

Commission Regulation (EC) No 1276/2008 of 17 December  
2008 on the monitoring by physical checks of exports of  
agricultural products receiving refunds or other amounts

CHAPTER I

**INTRODUCTORY PROVISIONS**

*Article 1*

**Subject matter and scope**

This Regulation lays down certain procedures for monitoring whether operations conferring entitlement to the payment of export refunds and all other amounts as defined in Article 2(a) have been carried out correctly.

It shall apply without prejudice to the provisions of Regulation (EC) No 800/1999.

This Regulation shall not apply to exports involving Community or national food aid covered by Regulation (EC) No 2298/2001.

*Article 2*

**Definitions**

For the purposes of this Regulation the following definitions shall apply:

- (a) 'other amounts' means operations related to financial measures under the European Agricultural Guarantee Fund and the European Agricultural Fund for Rural Development pursuant to Regulations (EC) No 793/2006, (EC) No 967/2006 and (EC) No 1914/2006;
- (b) 'products' means products as defined in first indent of Article 2(1)(a) of Regulation (EC) No 800/1999;
- (c) 'customs office of export' means the customs office referred to in Article 5(7)(a) of Regulation (EC) No 800/1999;
- (d) 'customs office of exit' means the customs office referred to in Article 793(2) of Regulation (EEC) No 2454/93;
- (e) 'customs office to which the T5 control copy is sent' means the customs office of destination referred to in Article 912c of Regulation (EEC) No 2454/93 including a customs office to which an equivalent document is sent;
- (f) 'physical check' means verification that the export declaration, or for other amounts documents as set out in Regulations (EC) No 793/2006, (EC) No 967/2006 and (EC) No 1914/2006, including documents submitted in support thereof, corresponds with the products as regards quantity, nature and characteristics under the conditions set out in Article 5;

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- (g) ‘substitution check’ means a check carried out by means of a visual check, that the products correspond to the document which accompanied them from the customs office of export to the customs office of exit or the office to which the T5 control copy is sent under the conditions set out in Article 8;
- (h) ‘specific substitution check’ means a substitution check which may vary from a visual check to a physical check, to be carried out if there are doubts as to the integrity of the sealing of the export products under the conditions set out in Article 9;
- (i) ‘visual check’ means a check by sensory perception including such checks using technical equipment;
- (j) ‘document’ means a paper, or an electronic medium approved under Regulation (EEC) No 2913/92, Commission Regulation (EC) No 885/2006<sup>(1)</sup> or Regulation (EC) No 450/2008 of the European Parliament and of the Council<sup>(2)</sup>, bearing information relevant in the framework of this Regulation;
- (k) ‘equivalent document’, in relation to a T5 control copy, means the national document referred to in Articles 8, 8a and 9 of Regulation (EC) No 800/1999, used where a national procedure is applied pursuant to Article 912a(5) of Regulation (EEC) No 2454/93;
- (l) ‘product sectors’ are the sectors as set out in Article 1 of Regulation (EC) No 1234/2007, with the exception of cereals and rice covered by Parts I and II of Annex I to that Regulation which shall be treated as a single product sector, and goods not covered by Annex I to the Treaty, which shall be treated as a single product sector.

### *Article 3*

#### **Types of checks**

Member States shall carry out:

- (a) physical checks on products in accordance with Article 4, at the time the customs export formalities are completed and before authorisation is given for the products in question to be exported, on the basis of documents submitted in support of the export declaration;
- (b) checks on the integrity of seals in accordance with Article 7;
- (c) substitution checks in accordance with Article 8;
- (d) specific substitution checks in accordance with Article 9; and
- (e) scrutiny of the documents in the payment application file in accordance with Article 12.

For other amounts, the application of physical checks is determined in Regulations (EC) No 793/2006, (EC) No 967/2006 and (EC) No 1914/2006.

