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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards marketing standards for poultrymeat

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laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards marketing standards for poultrymeat

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007¹, and in particular Article 90a(6), points (b) and (c), and Article 91, first subparagraph, points (b), (d), (f) and (g), thereof,

Whereas:

- (1) Regulation (EU) No 1308/2013 repealed and replaced Council Regulation (EC) No 1234/2007². Regulation (EU) No 1308/2013 lays down rules on marketing standards for poultrymeat and empowers the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the poultrymeat market in the new legal framework, certain rules have to be adopted by means of such acts. Those acts should replace the provisions of Commission Regulation (EC) No 543/2008³, which is repealed by Commission Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP]⁴. References to the Repealed Regulation should be read in accordance with Annex XII to that Delegated Regulation, which provides for a correlation table.
- (2) The provisions of this Regulation and in particular those relating to surveillance and enforcement should be applied uniformly throughout the Union. Detailed rules adopted to those ends should also be uniform. It is therefore necessary to lay down common measures in the matter of sampling procedures and tolerances.
- (3) In order to ensure the smooth functioning of the poultrymeat market, common rules have to be laid down concerning the checks that Member States should carry out to verify the respect of poultrymeat marketing standards.
- (4) With a view to the uniform application of the poultrymeat marketing standards, the term ‘batch’ should be defined in the poultrymeat sector.

¹ OJ L 347, 20.12.2013, p. 671.

² 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) (OJ L 299, 16.11.2007, p. 1).

³ Commission Regulation (EC) No 543/2008 of 16 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat (OJ L 157, 17.6.2008, p. 46).

⁴ Commission Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP] supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards marketing standards for poultrymeat, and repealing Commission Regulation (EC) No 543/2008 (OJ L [...], [...], p. [...]).

- (5) In order to avoid consumer deception, and in view of economic and technological developments in the production of poultrymeat, the maximum water content of poultrymeat should be fixed and a monitoring system both in slaughterhouses and at all marketing stages should be defined without violating the principle of the free circulation of products in a single market.
- (6) In order to ensure the respect of the marketing standards rules, it is necessary to lay down provisions on the action to be taken if a check reveals an irregularity in a consignment, where the products do not satisfy the requirements of this Regulation. A procedure should be established for the settlement of disputes which may arise in respect of consignments in the internal market, including the cooperation of the national authorities with the Commission in order to carry out inspections on the spot.
- (7) In order to ensure the smooth functioning of the market, provision should be made for the Member States to check the water content of frozen and quick-frozen poultry. With a view to ensuring the uniform application of this Regulation, provisions should be made for Member States to inform the Commission and the other Member States of the results of the checks.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down common rules for the implementation of marketing standards for poultrymeat laid down in Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP], in particular as regards:

- (a) the checks of conformity with the marketing standard for poultrymeat;
- (b) the cooperation and assistance between competent authorities with regard to certain conformity checks referred to in point (a);
- (c) the records to be kept by operators;
- (d) the methods of analysis.

Article 2

Definitions

The definitions provided for in Article 2 of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP] shall apply to this Regulation.

Article 3

Checks of anatomical conformity

- 1. Batches of poultrymeat shall be checked regularly, with appropriate frequencies determined on a risk basis, for conformity with Articles 2, 4 and 8 of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP]. Decisions arising from failure to comply in accordance with this Article may only be taken for the whole batch which has been checked.

For the purposes of this Regulation, a ‘batch’ is composed of a minimum of 100 units of poultrymeat of the same species and cut, the same class, the same production run, from the same slaughterhouse or cutting plant, situated in the same place, which is to be inspected.

2. A sample shall be drawn at random for each batch of each of the products referred to in Article 2 of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP] to be inspected in slaughterhouses, cutting plants, wholesale and retail warehouses or at any other stage of marketing, including during transport or, in the case of imports from third countries, at the time of customs clearance. The size of the sample and the tolerable number of defective units per batch size shall be as follows:

Batch size	Sample size	Tolerable number of defective units	
		Total	For Article 2, points (1) ⁽¹⁾ and (3), and Article 8(1) of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP]
1	2	3	4
100 to 500	30	5	2
501 to 3 200	50	7	3
> 3 200	80	10	4

(1) Tolerance within each species from Article 2(1) of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP], not from one species to another

3. The total tolerable number of defective units within a batch is laid down in column 3 of the table referred to in paragraph 2.

However, the number of defective units not complying with Article 2, points (1) and (3), or with Article 8(1) of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP], shall not exceed the figures shown in column 4 of the table.

