COMMISSION REGULATION (EC) No 258/2009

of 26 March 2009

amending Regulation (EC) No 595/2004 laying down detailed rules for applying Council Regulation (EC) No 1788/2003 establishing a levy in the milk and milk products sector

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 69(2), Article 80(1) and Article 85, in conjunction with Article 4 thereof,

Whereas:

(1) Article 10 of Commission Regulation (EC) No 595/2004 [2] provides for the way the fat content of milk is taken into account when drawing up the definitive statement of deliveries.

(2) The adjustment coefficients applied to milk deliveries where the fat content is greater or lower than the reference level have remained the same since 1989. In view of many changes in the nature of the support regime for the milk sector since then, it is appropriate to reduce the degree of adjustment applied to milk delivered with fat content greater than reference fat content. The coefficient to be applied when the real fat content of deliveries is less than the reference fat should remain unchanged.

(3) In view of those differential adjustment rates, it is also appropriate to modify the information provided by Member States to the Commission in the annual questionnaire so that it shows details on both the upward and downward adjustments.

(4) Article 2 of Regulation (EC) No 595/2004 requires that each year the Commission has to divide the national quota for each Member State between deliveries and direct sales, based on communications from the Member States. Those communications concern the requests for conversions made by producers. Additional quota allocated to Member States is allocated to the national reserve in the first instance and then divided by Member States between deliveries and direct sales according to foreseeable needs. However, there is no formal provision whereby the Commission is informed of this division. Therefore, it is appropriate to require the Commission to take this division into account in the annual adaptation and to provide Member States with the mechanism to inform the Commission of the division of such quota.

(5) In a number of Member States, deliveries have been substantially lower than the deliveries part of the national quota for a number of years. The possibility of the quota being exceeded will be further reduced as national quotas are increased. Experience shows that as the risk of incurring a levy is reduced, the risk that operators would understate or conceal the quantity of deliveries would also fall. It is therefore appropriate to reduce accordingly the intensity of controls to take place in such Member States in order to optimise the use of control resources.

(6) In accordance with the second subparagraph of Article 19(3) of Regulation (EC) No 595/2004, Member States are required to complete all control reports relating to a 12-month period within 18 months of the end of the period concerned. Where Member States avail themselves of the option now provided to implement a reduced rate of control intensity in certain circumstances, it is appropriate to reduce the maximum time allowed for the completion of all reports.

(7) In order to allow the Member States to benefit from a less burdensome situation resulting from the adjusted intensity of control, and taking into account that according to Article 19(2) of Regulation (EC) No 595/2004 controls are carried out partly during the 12-month period in question, partly after the 12-month period, it is appropriate to apply the adjusted intensity of controls as from the 12-month period 2008/2009, i.e. the period starting on 1 April 2008 and finishing on 31 March 2009.

(8) In order to support the Commission's supervision of the implementation of the quota system and in particular in the context of the reports to be provided by the Commission to the Council before the end of 2010 and 2012, it is appropriate to provide for more detailed information on the extent of quota utilisation, the distribution of the unused quota to producers, and where relevant, on the collection of levy due from producers.

(9) Regulation (EC) No 595/2004 should therefore be amended accordingly.

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

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 94, 31.3.2004, p. 22.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 595/2004 is amended as follows:

1. in Article 2, first paragraph, 'Article 21' is replaced by 'Article 25';

2. Article 10 is amended as follows:

   (a) paragraph 1 is amended as follows:

      (i) the second subparagraph is replaced by the following:

      'If a positive difference is found, the quantity of milk delivered shall be increased by 0,09 % per 0,1 gram of additional fat per kilogram of milk.';

      (ii) the fifth subparagraph is replaced by the following:

      'Where the quantity of milk delivered is expressed in litres, the adjustment shall be multiplied by the coefficient 0,971.';

   (b) paragraph 2 is replaced by the following:

   '2. The Member States shall establish the adjustment of deliveries at national level in accordance with Article 80(1) of Council Regulation (EC) No 1234/2007 (*).

   (*) OJ L 299, 16.11.2007, p. 1.';

3. in Article 19(3), the following sentence is added in the second subparagraph:

   'However the inspection reports shall be completed no later than 12 months after the end of the period concerned in Member States where Article 22(1), points (aa) and (ba) apply.';

4. in Article 22(1), points (a) and (b) are replaced by the following:

   '(a) 2 % of producers for each 12-month period, or

   (aa) 1 % of producers in Member States where the total adjusted deliveries have been less than 95 % of the deliveries part of the national quota in each of the three preceding 12-month periods; and

   (b) 40 % of the quantity of milk declared after adjustment for the period concerned, or

   (ba) 20 % of the quantity of milk declared after adjustment in Member States where the total adjusted deliveries have been less than 95 % of the deliveries part of the national quota in each of the three preceding 12-month periods; and';

5. in Article 25, paragraph 2 is replaced by the following:

   '2. In accordance with Article 69(2)(a) of Regulation (EC) No 1234/2007, the Member States shall notify to the Commission, before 1 February each year:

   (a) the quantities which have been definitively converted between individual quotas for deliveries and direct sales at the request of individual producers;

   (b) the division between deliveries and direct sales of the quota placed in the national reserve in accordance with Article 71(2) of Regulation (EC) No 1234/2007 with effect from 1 April of the 12-month period in question.';

6. in Article 27, the following paragraph 4 is added:

   '4. Before 1 October each year, the Member States shall communicate to the Commission a report concerning quota utilisation and levy collection in respect of the 12-month period finishing on 31 March of the same calendar year. The report shall include information on the reallocation of unused quota including the number of producers to whom allocations were made and the basis for the allocations. Where relevant, the report shall state the number of producers contributing to the payment of the surplus levy and indicate the number of cases, if any, where the surplus levy has been deemed impossible to collect due to producers' definitive incapacity to pay or bankruptcy. Member States shall communicate an update of the report to the Commission before 1 December to include relevant newly available information. Each subsequent report shall update the position in respect of the collection of any surplus levy previously reported as outstanding.';

7. in Annex I, point 1.8 is replaced by the following:

   '1.8 Adjustment of deliveries due to fat content:

      (a) quantity of deliveries subject to upward adjustment (kilograms);

      (b) total of upward adjustment (kilograms);

      (c) quantity of deliveries subject to downward adjustment (kilograms);

      (d) total of downward adjustment (kilograms).'.

Article 2

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

It shall apply from 1 April 2009, except for points 3 and 4 of Article 1, which shall apply from 1 April 2008.

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

Done at Brussels, 26 March 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission