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COMMISSION REGULATION (EC) No 760/2008

of 31 July 2008

laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards authorisations for the use of casein and caseinates in the manufacture of cheeses

(OJ L 205, 1.8.2008, p. 22)

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laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards authorisations for the use of casein and caseinates in the manufacture of cheeses

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 Articles 121(i), 192 and 194 in conjunction with Article 4 thereof,

Whereas:

(1) Council Regulation (EEC) No 2204/90 of 24 July 1990 laying down additional general rules on the common organisation of the market in milk and milk products as regards cheeses ([2]) is repealed by Regulation (EC) No 1234/2007 as from 1 July 2008.

(2) The provisions of Article 3 of Regulation (EEC) No 2204/90 on the exchange of information and on controls and administrative measures have not been incorporated in Regulation (EC) No 1234/2007. Pursuant to Articles 192 and 194 of Regulation (EC) No 1234/2007, those provisions should be integrated in Commission Regulation (EC) No 1547/2006 of 13 October 2006 laying down detailed rules for the application of Council Regulation (EEC) No 2204/90 ([3]).

(3) In the interests of clarity and rationality Regulation (EC) No 1547/2006 should be repealed and replaced by a new Regulation.

(4) Article 119 of Regulation (EC) No 1234/2007 stipulates that the use of casein and caseinates in the manufacture of cheese is subject to prior authorisation. It is necessary to lay down detailed rules for the grant of such authorisations, having regard to the requirements as regards checks on undertakings. In order to facilitate the implementation and monitoring of the derogations concerned authorisations should be granted for a specific period.

(5) Point (i) of Article 121 of Regulation (EC) No 1234/2007 stipulates that the maximum percentages of casein and caseinates to be incorporated in cheese must be determined on the basis of objective criteria having regard to what is technologically necessary. It is appropriate to determine the said percentages at community level on the basis of available knowledge. In order to facilitate checks to ensure compliance with this provision, it is advisable to set overall percentages rather than percentages for individual products without prejudice to stricter standards at national level.

(6) When using casein and/or caseinates in cheeses the international standards for cheese should be respected, in particular the respect of the whey protein/casein ratio ([4]).

([1]) OJ L 299, 16.11.2007, p. 1. Regulation as last amended by Commission Regulation (EC) No 510/2008 (OJ L 149, 7.6.2008, p. 61).
([2]) OJ L 201, 31.7.1990, p. 7. Regulation as amended by Regulation (EC) No 2583/2001 (OJ L 345, 29.12.2001, p. 6).
([3]) OJ L 286, 17.10.2006, p. 8.
([4]) Codex Alimentarius general standard for cheese (CODEX STAN A-6, amended 2006).

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(7) It is necessary to lay down detailed rules on controls and penalties taking into account the structure of the industry. The level of the penalty should be determined when the aid pursuant to Article 100 of Regulation (EC) No 1234/2007 is reintroduced.

(8) Without prejudice to any national penalties when use of caseins and caseinates in the manufacture of cheeses is made without authorisation, it is appropriate, where an amount of aid is fixed pursuant to Article 100 of Regulation (EC) No 1234/2007, to claim a penalty determined on the basis of the value of the casein and caseinates on one hand and the value of a corresponding quantity of skimmed milk powder on the other hand in order to neutralise at least the economic benefit arising from unauthorised utilisation. As long as the aid for the production of casein and caseinates is fixed at zero it is appropriate not to fix the level of the penalty.

(9) Article 204(2)(f) of Regulation (EC) No 1234/2007 lays down that the Regulation applies as regards the milk and milk products sector, with the exception of the provisions set out in Chapter III of Title I of Part II, from 1 July 2008. It repeals Regulation (EEC) No 2204/90 as from that date. Therefore, this Regulation should apply from 1 July 2008.

(10) In order to allow the industry to adapt to the new maximum percentage to be incorporated and its extension to other cheeses, a derogation for a period of six months should be provided for.

(11) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

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1. This Regulation lays down the rules as regards the granting of authorisations for the use of casein and caseinates in the manufacture of cheese when:

(a) an aid is fixed pursuant to Article 100 of Regulation (EC) No 1234/2007; and

(b) such use is considered necessary for the manufacture of cheese as provided for in Article 119 of that Regulation.

