

Commission Delegated Regulation (EU) 2016/1237 of 18 May 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the rules for applying the system of import and export licences and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the rules on the release and forfeit of securities lodged for such licences, amending Commission Regulations (EC) No 2535/2001, (EC) No 1342/2003, (EC) No 2336/2003, (EC) No 951/2006, (EC) No 341/2007 and (EC) No 382/2008 and repealing Commission Regulations (EC) No 2390/98, (EC) No 1345/2005, (EC) No 376/2008 and (EC) No 507/2008 (Text with EEA relevance)

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

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

- (a) 'licence' means an electronic or paper document with a specific period of validity, expressing the right and obligation to import or export products;
- (b) 'notice on import and export licences for agricultural products' means the detailed provisions for the import licence or export licence and set of information to be mentioned in a licence application and in a licence as published in the *Official Journal of the European Union*, C-series.⁽¹⁾

Article 2

Cases where a licence is required

- 1 An import licence shall be presented for the following products:
 - a products listed in Part I of the Annex, when they are declared for release for free circulation under all conditions, other than tariff rate quotas, save as otherwise provided in that Part I;
 - b products declared for release for free circulation under tariff rate quotas administered by the simultaneous examination method or the traditional/newcomer method as referred to in Article 184(2)(b) and (c) of Regulation (EU) No 1308/2013 respectively, or a combination thereof or by another appropriate method;
 - c products for which Part I of the Annex refers to this provision when declared for release for free circulation under tariff rate quotas administered by the method of the 'first come, first served' principle referred to in Article 184(2)(a) of Regulation (EU) No 1308/2013;
 - d products referred to in Part I of the Annex when declared for release for free circulation under a preferential arrangement to be administered by licences;
 - e products that are covered by an outward processing procedure using an export licence and that return into release for free circulation as a product listed in Section A or B of Part I of the Annex;

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- f products declared for release for free circulation under Article 185 of Regulation (EU) No 1308/2013 in case an import duty reduction applies.
- 2 An export licence shall be presented for the following products:
- a products listed in Part II of the Annex;
 - b Union products for which an export licence needs to be presented for admission under a quota that is administered by the Union or by a third country and has been opened in that country for those products;
 - c the following Union products referred to in Part II of the Annex to be exported:
 - (i) products that are under the customs procedure of inward processing;
 - (ii) products that are basic products as listed in Annex III to Regulation (EU) No 510/2014 of the European Parliament and of the Council⁽²⁾ and that are under the customs procedure of outward processing;
 - (iii) products that are subject to the recovery or remission of the amount of import or export duty as set out in Chapter 3 of Title III of Regulation (EU) No 952/2013 of the European Parliament and of the Council⁽³⁾ in respect of which a final decision has not yet been taken.

Article 3

Cases where a licence is not required

- 1 A licence shall not be required and shall not be issued or presented for the purposes of:
- a release for free circulation or export of products of a non-commercial nature as set out in Section II(D)(2) of Part One of Annex I to Council Regulation (EEC) No 2658/87⁽⁴⁾;
 - b cases in which relief from import duties, export duties and measures adopted on the basis of Article 207 of the Treaty is to be granted under Council Regulation (EC) No 1186/2009⁽⁵⁾;
 - c quantities of products to be released for free circulation or export not exceeding those set out in the Annex;
 - d products to be released for free circulation as returned goods in accordance with Section 1 of Chapter 2 of Title VI of Regulation (EU) No 952/2013;
 - e products for which at the time of acceptance of the re-export declaration the declarant provides proof that a favourable decision for repayment or remission of import duties has been given in respect of such products under Section 3 of Chapter 3 of Title III of Regulation (EU) No 952/2013.

By way of derogation from points (b) and (c) of the first subparagraph, a licence shall be required where the release for free circulation or export is being made under preferential arrangements which are granted by means of the licence.

For the purposes of point (c) of the first subparagraph, the quantity to be covered by one licence shall be calculated as comprising all the quantities to be released for free circulation or to be exported that are covered by the same logistic operation.

