II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) No 786/2012

of 30 August 2012

amending and correcting Regulation (EC) No 951/2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1], and in particular Article 134, Article 161(3), Article 170 and Article 192(2), in conjunction with Article 4 thereof,

Whereas:

(1) Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands [2] lays down common rules for notifying information and documents by the competent authorities of the Member States to the Commission. Those rules cover in particular the obligation for the Member States to use the information systems made available by the Commission and the validation of the access rights of the authorities or individuals authorised to send notifications. In addition, that Regulation sets common principles applying to the information systems so that they guarantee the authenticity, integrity and legibility over time of the documents and provides for personal data protection.

(2) Pursuant to Regulation (EC) No 792/2009 the obligation to use the information systems in accordance with that Regulation has to be provided for in the Regulations establishing a specific notification obligation.

(3) The Commission has developed an information system that allows managing documents and procedures electronically in its own internal working procedures and in its relations with the authorities involved in the common agricultural policy. It is considered that several notification obligations can be fulfilled via that system in accordance with Regulation (EC) No 792/2009, in particular those provided for in Commission Regulation (EC) No 951/2006 [3].

(4) In the interest of an efficient administration and taking account of the experience, some notifications should be either simplified and specified or deleted in Regulation (EC) No 951/2006.

(5) For reasons of clarity, it is appropriate to provide explicitly that Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [4] applies to the licences provided for in Regulation (EC) No 951/2006, save as otherwise provided in the latter Regulation.

(6) Isoglucose products are not listed in Section C of Part II of Annex II to Regulation (EC) No 376/2008, therefore no export licence is required for the exports of isoglucose which is in free circulation on the Union market and which is not considered as 'out-of-quota' to be exported without refund. This should be reflected in Article 7 of Regulation (EC) No 951/2006, where any reference to isoglucose should be deleted.

(7) According to point (d) of the first paragraph of Article 61 of Regulation (EC) No 1234/2007, the sugar or isoglucose produced in excess of the quota referred to in Article 56 of that Regulation may be exported only within the quantitative limit to be fixed by the Commission. When fixing the quantitative limit the Commission has to respect the commitments resulting from agreements concluded in accordance with Article 218 of the Treaty.

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 228, 1.9.2009, p. 3.
[3] OJ L 178, 1.7.2006, p. 24.
[4] OJ L 114, 26.4.2008, p. 3.

(8) At times of large Union production of out-of-quota sugar, in particular when coupled with high world market prices, applications for export licences submitted by sugar manufacturers can exceed significantly the available quantities. The strong competition of operators for export licences may lead to a situation where certain operators apply for licences exceeding their actual production of out-of-quota sugar in respect of the marketing year concerned. Such speculative behaviour could mean loss of export possibilities for Union out-of-quota sugar and increasing the pressure on the Union market for out-of-quota sugar and therefore also increasing the risk of accumulation of surplus sugar.

(9) According to Article 8 of Regulation (EC) No 376/2008 the rights deriving from licences or certificates can be transferred once by their titular holder during the validity of the licence or certificate concerned. In order to reduce the risks of speculative behaviour of sugar manufacturers it is appropriate to prohibit the transfer of export licences in the case of out-of-quota sugar.

(10) Article 3(4) of Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing additional import duties in the poultry meat and egg sectors and for egg albumin, and repealing Regulation No 163/67/EEC [1] and Article 4(4) of Commission Regulation (EC) No 504/2007 of 8 May 2007 laying down detailed rules for the application of the arrangements for additional import duties in the milk and milk products sector [2] set the time limit for the importers concerned to prove that the consignment in question was disposed of under conditions confirming the correctness of the declared cif import price. For the sake of harmonisation of the implementing rules applicable to the additional import duties in the different sectors, it is appropriate to align Article 38(4) of Regulation (EC) No 951/2006 to Article 3(4) of Regulation (EC) No 1484/95 and Article 4(4) of Regulation (EC) No 504/2007.

(11) Article 34(3) of Regulation (EC) No 951/2006 lays down that Member States have to provide the Commission each month with information related to the molasses world market. Experience has shown that, due to the characteristics of the molasses markets, such information is difficult to obtain and most Member States have no relevant information to provide. It is therefore appropriate to delete that notification obligation.

(12) Chapter 17 of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [3] as amended by Commission Implementing Regulation (EU) No 1006/2011 [4] contains new CN codes for the various raw sugar products which are different from those referred to in Regulation (EC) No 951/2006. For the sake of legal clarity those new codes should be reflected in Article 42 of Regulation (EC) No 951/2006.

(13) At the occasion of those amendments it is appropriate to correct an obvious error regarding an internal reference.

(14) Regulation (EC) No 951/2006 should therefore be amended and corrected accordingly.

