

## COMMISSION REGULATION (EC) No 1253/2002

of 11 July 2002

**amending Regulation (EC) No 800/1999 laying down common detailed rules for the application of the system of export refunds on agricultural products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1666/2000 <sup>(2)</sup>, and in particular Articles 13 and 21 thereof, and the corresponding provisions of the other regulations on the common organisation of markets in agricultural products,

Whereas:

(1) At present, the conditions for the approval and control of international control and supervisory agencies (hereinafter referred to as SAs) by Member States are laid down in a working document of the Commission that is not legally binding. In its Special Report No 7/2001 concerning export refunds <sup>(3)</sup>, the Court of Auditors has noted certain deficiencies in the proof of arrival system for differentiated export refunds on agricultural products, in which the SAs play a crucial role. In the light of the recommendations of that Special Report, it is appropriate to render the conditions governing the approval and control of SAs legally binding by integrating them into Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products <sup>(4)</sup>, as last amended by Regulation (EC) No 2299/2001 <sup>(5)</sup>. These conditions concern the procedures for granting, suspending and withdrawing approval, the types and models of the certificates to be issued by SAs as well as the requirements for certification.

(2) It is further considered necessary to provide for an effective system of sanctions, to be implemented by Member States, in cases of irregular proofs of arrival delivered by SAs.

(3) At present there are no common rules for the issue of certificates of unloading by official agencies of Member States established in third countries. It is therefore necessary to establish the minimum requirements to be observed by these agencies when issuing secondary proof of arrival.

- (4) With a view to simplify the administrative burden involved in the submission of proofs of arrival, the amounts of export refunds for which no proof of importation is required should be increased.
- (5) The burden on the competent authorities of managing small amounts of refunds is heavy. It is therefore considered appropriate, in the interest of simplification, to establish a threshold of EUR 100 below which the competent services of the Member States should be given the option of refusing the payment of such refunds.
- (6) At the same time Article 9(1)(c) of Regulation (EC) No 800/1999 should be adapted to the amended Article 912c(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code <sup>(6)</sup>, as last amended by Regulation (EC) No 444/2002 <sup>(7)</sup>.
- (7) Regulation (EC) No 800/1999 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinions of all Management Committees concerned,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 800/1999 is amended as follows:

1. Article 9(1)(c) is replaced by the following:

- '(c) As an alternative to the conditions set out in point (b), the Member State of destination of the T5 control copy or the Member State where a national document is used as proof may stipulate that the T5 control copy or the national document proving that the products have left the customs territory of the Community is to be endorsed only on presentation of a transport document specifying a final destination outside the customs territory of the Community.

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.<sup>(2)</sup> OJ L 193, 29.7.2000, p. 1.<sup>(3)</sup> OJ C 314, 8.11.2001, p. 1.<sup>(4)</sup> OJ L 102, 17.4.1999, p. 11.<sup>(5)</sup> OJ L 308, 27.11.2001, p. 19.<sup>(6)</sup> OJ L 253, 11.10.1993, p. 1.<sup>(7)</sup> OJ L 68, 12.3.2002, p. 11.

In such cases, one of the following entries shall be added by the competent authorities of the Member State of destination of the T5 control copy or the Member State where a national document is used as proof under the heading "Remarks" in the section headed "Control of use and/or destination" on the T5 control copy or under the corresponding heading of the national document:

- Documento de transporte con destino fuera de la CE presentado,
- Transportdokument med destination uden for EF forelagt,
- Beförderungspapier mit Bestimmung außerhalb der EG wurde vorgelegt,
- Υποβαλλόμενο έγγραφο μεταφοράς με προορισμό εκτός ΕΚ,
- Transport document indicating a destination outside the customs territory of the Community has been presented,
- Document de transport avec destination hors CE présenté,
- Documento di trasporto con destinazione fuori CE presentato,
- Vervoerdocument voor bestemming buiten EG voorgelegd,
- Documento de transporte com destino fora da CE apresentado,
- Kuljetusasiakirja, jossa ilmoitetaan yhteisön tullialueen ulkopuolinen määräraikka, on esitetty,
- Transportdokument med slutlig destination, utanför gemenskapens tullområde har lagts fram.