- 2 An export licence shall not be required and shall not be issued or presented in respect of products consigned by private individuals or groups of private individuals with a view to their free distribution for humanitarian aid purposes in third countries where such consignments are occasional in nature, comprise varied products and do not exceed a total of 30 000 kg per

means of transport. Food aid operations not meeting these conditions are subject to a licence in accordance with this Regulation and the Implementing Regulation (EU) 2016/1239.

Article 4

Security

1 Licences are subject to a security, except in the cases provided for in the Annex.

2 When submitting an application for a licence, the applicant shall lodge a security, which shall be available at the licence issuing authority not later than 13.00 hours Brussels time on the day the application is submitted.

3 No security shall be required where the security comes to a threshold of EUR 100 or less.

For that purpose, the amount of the security shall be calculated as comprising all the quantities resulting from obligations covered by the same logistic operation.

4 No security shall be required where the applicant is either:

- a a public body responsible for executing the duties of a public authority; or
- b a private body executing duties referred to in point (a) under a Member State's supervision.

5 The security lodged in respect of a quantity for which a licence has not been issued shall be released forthwith.

Article 5

Rights and obligations, tolerance

1 The import or export licence shall constitute a right and give rise to an obligation to release for free circulation or to export, respectively, the quantity of products covered by the licence during its period of validity in accordance with Article 7(1) of Implementing Regulation (EU) 2016/1239.

2 The customs declaration for release for free circulation or for export shall be lodged by:

- a the titular holder of the licence mentioned in Section 4 of the licence of which a model is set out in Annex I to Implementing Regulation (EU) 2016/1239 ('titular holder');
- b the transferee mentioned in Section 6 of the licence referred to in point (a); or
- c an appointed customs representative acting on behalf of the titular holder or transferee as provided for in Article 18 of Regulation (EU) No 952/2013, specifying in the customs declaration that the titular holder or transferee is the person on whose behalf the obligation mentioned in paragraph 1 is carried out.

3 If specific Union legislation provides so, the obligation to release for free circulation or to export may include the obligation to release from or export to the country or group of countries specified in the licence.

4 The obligation to release for free circulation or to export shall be considered fulfilled if the total quantity specified on the licence has been cleared by customs under the relevant procedure. For that purpose a positive or negative tolerance on the quantity specified on the licence shall apply in accordance with Article 8 of Implementing Regulation (EU) 2016/1239.

5 A positive tolerance shall not apply where the quantity specified on the import licence is equivalent to the quantity specified in an export document, being an element of proof that the product is eligible for the preferential treatment due to its specific quality, variety, or characteristics, as required in the relevant international agreement.

Where the import licence is required for a tariff rate quota, the quantity in excess to the quantity specified on the import licence within the positive tolerance, shall be brought into free circulation under the same licence subject to the conventional rate of duty.

Article 6

Transfer

1 Obligations deriving from licences shall not be transferable. Save as otherwise provided for, rights deriving from licences shall be transferable by their titular holder during the period of the validity of the licence.

2 A transfer of rights deriving from a licence or its extract may be made in favour of a single transferee only and shall cover the quantities not yet attributed to the licence or extract.

3 A transfer shall be requested by the titular holder at the licence issuing authority which issued the original licence.

4 Transferees shall not transfer their rights further but may transfer them back to the titular holder. Transfers back to the titular holder shall cover the quantities not yet attributed to the licence or its extract. The licence issuing authority shall note the transfer back according to the notice on import and export licences for agricultural products.

5 The transfer or transfer back to the titular holder shall take effect from the date as validated by the licence issuing authority.

Article 7

Release and forfeit of securities

1 The release of security provided for in Article 24(2) of Commission Delegated Regulation (EU) No 907/2014⁽⁶⁾ may be partial in proportion to the quantity of products for which the evidence of fulfilling the obligation to import or export has been furnished. That quantity shall not be less than 5 % of the total quantity specified on the licence.

However, if the quantity imported or exported amounts to less than 5 % of the quantity specified on the licence, the whole security shall be forfeit.