(15) For reasons of transparency and equal treatment this Regulation should apply from the beginning of the 2012-2013 marketing year. However, since the correction of Article 12a(3) of Regulation (EC) No 951/2006 should have a retroactive effect which duly respects the legitimate expectations of those concerned, that correction should apply as from the date of entry into force of the amending act which inserted the erroneous reference into Regulation (EC) No 951/2006, namely Commission Regulation (EC) No 910/2008 [5].

(16) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EC) No 951/2006

Regulation (EC) No 951/2006 is amended as follows:

(1) Article 1 is replaced by the following:

'Article 1

Scope

1. This Regulation lays down, in accordance with Part III of Council Regulation (EC) No 1234/2007 (*), the special detailed rules for the application of the system of import and export licences, the granting of export refunds and the management of imports, in particular the application of additional import duties in the sugar sector.

2. Commission Regulation (EC) No 376/2008 (**) shall apply, save as otherwise provided in this Regulation.

(*) OJ L 299, 16.11.2007, p. 1.
(**) OJ L 114, 26.4.2008, p. 3.';

(2) Articles 7 and 7a are replaced by the following:

[1] OJ L 145, 29.6.1995, p. 47.
[2] OJ L 119, 9.5.2007, p. 7.
[3] OJ L 256, 7.9.1987, p. 1.
[4] OJ L 282, 28.10.2011, p. 1.
[5] OJ L 251, 19.9.2008, p. 13.

'Article 7

Export licence for sugar without refund

Where sugar which is in free circulation on the Union market and which is not considered as "out-of-quota" is to be exported without refund, Section 20 of the licence application and of the licence shall contain one of the entries listed in Part C of the Annex.

Article 7a

Export licences for out-of-quota exports

1. By way of derogation from Article 5, exports of out-of-quota isoglucose within the quantitative limit referred to in point (d) of the first paragraph of Article 61 of Regulation (EC) No 1234/2007 shall be subject to the presentation of an export licence.

2. By way of derogation from Article 8 of Regulation (EC) No 376/2008, the rights deriving from export licences issued for out-of-quota sugar shall not be transferable.';

(3) in Article 7c(1), the first subparagraph is replaced by the following:

'1. Member States shall notify the Commission, by Monday each week, of the quantities of sugar and/or isoglucose, for which applications for export licence have been submitted during the preceding week.';

(4) in Article 9, paragraph 4 is replaced by the following:

'4. Applicants may withdraw their licence applications until the end of the week following that of the publication in the *Official Journal of the European Union* of an acceptance percentage as indicated in point (a) of paragraph 1 if it is less than 80 %. Member States shall thereupon release the security.';

(5) the title of Chapter V is replaced by the following:

'ADDITIONAL RULES FOR EXPORT LICENCES';

(6) Article 11 is replaced by the following:

'Article 11

Application for and issue of export licences

1. Export licences for sugar falling within CN code 1701 for quantities exceeding 10 tonnes shall be issued:

(a) on the fifth working day following that on which the application was lodged;

(b) in the case of export licences with advance fixing of the refund, on the fifth working day following that on which the application was lodged provided that no specific action as indicated in Article 9(1) has been taken by the Commission in the meantime.

The first subparagraph shall not apply to:

(a) candy sugar;

(b) flavoured sugar and sugar with added colouring matter.

2. When an application for a licence in respect of the products to which the first subparagraph of paragraph 1 applies relates to quantities not exceeding 10 tonnes, the party concerned may not lodge on the same day and with the same competent authority more than one such application.';

(7) Articles 17, 18 and 19 are replaced by the following:

'Article 17

Notification of export licences issued

1. Member States shall notify the Commission by the 15th of each month in respect of the preceding month of the quantities for which licences have been issued pursuant to Article 7.

2. During the periods when export refunds are granted in the sugar sector, Member States shall notify the Commission by the 15th of each month in respect of the preceding month of:

(a) the quantities for which licences have been issued with the amounts of export refunds fixed pursuant to Article 164(2)(a) of Regulation (EC) No 1234/2007 broken down between:

— sugar products falling within CN codes 1701 91 00, 1701 99 10 and 1701 99 90,

— *tel quel* raw sugar falling within CN codes 1701 12 90, 1701 13 90 and 1701 14 90,

— sucrose syrups, expressed as white sugar, falling within CN codes 1702 90 71, 1702 90 95 and 2106 90 59,

— isoglucose, expressed as dry matter, falling within CN codes 1702 40 10, 1702 60 10, 1702 90 30 and 2106 90 30;

(b) the quantities of white sugar falling within CN code 1701 99 10 for which a licence has been issued with the amounts of export refunds fixed pursuant to Article 164(2)(b) of Regulation (EC) No 1234/2007;

(c) the quantities, with the corresponding amounts of export refunds fixed pursuant to Article 164(2)(a) of Regulation (EC) No 1234/2007, of white sugar, the quantities of raw sugar and sucrose syrup, expressed as white sugar, and the quantities of isoglucose, expressed as dry matter, for which an export licence has been issued with a view to export in the form of products referred to in point (b) of Part X of Annex I to that Regulation.

