

COMMISSION REGULATION (EC) No 38/2004

of 9 January 2004

amending Regulation (EC) No 314/2002 laying down detailed rules for the application of the quota system in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 on the common organisation of the markets in the sugar sector⁽¹⁾, and in particular Articles 13(3), 14(4), 15(8), 16(5), 18(5) and 20(2) and the second paragraph of Article 41 thereof,

Whereas:

(1) Both yeast and alcohol production use sugar industry products and by-products that do not form part of the finished product but are needed for the fermentation process by which it is made.

(2) The recently increasing demand from alcohol producers for molasses has meant that less high quality beet molasses has been available to yeast producers and that it is of increasing interest to them to use sugar syrups. Use of these in turn means a marked reduction in environmental pollution caused by using molasses in making yeast.

(3) Commission Regulation (EC) No 314/2002⁽²⁾ stipulates that invert sugar and syrups processed into alcohol or rum are excluded from calculation of sugar production for the purposes of Articles 13 to 18 of Regulation (EC) No 1260/2001.

(4) In order to treat yeast producers fairly the above provision should be extended to cover syrups processed into live yeast.

(5) To prevent any misuse of the production quota system, arrangements should be introduced for supervising both enterprises allocated sugar production quotas and those processing sugar into alcohol, rum or yeast. Official approval of processing enterprises should be required and prior declaration of deliveries from enterprises assigned quotas should be required so that the authorities of the Member States can check on quantities. These arrangements should also apply to syrups for spreading and syrups to be processed into 'Rinse appelstroop',

which, under Article 1(2)(h) of Regulation (EC) No 314/2002, are excluded from calculation of sugar production for the purposes of Articles 13 to 18 of Regulation (EC) No 1260/2001. To give the authorities time to introduce management and inspection measures, the new provisions should apply from 1 February 2004.

(6) To allow monitoring of use of invert sugar and syrups and of the corresponding production of alcohol, rum, yeast, syrups for spreading and 'Rinse appelstroop', Member States should notify the Commission of the quantities used and produced.

(7) In the third subparagraph of Article 4b(3) of Regulation (EC) No 314/2002 a distinction should be made between quantities of isoglucose expressed as dry matter and quantities of inulin syrup expressed as white sugar equivalent.

(8) In Article 6(5)(c) of Regulation (EC) No 314/2002 concerning export obligations to be fulfilled during the current marketing year (within the meaning of Article 15(1)(d) of Regulation (EC) No 1260/2001) the words 'such quantities being spread evenly over the marketing year' are unnecessary and should for clarity be removed.

(9) Regulation (EC) No 314/2002 should be amended accordingly.

(10) The Management Committee for Sugar has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 314/2002 is amended as follows:

1. in Article 1(2) point (f) is replaced by:

'(f) quantities of invert sugar and syrups processed into alcohol or rum and quantities of syrups used in making live yeast;'

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 2196/2003 (OJ L 328, 17.12.2003, p. 26).

⁽²⁾ OJ L 50, 21.2.2002, p. 40. Regulation as amended by Regulation (EC) No 1140/2003 (OJ L 160, 28.6.2003, p. 33).

2. the following Article 1a is added:

'Article 1a

1. Only quantities used by undertakings approved by the competent authorities of the Member States shall count for the purposes of Article 1(2)(f) and (h).

These authorities shall grant approval on request to undertakings producing alcohol, rum, yeast, syrups for spreading and "Rinse appelstroop" which agree to:

- (a) keep separate daily stock records for the raw materials and processed products indicated at Article 1(2)(f) and (h);
- (b) provide on request by these authorities any information or supporting documents needed for checking the origin and use made of the raw materials indicated at (a);
- (c) allow these authorities to make appropriate administrative and physical checks.

2. For the purposes of application of Article 1(2)(f) and (h) undertakings assigned quotas shall before making deliveries declare to the competent authorities of the Member States concerned:

- (a) the nature and quantity of the products to be delivered, in both net weight and in white sugar equivalent;
- (b) particulars of the approved processor and the location at which the products delivered are to be processed
- (c) the timetable of deliveries to the processing location.

3. The competent authorities of the Member States shall if necessary set additional requirements for granting approval as indicated in the second subparagraph of paragraph 1 and additional requirements in connection with the declarations indicated in paragraph 2 such as the date by which they are to be made and their period of validity. They shall make administrative and physical checks on the origin and processing of these deliveries.

Using risk analysis they shall each marketing year make unannounced physical on-the-spot checks.

The risk analysis shall use, *inter alia*:

- (a) findings from checks made in previous years;
- (b) changes from the previous year;
- (c) processed product yield from the raw material.

The checks shall cover at least 10 % of the invert sugar and syrups. Should irregularities or anomalies be found, the Member States shall increase the check percentage according to the gravity of the findings.

4. At the end of each marketing year Member States shall determine for each undertaking assigned quotas and each approved undertaking the relevant quantities of syrup and invert sugar and the corresponding production of alcohol, rum, yeast, syrups for spreading and "Rinse appelstroop".

5. Approval shall be withdrawn, for the marketing year in progress and the following one, from any enterprise failing to observe the terms of approval. A fresh application for approval must subsequently be made.

6. Before 5 September each year Member States shall notify to the Commission for the previous marketing year:

- (a) the total quantities, expressed as white sugar equivalent, of invert sugar and syrups and the corresponding production of:
 - alcohol, expressed as pure alcohol, broken down by fuel alcohol, rum and other alcohol,
 - live yeasts, expressed as pressed yeasts, and
 - syrups for spreading and "Rinse appelstroop".
- (b) the findings from checks made under paragraph 3 and the action taken on these;
- (c) cases of withdrawal of approval under paragraph 5.;

3. in the first subparagraph of Article 4b(3) the opening words are replaced by:

'Each undertaking to which a production quota has been granted for isoglucose or inulin syrup shall notify to the competent authority of the Member State in which production took place, before 1 August, the quantities of isoglucose (expressed as dry matter) and of inulin syrup (expressed as white sugar equivalent) owned by it and stored in free circulation on Community territory at the end of the previous marketing year, broken down as follows:'

4. in the first paragraph of Article 6(5), point (c) is replaced by:

'(c) all foreseeable exports of sugar, isoglucose and inulin syrup in the form of processed products with export refunds or export levies fixed for that purpose during that marketing year.'

Article 2

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

Points 1 and 2 in Article 1 shall apply from 1 February 2004.

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

Done at Brussels, 9 January 2004.

For the Commission
Franz FISCHLER
Member of the Commission