Compliance with this point shall be verified by suitable spot checks conducted by the paying agency.'

2. Article 16 is amended as follows:

- (a) in paragraph 1, point (b) is replaced by the following:

'(b) a certificate of unloading and importation drawn up by an approved international control and supervisory agency (hereinafter referred to as SA) in accordance with the rules set out in Annex VI, Chapter III, using the model set out in Annex VII. The date and number of the customs document of import must appear on the certificate concerned.'

- (b) in paragraph 2 the opening sentence and points (b) and (c) are replaced by the following:

'Where the exporter cannot obtain the document chosen in accordance with points (a) or (b) of paragraph 1 even

after taking the appropriate steps, or where there are doubts as to the authenticity of the document furnished, or its accuracy in all respects, proof of completion of customs formalities for importation may be furnished by one or more of the following documents:'

'(b) a certificate of unloading issued by an official agency of a Member State established in, or competent for, the country of destination, in accordance with the requirements and in conformity with the model set out in Annex VIII, certifying in addition that the product has left the place of unloading or at least that, to its knowledge, the product has not subsequently been loaded for re-exportation;

(c) a certificate of unloading drawn up by an approved SA in accordance with the rules set out in Annex VI, Chapter III, using the model set out in Annex IX, certifying in addition that the product has left the place of unloading or at least that, to its knowledge, the product has not subsequently been loaded for re-exportation;'

- (c) paragraph 5 is deleted.

3. The following Articles 16a to 16f are inserted:

*Article 16a*

1. An SA wishing to issue certificates as referred to in Article 16(1)(b) and (2)(c) has to be approved by the competent authority of the Member State where it has its registered office.

2. The SA shall be approved at its request for a renewable period of three years, if it fulfils the conditions set out in Annex VI, Chapter I. The approval shall be valid for all Member States.

3. The approval shall specify whether the authorisation to issue certificates as referred to in Article 16(1)(b) and (2)(c) shall be on a worldwide basis or limited to a certain number of third countries.

*Article 16b*

1. The SA shall act in accordance with the rules set out in Annex VI, Chapter II, point 1.

If one or more of the conditions set out in those rules are not respected, the Member State which has approved the SA shall suspend the approval for such a period as is required to remedy the situation.

2. The Member State which has approved the SA shall control the performance and behaviour of the SA in accordance with the requirements set out in Annex VI, Chapter II, point 2.

*Article 16c*

Member States which have approved SAs shall provide for an effective system of sanctions for cases where an approved SA has issued a false certificate.

*Article 16d*

1. The Member State which has approved the SA shall immediately withdraw the approval:

- if the SA does no longer comply with the conditions for approval set out in Annex VI, Chapter I, or
- if the SA has repeatedly and systematically issued false certificates. In this case the sanction provided for in Article 16(c) shall not apply.

2. The withdrawal shall be total or limited to certain parts or activities of the SA according to the nature of the shortcomings detected.

3. Whenever an approval is withdrawn by a Member State from an SA belonging to a group of companies, Member States which have approved SAs belonging to the same group, shall suspend the approvals of these SAs for a period not exceeding three months in order to carry out the necessary investigations to verify whether the SAs also feature the shortcomings detected in relation to the SA whose approval has been withdrawn.

For the application of the previous subparagraph, a group of companies shall comprise all companies whose capital is owned, directly or indirectly, for more than 50 % by one single parent company, as well as the parent company itself.

*Article 16e*

1. Member States shall notify the approval of SAs to the Commission.

2. A Member State that withdraws or suspends the approval shall immediately notify the other Member States and the Commission, indicating the shortcomings that led to the withdrawal or suspension.

The notification to Member States shall be sent to the Member States central bodies listed in Annex X.

3. The Commission shall periodically publish for information an updated list of the SAs approved by Member States.

*Article 16f*

1. Certificates as referred to in Article 16(1)(b) and (2)(c) issued after the date of withdrawal or suspension of the approval shall not be valid.

2. Member States shall refuse to accept certificates as referred to in Article 16(1)(b) and (2)(c) if they detect irregularities or deficiencies in the certificates. When such certificates have been issued by an SA approved by another Member State, the Member State which detects the irregularities shall notify these circumstances to the Member State which gave the approval.'