Article 18

Notification of quantities exported

1. Member States shall notify the Commission for each calendar month, and not later than by the end of the third calendar month following the calendar month in question, of the quantities of sugar covered by quotas exported as white sugar or in the form of processed products expressed as white sugar, for which an export licence has been issued for the implementation of Union and national food aid under international conventions or other complementary programmes and for the implementation of other Union measures for the free supply of food.

2. During the periods when export refunds are granted in the sugar sector, Member States shall notify the Commission, not later than the end of each calendar month in respect of the preceding calendar month, of the quantities of white sugar referred to in Article 17(2)(b) exported in accordance with Article 7(4) and (5) of Regulation (EC) No 376/2008.

3. During the periods when export refunds are granted in the sugar sector, Member States shall notify the Commission for each calendar month, and not later than the end of the third calendar month following the calendar month in question:

(a) in the case of exports referred to in Article 4(2) of Regulation (EC) No 612/2009, of the quantities of sugar and sucrose syrups, expressed as white sugar, and of isoglucose, expressed as dry matter, exported without further processing, together with the amounts of the corresponding refunds;

(b) of the quantities, with the corresponding amounts of export refunds fixed pursuant to Article 164(2)(a) of Regulation (EC) No 1234/2007, of white sugar, the quantities of raw sugar and sucrose syrup, expressed as white sugar, and the quantities of isoglucose, expressed as dry matter, exported in the form of the products referred to in Part IV of Annex XX to that Regulation and in the form of the products referred to in Annex II to Commission Regulation (EU) No 578/2010 (*).

The notifications referred to in point (b) of the first subparagraph shall be supplied separately to the Commission for each Regulation applicable to the processed product in question.

Article 19

Notification of import licences

Member States shall notify the Commission of the quantities of sugar imported from third countries and exported as compensating products under the inward processing arrangements referred to in Article 116 of Regulation (EEC) No 2913/92. That notification shall refer to each marketing year. It shall be submitted no later than the end of the second calendar month following the marketing year in question.

_____

(*) OJ L 171, 6.7.2010, p. 1.';

(8) Article 21 is replaced by the following:

'Article 21

Method of notification

The notifications by the Member States provided for in this Regulation shall be made as follows:

(a) until 31 December 2012, by electronic transmission in accordance with methods made available to the Member States by the Commission;

(b) as from 1 January 2013, in accordance with Commission Regulation (EC) No 792/2009 (*).

_____

(*) OJ L 228, 1.9.2009, p. 3.';

(9) in Article 23, the introductory phrase is replaced by the following:

'When the most favourable purchasing opportunities on the world market are being established, account shall be taken of the relevant information available to the Commission either directly or through the competent agencies of the Member States relating to:';

(10) in Article 29, the introductory phrase is replaced by the following:

'When the most favourable purchasing opportunities on the world market are being established, account shall be taken of the relevant information relating to:';

(11) in Article 34, paragraph 3 is deleted;

(12) in Article 38, paragraph 4 is replaced by the following:

'4. The importer shall have two months from the sale of the products in question, subject to a limit of nine months from the date of acceptance of the declaration of release for free circulation, to prove that the consignment was disposed of under conditions confirming the correctness of the prices referred to in paragraph 2. Failure to meet one or other of these deadlines shall entail the loss of the security lodged. However, the time limit of nine months may be extended by the competent authorities by a maximum of three months following a duly substantiated request of the importer.

The security lodged shall be released to the extent that proof of the conditions of disposal is provided to the satisfaction of the competent authorities. Otherwise, the security shall be forfeit by way of payment of the additional duties.';

(13) Article 42 is replaced by the following:

'*Article 42*

Calculating methods

1. If the yield of imported raw sugar as determined in accordance with Section B.III of Annex IV to Regulation (EC) No 1234/2007 differs from the yield fixed for the standard quality, the customs tariff duty for products falling within CN codes 1701 12 10, 1701 13 10 and 1701 14 10, and the additional duty for products falling within CN codes 1701 12 10, 1701 12 90, 1701 13 10, 1701 13 90, 1701 14 10 and 1701 14 90 to be levied per 100 kilograms of the said raw sugar shall be calculated by multiplying the corresponding duty fixed for raw sugar of the standard quality by a correcting coefficient. The correcting coefficient shall be obtained by dividing the percentage of the yield of the imported raw sugar by 92.

