Commission Regulation (EU) No 817/2010 of 16 September 2010 laying down detailed rules pursuant to Council Regulation (EC) No 1234/2007 as regards requirements for the granting of export refunds related to the welfare of live bovine animals during transport (recast)

COMMISSION REGULATION (EU) No 817/2010

of 16 September 2010

laying down detailed rules pursuant to Council Regulation (EC) No 1234/2007 as regards requirements for the granting of export refunds related to the welfare of live bovine animals during transport

(recast)

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 170 in conjunction with Article 4 thereof,

Whereas:

(1) Commission Regulation (EC) No 639/2003 of 9 April 2003 laying down detailed rules pursuant to Council Regulation (EC) No 1254/1999 as regards requirements for the granting of export refunds related to the welfare of live bovine animals during transport[(2)] has been substantially amended several times[(3)]. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Pursuant to Article 168 of Regulation (EC) No 1234/2007, the granting and the payment of the refund for exports of live bovine animals are subject to compliance with legislation of the Union concerning animal welfare and, in particular, Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations[(4)].

(3) In order to guarantee that the animal welfare standards are maintained, a monitoring system should be introduced comprising compulsory checks at the exit point from the customs territory of the Community and after leaving the customs territory of the Community where there is a change of means of transport and also at the place of the first unloading in the third country of final destination.

(4) In order to facilitate proper checks on exit from the customs territory of the Community, it is necessary to designate exit points.

(5) The assessment of the physical condition and state of health of animals requires specific expertise and experience. Checks should therefore be carried out by a veterinarian.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 817/2010. (See end of Document for details)*

Moreover, the extent of those checks should be clarified and a model report set out in order to make those checks accurate and harmonised.

(6) Checks in third countries for the purposes of this Regulation should be compulsory and should be carried out by agencies of Member States or by international control and supervisory agencies (hereinafter referred to as 'SAs') approved and controlled by Member States in accordance with Commission Regulation (EC) No 612/2009 of 7 July 2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products[(5)]. In order to carry out checks for the purposes of this Regulation, the SAs should in particular meet the requirements for approval and control set out in Annex VIII to Regulation (EC) No 612/2009.

(7) Article 168 of Regulation (EC) No 1234/2007 and this Regulation provide that compliance with legislation of the Union on animal welfare is a condition for the payment of export refunds. Therefore, it should be clearly set out that, without prejudice to cases of *force majeure* recognised by the case law of the Court of Justice of the European Union, a violation of those animal welfare provisions does not trigger a reduction but the loss of the export refund, related to the number of animals for which the welfare requirements were not respected. It equally results from those provisions, as well as from the animal welfare rules set out in Articles 3 to 9 of Regulation (EC) No 1/2005 and the Annexes referred to therein, that the refund is to be lost for the animals for which those welfare rules were not respected, irrespective of the concrete physical conditions of the animals.

(8) In addition to the non-payment of the export refund, when there is evidence that Regulation (EC) No 1/2005 is not complied with for a high number of animals, appropriate penalties should be applied. Furthermore, where such non-compliance is due to a complete disregard of animal welfare requirements, the total loss of the refund should be established.

(9) Given the discrepancies between different language versions, it is necessary to clarify that the refund for all animals indicated in the export declaration is to be refused if the number of animals for which no refund is paid amounts to more than 5 % of the number endorsed in the accepted export declaration, but at least three animals, or to 10 animals or more, but at least 2 % of the number endorsed in the accepted export declaration. Article 6(2)(b) should therefore be amended accordingly.

(10) Member States should provide the Commission with the necessary information for the purposes of monitoring and reporting on the application of this Regulation.

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

HAS ADOPTED THIS REGULATION:

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EU) No 817/2010. (See end of Document for details)*

Article 1

Scope

The payment of export refunds for live bovine animals falling within CN code 0102 (hereinafter referred to as the 'animals'), pursuant to Article 168 of Regulation (EC) No 1234/2007, shall be subject to compliance, during the transport of the animals to the first place of unloading in the third country of final destination, with Articles 3 to 9 of Regulation (EC) No 1/2005 and the Annexes referred to therein, and with this Regulation.

For the purposes of this Regulation, in the case of transport by road, the 'first place of unloading in the third country of final destination' shall mean the place at which the first animal is finally unloaded from a road vehicle, thus excluding a place where the journey is interrupted to rest, feed or water the animals.

Article 2

Checks within the customs territory of the Community

1 The exit of the animals from the customs territory of the Community may take place only through the following exit points:

a a border inspection post approved by a Commission decision for veterinary checks on live ungulates from third countries;

or

b an exit point designated by the Member State.

2 The official veterinarian at the exit point shall verify in accordance with Council Directive 96/93/EC[(6)] for those animals for which an export declaration is accepted whether:

a the requirements laid down in Regulation (EC) No 1/2005 have been complied with from the place of departure, as defined in Article 2 (r) of that Regulation, until the exit point;

and

b the transport conditions for the rest of the journey comply with Regulation (EC) No 1/2005 and that the necessary arrangements have been taken to ensure its compliance until the first unloading in the third country of final destination.