4. Article 17 is replaced by the following:

*'Article 17*

Member States may exempt exporters from furnishing proof required under Article 16 other than the transport document, in case of an export declaration giving entitlement to a refund the differentiated part of which is less than or equal to:

- (a) EUR 2 400 where the third country or territory of destination is listed in Annex IV;
- (b) EUR 12 000 where the third country or territory of destination is not listed in Annex IV.

If the exporter artificially divides the export operation with the aim of circumventing the obligation to furnish the proof of arrival at destination, the entitlement to the export refund shall no longer exist and the refund shall be reimbursed, except where the exporter provides the proof required under Article 16 for the products concerned.'

5. In Article 49, paragraph 9 is replaced by the following:

'9. Member States may decide not to grant refunds where the amount is less than or equal to EUR 100 per export declaration.'

6. Annexes VI to X, as set out in the Annex to this Regulation, are added.

*Article 2*

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

It shall apply from 1 January 2003, subject to the following exceptions:

- (a) Article 1 point (1) shall apply as from the entry into force of this Regulation.
- (b) Article 1 points (4) and (5) shall apply to export declarations accepted after the entry into force of this Regulation.
- (c) As regards SAs which have received an authorisation of no more than three years before 1 January 2003, the provisions of Article 16a and Annex VI, Chapter I, shall apply for the first time when this authorisation is to be renewed.

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

Done at Brussels, 11 July 2002.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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## ANNEX

## 'ANNEX VI

Requirements for approval and control of SAs by Member States

**Chapter I***Approval requirements*

- (a) The SA must be an entity having legal capacity and has to be registered in the Register of companies of the responsible Member State.
- (b) The SA's constituting articles must stipulate that one of its declared aims is control and supervision of agricultural products at international level.
- (c) The SA must have international coverage in order to be able to carry out certification on a world-wide basis, either by implantation through subsidiaries in a number of third countries and/or by way of directly attending the discharge operations with their own salaried inspectors from the nearest regional office or from the national office in the Community or with local agents that are subjected to proper supervision by the SA.

The subsidiaries referred to in the previous paragraph must be owned by more than half of the capital by the SA. However, if national legislation in the third country concerned limits foreign ownership of the capital to 50 % or less, effective control of the subsidiary shall be sufficient for the purpose of the preceding subparagraph. This control shall be proved by appropriate means, such as, in particular, the existence of a management agreement, composition of its board of directors and senior management or similar arrangements.

- (d) The SA must have proved experience in control and supervision in agricultural and food products. This experience shall be established by submitting evidence relating to the inspections carried out over the previous three years, or currently in progress. These references must include information on the type of checks carried out (nature, quantity of products, place of inspection, etc.) and names and addresses of bodies or entities which can provide information about the applicant.
- (e) The SA must fulfil the requirements laid down in the standard norm EN 45011, points 4.1.1, 4.1.2, 4.1.4, 4.2a) to p), 4.4, 4.5, 4.7, 4.8.1b) to f), 4.8.2, 4.9.1, 4.10, 5, 7, 9.4.
- (f) The SA's financial situation (capital, turnover, etc.) must be sound. Proofs of the financial soundness, as well as its annual accounts for the past three years, containing the balance sheet, the profit and loss account, and, if required by law the auditors' report and the directors' report, shall be presented.
- (g) The administrative organisation of the SA must have an "internal audit unit", which will be responsible for assisting the national authorities in the activities of control and inspection that they will undertake on the approved SAs.

**Chapter II***1. Performance's engagements of SAs*

Approved SAs must engage at all time their responsibility and professional competence when delivering the certificates of arrival.

Approved SAs must conform in the course of their activities to the following criteria:

- (a) they must execute all possible controls to determine the identity and weight of the products covered by the certificates;
- (b) the management of the SA must properly oversee the controls undertaken by the staff of the company in the third countries of destination;
- (c) SAs must keep a file on each certificate delivered, in which evidence of the survey work carried out in order to support the conclusions stated in the certificate is recorded (quantitative controls and documentary checks effected, etc.). Files on the certificates issued must be kept for 5 years.
- (d) The approved SAs shall verify the unloading operations with their own suitably qualified, permanent personnel or with local agents based or active in the country of destination, or by sending their own personnel from regional offices or a national office in the Community. Intervention of local agents must be regularly supervised by suitably qualified, permanent employees of the SAs.

