COMMISSION REGULATION (EEC) No 3445/85

of 6 December 1985

amending Regulation (EEC) No 798/80 laying down detailed rules on the advance payment of export refunds and positive monetary compensatory amounts in respect of agricultural products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (1), as last amended by Regulation (EEC) No 1018/84 (2), and in particular Articles 16 (6) and 24 thereof, and also to the corresponding provisions in the other Regulations on the common organization of the markets in agricultural products,

Having regard to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (3), as last amended by Regulation (EEC) No 855/84 (4), and in particular Article 6 thereof,

Having regard to Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products (5), as last amended by Regulation (EEC) No 2026/83 (6),

Whereas Article 10 of Commission Regulation (EEC) No 798/80 (7), as last amended by Regulation (EEC) No 1663/81 (8), lays down provisions for the release of the security required under Article 6 of Regulation (EEC) No 565/80 ;

Whereas Article 7 (1) of Regulation (EEC) No 798/80 provides for a minimum security where this amount is greater than the amount calculated in accordance with Article 6 (3), taking account of any monetary compensatory amount, increased by 20 % ;

Whereas in certain cases this can lead to a disproportionate penalty when reimbursement becomes necessary ;

Whereas it is necessary to modify the rules governing the calculation of the reimbursement when the minimum security has been used in order to avoid a disproportionate penalty ;

Whereas the measures provided for in this Regulation are in accordance with the opinions of all the relevant Management Committees,

HAS ADOPTED THIS REGULATION :

Article 1

Article 10 (4) of Regulation (EEC) No 798/81 is hereby replaced by the following :

'(4) Except in cases of *force majeure,* reimbursement of the following amounts shall be required :

(a) where the time limits laid down in Article 11 have not been complied with :

— an amount equal to the security ;

(b) where the time limits laid down in Article 11 have been complied with but the entitlement to refund covers a smaller amount than that referred to in paragraph 1 (b) and the minimum increase provided for in Article 7 (1), second sentence, has not been applied :

— where Article 7 (3) applies, an amount equal to the security, less the amount of the actual refund reduced by any negative monetary compensatory amount, increased by 20 %,

— in other cases, an amount equal to the security, less the amount of the actual refund and any positive monetary compensatory amount due, increased by 20 %,

(c) where the time limits laid down in Article 11 have been complied with but the entitlement to refund covers a smaller amount than that referred to in paragraph 1 (b) and where the minimum increase provided for in Article 7 (1), second sentence, has been applied :

— an amount equal to the difference between the amount advanced and the amount due, this difference being increased by the percentage which expresses the relationship between the minimum increase and the amount advanced'.

Article 2

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

At the request of those concerned the provisions of Article 1 shall apply to cases pending.

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 107, 19. 4. 1984, p. 1.
(3) OJ No L 106, 12. 5. 1971, p. 1.
(4) OJ No L 90, 1. 4. 1984, p. 1.
(5) OJ No L 62, 7. 3. 1980, p. 5.
(6) OJ No L 199, 22. 7. 1983, p. 12.
(7) OJ No L 87, 31. 3. 1980, p. 42.
(8) OJ No L 166, 24. 6. 1981, p. 9.

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

Done at Brussels, 6 December 1985.

For the Commission

Frans ANDRIESSEN

Vice-President