

**COMMISSION REGULATION (EC) No 2298/2001****of 26 November 2001****laying down detailed rules for the export of products supplied as food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 1666/2000<sup>(2)</sup>, and in particular Article 9(2) and Article 13(11) thereof, and the corresponding provisions of the other Regulations on the common organisation of the markets in agricultural products,

Whereas:

- (1) For the purpose of applying Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security<sup>(3)</sup>, as amended by Regulation (EC) No 1726/2001 of the European Parliament and of the Council<sup>(4)</sup>, Commission Regulation (EC) No 2519/97<sup>(5)</sup> lays down general rules for the mobilisation of products to be supplied as Community food aid.
- (2) The above mobilisation rules involve the application of export refunds in the event of mobilisation within the Community. However, it is necessary to lay down special rules governing certain aspects by derogation from Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products<sup>(6)</sup>, as last amended by Regulation (EC) No 90/2001<sup>(7)</sup>. To guarantee that the competitive conditions which apply to deliveries at the time of submission of tenders are not changed after the award of the contracts as a result of the application of certain techniques which can adjust export refunds as a function of the date of export, provision should be made to waive certain rules applying to trade in agricultural products and granting an export refund which is the same for all tenderers and which remains unaltered regardless of the actual date of export.
- (3) To guarantee that the above provisions are applied correctly, administrative rules relating to export licences should be laid down which derogate from Commission

Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products<sup>(8)</sup>, as last amended by Regulation (EC) No 1095/2001<sup>(9)</sup>. To that end, the delivery guarantee lodged by the successful tenderer for the food-aid operation as an assurance that he meets his supply obligations in accordance with Article 10 of Regulation (EC) No 2519/97 should be considered as sufficient also to guarantee respect of the obligations deriving from those licences.

- (4) Supplies carried out under Regulation (EC) No 2519/97 are to be considered as food aid within the meaning of Article 10(4) of the Agreement on Agriculture within the context of the Uruguay Round.
- (5) With regard to national food aid, this Regulation is to apply solely to aid meeting the conditions laid down in Article 10(4) of the Agreement on Agriculture within the context of the Uruguay Round. The same derogations to Regulations (EC) No 800/1999 and (EC) No 1291/2000 should apply to those operations as apply to Community food aid.
- (6) Export refunds for Community food aid are paid only for quantities exported in compliance with Regulation (EC) No 800/1999 and only if they are taken over in compliance with Regulation (EC) No 2519/97.
- (7) As regards the rate of refund for national food aid, the rule provided for in Article 13(2) of Commission Regulation (EC) No 174/1999 of 26 January 1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products<sup>(10)</sup>, as last amended by Regulation (EC) No 1923/2001<sup>(11)</sup>, and in Article 11(a) of Commission Regulation (EC) No 1162/95 of 23 May 1995 laying down special detailed rules for the application of the system of import and export licences for cereals and rice<sup>(12)</sup>, as last amended by Regulation (EC) No 409/2001<sup>(13)</sup>, whereby the refund applicable is that fixed and published prior to the submission of tenders, should be applied.

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 1.

<sup>(3)</sup> OJ L 166, 5.7.1996, p. 1.

<sup>(4)</sup> OJ L 234, 1.9.2001, p. 10.

<sup>(5)</sup> OJ L 346, 17.12.1997, p. 23.

<sup>(6)</sup> OJ L 102, 17.4.1999, p. 11.

<sup>(7)</sup> OJ L 14, 18.1.2001, p. 22.

<sup>(8)</sup> OJ L 152, 24.6.2000, p. 1.

<sup>(9)</sup> OJ L 150, 6.6.2001, p. 25.

<sup>(10)</sup> OJ L 20, 27.1.1999, p. 8.

<sup>(11)</sup> OJ L 261, 29.9.2001, p. 53.

<sup>(12)</sup> OJ L 117, 24.5.1995, p. 2.

<sup>(13)</sup> OJ L 60, 1.3.2001, p. 27.

- (8) The adoption of horizontal provisions relating to the rate of refund applicable to national food-aid actions means that the existing sectoral provisions should be deleted.
- (9) Commission Regulation (EC) No 259/98 of 30 January 1998 laying down detailed rules for the export of products supplied as Community food aid<sup>(1)</sup> should be replaced in order for the necessary changes to be made and for the purposes of clarity and administrative efficiency.
- (10) The measures provided for in this Regulation are in accordance with the opinion of all the Management Committees concerned,

### Article 3

1. Eligibility for the refund shall be conditional upon the presentation of an export licence, comprising advance fixing of the refund referred to in Article 2(1), applied for to carry out the food-aid operation concerned. The licence shall be valid only for the export to be carried out in this context.

By way of derogation from Article 40 of Regulation (EC) No 1291/2000, the period of validity of the licence may be extended by the competent authority at the written and justified request of the successful tenderer (hereinafter referred to as 'the supplier').

The export licence shall be valid only for the quantity indicated in box 17 of the licence and for which the applicant has been declared the supplier. Box 19 of the licence shall contain the figure '0'.