As regards products referred to in Article 2, point (3), of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP], no defective unit shall be tolerable in a batch unless it be of a weight of at least 240 g in the case of duck livers and of at least 385 g in the case of goose livers.
4. For poultrymeat graded as class B, the tolerable number of defective units per batch shall be doubled.
5. Where the checked batch does not comply, the supervising agency shall prohibit its marketing or, if the batch comes from a third country, its import, unless and until it is proven that the batch has been rectified to comply with Articles 2 and 8 of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP] by removing all defective units.

Article 4

Checks of optional reserved terms

1. Food business operators marketing products that use the terms referred to in Article 10 of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP] shall be subject to special registration.
2. Inspections regarding compliance with Articles 10 and 11 of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP] shall be carried out with appropriate frequencies determined on a risk basis at:
 - (a) the farm;
 - (b) the feed manufacturer and supplier;
 - (c) the slaughterhouse;
 - (d) the hatchery.
3. Each Member State shall make available to the other Member States and to the Commission, by every appropriate means, including publication on the Internet, the updated list of the approved food business operators registered in accordance with paragraph 1, showing their name and address and the number allotted to each of them.

Article 5

Analysis of technically unavoidable water content in chicken carcasses

1. The method of analysis for technically unavoidable water content value referred to in Article 14(2) of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP] is laid down in Annex I to this Regulation ('chemical method').
2. The competent authorities designated by each Member State shall ensure that the slaughterhouses adopt all measures necessary to comply with Article 14 of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP], in particular that:
 - (a) samples for monitoring water absorption during chilling and water content of frozen and quick-frozen chicken carcasses are taken;
 - (b) results of the checks are recorded and kept for a period of one year;
 - (c) each batch is marked with its date of production; the date of production of each batch shall be part of the production record.

Article 6

Checks of water absorbed and total water content in chicken carcasses

1. Regular checks in accordance with Annex III on the water absorbed shall be carried out in the slaughterhouses, with appropriate frequencies determined in procedures developed in accordance with the HACCP principles pursuant to Regulation (EC) No 852/2004 of the European Parliament and of the Council⁵.

⁵ Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

Where these checks reveal that the amount of water absorbed is greater than the thresholds set out in Annex IX to Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP], the necessary technical adjustments shall be made immediately by the slaughterhouse to the process.

2. Competent authorities shall carry out checks on water content regularly, with appropriate frequencies determined on a risk basis and by sampling, on frozen and quick-frozen chicken carcasses from each slaughterhouse using the method of analysis referred to in Article 5(1). These checks shall not be conducted for carcasses in respect of which proof is provided to the competent authority that they are intended exclusively for export.
3. If the result of the checks referred to in paragraph 2 exceed the values referred to in Article 14(2) of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP], the slaughterhouse concerned may request that a counter-analysis of a batch be carried out in the reference laboratory of the Member State, using a method to be chosen by the competent authority of the Member State. The costs of this counter-analysis shall be borne by the holder of the batch.
4. Where the batch in question is deemed after such counter-analysis not to comply with this Regulation, it shall remain under the supervision of the competent authority until it is dealt with in accordance with this paragraph or otherwise disposed of.
5. If it is certified to the competent authority that the batch referred to in the first subparagraph is to be exported, the competent authority shall take all necessary measures to prevent the batch in question from being marketed within the Union.
6. The competent authority may authorise the marketing within the Union of the batch in accordance with Article 14(4) of Delegated Regulation 2023/XXX [PLAN/2022/1902, to be completed by OP].
7. Paragraphs 2, 3 and 4 shall apply *mutatis mutandis* to imported frozen and quick-frozen chicken carcasses at the time of customs clearance.

Article 7

Cooperation and assistance on water content controls

1. The Member State of destination may, where there are serious grounds for suspecting irregularities, carry out non-discriminatory random checks of frozen or quick-frozen chicken carcasses in order to verify that a consignment meets the requirements of Article 14 of Delegated Regulation 2023/XXX [PLAN/2022/1902, to be completed by OP].
2. The checks referred to in paragraph 1 shall be carried out at the place of destination of the goods or at another suitable place, provided that in the latter place is not at the border and interferes as little as possible with the routing of the goods and that the goods may proceed normally to their destination once the sample has been taken. However, the products concerned shall not be sold to the final consumer until the result of the checks prove the compliance with Article 14 of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP].

Such checks shall be carried out as quickly as possible to avoid undue delays in placing the products on the market, or cause delays which impair the products' quality.

Results of these checks and any subsequent decisions and the grounds for taking them shall be notified at the latest two working days after sampling to the consignor, the consignee or their representative. Decisions taken by the competent authority of the Member State of destination and the reasons for such decisions shall be notified to the competent authority of the Member State of dispatch.

