Commission Implementing Regulation (EU) 2016/1239 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the system of import and export licences (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1239

of 18 May 2016

laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the system of import and export licences

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007[(1)], and in particular Article 178 and Article 223(3)(a), (b), and (c) thereof,

Whereas:

(1) Regulation (EU) No 1308/2013 repealed and replaced Council Regulation (EC) No 1234/2007[(2)] and lays down rules regarding import and export licences for agricultural products. It also empowers the Commission to adopt delegated and implementing acts in that respect. In order to ensure the smooth functioning of the system of import and export licences in the new legal framework, certain rules have to be adopted by means of such acts. As the aim of those acts is to simplify and adapt the provisions applicable to the system of import and export licences to the new legal framework established by Regulation (EU) No 1308/2013, Commission Delegated Regulation (EU) 2016/1237[(3)] amends Commission Regulations (EC) No 2535/2001[(4)], (EC) No 1342/2003[(5)], (EC) No 2336/2003[(6)], (EC) No 951/2006[(7)], (EC) No 341/2007[(8)] and (EC) No 382/2008[(9)] and repeals Commission Regulations (EC) No 2390/98[(10)], (EC) No 1345/2005[(11)], (EC) No 376/2008[(12)] and (EC) No 507/2008[(13)].

(2) With a view of sound and uniform administration of the licensing system it is appropriate to lay down common provisions as regards application for and issue of licences.

(3) In order to unambiguously identify an applicant for a licence and a titular holder of a licence, the Economic Operators Registration and Identification (EORI) number should be used for this purpose.

Changes to legislation: *There are outstanding changes not yet made to Commission Implementing Regulation (EU) 2016/1239. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) It is necessary to establish the appropriate level of the security for the licences to be issued, so as to guarantee that the products will be imported or exported during the period of validity of the licence.

(5) It should be possible to issue extracts of licences that have the same effect as the licences from which they are extracted, so that several operations can be carried out at the same time under one licence.

(6) It is necessary to lay down periods of validity of the import and export licences. This validity can vary for specific products and has to be fixed in order to define when the obligation to export or import is to be fulfilled.

(7) In view of international trade practice in respect of the agricultural products concerned, level of tolerances should be defined with regard to the quantity of products imported or exported as compared with the quantity indicated on the licence.

(8) The import and export licence constitutes a right and give rise to an obligation to release for free circulation or to export. It is necessary to define when the undertaking to export or import is fulfilled and how to prove it.

(9) It is appropriate to lay down provisions on the procedure to be followed when a licence is destroyed or lost.

(10) In order to reduce the administrative burden in those cases where the amount of security required for a licence is relatively small, a threshold should be fixed under which no security is required.

(11) In order to reduce the administrative burden it is appropriate to set out maximum quantities for specific products for which a licence is not required.

(12) Action should be taken in cases where the obligation to import or export is not fulfilled, especially in cases of recognised force majeure. In such cases that obligation may be considered cancelled or the period of validity of the licence may be extended.

(13) It is necessary to lay down some additional notification requirements for import licences for hemp, garlic and ethyl alcohol of agricultural origin in order to take into consideration the specificities of those sectors.

(14) Taking into consideration the need of a smooth transition from the current rules to those being introduced by this Regulation, some transitional provisions should be adopted.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the definitions of ‘declarant’ as set out in Article 5(15), and ‘risk management’ as set out in Article 5(25) of Regulation (EU) No 952/2013

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of the European Parliament and of the Council[14] and of 'exporter' as set out in Article 1(19) of Commission Delegated Regulation (EU) 2015/2446[15] shall apply. In addition, the definitions laid down in Article 1 of Delegated Regulation (EU) 2016/1237 shall apply.

Article 2

Application for and issue of licences

1 Licences shall be applied for and issued via information technology application ('IT applications') respecting the integrity and quality standards as set out in Section 3 B of Annex I to Commission Delegated Regulation (EU) No 907/2014[16].

Where no such IT applications are available or effective, and as fall-back for failure of IT applications, licences may also be applied for and issued, using a print of the model as set out in Annex I to this Regulation, and taking account of the instructions set out in that Annex.

2 The names and addresses of the authorities competent for receiving the application and issuing the licence shall be published on the official website of those authorities, or on the official website dealing with agricultural trade of each Member State.

3 Applications and licences shall be completed and issued in typed format in one of the official languages of the Union, as specified by the competent authorities of the issuing Member State.

4 The competent authorities of the Member States may, where necessary, require that non-harmonised texts in applications for licences or accompanying documents be translated at the cost of the applicant into the official language or one of the official languages of the Member State concerned.

5 The licence application shall be filled in in accordance with the purpose of the licence and as set out in the notice on import and export licences for agricultural products[17].

6 The licence issuing authority shall not accept applications that are not in accordance with the relevant Union rules. It shall issue the licence without delay, using the accepted information as filled in by the applicant, and completing the information as set out in the notice on import and export licences for agricultural products. On paper copies the licence issuing authorities shall validate their issuing by signature and by means of a stamp, or an embossing press. Electronic copies shall be validated in accordance with the standards referred to in paragraph 1.

