooth implementation. However, in order not to disrupt trade in the products of animal origin concerned, it should be provided that products for which an identification mark has been applied in accordance with Regulation (EC) No 853/2004 before 1 November 2009 may be imported into the Community until 31 December 2009.

(2) Notwithstanding the general principle laid down in Article 3(2) of Regulation (EC) No 853/2004 whereby food business operators are not to use, where hygiene so requires, any substance other than potable water, provisions allowing the use of clean water for the handling of fish are set out in Part A of Annex I and in Chapter VII of Annex II to Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs[(2)] and in Part II of Chapter I and Chapters III and IV of Section VIII of Annex III to Regulation (EC) No 853/2004, in particular for handling fishery products on board vessels.

(3) Article 11 of Commission Regulation (EC) No 2076/2005 of 5 December 2005 laying down transitional arrangements for the implementation of Regulations (EC) No 853/2004, (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No 853/2004 and (EC) No 854/2004[(3)]

provides that clean water may also be used in land-based establishments until 31 December 2009.

(4) It has long been scientifically recognised that the use of seawater is of technological interest for fishery products as it helps in maintaining intact their organoleptic characteristics by eliminating the risk of osmotic shock.

(5) The use of clean seawater for the handling and washing of fishery products does not represent a risk for public health as long as control procedures based, in particular, on the Hazard Analysis and Critical Control Points (HACCP) principles have been developed and put in place by food business operators to ensure that it complies with the definition of clean seawater set out in Regulation (EC) No 852/2004. It is therefore appropriate to delete Article 11 of Regulation (EC) No 2076/2005 and to make the transitional arrangement, provided for in that Regulation as regards the use of clean seawater, permanent. Section VIII of Annex III to Regulation (EC) No 853/2004 should be amended accordingly.

(6) Section VIII of Annex III to Regulation (EC) No 853/2004 sets out the requirements governing the production and placing on the market of fishery products intended for human consumption, including fish oil.

(7) There have been difficulties in implementing those specific requirements in some Member States. Problems have also been encountered as regards fish oil imported from third countries. Those difficulties mainly relate to the requirements applying to raw materials in order to ensure their suitability for the production of fish oil for human consumption and to food manufacturing practices usually in place in the fish oil industry. It is therefore appropriate to clarify those provisions in order to harmonise their implementation. Section VIII of Annex III to Regulation (EC) No 853/2004 should be amended accordingly.

(8) The opinion of the European Food Safety Authority adopted on 30 August 2004 on contaminants in the food chain related to the toxicity of fishery products belonging to the family of *Gempylidae* has demonstrated that fishery products belonging to that family, in particular *Ruvettus pretiosus* and *Lepidocybium flavobrunneum*, may have adverse gastrointestinal effects if not consumed under certain conditions. Chapter V of Section VIII of Annex III to Regulation (EC) No 853/2004 lays down specific marketing conditions for those fishery products.

(9) Those conditions apply to fresh, prepared and processed fishery products derived from those species. However, similar risks for the consumer may be encountered with frozen fishery products derived from the family of *Gempylidae*. It is therefore appropriate to require similar protective and informative conditions for those frozen fishery products. Section VIII of Annex III to Regulation (EC) No 853/2004 should be amended accordingly.

(10) Point 1(a) of Part III of Chapter II of Section IX of Annex III to Regulation (EC) No 853/2004 provides that food business operators manufacturing dairy products must ensure that raw cows' milk meets a limit criterion before processing.

(11) Compliance with that limit is particularly important for food safety where the milk has to be heat-treated by a pasteurisation process or a process which is less strict than pasteurisation, and has not been heat-treated within a pre-defined time. In such circumstances, the application of such heat-treatments does not have a sufficient bactericidal effect, which may lead to an early spoilage of the resulting dairy product.

(12) Article 12 of Regulation (EC) No 2076/2005 provides for a transitional arrangement aiming at limiting the verification of compliance with this criterion to such circumstances. It is therefore appropriate to delete Article 12 of Regulation (EC) No 2076/2005 and to make that transitional arrangement permanent. Section IX of Annex III to Regulation (EC) No 853/2004 should be amended accordingly.

