Commission Regulation (EU) No 278/2010 of 31 March 2010 amending Regulation (EC) No 1276/2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts and Regulation (EC) No 612/2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products

COMMISSION REGULATION (EU) No 278/2010

of 31 March 2010

amending Regulation (EC) No 1276/2008 on the monitoring by physical checks of exports of agricultural products receiving refunds or other amounts and Regulation (EC) No 612/2009 on laying down common detailed rules for the application of the system of export refunds on agricultural products

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 Articles 170(c) and 194(a), in conjunction with Article 4 thereof,

Whereas:

(1) Pursuant to Article 15 of Commission Regulation (EC) No 1276/2008[(2)] the customs office has to note information on physical checks, on exemption of physical checks, on the checks on sealing, or on substitution checks on T5 control copies or equivalent documents, as set out in the Annexes III to VII to that Regulation.

(2) Article 51 of Commission Regulation (EC) No 1043/2005 of 30 June 2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds[(3)] provides that for certain goods listed in its Annex IV, an analysis is to be carried out in order to determine whether those products are eligible for a refund. The customs office of export should note that an analysis has been carried out.

(3) In accordance with Article 5(8) of Commission Regulation (EC) No 612/2009[(4)], the customs office has to visually check the conformity of the products with the export declarations and note the checks carried out in box D of the T5 control copy or equivalent document by one of the entries listed in Annex II to that Regulation.

(4) It appears that the required notes in their different linguistic versions and handwritings can be difficult to read or to understand by the authorities involved. It is therefore appropriate to simplify the procedures by replacing handwritten notes on T5 control copies by uniform codes.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 278/2010. (See end of Document for details)*

(5) Those physical checks and substitution checks should be carried out on the basis of risk management, implying that the professional reputation of the exporter is one of the elements to take into account. The information required under Regulations (EC) No 1276/2008 and (EC) No 612/2009 in a control copy T5 serves, amongst others, to notify to the customs office of exit or the customs office to which the T5 control copy is sent, the control measures taken. It appeared that in cases where a T5 control copy was not filled in correctly, the customs office's risk based selection process of control measures was made difficult. As a correct filled T5 control copy is one indicator of the exporter's professionalism and of his compliance to the applicable rules, it is therefore deemed to be appropriate to notify imperfections of the T5 control copy to the authorities responsible for the adjustment of the exporter's risk profile in the Member State where the T5 control copy was issued.

(6) Regulations (EC) No 1276/2008 and (EC) No 612/2009 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1276/2008 is amended as follows:

1. In Article 2, the following point is added:

(m) "Control code" means information expressed by the letter "A" followed by four digits generated by electronic means, in printing, or in clearly legible handwriting.

2. Article 15 is replaced by the following:

Article 15

T5 control copy

1 For the purposes of Article 912c(3) and (4) of Regulation (EEC) No 2454/93, when applicable, customs authorities shall note on the control copy T5, or the equivalent document accompanying the products, the relevant control codes set out in Annex IIa to this Regulation, in accordance with the following rules:

a the customs office of export shall note in box D the relevant control code listed in Part 1 of Annex IIa, corresponding to whether:

(i) a physical check on export refunds provided in Article 4 of this Regulation has been carried out;

(ii) an analysis has been carried out in accordance with Article 51 of Commission Regulation (EC) No 1043/2005[(5)];

(iii) it is a food aid export under Regulation (EC) No 2298/2001 exempted from physical check;

b the customs office of exit or the customs office to which the T5 control copy is sent shall, after having carried out the checks on the integrity of seals referred to in Article 7 of this Regulation, note in box J the relevant control code listed in Part 2 of Annex IIa, corresponding to whether:

(i) the seal is in conformity, or the absence of a seal is justified as referred to in Article 5(8) of Commission Regulation (EC) No 612/2009[(6)];

(ii) the seal is missing or it was broken;

c the customs office of exit or the customs office to which the T5 control copy is sent shall note in box J the relevant control code listed in Part 3 of Annex IIa, corresponding to whether:

(i) the findings of the substitution check referred to in Article 8 of this Regulation are in conformity;

(ii) a sample has been taken under the substitution check referred to in Article 8 or the specific substitution check referred to in Article 9 of this Regulation, but the findings are not yet available due to ongoing verification by laboratory analysis;

(iii) the findings of the specific substitution check referred to in Article 9 are in conformity;

(iv) the findings of the substitution check referred to in Article 8 or the specific substitution check referred to in Article 9 are not in conformity.

2 The customs office of exit or the customs office to which the T5 control copy is sent shall mention in box J of the T5 control copy its Customs Office Reference number as referred to in point 8 of Annex 37c to Regulation (EEC) No 2454/93.

In the case referred to in paragraph 1(c)(ii), the customs office concerned shall, as soon as the verification is finalised, note the findings of this verification in box J of a copy of the T5 control copy sent previously, by using the relevant control code referred to in paragraph 1(c).

In the case referred to in paragraph 1(c)(iv), the customs office that made the findings shall:

a attach to the copy of the T5 control copy which will be returned to the paying agency according to the procedure of Article 912c(4) of Regulation (EEC) No 2454/93, a copy of the control report as set out in paragraph 5 of this Article, indicating the checks carried out and the reasons why the relevant rules on export refunds might not have been complied with; and

b request that the paying agency notifies them of the action taken as a result of the findings.

3 If selection procedures for checks on the integrity of seals referred to in Article 7, or for substitution checks referred to in Article 8, or specific substitution checks referred to in Article 9, and therefore the application of risk management, are made difficult due to incomplete information indicated in the T5 control copy, the customs office of exit or the customs office to which the T5 control copy is sent shall note in box J, as supplementary information, one of the control codes listed in Part 4 of Annex IIa.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) No 278/2010. (See end of Document for details)*

4 The customs office of exit or the customs office to which the T5 control copy is sent shall take steps to make available to the Commission at any time details of the number of:

a T5 control copies and equivalent documents taken into account for the purposes of the checks on the integrity of seals referred to in Article 7, for the purposes of substitution checks referred to in Article 8, and specific substitution checks referred to in Article 9;

b checks carried out on integrity of seals referred to in Article 7;

c substitution checks carried out referred to in Article 8;

d specific substitution checks carried out referred to in Article 9.

A duplicate or a copy of the document shall remain at the customs office of exit or the customs office to which the T5 control copy or equivalent document is sent, as the case may be, and it shall be accessible for consultation.

5 Every substitution check and specific substitution check referred to in Articles 8 and 9 shall be the subject of a report drawn up by the customs official who carries it out.

The report shall permit monitoring of the checks carried out and shall bear the date and the name of the customs official. Without prejudice to Article 9 of Regulation (EC) No 885/2006 it shall be accessible for consultation for three years from the year of export at the customs office which carried out the check, or at one place in the Member State.

3. Annexes III to VII are deleted.

4. A new Annex IIa is inserted the text of which is set out in Annex I to this Regulation.

Article 2

Regulation (EC) No 612/2009 is amended as follows:

1. In Article 5(8), the second subparagraph is replaced by the following:

> Before affixing seals, the customs office of export shall visually check the conformity of the products with the export declarations. The number of visual checks shall not be less than 10 % of the number of export declarations, other than those in respect of which the products covered by them have been physically checked or selected for a physical check under Article 3 of Regulation (EC) No 1276/2008. The customs office shall note this check in box D of the T5 control copy or equivalent document by using the control code as defined in Article 2(m) of Regulation (EC) No 1276/2008 and as set out in Annex II to this Regulation.

2. Annex II is replaced by the text set out in Annex II to this Regulation.

Article 3

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 as from 1 July 2010.

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