Commission Regulation (EC) No 589/2008 of 23 June 2008 laying down detailed rules for implementing Council Regulation (EC) No 1234/2007 as regards marketing standards for eggs

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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 121(d) in conjunction with Article 4 thereof,

Whereas:

(1) As of 1 July 2008, Council Regulation (EC) No 1028/2006 of 19 June 2006 on marketing standards for eggs[(2)] is repealed by Regulation (EC) No 1234/2007.

(2) Certain provisions and obligations laid down in Regulation (EC) No 1028/2006 have not been incorporated in Regulation (EC) No 1234/2007.

(3) Certain appropriate provisions and obligations should therefore be adopted within the framework of a regulation laying down detailed rules for implementing Regulation (EC) No 1234/2007 in order to ensure the continuity and smooth running of the common organisation of the market, and in particular marketing standards.

(4) Regulation (EC) No 1234/2007 lays down the basic requirements which eggs must satisfy to be marketed in the Community. For the sake of clarity, new detailed rules for the implementation of those requirements should be laid down. Commission Regulation (EC) No 557/2007[(3)], which laid down detailed rules for the application of Regulation (EC) No 1028/2006, should therefore be repealed and replaced by a new Regulation.

(5) Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs[(4)] and Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin[(5)] apply to eggs. Therefore, reference should be made to the extent possible to those horizontal Regulations.

(6) The quality characteristics for Class A eggs should be fixed in order to guarantee the high quality of eggs to be delivered directly to the final consumer and to set criteria that can be checked by inspection services. Such quality characteristics should be based on Standard No 42 of the United Nations Economic Commission for Europe (UN/ECE)

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concerning the marketing and commercial quality controls of eggs-in-shell moving in international trade between and to UN/ECE member countries.

(7) Cold eggs left out at room temperature may become covered in condensation, facilitating the growth of bacteria on the shell and probably their ingression into the egg. Therefore, eggs should be stored and transported preferably at a constant temperature, and should in general not be refrigerated before sale to the final consumer.

(8) In general, eggs should not be washed or cleaned because such practices can cause damage to the egg shell, which is an effective barrier to bacterial ingress with an array of antimicrobial properties. However, some practices, such as the treatment of eggs with ultra-violet rays, should not be interpreted as constituting a cleaning process. Moreover, Class A eggs should not be washed because of the potential damage to the physical barriers, such as the cuticle, which can occur during or after washing. Such damage may favour trans-shell contamination with bacteria and moisture loss and thereby increase the risk to consumers, particularly if subsequent drying and storage conditions are not optimal.

(9) However, egg-washing systems subject to authorisation and operating under carefully controlled conditions are used in some Member States with good results. According to the opinion of the European Food Safety Authority, Scientific Panel on Biological Hazards on the request from the Commission related to the Microbiological risks on washing of table eggs adopted on 7 September 2005[(6)], the egg-washing practice as performed in certain packing centres can be sustained from a hygienic standpoint, provided, inter alia, that a code of practice for egg-washing systems is developed.

(10) Class A eggs should be graded by weight. A limited number of weight grades and corresponding clear terms should therefore be fixed as well as minimum labelling requirements, which do not rule out additional voluntary labelling, provided the requirements of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs[(7)] are met.

(11) Only undertakings whose premises and technical equipment are suited to the scale and type of their operations, and which therefore allow eggs to be handled properly, should be authorised, as packing centres, to grade eggs by quality and weight.

(12) Maximum time limits for the grading, marking and packing of eggs and the marking of packs should be fixed.

(13) In addition to the general obligation to establish traceability of food, feed, food-producing animals, and any other substance intended to be, or expected to be, incorporated into food or feed at all stages of production, processing and distribution in accordance with 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[(8)], certain information to be indicated on transport packaging containing eggs and on accompanying documents, for the purpose of carrying out checks, should be laid down.

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(14) The marking of eggs with the producer code at the production site is essential where eggs are delivered to another Member State. With regard to Class B eggs in particular, it should be specified that if the producer code alone does not clearly indicate the quality grading, Class B eggs should be marked with another indication.

(15) The composition of the producer code provided for in point 1 of part A, III of Annex XIV to Regulation (EC) No 1234/2007 should be fixed. Moreover, it should be clarified that an exception to the marking requirement with the producer code may be made if the technical equipment for egg marking does not allow for marking cracked or soiled eggs.

(16) The characteristics of the other possible indications for marking Class B eggs as referred to in the second subparagraph of point 1 of part A, III of Annex XIV to Regulation (EC) No 1234/2007 should be defined.

(17) When eggs are delivered directly to the food industry for processing and there is sufficient guarantee of their final destination, Member States may grant exemptions from the marking requirement to operators who so request.

(18) Directive 2000/13/EC lays down rules of a general nature applicable to all foodstuffs put on the market. However, some specific marking requirements should be provided for packs.

(19) Article 9 of Directive 2000/13/EC defines the date of minimum durability of a foodstuff to be the date until which the foodstuff retains its specific properties when properly stored. For the sake of clarity, this date should be fixed at not more than 28 days after laying.

(20) Eggs may be sold with an indication highlighting the particular freshness of the egg. For this purpose, a maximum time limit should be fixed for such indications.