Article 3

Deadlines

1 By way of derogation from Article 5 of Council Regulation (EEC, Euratom) No 1182/71[18] the day an application for a licence is lodged shall be deemed to be the working day on which it is received by the licence issuing authority, provided that it has been received not later than 13.00 hours Brussels time.

An application received after 13.00 hours Brussels time on a working day shall be deemed to have been lodged on the first working day following the day on which it was actually received.

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2 A request for cancellation of an application for a licence may only be made in electronic or written form, to be received by the licence issuing authority by 13.00 hours Brussels time on the day the application is received.

[F1 3 Where in this Regulation a period for procedures is set, and the opening or closing date is a Saturday, Sunday, or public holiday as defined in Regulation (EEC, Euratom) No 1182/71:

a the applicable opening date shall be the following working day and shall start at 0.00 hours, taking account of official office opening hours;

[F2 b by way of derogation from Article 3(2)(b) and (4) of that Regulation, the applicable closing date shall be the last working day preceding the Saturday, Sunday or public holiday and shall end at 13.00 hours Brussels time. However, in respect of applications for a licence Member States may decide to provide for the necessary working arrangements to allow their submission on a Saturday, Sunday or public holiday. In that case, the applicable closing date shall be the given Saturday, Sunday or public holiday and shall end at 13.00 hours Brussels time. Where a Member State decides to provide for such working arrangements, it shall publish them.**]**

[F3 Point (b) of the first subparagraph shall also apply where the applicable closing date is defined by reference to a specified date and that date falls on a Saturday, Sunday or public holiday.**]]**

[F4 4 By way of derogation from paragraph 3, where for the purposes of this Regulation a time limit applies for the notification of quantities of products covered by applications for licences under a tariff quota or for the notification of unused quantities under a tariff quota, that time limit shall end with the expiry of the last hour of the last day, irrespective of whether that day is a Saturday, Sunday or public holiday.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2017/1964 of 17 August 2017 amending Implementing Regulation (EU) 2016/1239 as regards certain rules on time limits and notifications of the quantities covered by licences in the rice sector (Text with EEA relevance).

F2 Substituted by Commission Implementing Regulation (EU) 2019/1607 of 27 September 2019 amending Implementing Regulation (EU) 2016/1239 as regards the applicable closing dates for the submission of licence applications.

F3 Inserted by Commission Implementing Regulation (EU) 2019/1607 of 27 September 2019 amending Implementing Regulation (EU) 2016/1239 as regards the applicable closing dates for the submission of licence applications.

F4 Inserted by Commission Implementing Regulation (EU) 2017/1964 of 17 August 2017 amending Implementing Regulation (EU) 2016/1239 as regards certain rules on time limits and notifications of the quantities covered by licences in the rice sector (Text with EEA relevance).

Article 4

Economic Operators Registration and Identification number

1 The Economic Operators Registration and Identification number (‘EORI number’) assigned to the applicant, titular holder or transferee pursuant to Article 9 of Regulation (EU) No 952/2013 shall be inserted in Section 4 or, where applicable, Section 6 of the application and the licence.

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Applicants or licence issuing authorities may, on the basis of national instructions, mention the EORI number of the applicant, titular holder or transferee in Section 20, provided that the name or identity number in Section 4 or 6 links to the EORI number in Section 20.

2 Where products are declared for release for free circulation or export by a customs representative as referred to in Article 18 of Regulation (EU) No 952/2013, the EORI number of the titular holder or transferee shall be mentioned in the appropriate data element of the electronic customs declaration.

Article 5

Amount of the security

1 Where a security is required in accordance with Article 4(1) of Delegated Regulation (EU) 2016/1237, the amount of the security shall be as set out in Annex II to this Regulation.

2 Where the amounts resulting from the conversion of euro into sums in national currency to be entered on licences contain decimal places, the amount of the security shall be rounded to the first lower amount in whole national currency.

Article 6

Extracts

1 Where the quantity indicated on a licence is to be subdivided for procedural or logistic reasons, or if the titular holder or transferee needs to use a licence issued in electronic format in one Member State, in another Member State not connected to the issuing Member States' IT applications, the licence issuing authority may, at the request of the titular holder or transferee, issue extracts from licences (‘extracts’).

2 Extracts shall have the same legal effects as the licences from which they are extracted, within the limits of the quantity in respect of which such extracts are issued.

3 The procedures for the application for licences and the issuing and return thereof shall also apply to extracts. The licence issuing authority may provide for simplified application procedures.

4 The licence issuing authority shall deduct the quantity indicated in the extract from the original licence quantity, where applicable increased by the tolerance, and the word ‘extract’ shall be entered on the original licence beside that deducted quantity.

5 Extracts shall be issued without delay and at no additional cost, either in electronic format, or in printed format using the model set out in Annex I.

6 No further extract may be made of an extract.

7 The titular holder shall return the holder's copy of the extract which has been used or expired to the licence issuing authority, together with the titular holder's copy of the original licence.