2 When calculating the part of the security to forfeit, where applicable, the licence issuing authority shall deduct an amount corresponding to the quantitative tolerance referred to in Article 5(4).

3 Where the licence issuing authority waives the security requirement where the value of the sum secured is less than EUR 500, as provided for in Article 18(2) of Delegated Regulation (EU) No 907/2014, the amount of the sum equal to the security to forfeit shall be paid by the party concerned on expiry of 60 days following the date on which the validity of the licence expires.

4 If the total amount of the security which would be forfeit comes to EUR 100 or less for a given licence, the licence issuing authority shall release the whole security.

Article 8

Notifications

In accordance with the detailed conditions laid down in the implementing act adopted pursuant to Article 223(3) of Regulation (EU) No 1308/2013, Member States shall notify the Commission of the following:

- (a) the replacement licences issued referred to in Article 15(5) of Implementing Regulation (EU) 2016/1239;
- (b) cases of *force majeure* referred to in Article 16(3) of Implementing Regulation (EU) 2016/1239;
- (c) as regards hemp, the provisions adopted, the penalties imposed, and the competent authorities for checks referred to in Article 17(2) of Implementing Regulation (EU) 2016/1239;
- (d) as regards garlic, the quantities covered by ‘B’ licences referred to in Article 18 of Implementing Regulation (EU) 2016/1239;
- (e) as regards ethyl alcohol, the import licences issued referred to in Article 19 of Implementing Regulation (EU) 2016/1239;
- (f) irregularities referred to in Article 20(2) of Implementing Regulation (EU) 2016/1239;
- (g) the authorities competent for receiving the applications for licences and issuing the licences or replacement licences referred to in Article 20(3) of Implementing Regulation (EU) 2016/1239;
- (h) official stamps and, where appropriate, embossing presses referred to in Article 20(4) of Implementing Regulation (EU) 2016/1239.

CHAPTER II

SPECIFIC SECTORAL PROVISIONS

Article 9

Hemp

1 The release for free circulation of hemp products listed in Sections C, D, and G of Part I of the Annex to this Regulation shall be subject to an import licence in accordance with the model set out in Annex I to Implementing Regulation (EU) 2016/1239 (‘import licence AGRIM’).

The licence shall be issued only where it has been demonstrated to the satisfaction of the Member State where the hemp products are to be released for free circulation that all the conditions laid down in Article 189(1) of Regulation (EU) No 1308/2013 and in this Regulation and the requirements laid down by the Member State concerned pursuant to Article 189(2) of Regulation (EU) No 1308/2013, have been met.

2 The application for a licence shall contain the information in line with the instructions for hemp products in the notice on import and export licences for agricultural products.

Member States may lay down additional requirements relating to the licence application and the issue and use of the licence, as referred to in Article 189(2) of Regulation (EU) No 1308/2013.

3 For the purposes of point (c) of Article 189(1) of Regulation (EU) No 1308/2013 the Member States concerned shall establish arrangements for the authorisation of importers of hemp seed other than for sowing. Those arrangements shall include the definition of the conditions for authorisation, checks and the penalties to be applied in cases of irregularity.

4 In the case of release for free circulation of hemp seeds other than for sowing as referred to in Section G of Part I of the Annex, the import licence shall be issued only where the authorised importer undertakes that the authorities competent for checks concerning the relevant operations in the Member State where the importer is authorised will be provided, within the time limits and under the conditions set by the Member State, with documents demonstrating that the hemp seed covered by the licence has undergone, within a period of less than 12 months from the date on which the licence is issued, one of the following operations:

- a placing in a condition that excludes use for sowing;
- b mixing with seed other than hemp seed for the purposes of animal nutrition, with hemp seed accounting for a maximum of 15 % of the total mixture and, in exceptional cases, a maximum of 25 % at the request of the authorised importer accompanied by a justification;
- c export to a third country.

However, if part of the hemp seed covered by the licence has not undergone one of the operations referred to in the first subparagraph within the time limit of 12 months, the Member State may, at the request of the authorised importer accompanied by a justification, extend that time limit by one or two periods of six months.