The official veterinarian who has conducted the checks shall complete a report in accordance with the model set out in Annex I to this Regulation certifying whether the results of the checks performed in accordance with the first subparagraph are satisfactory or not satisfactory.

The veterinarian authority responsible for the exit point shall keep that report for at least three years. A copy of the report shall be sent to the paying agency.

3 If the official veterinarian at the exit point is satisfied that the requirements of paragraph 2 are met, he shall certify this by one of the entries listed in Annex II and by stamping and signing the document constituting evidence of exit from the customs territory of the Community, either in Section J of the control copy T5 or in the most appropriate place on the national document.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 817/2010. (See end of Document for details)*

4 The official veterinarian at the exit point shall endorse on the document referred to in paragraph 3 the total number of animals for which an export declaration had been accepted minus the number of animals which gave birth or aborted during transport, died or for which the requirements of Regulation (EC) No 1/2005 were not complied with.

5 Member States may require the exporter to give advance notice of the arrival of the consignment at the exit point to the official veterinarian at the exit point.

6 By way of derogation from paragraph 1, where the simplified Community transit procedure for carriage by rail or large containers referred to in Article 11 of Regulation (EC) No 612/2009 applies, the official veterinarian shall carry out checks at the office where the animals are placed under such procedure.

The certification and endorsements referred to in paragraphs 3 and 4 of this Article shall be made on the document used for the purpose of payment of the refund or on the T5 control copy in the case described in Article 11(4) of Regulation (EC) No 612/2009.

Article 3

Checks in third countries

1 After leaving the customs territory of the Community, the exporter shall ensure that the animals shall be subject to a check at:

a any place where there is a change of means of transport except where such change was not planned and is due to exceptional and unforeseen circumstances;

b the place of the first unloading in the third country of final destination.

2 An international control and supervisory agency, approved and controlled for this purpose by a Member State in accordance with Articles 18 to 23 of Regulation (EC) No 612/2009, or an official agency of a Member State shall be responsible for carrying out the checks provided for in paragraph 1.

The checks provided for in paragraph 1 shall be carried out by a veterinarian holding a diploma, certificate or other evidence of formal qualification in veterinary medicine as referred to in Article 21 of Directive 2005/36/EC of the European Parliament and of the Council[7]. However, the Member States, which have approved the international control and supervisory agencies, referred to in the first subparagraph of this paragraph shall verify that those agencies check that veterinarians holding a qualification not covered by that Directive possess the knowledge of the requirements imposed by Regulation (EC) No 1/2005. Those checks shall be carried out in a reasonable, objective and impartial manner through appropriate procedures.

A report of each check carried out pursuant to paragraph 1 shall be completed in accordance with the models set out in Annexes III and IV to this Regulation by the veterinarian who carried out the check.

Article 4

Procedure for payment of export refunds

1 The exporter shall inform the competent authority of the Member State where the export declaration is accepted about all necessary details of the journey, at the latest when the export declaration is lodged.

At the same time, or at the latest when he becomes aware thereof, the exporter shall inform the competent authority about any possible change of the means of transport.

2 Applications for the payment of export refunds drawn up in accordance with Article 46 of Regulation (EC) No 612/2009 shall be supplemented within the time limit laid down in that Article by:

a the document referred to in Article 2(3) of this Regulation duly completed;

and

b the reports provided for in the third subparagraph of Article 3(2) of this Regulation.

3 Where the checks referred to in Article 3(1) could not be carried out due to circumstances beyond the control of the exporter, the competent authority, on a reasoned request from the exporter, may accept other documents which prove to its satisfaction that Regulation (EC) No 1/2005 has been complied with.

Article 5

Non-payment of export refunds

1 The total sum of the export refund per animal calculated in accordance with the second subparagraph shall not be paid for:

a animals which have died during transport, except as provided in paragraph 2;

b animals which have given birth or aborted during transport before their first unloading in the third country of final destination;

c animals for which, in the light of the documents referred to in Article 4(2) and/or all other elements at its disposal concerning compliance with this Regulation, the competent authority considers that Articles 3 to 9 of Regulation (EC) No 1/2005 and the Annexes referred to therein have not been complied with.

The weight of an animal in respect of which the refund is not paid shall be determined on a flat-rate basis by dividing the total weight in kilograms given in the export declaration by the total number of animals given in that same declaration.

2 Where the animals have died during transport as a result of *force majeure* after leaving the customs territory of the Community:

a in the case of a non-differentiated refund, the total refund shall be paid;

b in the case of a differentiated refund, the part of the refund calculated in accordance with Article 25(2) of Regulation (EC) No 612/2009 shall be paid.

Article 6

Penalties

1 The refund shall be further reduced by an amount equal to the amount of refund which is not paid pursuant to Article 5(1), if the number of animals for which no export refund is paid amounts to:

a more than 1 % of the number endorsed in the accepted export declaration, but at least two animals;

or

b more than five animals.