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## CHAPTER II

### PHYSICAL CHECKS

#### *Article 4*

##### **Form and timing of checks**

1 Without prejudice to any specific provisions which require more extensive checks, physical checks shall take the form of spot checks conducted frequently and without prior warning.

2 Physical checks concerning which the exporter has received express or tacit prior warning shall not count as checks. This paragraph shall not apply where the accounts of an undertaking are audited in accordance with point 3 of Annex I.

3 Member States shall ensure that there are variations in the start of the physical check at the exporter's premises by comparison with the indicated time for starting loading as referred to in Article 5(7) of Regulation (EC) No 800/1999.

#### *Article 5*

##### **Detailed methods for checks**

1 In cases where a visual check fails to establish that the products correspond to the description given in the export refunds nomenclature, and where classification or the quality of the products requires very precise information about the ingredients thereof, the customs office of export shall verify that description according to the nature of the product.

2 Where the customs office of export deems it necessary, it shall carry out tests by laboratories specially equipped and accredited or officially approved for that purpose, stating the grounds for such tests. Where the refund rate or other amounts depend on the level of a particular component, as part of the physical check the customs office of export shall take representative samples with a view to having the composition analysed by an accredited or officially approved laboratory.

Where the same exporter regularly exports a product with the same export refund nomenclature code or combined nomenclature code and the refund rate depends on the level of a particular component, the customs office of export may take representative samples in only 50 % of physical checks on that exporter provided that the laboratory tests during the past six months have revealed no non-conformities having financial consequences greater than EUR 1 000 of the gross amount of the refund with respect to that exporter. If laboratory testing detects a non-conformity having financial consequences greater than EUR 1 000 on the gross amount of the refund with respect to that exporter, the customs office of export shall take samples for all physical checks on that exporter in the following six months.

3 The checks referred to in this Article shall be carried out without prejudice to any measures which the customs authorities may take to ensure that the products leave the customs territory in the same state as when the export authorisation was granted.

4 The customs office of export shall ensure compliance with Article 21 of Regulation (EC) No 800/1999. Where there are specific grounds for suspecting the sound, fair and

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marketable quality of a product, the customs office of export shall verify compliance with the applicable Community provisions, in particular those relating to animal and plant health.

5 Physical checks on bulk products, on packed products, and on goods not covered by Annex I to the Treaty, shall be carried out taking account of the methods set out in Annex I to this Regulation.

### Article 6

#### Checking rates

1 Without prejudice to paragraphs 2 to 7, physical checks shall relate to a representative choice of not less than 5 % of the export declarations referred to in Article 5 of Regulation (EC) No 800/1999 in respect of which applications are submitted for the refunds and amounts referred to in Article 1.

The rate shall apply:

- a per customs office of export;
- b per calendar year; and
- c per product sector.

2 However, the Member State may choose to:

- a replace the rate of 5 % per product sector by a rate of 5 % covering all product sectors, in which case, a minimum rate of 2 % shall be compulsory per product sector;
- b replace the rate of 5 % per customs office by a rate of 5 % for its entire territory and of 5 % per product sector by a rate of 5 % covering all product sectors with a minimum rate of 2 % per product sector.

3 In case of application of paragraphs 1 and 2(a), where a customs office of export accepts fewer than 20 export declarations as referred to in paragraph 1 per product sector per year, at least one export declaration per product sector per year shall be subjected to a physical check.

This requirement shall not apply if the customs office has not checked the first two declarations pursuant to the results of its risk analysis as provided for in Article 11 and no further exports are carried out thereafter in that product sector.

4 By derogation from paragraphs 1 and 2:

- a a minimum rate of 0,5 % per customs office or of 0,5 % for the entire territory of the Member State shall apply for goods not covered by Annex I to the Treaty. The percentage of physical checks carried out on those products shall not be taken into account when calculating the rate of 5 % per product sector or the overall rate of 5 % covering all products sectors;
- b for customs offices of export where a range of products from no more than two product sectors is presented for export by no more than five exporters, physical checks may be reduced to a minimum rate of 2 % per product sector. Product sectors with fewer than 20 export declarations per year per customs office shall not be taken into account when determining the number of product sectors. Customs offices of export may apply these rules for a full calendar year, based on the statistics for the previous calendar year, even where export declarations are made by additional exporters or for additional product sectors during the course of the year.