2. For the products referred to in point (c) of Part III of Annex I to Regulation (EC) No 1234/2007, the sucrose content, including other sugars expressed as sucrose, shall be determined by the application of the Lane and Eynon method (copper reduction method) to the solution inverted according to Clerget-Herzfeld. The total sugar content thus determined shall be expressed as sucrose by multiplying by 0,95.

However, the sucrose content, including other sugars expressed as sucrose, of products containing less than 85 % sucrose or other sugars expressed as sucrose, and invert sugar expressed as sucrose shall be determined by ascertaining the dry matter content. The dry matter content shall be determined according to the specific gravity of the solution diluted in a proportion of 1 to 1 by weight and, for solid products, by drying. The dry matter content shall be expressed as sucrose by multiplying by the coefficient 1.

3. For the products referred to in points (d) and (g) of Part III of Annex I to Regulation (EC) No 1234/2007, the dry matter content shall be determined in accordance with the second subparagraph of paragraph 2 of this Article.

4. For the products referred to in point (e) of Part III of Annex I to Regulation (EC) No 1234/2007, the conversion into sucrose equivalent shall be obtained by multiplying the dry matter determined in accordance with the second subparagraph of paragraph 2 of this Article by the coefficient 1,9.';

(14) Part C of the Annex is replaced by the text in the Annex to this Regulation.

Article 2

Correction of Regulation (EC) No 951/2006

In Article 12a, paragraph 3 is replaced by the following:

'3. The security referred to in paragraph 1 shall be released in accordance with Article 34 of Regulation (EC) No 376/2008 for the quantity for which the applicant has fulfilled, within the meaning of Articles 30(b) and 31(b)(i) of that Regulation, the export obligation resulting from the licences issued in accordance with Article 7d of this Regulation.'.

Article 3

Entry into force and application

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

It shall apply from 1 October 2012. However, Article 2 shall apply from 26 September 2008.

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

Done at Brussels, 30 August 2012.

For the Commission
The President
José Manuel BARROSO

ANNEX

'C. Entries referred to in Article 7:

— *in Bulgarian:* „Захар, която не се разглежда „извън квотата“ за износ без възстановяване“

— *in Spanish:* "Azúcar no considerado 'al margen de cuota' para la exportación sin restitución"

— *in Czech:* „Cukr, který se nepovažuje za produkt »mimo rámec kvót«, pro vývoz bez náhrady.“

— *in Danish:* »Sukker, der ikke anses for at være »uden for kvote« til eksport uden restitution«

— *in German:* ‚Nicht als ‚Nichtquotenerzeugung' geltender Zucker für die Ausfuhr ohne Erstattung'

— *in Estonian:* „Kvoodivälisena mittekäsitatava suhkru eksportimiseks ilma toetuseta."

— *in Greek:* "Ζάχαρη που δεν θεωρείται 'εκτός ποσόστωσης' προς εξαγωγή χωρίς επιστροφή."

— *in English:* "Sugar not considered as 'out-of-quota' for export without refund."

— *in French:* "Sucre non considéré 'hors quota' pour les exportations sans restitution."

— *in Italian:* "Zucchero non considerato 'fuori quota' per le esportazioni senza restituzione"

— *in Latvian:* "Cukurs, kas nav uzskatāms par "ārpuskvotu" produkciju eksportam bez kompensācijas",

— *in Lithuanian:* „Viršk votiniu nelaikomas cukrus eksportui be grąžinamosios išmokos“

— *in Hungarian:* »A cukrot nem tekintik 'kvótán felülinek' a visszatérítés nélküli kivitel tekintetében.«

— *in Dutch:* „Suiker die niet als „buiten het quotum geproduceerd" wordt beschouwd, bestemd voor uitvoer zonder restitutie."

— *in Polish:* »Cukier niezaliczany do produktów 'pozakwotowych', przeznaczony na wywóz bez refundacji«

— *in Portuguese:* "Açúcar não considerado 'extraquota' para exportação sem restituição."

— *in Romanian:* «Zahăr neconsiderat „peste cotă" pentru exporturile fără restituire».

— *in Slovak:* ‚Cukor, ktorý sa nepovažuje za »nad rámec kvóty« na vývoz bez náhrady',

— *in Slovene:* ‚Sladkor se ne šteje kot ‚izven kvote' za izvoz brez nadomestila.'

— *in Finnish:* "Tuetta vietävä sokeri, jota ei pidetä kiintiön ulkopuolisena".

— *in Swedish:* 'Socker som inte anses vara 'utomkvotsprodukter' för export utan bidrag.' '