(13) Section X of Annex III to Regulation (EC) No 853/2004 lays down specific hygiene rules for eggs and egg products. Pursuant to point 2 of Chapter I of that Section, eggs must be stored and transported at a preferably constant temperature that is best suited to ensure optimal conservation of their hygiene properties.

(14) Article 13(1) of Regulation (EC) No 2076/2005 provides that Member States which, before 1 January 2006, applied national temperature requirements for eggs storage facilities and for vehicles transporting eggs between such storage facilities may continue to apply those requirements until 31 December 2009. Since this possibility does not interfere with the food safety objectives laid down in Regulation (EC) No 853/2004, it is appropriate to make that transitional arrangement permanent.

(15) In addition, pursuant to point 1 of Part II of Chapter II of Section X of Annex III to Regulation (EC) No 853/2004, cracked eggs may be used for the manufacture of egg products under certain conditions. Article 13(2) of Regulation (EC) No 2076/2005 provides that food business operators may, until 31 December 2009, use cracked eggs for the production of liquid egg in an establishment approved for that purpose, provided that the establishment of production or a packing centre has delivered them directly and they are broken as soon as possible. Since the use of cracked eggs in the production of liquid egg does not represent a risk for public health under such conditions, it is appropriate to make that transitional arrangement permanent.

(16) Article 13 of Regulation (EC) No 2076/2005 should therefore be deleted and Section X of Annex III to Regulation (EC) No 853/2004 should be amended accordingly.

(17) Regulations (EC) No 853/2004 and (EC) No 2076/2005 should therefore be amended accordingly.

(18) 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:

Article 1

Annex II to Regulation (EC) No 853/2004 is amended in accordance with Annex I to this Regulation.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 1020/2008. (See end of Document for details)*

Article 2

Annex III to Regulation (EC) No 853/2004 is amended in accordance with Annex II to this Regulation.

Article 3

In Regulation (EC) No 2076/2005, Articles 11, 12 and 13 are deleted.

Article 4

Products of animal origin for which an identification mark has been applied in accordance with point 8 of Part B of Section I of Annex II to Regulation (EC) No 853/2004 before 1 November 2009 may be imported into the Community until 31 December 2009.

Article 5

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

However, point 1(b) of Annex I shall apply from 1 November 2009.

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

Done at Brussels, 17 October 2008.

For the Commission

Androulla VASSILIOU

Member of the Commission

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 1020/2008. (See end of Document for details)*

ANNEX I

Annex II to Regulation (EC) No 853/2004 is amended as follows:

(1) Section I is amended as follows:

(a) Part A is amended as follows:

(i) Point 1 is replaced by the following:

1. The identification mark must be applied before the product leaves the establishment of production.

(ii) Point 3 is replaced by the following:

3. An identification mark is not necessary on packs of eggs when a packing centre code is applied in accordance with Part A of Annex XIV to Council Regulation (EC) No 1234/2007[(4)].

(b) In Part B, point 8 is replaced by the following:

8. When applied in an establishment located within the Community, the mark must be oval in shape and include the abbreviation CE, EB, EC, EF, EG, EK, EO, EY, ES, EÜ, EK or WE.

Those abbreviations must not be included in marks applied on products imported into the Community from establishments located outside the Community.

(2) Section III is amended as follows:

(a) Point 1 is replaced by the following:

1. Slaughterhouse operators must not accept animals onto the slaughterhouse premises unless they have requested, and been provided with, relevant food chain information contained in the records kept at the holding of provenance in accordance with Regulation (EC) No 852/2004.

(b) In point 3, the introductory phrase is replaced by the following:

3. The relevant food chain information referred to in point 1 is to cover, in particular:

ANNEX II

Annex III to Regulation (EC) No 853/2004 is amended as follows:

(1) Section VIII is amended as follows:

(a) The introductory Part is amended as follows:

(i) Point 2 is replaced by the following:

2. Chapter III, Parts A, C and D, Chapter IV, Part A and Chapter V apply to retail.