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5 Without prejudice to the inspection measures referred to in Article 36(4), Article 37(4) and Article 44(4) of Regulation (EC) No 800/1999, Member States may opt to waive the physical and substitution checks provided for in this Regulation on deliveries referred to in Articles 36 and 44 of Regulation (EC) No 800/1999.

6 When calculating the minimum rates of checks to be carried out in accordance with this Article, Member States shall disregard export declarations for physical controls involving:

- a either quantities not exceeding:
  - (i) 25 000 kg in the case of cereals and rice;
  - (ii) 5 000 kg in the case of goods not covered by Annex I to the Treaty;
  - (iii) 2 500 kg in the case of other products;
- b or refund amounts of less than EUR 1 000.

7 When implementing paragraphs 5 and 6, Member States shall adopt appropriate provisions to prevent fraud and abuses. Any checks made to that end may be counted for the purposes of calculating compliance with the minimum rates of checks as set out in this Article.

### CHAPTER III

#### CHECKS ON SEALS

##### *Article 7*

##### **Checking obligation and rates**

1 The customs office of exit or the customs office to which the T5 control copy is sent shall check the integrity of seals.

2 The number of checks on seals shall not be less than 10 % of the total number of T5 control copies or equivalent documents other than those selected for a substitution check pursuant to Article 8.

### CHAPTER IV

#### SUBSTITUTION CHECKS

##### *Article 8*

##### **Location and detailed methods for checks**

1 Where the export declaration has been accepted at a customs office of export which is not the customs office of exit or the customs office to which the T5 control copy is sent, and if the customs office of export had not carried out a physical check, the customs office of exit shall carry out a substitution check in accordance with this Article and without prejudice to checks carried out under other provisions.

If the customs office of exit is not the customs office to which the T5 control copy is sent, the substitution check shall be carried out by the latter.

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2 If a visual check on the complete cargo would be insufficient to check substitution, other physical control methods referred to in Article 5, where necessary including partial unloading, shall be used.

A sample for testing shall be taken only in cases where the customs office of exit cannot check, visually and using the information on the packaging and in the documentation, whether the products tally with the accompanying document.

3 Where, in addition to a customs seal, a veterinary seal has been applied in compliance with the requirements of the third country of destination, a substitution check shall be required only if there is a suspicion of fraud.

#### *Article 9*

##### **Specific substitution checks**

1 The customs office of exit or the customs office to which the T5 control copy is sent shall carry out a specific substitution check if it finds that:

- a the seals affixed on departure have been removed other than under customs supervision;
- b the seals affixed on departure have been broken;
- c the dispensation from sealing under Article 357(4) of Regulation (EEC) No 2454/93 has not been granted.

2 The customs office of exit or the customs office to which the T5 control copy is sent shall decide in the light of the risk analysis referred to in Article 11 whether the specific substitution check shall comprise only the substitution check or shall also entail a physical check.

#### *Article 10*

##### **Checking rates**

1 The total of the minimum number of substitution checks referred to in Article 8 and specific substitution checks referred to in Article 9 carried out each calendar year by the customs office of exit or by the customs office to which the T5 control copy is sent at which the products leave Community's customs territory shall not be less than 8 % of the number of T5 control copies and equivalent documents covering products for which a refund is claimed.

2 When calculating the minimum rates of checks to be carried out in accordance with this Article, Member States shall disregard T5 control copies or equivalent documents for substitution checks involving:

- a either quantities not exceeding:
  - (i) 25 000 kg in the case of cereals and rice;
  - (ii) 5 000 kg in the case of goods not covered by Annex I to the Treaty;
  - (iii) 2 500 kg in the case of other products;
- b or refund amounts of less than EUR 1 000.