The documents referred to in the first subparagraph shall be drawn up by the operators who have carried out the operations and shall comprise at least the following information:

- a the name, full address, Member State and signature of the operator;
- b a description of the operation carried out meeting the conditions laid down in the first subparagraph and the date on which it was carried out;
- c the quantity in kilograms of hemp seed to which the operation related.

On the basis of a risk analysis, each Member State concerned shall carry out checks on the accuracy of the documents relating to the operations referred to in the first subparagraph carried out on their territory.

5 By way of derogation from Article 6(1), rights deriving from import licences for hemp products shall not be transferable.

Article 10

Garlic

1 Import licences for garlic as listed in Sections E and F of Part I of the Annex shall be referred to as 'B' licences.

2 Applicants may only lodge applications for ‘B’ licences with the licence issuing authority of the Member State in which they are established and in which they are registered for VAT purposes.

3 By way of derogation from Article 6(1), rights deriving from ‘B’ licences shall not be transferable.

CHAPTER III

AMENDMENTS, REPEAL, TRANSITIONAL AND FINAL PROVISIONS

Article 11

Amendment of Regulations (EC) No 2535/2001, (EC) No 1342/2003, (EC) No 2336/2003, (EC) No 951/2006, (EC) No 341/2007 and (EC) No 382/2008

- 1 The following provisions are deleted:
- a in Regulation (EC) No 2535/2001, Articles 20, 21 and 22;
 - b in Regulation (EC) No 1342/2003, Articles 6(1)(a), 8(2), 9(1) and (2), 12(a) and 16;
 - c in Regulation (EC) No 2336/2003, Articles 5 and 7;
 - d in Regulation (EC) No 951/2006, Articles 4c, 4d, 4e, 5(1), 7 to 7f, 8a, 9, 10, 11(1)(a) and (2), 12a, 17(1) and 18(1);
 - e in Regulation (EC) No 341/2007, Article 5(1), the second subparagraph of Article 5(2) and Articles 13 and 14;
 - f in Regulation (EC) No 382/2008, Articles 2, 5(1) and (2), 6(1) and (2), 7 and 8(1) and (2);
- 2 The provisions referred to in paragraph 1 shall continue to apply for licences issued under the relevant Regulations.

Article 12

Repeal

Regulations (EC) No 2390/98, (EC) No 1345/2005, (EC) No 376/2008 and (EC) No 507/2008 are repealed.

However,

- those Regulations shall continue to apply for licences issued under those Regulations, and
- Article 34(10) of Regulation (EC) No 376/2008 shall continue to apply until the relevant rules in respect of tariff quotas adopted on the basis of Articles 186 and 187 of Regulation (EU) No 1308/2013 have become applicable.

Article 13

Transitional provisions

1 This Regulation does not affect the applicable period of validity and the amount of the security lodged for licences which have not expired on 6 November 2016.

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2 At the request of the titular holder, the security lodged for a licence shall be released when all of the following conditions are met:

- a the validity of the licence has not expired on the date referred to in paragraph 1;
- b the licence is no longer required for the products concerned from the date referred to in paragraph 1;
- c the licence has been used only partially or not at all on the date referred to in paragraph 1.

Article 14

Entry into force and application

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

It shall apply from 6 November 2016.

However, Article 11(1)(d) shall apply from 1 October 2017.

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

Done at Brussels, 18 May 2016.

For the Commission

The President

Jean-Claude JUNCKER

- (1) Notice on import and export licences ([OJ C 278, 30.7.2016](#)).
- (2) Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 ([OJ L 150, 20.5.2014, p. 1](#)).
- (3) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ([OJ L 269, 10.10.2013, p. 1](#)).
- (4) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ([OJ L 256, 7.9.1987, p. 1](#)).
- (5) Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty ([OJ L 324, 10.12.2009, p. 23](#)).
- (6) Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro ([OJ L 255, 28.8.2014, p. 18](#)).