If the consignor or his representative so requests, the decisions and reasons for them shall be forwarded to him in writing with details of the rights of appeal which are available to him under the law in force in the Member State of destination and of the procedure and time limits applicable.

3. If the result of the checks referred to in paragraph 1 exceeds the values referred to in Article 14(2) of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP], the holder of the batch concerned may request that a counter-analysis be carried out in one of the reference laboratories of the Member States from among the list published by the Commission on the Europa website, using the same method of analysis as used for the initial test. The costs of this counter-analysis shall be borne by the holder of the batch. The tasks of reference laboratories are set out in Annex IV to this Regulation.
4. If, after a check carried out in accordance with paragraphs 1 and 2 and, if requested, after a counter-analysis, it is found that the frozen or quick-frozen chicken carcasses do not comply with Article 14(2) of Delegated Regulation 2023/XXX [PLAN/2022/1902, to be completed by OP], the competent authority of the Member State of destination shall apply the procedures provided for in Article 6(4) of this Regulation.
5. In the cases provided for in paragraphs 3 and 4, the competent authority of the Member State of destination shall contact the competent authorities of the Member State of dispatch without delay. The latter authorities shall take all necessary measures and notify the competent authority of the Member State of destination of the nature of the checks carried out, the decisions taken and the reasons for such decisions.

Where the checks referred to in paragraphs 1 and 3 show repeated irregularities, or where such checks, in the view of the Member State of dispatch, are carried out without sufficient justification, the competent authorities of the Member States concerned shall inform the Commission.

The Commission, acting on its own initiative to ensure uniform application of the poultrymeat marketing standards or at the request of the competent authority of the Member State of destination, may:

- (a) request the cooperation of the competent national authorities of the Member State concerned to carry out on-the-spot inspections in the establishment concerned; or
- (b) request the competent authority of the Member State of dispatch to intensify the frequency of controls and increase the sampling of the products of the establishment concerned and if necessary, to apply sanctions.

The Commission shall inform the Member States of its findings. Member States in whose territory an inspection is carried out shall provide the Commission personnel all the assistance necessary for the performance of their tasks.

Pending the Commission's findings, the Member State of dispatch shall, at the request of the Member State of destination, increase the frequency of checks on products coming from the establishment concerned.

Where these measures are taken to address repeated irregularities in an establishment, the costs incurred due to the application of the measures laid down in the third subparagraph, points (a) and (b), shall be borne by the establishment concerned.

Article 8

Checks of water absorbed and total water content in poultrymeat cuts

1. The method of analysis referred to in Article 14(3) of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP] is laid down in Annex II to this Regulation ('chemical method').
2. The competent authorities designated by each Member State shall ensure that the slaughterhouses and cutting plants, whether or not attached to slaughterhouses, adopt all measures necessary to comply with the provisions of Article 14 of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP] and in particular that:
 - (a) except for air chilling of turkey carcasses, regular checks on water absorbed are carried out in the slaughterhouses in accordance with Article 6(1) also for chicken and turkey carcasses intended for the production of the fresh, frozen and quick-frozen cuts listed in Article 14(3) of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP];
 - (b) results of the checks are recorded and kept for a period of one year;
 - (c) each batch is marked with its date of production; the date of production of each batch shall be part of the production record.
3. Checks on the water content referred to in paragraph 1 shall be carried out, with appropriate frequencies determined on a risk basis and by sampling, on frozen and quick-frozen poultry cuts from each cutting plant producing such cuts, in accordance with Annex II. These checks may not be conducted for poultry cuts in respect of which proof is provided to the competent authority that they are intended exclusively for export.
4. Article 6(2) to (5) and Article 7 shall apply, *mutatis mutandis*, for poultry cuts referred to in Article 14(3) of Delegated Regulation (EU) 2023/XXX [PLAN/2022/1902, to be completed by OP].

Article 9

Notifications

The notifications to the Commission referred to in this Regulation shall be made in accordance with Commission Delegated Regulation (EU) 2017/1183⁶ and Commission Implementing Regulation (EU) 2017/1185⁷.

⁶ Commission Delegated Regulation (EU) 2017/1183 of 20 April 2017 on supplementing Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council with regard to the notifications to the Commission of information and documents (OJ L 171, 4.7.2017, p. 100).

Article 10

Entry into force

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

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

Done at Brussels,

For the Commission
The President
Ursula von der Leyen

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Commission Implementing Regulation (EU) 2017/1185 of 20 April 2017 laying down rules for the application of Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards notifications to the Commission of information and documents and amending and repealing several Commission Regulations (OJ L 171, 4.7.2017, p. 113).