Those authorisations shall be granted for a period of 12 months, at the request of the undertakings concerned, subject to a prior undertaking in writing to accept and comply with the provisions of Article 3 of this Regulation.

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2. Authorisations shall be issued with a serial number for each undertaking or, where necessary, for each production unit.

3. Authorisations may cover one or more types of cheese, in accordance with the application made by the undertaking concerned.

Article 2

1. The maximum percentage referred to in point (i)(i) of Article 121 of Regulation (EC) No 1234/2007 to be incorporated in products falling under CN code 0406 is 10 %. It shall apply to the weight of the cheese produced by the undertaking or production unit concerned during a six-month period.

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The cheeses with added casein or caseinates shall not exceed the whey protein/casein protein ratio of milk and shall respect the national legislation of the country of manufacture on the use of casein and caseinates.

2. By way of derogation from paragraph 1, until 31 December 2008, the maximum percentage referred to in the first subparagraph of that paragraph shall be 5 % for:

(a) processed cheese falling within CN code 0406 30;

(b) grated processed cheese covered by CN code ex 0406 20, manufactured by a continuous process, without addition of already manufactured processed cheese;

(c) processed cheese in powdered form covered by CN code ex 0406 20, manufactured by a continuous process, without addition of already manufactured processed cheese.

Article 3

1. Undertakings shall:

(a) declare to the competent authority the quantities and types of cheese manufactured and the quantities of casein and caseinates incorporated into the various products;

(b) keep stock accounts enabling verification of the quantities and types of cheese manufactured, the quantities of casein and caseinates purchased and/or manufactured and their destination and/or utilisation.

2. The stock accounts referred to in paragraph 1(b) shall include information as to the origin, composition and quantity of the raw materials used in the manufacture of the cheeses. Member States may require samples to be taken to provide a check on this information. Member States shall ensure that the information collected from undertakings is treated as confidential.

Article 4

1. Member States shall ensure compliance with this Regulation by administrative and physical verification notably by:

(a) frequent, unannounced spot checks in order to cross-check the stock accounts on the one hand and appropriate commercial documents and stocks actually held on the other hand; such checks shall relate to a representative number of the declarations referred to in Article 3(1)(a);

(b) random checks of undertakings which manufacture cheese and which have not been granted an authorisation.

2. Each undertaking in receipt of an authorisation shall be checked at least once per year.

Article 5

Member States shall keep records on:

(a) the number of authorisations granted and/or revoked;

(b) the quantities of casein and caseinates declared in respect of these authorisations, and the quantity of cheese produced;

(c) the cases in which casein and/or caseinates have been used either without authorisation or without abiding the percentages laid down, with the unauthorised quantities of casein and caseinates used.

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Article 6

1. Without prejudice to the penalties laid down by the Member States concerned, casein and caseinates used without authorisation shall be subject to a penalty. That penalty shall be determined when the level of aid pursuant to Article 100 of Regulation (EC) No 1234/2007 is amended.

2. The sums collected pursuant to paragraph 1 shall be deemed to be assigned revenue in accordance with Article 12 of Commission Regulation (EC) No 883/2006 ([1]) and shall be declared to the Commission in accordance with Article 5 of that Regulation.

Article 7

1. Regulation (EC) No 1547/2006 is repealed.

However, authorisations granted in accordance with Article 1 of Regulation (EC) No 1547/2006 shall remain valid until they expire.

2. References to the repealed Regulation and to Article 3 of Regulation (EEC) No 2204/90 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

Article 8

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

It shall apply from 1 July 2008. However, Article 2(1) shall apply from 1 January 2009.

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

([1]) OJ L 171, 23.6.2006, p. 1.

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ANNEX

Correlation Table

Regulation (EC) No 1547/2006	Regulation (EEC) No 2204/90	This Regulation
Articles 1 and 2		Articles 1 and 2
	Article 3(1)(a) and (b)	Article 3(1)
	Article 3(1)(c)	Article 4(1)
Article 3(1)		Article 3(2)
Article 3(2)		Article 4(2)
Article 3(3)		Article 5(c)
Article 4(1)		Article 6
Article 4(2)		—
Article 5		Article 5(a) and (b)
Article 6		—
—		Article 7
Article 7		Article 8
Annex I		—
Annex II		—
Annex III		—