

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 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.

Status: Point in time view as at 31/01/2020.

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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

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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.

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