

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;

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1276/2008. (See end of Document for details)

- (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⁽¹⁾ or Regulation (EC) No 450/2008 of the European Parliament and of the Council⁽²⁾, 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^{[F1];}
- (m) ^[F2]‘Control code’ means information expressed by the letter ‘A’ followed by four digits generated by electronic means, in printing, or in clearly legible handwriting.]

Textual Amendments

- F1** Substituted by [Commission Regulation \(EU\) No 278/2010 of 31 March 2010 amending Regulation \(EC\) No 1276/2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts and Regulation \(EC\) No 612/2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products.](#)
- F2** Inserted by [Commission Regulation \(EU\) No 278/2010 of 31 March 2010 amending Regulation \(EC\) No 1276/2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts and Regulation \(EC\) No 612/2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products.](#)

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.

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

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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 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.

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.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1276/2008. (See end of Document for details)

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.

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.

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:

- [^{F3}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.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1276/2008. (See end of Document for details)

Textual Amendments

- F3** 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.

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.

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.

[^{F1} Article 15

T5 control copy

1 For the purposes of Article 912c(3) and (4) of Regulation (EEC) No 2454/93, when applicable, customs authorities shall note on the control copy T5, or the equivalent document accompanying the products, the relevant control codes set out in Annex IIa to this Regulation, in accordance with the following rules:

- a the customs office of export shall note in box D the relevant control code listed in Part 1 of Annex IIa, corresponding to whether:
 - (i) a physical check on export refunds provided in Article 4 of this Regulation has been carried out;
 - (ii) an analysis has been carried out in accordance with Article 51 of Commission Regulation (EC) No 1043/2005⁽³⁾;
 - (iii) it is a food aid export under Regulation (EC) No 2298/2001 exempted from physical check;

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1276/2008. (See end of Document for details)

- b the customs office of exit or the customs office to which the T5 control copy is sent shall, after having carried out the checks on the integrity of seals referred to in Article 7 of this Regulation, note in box J the relevant control code listed in Part 2 of Annex IIa, corresponding to whether:
 - (i) the seal is in conformity, or the absence of a seal is justified as referred to in Article 5(8) of Commission Regulation (EC) No 612/2009⁽⁴⁾;
 - (ii) the seal is missing or it was broken;
- c the customs office of exit or the customs office to which the T5 control copy is sent shall note in box J the relevant control code listed in Part 3 of Annex IIa, corresponding to whether:
 - (i) the findings of the substitution check referred to in Article 8 of this Regulation are in conformity;
 - (ii) a sample has been taken under the substitution check referred to in Article 8 or the specific substitution check referred to in Article 9 of this Regulation, but the findings are not yet available due to ongoing verification by laboratory analysis;
 - (iii) the findings of the specific substitution check referred to in Article 9 are in conformity;
 - (iv) the findings of the substitution check referred to in Article 8 or the specific substitution check referred to in Article 9 are not in conformity.

2 The customs office of exit or the customs office to which the T5 control copy is sent shall mention in box J of the T5 control copy its Customs Office Reference number as referred to in point 8 of Annex 37c to Regulation (EEC) No 2454/93.

In the case referred to in paragraph 1(c)(ii), the customs office concerned shall, as soon as the verification is finalised, note the findings of this verification in box J of a copy of the T5 control copy sent previously, by using the relevant control code referred to in paragraph 1(c).

In the case referred to in paragraph 1(c)(iv), the customs office that made the findings shall:

- a attach to the copy of the T5 control copy which will be returned to the paying agency according to the procedure of Article 912c(4) of Regulation (EEC) No 2454/93, a copy of the control report as set out in paragraph 5 of this Article, indicating the checks carried out and the reasons why the relevant rules on export refunds might not have been complied with; and
- b request that the paying agency notifies them of the action taken as a result of the findings.

3 If selection procedures for checks on the integrity of seals referred to in Article 7, or for substitution checks referred to in Article 8, or specific substitution checks referred to in Article 9, and therefore the application of risk management, are made difficult due to incomplete information indicated in the T5 control copy, the customs office of exit or the customs office to which the T5 control copy is sent shall note in box J, as supplementary information, one of the control codes listed in Part 4 of Annex IIa.

4 The customs office of exit or the 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:

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- 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 carried out on integrity of seals referred to in Article 7;
- c substitution checks carried out referred to in Article 8;
- d specific substitution checks carried out referred to in Article 9.

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.

5 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.]

Textual Amendments

- F1** Substituted by [Commission Regulation \(EU\) No 278/2010 of 31 March 2010 amending Regulation \(EC\) No 1276/2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts and Regulation \(EC\) No 612/2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products.](#)

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.

[^{F4}The notifications referred to in the first paragraph shall be made in accordance with Commission Regulation (EC) No 792/2009⁽⁵⁾.]

Textual Amendments

- F4** Substituted by [Commission Implementing Regulation \(EU\) No 996/2011 of 7 October 2011 amending Regulations \(EC\) No 657/2008, \(EC\) No 1276/2008 and Implementing Regulation \(EU\) No 543/2011 as regards the notification obligations within the common organisation of agricultural markets.](#)

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1276/2008. (See end of Document for details)

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.

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.

Changes to legislation: There are currently no known outstanding effects for the Commission Regulation (EC) No 1276/2008. (See end of Document for details)

- (1) OJ L 171, 23.6.2006, p. 90.
- (2) OJ L 145, 4.6.2008, p. 1.
- (3) [^{F1}OJ L 172, 5.7.2005, p. 24.]
- (4) [^{F1}OJ L 186, 17.7.2009, p. 1.]
- (5) [^{F4}OJ L 228, 1.9.2009, p. 3.]

Textual Amendments

- F1** Substituted by Commission Regulation (EU) No 278/2010 of 31 March 2010 amending Regulation (EC) No 1276/2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts and Regulation (EC) No 612/2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products.
- F4** Substituted by Commission Implementing Regulation (EU) No 996/2011 of 7 October 2011 amending Regulations (EC) No 657/2008, (EC) No 1276/2008 and Implementing Regulation (EU) No 543/2011 as regards the notification obligations within the common organisation of agricultural markets.

Changes to legislation:

There are currently no known outstanding effects for the Commission Regulation (EC) No 1276/2008.