3 When implementing paragraph 2, Member States shall adopt appropriate provisions to prevent fraud and abuses. Any checks made to that end may be counted for the purposes of calculating compliance with the minimum rates of checks as set out in this Article.

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## CHAPTER V

### RISK MANAGEMENT

#### Article 11

#### Risk analysis

1 The selection for physical checks and for substitution checks shall be based on a risk management system.

2 Member States shall carry out a risk analysis to enable the physical checks to be targeted on those products, individuals and legal entities and product sectors where there is the greatest risk that the operations referred to in Article 1 are not correctly carried out.

3 Without prejudice to Article 592e of Regulation (EEC) No 2454/93, Member States shall set up their risk analysis taking into account the present Regulation and the criteria set out in Annex II, as appropriate.

4 The Member States and the Commission shall jointly assess the reliability and relevance of the criteria set out in Annex II on the basis of experience acquired in order to make, where necessary, adjustments to the system and selection parameters to make physical and substitution checks more effective and improve targeting.

5 The Member States shall notify the Commission of:

- [<sup>F1</sup>a the measures taken, including instructions to national departments, to apply the selection system on the basis of risk analysis, in the light of the criteria referred to in Annex II;]
- b the checking rates to be applied as set out in Article 6;
- c individual cases which could be of interest to the other Member States.

Member States to which point (a) of the third paragraph of Article 18 applies shall notify the Commission by 1 July 2009.

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#### Textual Amendments

- F1** Substituted by [Commission Regulation \(EC\) No 611/2009 of 10 July 2009 correcting Regulation \(EC\) No 1276/2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts.](#)

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## CHAPTER VI

### COORDINATION AND ADMINISTRATIVE REPORTS

#### SECTION 1

##### **Coordination**

###### *Article 12*

##### **Paying agency scrutiny**

Paying agencies shall scrutinise, on the basis of the payment application files and other available information, in particular of the documents relating to the export and the comments of the customs services, all the evidence in those files adduced to justify the payment of the amounts in question.

###### *Article 13*

##### **Coordination of risk analysis and checks**

1 The Member States shall ensure that a single body coordinates information on risk analysis.

2 Member States shall take steps to coordinate the checks imposed on individual operators and combine the checks provided for in Articles 5, 8 and 9 and the checks provided for in Regulation (EC) No 485/2008.

Such coordinated checks shall be carried out, on the initiative or at the request either of the Commission or of the customs authorities carrying out the physical checks or the paying agencies scrutinising the payment application file or the competent authorities auditing the accounts.

#### SECTION 2

##### **Administrative reports**

###### *Article 14*

##### **Reports on physical checks**

1 Each customs office of export shall make the necessary arrangements to ensure that compliance with the rate of physical checks referred to in Article 6 can be verified at any time.

Those arrangements shall show, for each product sector:

- a the number of export declarations taken into account for the physical checks;
- b the number of physical checks carried out.

2 The competent customs official shall produce a detailed inspection report on each physical check carried out.



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Inspection reports shall at least include relevant details on:

- a the place, date, time of arrival, time of completion of the physical check, means of transport for the products, whether the means of transport were empty, partially or completely loaded at the beginning of the control procedure, the number of samples taken for a laboratory analysis, and the name and signature of the competent officer; and
- b date and time of receipt of information as referred to in Article 5(7)(b) of Regulation (EC) No 800/1999, the indicated time for starting loading and completion of the loading of the products in the means of transport.

Without prejudice to Article 9 of Regulation (EC) No 885/2006 the inspection reports and the document mentioning the reason for selecting the export declaration for a physical check shall be kept accessible for consultation for three years from the year of export at the customs office which carried out the physical check, or at one place in the Member State.

#### *Article 15*

#### **T5 control copy**

1 The customs office of export shall note on the T5 control copy or equivalent document accompanying the products, in box D:

- a one of the entries listed in Annex III if it has carried out a physical check;
- b one of the entries listed in Annex IV in the case of food aid exports.