2. Applications for licences shall be accompanied by proof that the applicant is the supplier of the Community food aid. Such proof shall be provided by a copy of the communication sent to him by the Commission informing him that he is the supplier of the food aid in question and, if required by the issuing agency, a copy of the tender notice.

Licences shall be issued only if proof is provided that the delivery guarantee referred to in Article 10 of Regulation (EC) No 2519/97 has been lodged. The lodging of that guarantee shall be deemed to constitute the lodging of the licence security. The word 'exempted' shall accordingly be entered in box 11 of the licence.

3. In the document used to apply for the refund as referred to in Article 5(4) of Regulation (EC) No 800/1999 and, in addition to the requirements of Article 16 of Regulation (EC) No 1291/2000, in box 20 of the application for licences and the export licence itself, one of the following entries shall be included:

- Ayuda alimentaria comunitaria — Acción n.º ..../. o Ayuda alimentaria nacional
- Fællesskabets fødevarehjælp — Aktion nr. ..../. eller National fødevarehjælp
- Gemeinschaftliche Nahrungsmittelhilfe — Maßnahme Nr. ..../. oder Nationale Nahrungsmittelhilfe
- Κοινωνική επισιτιστική βοήθεια — Δράση αριθ. ..../. ή Εθνική επισιτιστική βοήθεια
- Community food aid — Action No ..../. or National food aid
- Aide alimentaire communautaire — Action n.º ..../. ou Aide alimentaire nationale
- Aiuto alimentare comunitario — Azione n. ..../. o Aiuto alimentare nazionale
- Communautaire voedselhulp — Actie nr. ..../. of Nationale voedselhulp
- Ajuda alimentar comunitária — Acção n.º ..../. ou Ajuda alimentar nacional
- Yhteisön elintarvikeapu — Toimi nro ..../. tai Kansallinen elintarvikeapu
- Livsmedelsbistånd från gemenskapen — Aktion nr ..../. eller Nationellt livsmedelsbistånd.

HAS ADOPTED THIS REGULATION:

### Article 1

Without prejudice to exceptional provisions adopted by the Commission for special operations, this Regulation shall apply to exports of products covered by the regulations on the common organisation of the markets listed in Article 1 of Regulation (EC) No 1291/2000 where the products are supplied as Community food aid under Regulation (EC) No 1292/96 and mobilised in the Community in accordance with the general rules of Regulation (EC) No 2519/97.

It shall apply *mutatis mutandis* where the products referred to in the preceding paragraph are supplied as national food aid implemented by the Member States, subject however to specific national measures on organising and assigning these operations.

### Article 2

1. By way of derogation from Article 5(2) of Regulation (EC) No 800/1999, the export refund to be paid shall be that applicable on the date specified in the legal instrument laying down the special conditions under which the Community food-aid operation is to be carried out (hereinafter referred to as the 'tender notice').

In the case of the national food aid referred to in Article 1, the applicable refund rate shall be that applying on the day the Member State opens the invitation to tender for the supply in question.

2. In the case of supply ex works or free carrier and free at port of shipment, the time limit within which the products must leave the customs territory of the Community, laid down in the first subparagraph of Article 7(1) and in Article 34(1) of Regulation (EC) No 800/1999, shall not apply.

3. By way of derogation from the provisions laying down a readjustment of amounts fixed in advance, the refund referred to in paragraph 1 shall not be subject to any adjustment or correction.

(1) OJ L 25, 31.1.1998, p. 39.

The action number to be indicated is that specified in the tender notice. In addition, the country of destination shall be indicated in box 7 of both the licence application and the licence.

*Article 4*

1. Without prejudice to the provisions of Article 2, payment of the export refund in connection with Community food aid shall be made in accordance with the provisions of Regulation (EC) No 800/1999 and, by way of derogation from Article 16 of that Regulation, on production of a copy of the taking-over certificate or the delivery certificate referred to in Article 17(3) and (4) of Regulation (EC) No 2519/97, certified as a true copy by the Commission office to which the tenders are sent in accordance with the tender notice.

Payment of the refund referred to in Article 2(1) shall be made in respect of the net quantity accepted which appears in the taking-over or delivery certificate.

2. The provisions of Article 51(1) of Regulation (EC) No 800/1999 shall not apply where the refund requested is higher than the refund due for the relevant exportation as a result of circumstances or events beyond the control of the supplier which occur after the completion of the supply operation in

accordance with Article 12(5), Article 13(7), Article 14(11) or Article 15(5) of Regulation (EC) No 2519/97.

Where the country of destination is changed by the aid beneficiary, the reduction referred to in the second indent of Article 18(3)(b) of Regulation (EC) No 800/1999 shall not apply.

*Article 5*

Article 13(2) of Regulation (EC) No 174/1999 and Article 11(a) of Regulation (EC) No 1162/95 are hereby deleted.

*Article 6*

Regulation (EC) No 259/98 is hereby repealed. However, it shall continue to apply to Community food-aid supplies for which the tender notice was published before the date of entry into force of this Regulation.

*Article 7*

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

It shall apply to Community food-aid supplies for which the tender notice was published on or after the date of entry into force of this Regulation.

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

Done at Brussels, 26 November 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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