Commission Regulation (EC) No 491/2008 of 3 June 2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 concerning production refunds in the cereals sector

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 98 in conjunction with Article 4 thereof,

Whereas:

(1) Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organization of the market in cereals[(2)] is to be repealed from 1 July 2008 under Article 201(1)(c) of Regulation (EC) No 1234/2007.

(2) Commission Regulation (EEC) No 1722/93 of 30 June 1993 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 concerning production refunds in the cereals sector[(3)] has been substantially amended several times. Following the adoption of Regulation (EC) No 1234/2007 as single CMO Regulation it is appropriate to adapt Regulation (EEC) No 1722/93 accordingly. In the interests of clarity, that Regulation should be repealed and replaced by a new Regulation.

(3) In view of the special situation of the market in starch, and particularly the need to keep prices competitive in relation to starch produced in third countries and imported as goods in respect of which the import arrangements do not provide sufficient protection for Community producers, Article 96 of Regulation (EC) No 1234/2007 provides for the grant of a production refund for starch obtained from maize, wheat or potatoes and for certain derivatives used in the manufacture of certain products a list of which is drawn up by the Commission, or in the absence of significant domestic production of other cereals for the production of starch, in Finland and Sweden each marketing year a certain amount of starch from barley or oats, in so far as this does not entail an increase in the level of starch production from those two cereals. The granting of this refund aims to enable the user industries concerned to have access to starch and certain derivatives at a lower price than that which would result from applying the rules of the common organization of the market in the products in question.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 491/2008. (See end of Document for details)*

(4) Pursuant to Article 98 of Regulation (EC) No 1234/2007, it is necessary to adopt detailed rules for the grant of production refunds, including rules for control and payment, so that the same rules are applied in all Member States.

(5) The Regulation (EC) No 1234/2007 provides for a list to be drawn up of products the manufacture of which uses starch giving rise to entitlement to the refund.

(6) To ensure that control measures are effective, provision should be made for beneficiaries of the refund to be approved in advance by the Member States in whose territory the abovementioned products are manufactured.

(7) It is necessary to define how the production refund is to be calculated and how often it is to be fixed. The most satisfactory calculation method is at present based on the difference between the market price for cereals and the price used to calculate the import duty. For reasons of stability, the production refund should as a general rule be fixed every month and, as a means of checking that the production refund is of the correct value, the prices of cereals should be monitored on the world and the most representatives Community markets. It should be clarified which Community markets are to be monitored, and this monitoring should be limited to maize. Since taking other cereal prices into account has not had any practical effect in the past on calculating the amount of the refund, references to other cereals should therefore not be necessary.

(8) Production refunds are to be paid for the use of starch and certain derived products in the manufacture of certain goods; detailed information is required to facilitate the appropriate control and payment of the production refunds to applicants; the competent authority in the Member State concerned should be empowered to require applicants to supply any information and allow any checks or inspections necessary to effect such controls.

(9) The manufacturer of the product may not necessarily use basic starch and it is therefore necessary to draw up a list of certain products derived from starch the use of which will give the manufacturer the right to receive the refund.

(10) The special characteristics of esterified or etherified starch could lead to certain speculative processing operations designed to receive the production refund more than once; so as to prevent such speculation, measures are needed to ensure that esterified or etherified starch is not reprocessed into a raw material the use of which gives the right to apply for a refund. The level of the security should be adapted to prevent such speculation.

(11) The production refund should not be paid until processing has taken place. Once processing has taken place, payment should be made within five months following verification by the competent authority that the starch has been processed. However, it should be possible for the manufacturer to receive an advance before completion of the controls.

(12) With a view to simplification and reducing administrative burdens and the costs of re-converting modified starches it is appropriate to increase the amount of the

production refund below which control measures are not deemed to be necessary, without expanding the risk for inappropriate spending of Community resources.

(13) Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products[(4)], applies to the arrangements provided for in this Regulation. Therefore, the primary requirements of the obligations incumbent on manufacturers and guaranteed by the lodging of a security should be defined.

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

HAS ADOPTED THIS REGULATION:

Article 1

1 In accordance with Article 96 of Regulation (EC) No 1234/2007 a production refund (hereinafter called 'refund') may be granted to natural or legal persons using starch extracted from wheat, maize, or potatoes, or certain derived products, in the manufacture of the goods listed in Annex I to this Regulation.

For Finland and Sweden, a refund may also be granted for the use of barley and oat starch limited to a total quantity of 50 000 tonnes in Finland and 10 000 tonnes in Sweden.

2 It is decided to grant a refund taking into account, in particular:

a the level of competition with third countries, and the degree of protection against such competition afforded by the mechanisms of the common agricultural policy and the Common Customs Tariff;

b the progress made in the technology of starch manufacture and utilization;

c the degree to which starch is incorporated in the final product and/or the relative value of starch in the final product and/or the importance of the product as an outlet for starch, in the light of competition with other products.

3 The grant of a refund for a product may not cause distortion in the conditions of competition with other products which are not eligible for such refunds.