(21) Eggs may be sold with an indication highlighting the particular feed formula fed to the laying hens. Minimum requirements for the use of such indications should be laid down.

(22) When eggs are sold loose, certain information normally on the pack should be accessible to the consumer.

(23) In addition to the general hygiene requirements for the wrapping and packaging of foodstuffs, some additional requirements should be laid down in order to minimise the risk of deterioration or contamination of eggs during storage and transport. Such standards should be based on UN/ECE Standard No 42.

(24) Industrial eggs are unfit for human consumption. Special bands or labels should therefore be required for the easy identification of packaging containing such eggs.

(25) Only packing centres have the premises and technical equipment suitable for repacking eggs. Any repacking activities should therefore be restricted to packing centres.

(26) Food business operators are obliged to establish traceability in accordance with Regulation (EC) No 178/2002. Producers, collectors and packing centres should be obliged to keep specific additional records in order to allow inspection services to check compliance with the marketing standards.

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(27) The methods and criteria for conducting checks should be laid down.

(28) It is appropriate to check compliance with the marketing standards for a batch as a whole, and the marketing of a batch found not to be compliant should be prohibited unless compliance can be proven.

(29) Certain tolerances should be allowed when checking compliance with the marketing standards. Such tolerances should differ according to the different requirements and marketing stages.

(30) Third countries may have requirements different from those fixed for the Community for the marketing of eggs. In order to facilitate exports, eggs packed and intended for export should be allowed to conform to such requirements.

(31) Details should be fixed regarding the assessment of the equivalence of third-country marketing standards with Community legislation to be conducted by the Commission at the request of third countries. Certain marking and labelling requirements for eggs imported from third countries should be laid down.

(32) It is useful for the Commission to have data available on the number of establishments registered as keeping laying hens.

(33) Member States should communicate any significant infringement of the marketing standards so that other Member States that may be affected can be alerted in an appropriate manner.

(34) Egg supply for the retail trade in the French overseas departments relies partly on the supply of eggs from the European continent. In view of the duration of transport and of climatic conditions, the preservation of eggs transported to the French overseas departments presupposes the fulfilment of specific supply arrangements, including the possibility to dispatch eggs chilled. These special arrangements can be justified by the current lack of sufficient local egg production capacities. Until sufficient local production capacities are built up, these exceptional arrangements should be prolonged for a reasonable period of time.

(35) Point 2 of part A, I of Annex XIV to Regulation (EC) No 1234/2007 allows Member States to exempt certain forms of direct sales of eggs from producers to the final consumer from the requirements of that Regulation. In order to take account of the specific conditions of egg marketing in certain regions in Finland, sales from producers to retail outlets in those regions should be exempted from the requirements of Regulation (EC) No 1234/2007 and of this Regulation.

(36) In accordance with Article 5(2) of Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens[9], Member States should ensure that rearing of laying hens in unenriched cage systems is prohibited with effect from 1 January 2012. The Commission should therefore evaluate the application of the voluntary labelling provisions foreseen with regard to enriched cages before that date in order to examine the need of rendering this labelling compulsory.

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(37) 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:

Article 1

Definitions

The definitions in Article 2(1) of Regulation (EC) No 852/2004 and points 5 and 7.3 of Annex I to Regulation (EC) No 853/2004 shall apply as appropriate.

In addition, the following definitions shall apply for the purpose of this Regulation:

(a) ‘pack’ means a wrapping containing Class A or B eggs, excluding transport packaging and containers of industrial eggs;

(b) ‘loose sales’ means the offer for retail sale of eggs to the final consumer, other than in packs;

(c) ‘collector’ means any establishment registered in accordance with Article 6 of Regulation (EC) No 852/2004 to collect eggs from a producer for delivery to a packing centre, to a market selling exclusively to wholesalers whose undertakings are approved as packing centres, or to the food or non-food industry;

(d) ‘sell-by date’ means the maximum time limit for delivery of the egg to the final consumer according to point 3 of Chapter I of Section X of Annex III to Regulation (EC) No 853/2004;

(e) ‘food industry’ means any establishment producing egg products intended for human consumption, excluding mass caterers;

(f) ‘non-food industry’ means any business producing products containing eggs not intended for human consumption;

(g) ‘mass caterers’ means the entities referred to in Article 1(2) of Directive 2000/13/EC;

(h) ‘industrial eggs’ means eggs not intended for human consumption;

(i) **[**[F1]‘batch’ means the eggs in packs or loose from one and the same production site or packing centre, situated in one place, with one and the same laying date or date of minimum durability or packing date, the same farming method and, in case of graded eggs, the same quality and weight grading;**]**

(j) ‘repacking’ means the physical transfer of eggs to another pack or the re-marking of a pack containing eggs;

(k) ‘eggs’ means eggs in shell — other than broken, incubated or cooked eggs — that are produced by hens of the species *Gallus gallus* and are fit for direct human consumption or for the preparation of egg products;

(l) ‘broken eggs’ means eggs showing breaks of both the shell and the membranes, resulting in the exposure of their contents;

(m) ‘incubated eggs’ means eggs from the time of insertion in the incubator onwards;