*2. Controlling the performance of SAs*

- 2.1. Member States will have the responsibility for checking the soundness and appropriateness of the certification functions carried out by the SAs.

Prior to the three-year renewal period, national authorities shall carry out an inspection visit to the registered office of the SA.

Whenever there are reasonable doubts about the quality and accuracy of the certificates drawn up by a particular SA, the competent authority shall make an on the spot inspection to the registered office of the company in order to verify that the rules contained in this Annex are applied correctly.

The Member States shall pay particular attention while inspecting the SA, to the working methods and operational procedures of the SA in carrying out its functions, as well as examining at random, files concerning certificates presented to the paying agency in the procedure for payment of refunds.

Member States may employ external and independent auditors to carry out the task of controlling the SAs in the framework of the procedure set up in this Annex.

Member States may take any other measures they consider necessary for a proper control of the SAs.

- 2.2. Member States authorities must pay particular attention, when checking the claims for export refunds supported by certificates from SAs, to the following aspects of the certification:
- (a) requiring that the work done is described in the certificates and satisfying itself that the work as described was sufficient to support the conclusions drawn in the certificate;
  - (b) inquiring into all discrepancies of the certificates submitted;
  - (c) requiring the certificates to be issued within a reasonable time limit, depending of the case at hand.

### Chapter III

1. Certification issued by approved SAs shall include not only the appropriate information necessary to identify the goods and consignment in question as well as details of means of transport, dates of arrival and unloading, but also a description of the controls and methods applied to verify the identity and weight of the certified products.

The controls and verifications undertaken by the SAs must be carried out at the time the unloading, which can take place during completion of customs formalities for importation or after. However, in exceptional and duly justified cases, the controls and verification for issuing the certificates may take place within six months following the date on which the goods were unloaded and the certification must describe the steps taken for the verification of facts.

2. In the case of certificates of unloading and importation (Article 16(1)(b)), the certification shall include also verification that the goods have been cleared through customs for definitive importation. This check has to establish a clear link between the relevant customs import document or customs clearing procedure and the operation concerned.
  3. The approved SAs shall be independent of the parties involved in the transaction under scrutiny. In particular, neither the SA carrying out the controls for a particular transaction, nor any subsidiary company belonging to the same group, may take part in the operation as exporter, customs agent, carrier, consignee, warehousekeeper or in any other capacity likely to give rise to a conflict of interest.
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## ANNEX VII

**Certificate of unloading and importation referred to in Article 16(1)(b)**

1. Certificate of unloading and importation  
No:
2. Exporter:
3. EC exporting country:
4. Country of destination:
5. Description of goods and refund code:
6. Quantity and packaging identification:
  - 6.1. Gross weight (kg):  
net weight (kg):
  - 6.2. Units (in case export refunds are fixed by units):
  - 6.3. Packaging identification:  
The quantity of bulk goods or the number and type of packages.  
Containers: number and kind.
7. Identity of means of transport(s):
  - 7.1. Transport document(s): kind, number and date:
8. Place of unloading:
  - 8.1. Place of control (port, airport, railway station):
9. Date of arrival at place of unloading:
  - 9.1. Date and time unloading starts:
  - 9.2. Date and time unloading ends:
10. Results and modalities of control:
  - 10.1. Gross weight (kg):  
net weight (kg):
  - 10.2. Units (in case export refunds are fixed by units):
  - 10.3. Packaging identification:  
The quantity of bulk goods or the number and type of packages.  
Containers: number and kind.
  - 10.4. Methods used for checking the weight:
  - 10.5. Remarks:
11. Date and number of the customs import document:
12. Other remarks including, if applicable, explanation as to the reasons why the verification of discharge was not made at the time of unloading:
13. The certificate shall contain:
  - 13.1. Name and function of the person who checked the goods:
  - 13.2. Name, date and place of signature, signature and stamp of supervisory agency:

## ANNEX VIII

**Requirements to be observed by official agencies of Member States established in third countries for the application of Article 16(2)(b)**

1. The official agency decides to issue the certificate of unloading on the basis of one or more of the following documents:
    - customs import documents, including computer print-outs if approved as such,
    - national port documents and other documents issued by an official entity,
    - declaration by the captain or the transport company,
    - other forms of receipt provided by the importer,
  2. The official agencies of Member States issued certificates of unloading in accordance with the following wording:

It is hereby certified that ... (description of goods, quantity and packaging identification) have been unloaded ... (place of unloading/name of the town) on ... (date of unloading).

It is certified in addition that the product has left the place of unloading or at least that, to its knowledge, the product has not subsequently been loaded for re-exportation.

The certificate is issued on the basis of the following documents:  
(list of the documents presented which give the basis for the agency issuing the certificate)

Date and place of signature, signature and stamp of official agency
  3. The official agency issuing certificates of unloading shall keep a register and files on all the certificates issued, in which it shall be recorded on the basis of which documentary evidence the certificates were delivered.
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## ANNEX IX

**Certificate of unloading referred to in Article 16(2)(c)**

1. Certificate of unloading  
No:
2. Exporter:
3. EC exporting country:
4. Country of destination:
5. Description of goods and refund code:
6. Quantity and packaging identification:
  - 6.1. Gross weight (kg):  
net weight (kg):
  - 6.2. Units (in case export refunds are fixed by units):
  - 6.3. Packaging identification:  
The quantity of bulk goods or the number and type of packages.  
Containers: number and kind.
7. Identity of means of transport(s):
  - 7.1. Transport document(s): kind, number and date
8. Place of unloading:
  - 8.1. Place of control (port, airport, railway station):
9. Date of arrival at place of unloading:
  - 9.1. Date and time unloading starts:
  - 9.2. Date and time unloading ends:
10. Results and modalities of control:
  - 10.1. Gross weight (kg):  
net weight (kg):
  - 10.2. Units (in case export refunds are fixed by units):
  - 10.3. Packaging identification:  
The quantity of bulk goods or the number and type of packages.  
Containers: number and kind.
  - 10.4. Methods used for checking the weight:
  - 10.5. Remarks:
11. Date of leaving the port zone:  
Or from ... to ...
- 11.1. Means of transport:
- 11.2. Certification of no re-exportation according to Article 16(2)(c):
12. Other remarks including, if applicable, explanation as to the reasons why the verification of discharge was not made at the time of unloading:
13. The certificate shall contain:
  - 13.1. Name and function of the person who checked the goods:
  - 13.2. Name, date and place of signature, signature and stamp of supervisory agency.

## ANNEX X

**List of central bodies in Member States referred to in Article 16d**

Member State	Central body
Belgium	Bureau d'Intervention et de Restitution Belge (BIRB) Belgisch Interventie- en Restitutiebureau (BIRB)
France	Commission interministérielle d'agrément (CIA) des sociétés de contrôle et de surveillance — Direction générale des douanes et droits indirects (DGDDI)
Luxembourg	Ministère de l'Agriculture, de la Viticulture et du Développement rural
Greece	Ministère de l'Agriculture — OPEKEPE
Spain	Ministerio de Agricultura, Pesca y Alimentación — Fondo Español de Garantía Agraria (FEGA)
Portugal	Ministério da Agricultura, do Desenvolvimento Rural e das Pescas
Italy	Agenzia delle Dogane — Servizio Autonomo Interventi Settore Agricolo (SAISA)
Denmark	Ministeriet for Fødevarer, Landbrug og Fiskeri — Direktoratet for FødevareErhverv
Ireland	Department of Agriculture and Food
United Kingdom	Rural Payments Agency (RPA)
Germany	Bundesministerium der Finanzen — Hauptzollamt Hamburg-Jonas
Netherlands	Ministerie van Landbouw, Natuurbeheer en Visserij
Austria	Bundesministerium für Finanzen
Finland	Ministry of Agriculture and Forestry
Sweden	Swedish Board of Agriculture'