4 Should it be established that distortion has occurred following the grant of a refund, that refund shall:

a be abolished; or

b adjusted, in so far as is necessary to eliminate the distortion in the conditions of competition.

5 Starches imported into the Community under an import scheme which gives rise to a reduction in import duty may not benefit from a production refund.

6 The decisions provided for in this Article shall be adopted by the Commission in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

Article 2

For the purposes of this Regulation the following definitions shall apply:

(a) 'starch' means basic starch or a product derived from starch as listed in Annex II;

(b) 'approved products' means any of the products listed in Annex I;

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(c) 'the manufacturer' means the user of the starch for the production of approved products.

Article 3

1 In cases where a refund is granted, it shall be fixed once a month. However, if the prices of maize and/or wheat in the Community or on the world market change in a significant way, the refund calculated in accordance with paragraph 2 can be modified during this month to take account of these changes.

2 The refund per tonne of starch of maize, wheat, barley or oats shall be calculated in particular on the basis of the difference, multiplied by a coefficient of 1,6, between:

a the average of the maize market prices in France and Hungary, valid during the five days preceding the day of fixing; and

b the average of the representative cif Rotterdam import prices used for the determination of the import duties on the maize, noted during the five days preceding the day of the beginning of application.

For the purposes of calculating the difference referred to in the first subparagraph, the following rules shall apply:

a if the maize market price referred to in point (a) is higher than the intervention price referred to in Article 18 of Regulation (EC) No 1234/2007, but less than 155 % of that price, the price to be taken into account shall be the intervention price plus half the difference between the real price and the intervention price;

b if the maize market price referred to in point (a) is higher than 155 % of the intervention price, the price to be taken into account shall be the intervention price plus 27,5 % of the intervention price.

For potato starch a different rate may be set that reflects the minimum price indicated in Article 4a of Council Regulation (EC) No 1868/94[(5)]. In that case, the calculation shall be made on the basis of the maize market price in France and Hungary referred to in point (a) of the first subparagraph, up to a limit of 115 % of the intervention price.

During July, August and September, the maize price referred to in point (a) of the first subparagraph shall be reduced by the difference between the intervention price for cereals as referred to in Article 18 of Regulation (EC) No 1234/2007 valid in June and that valid in July, save if the price of maize referred to in point (a) of the first subparagraph corresponds already to that valid for the new harvest.

3 The refund payable shall be that calculated in accordance with paragraph 2 and multiplied by the coefficient indicated in Annex II which corresponds to the CN code of the starch actually used to manufacture the approved products.

4 The decisions provided for in this Article shall be adopted by the Commission in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

Article 4

1 Manufacturers who intend to claim refunds should apply to the competent authority in the Member State where the starch is used, giving the following information:

a the name and address of the manufacturer;

b the range of products in which starch is used, including those which are on the list in Annex I and those which are not, giving a full description and the CN codes;

c the address(es) of the place(s) where the starch is to be processed into an approved product, if the address is different as these of the manufacturer.

Member States may ask the manufacturer for additional information.

2 Manufacturers shall submit a written undertaking to the competent authority, allowing the competent authorities to carry out all checks and inspections required to monitor the use of the starch and that they will provide any information required.

3 The competent authority shall take measures to ensure that the manufacturer is established and officially recognized in the Member State.

4 On the basis of the information specified in paragraphs 1 and 2, the competent authority shall draw up a list of approved manufacturers which it shall keep up to date.

Only manufacturers thus approved shall be entitled to claim a refund in accordance with Article 5.

Article 5

1 If the manufacturer wishes to apply for a refund, he must address himself in writing to his competent authority to obtain a refund certificate. Applications may be lodged every working day before 13:00 Brussels time.

2 The application must specify:

a the name and address of the manufacturer;

b the quantity of starch to be used;

c in the case of manufacture of a product falling within CN code 3505 10 50, the quantity of starch which will be used;

d the place(s) where the starch will be used;

e the planned dates of the processing operations.

3 The application shall be accompanied by:

a the lodging of a security in accordance with Article 8;

b a declaration by the supplier of the starch that the product to be used has been directly produced from maize, wheat, barley, oats or potatoes, with the exclusion of all use of by-products obtained at the time of the manufacture of other agricultural products or goods.

4 Member States may require additional information.

Article 6

1 As soon as applications submitted in accordance with Article 5 are received, the competent authority shall verify them and shall issue the refund certificate forthwith.

2 Member States shall use national forms for the refund certificate which, without prejudice to the other provisions of Community legislation, shall contain at least the information specified in paragraph 3.

3 The refund certificate shall include the information referred to in Article 5(2) and state the refund rate and the last day of its validity, which shall be the last day of the third month following the month of issue.

However, during July, August and until 24 September included, the validity of the certificates requested during the periods in question is limited to 30 days as from the day on which they are issued, without being able to exceed the limit of 30 September.

4 The rate of the refund applicable and stated on the certificate corresponds to that valid the day of the receipt of the request.