2 Every customs office of exit or customs office to which the T5 control copy is sent shall take steps to make available to the Commission at any time details of the number of:

- a T5 control copies and equivalent documents taken into account for the purposes of the checks on the integrity of seals referred to in Article 7, for the purposes of substitution checks referred to in Article 8, and specific substitution checks referred to in Article 9;
- b checks on integrity of seals referred to in Article 7 carried out;
- c substitution checks referred to in Article 8 carried out;
- d specific substitution checks referred to in Article 9 carried out.

If the customs office of exit or the customs office to which the T5 control copy is sent has taken a sample, one of the entries listed in Annex V shall be noted on the T5 control copy or equivalent document to be returned to the competent authorities.

A duplicate or a copy of the document shall remain at the customs office of exit or the customs office to which the T5 control copy or equivalent document is sent, as the case may be, and it shall be accessible for consultation in accordance with paragraph 3.

3 Every substitution check and specific substitution check referred to in Articles 8 and 9 shall be the subject of a report drawn up by the customs official who carries it out. The report shall permit monitoring of the checks carried out and shall bear the date and the name of the customs official. Without prejudice to Article 9 of Regulation (EC) No 885/2006 it shall be accessible for consultation for three years from the year of export at the customs office which carried out the check, or at one place in the Member State.

The checks on the integrity of seals referred to in Article 7 and the cases of removed or broken seals shall be registered in accordance with Article 912c(3) of Regulation (EEC) No 2454/93.

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4 The customs office of exit or the customs office to which the T5 control copy is sent shall inform the competent authorities referred to in Article 912a(1)(a) of Regulation (EEC) No 2454/93 in writing, using a copy of the T5 control copy or equivalent document, of the result of the laboratory tests, reporting:

- a either one of the entries listed in Annex VI;
- b or the results of the tests if there is a discrepancy between the results and the product declared.

5 Where the substitution check reveals that the relevant rules on export refunds might not have been complied with, the customs office of exit or the customs office to which the T5 control copy is sent shall indicate one of the entries listed in Annex VII on the T5 control copy or equivalent document to be returned to the competent authorities referred to in Article 912a(1) (a) of Regulation (EEC) No 2454/93. The paying agency shall inform the customs office of the action taken as a result of the findings.

#### *Article 16*

#### **Annual report**

Before 1 May each year, the Member States shall send to the Commission a report evaluating the implementation and effectiveness of the checks carried out under this Regulation and the procedures applied to selecting the products subject to physical checks. The report shall include the elements listed in Annex VIII covering export declarations accepted between 1 January and 31 December of the preceding year.

The Member States shall submit the reports to the Commission on an electronic medium which precludes rewriting of the data and on paper, or, when applicable, by electronic means using the form made available to the Member States by the Commission.

### CHAPTER VII

#### **FINAL PROVISIONS**

#### *Article 17*

#### **Repeals**

Regulations (EC) No 3122/94 and (EC) No 2090/2002 are repealed.

References to the repealed Regulations and to Regulation (EEC) No 386/90 shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex IX.

#### *Article 18*

#### **Entry into force**

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

It shall apply as from 1 January 2009.

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However, Chapter V as regards physical checks and the second subparagraph of Article 5(2), Article 6(2), the second subparagraph of Article 6(3), and Article 6(4), shall apply:

- (a) for those Member States having sent their notification to the Commission under Article 3(2) of Regulation (EC) No 3122/94 from 1 January 2009;
- (b) for other Member States from the date which each Member State shall determine and notify to the Commission or from 1 July 2009, whichever is earlier.

Chapter V as regards substitution checks shall apply from the date which each Member State shall determine and notify to the Commission or from 1 July 2009, whichever is earlier.

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

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- (1) OJ L 171, 23.6.2006, p. 90.
- (2) OJ L 145, 4.6.2008, p. 1.

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