

COMMISSION REGULATION (EC) No 408/2003**of 5 March 2003****amending Regulation (EC) No 1148/2001 on checks on conformity to the marketing standards applicable to fresh fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as last amended by Commission Regulation (EC) No 47/2003 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1148/2001 ⁽³⁾, amended by Regulation (EC) No 2379/2001 ⁽⁴⁾, lays down rules for the application of checks on marketing conformity to standards both for products for consumption on the internal market and for exported products.
- (2) It is necessary to clearly establish that traders offering sufficient guarantees of conformity and therefore benefiting from special provisions at the export stage are not necessarily only those who packaged the products at the stage of dispatch. Indeed, some traders, offering such guarantees, for example wholesalers practising re-export or re-shipping after self-checking conformity do not have packing facilities. In addition, for clarification purposes, the mention 'Self-check' shall be added in the certificate issued at the stage of export when the inspection body did not itself carry out the physical check of the goods.
- (3) It is opportune to concentrate the checks carried out by Member States at the import stage on lots and consignments presenting the higher risks of non-conformity with marketing standards. It is desirable to that effect that Member States establish criteria on which such risks are to be assessed, together with rules on how checks may be relaxed where the risks of non-conformity are low. For the purpose of harmonisation of checking practices among the Member States, it is opportune that the Commission establish common guidelines.
- (4) Lots accompanied by conformity certificates issued by third countries the checks of which are approved according to Regulation (EC) No 1148/2001 present less of a risk of non-conformity than lots and consignments which are not accompanied by such certificates. The proportion of checks on such lots and consignments should therefore be substantially lower than for goods not accompanied by such certificate. It should also be ensured in this case, given the lower proportion of checks and the checking costs already generated in the

exporting third countries, that possible fees perceived by Member States to that effect are lower than fees perceived under the general import checks scheme and are proportionate to the checks realised.

- (5) Additional provisions should be laid down concerning cases where traders wish to bring goods into conformity in a Member State other than that in which the goods in question have been found not to conform and cases where it is not longer possible to bring goods into conformity.
- (6) Numerous packages, pre-printed before 1 January 2002 and still showing the mentions established by Commission Regulation (EEC) No 2251/92 ⁽⁵⁾, as last amended by Regulation (EC) No 766/97 ⁽⁶⁾, are still available in the stocks of certain traders. It is opportune to prolong by six months the period during which these packages can still be used.
- (7) The inspection methods laid down in Annex IV should be updated, in particular to take account of practices specific to nuts and of ways of testing the degree of ripeness of fruit and vegetables.
- (8) Regulation (EC) No 1148/2001 shall therefore be amended accordingly.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1148/2001 is hereby amended as follows:

1. Article 5 is amended as follows:

- (a) in paragraph 1, the third subparagraph is deleted;
- (b) the following paragraph 1a is inserted:

'1 bis. Member States may apply the provisions mentioned in the second subparagraph to traders fulfilling the following conditions:

 - (a) they offer sufficient guarantees of a consistent and high rate of conformity for the fruit and vegetables which they market;
 - (b) they have inspection staff who have received training approved by the Member State;

⁽¹⁾ OJ L 297, 21.11.1996, p. 1.

⁽²⁾ OJ L 7, 11.1.2003, p. 64.

⁽³⁾ OJ L 156, 13.6.2001, p. 9.

⁽⁴⁾ OJ L 321, 6.12.2001, p. 15.

⁽⁵⁾ OJ L 219, 4.8.1992, p. 9.

⁽⁶⁾ OJ L 112, 29.4.1997, p. 10.

- (c) they undertake to check the conformity of the goods they market;
- (d) they undertake to keep a register recording all the checks they have carried out.

For these traders, Member States may specify, for each category of trader concerned and based on a risk analysis, the minimum proportion of consignments and quantities subject to conformity checks by the competent inspection body at the export stage. This proportion must be sufficient to ensure compliance with Community rules. Where these checks reveal significant irregularities, the inspection bodies shall increase the proportion of consignments checked in the case of the traders concerned.'

- (c) in paragraph 2, the following subparagraph is added:

'Where, according to paragraph 1a, lots concerned by the certificate of conformity have not been checked by the competent inspection body at the export stage, the mention "self-check (Art 5(1a) of Regulation (EC) No 1148/2001" shall be reported in box 13 (Comments) of the certificate.'

- 2. Article 6(4) is replaced by the following:

'4. Notwithstanding paragraphs 1, 2 and 3, where the competent inspection body at the point of import considers that there is a low risk of certain lots not conforming to the marketing standards, it may choose not to check those lots. It shall send the customs authority a stamped declaration to that effect or inform that authority in another manner that it may carry out clearance procedures.

For the purposes of applying the first subparagraph, the inspection body shall lay down in advance the criteria for assessing the risk of lots not conforming and, on the basis of a risk analysis, for each type of import it has defined, the minimum proportions of consignments and quantities which will be subject to a conformity check by the competent inspection body at the import stage. Any proportion specified pursuant to this paragraph must in any case be substantially higher than the ones applied according to Article 7(5).

4 bis. In order to improve the uniformity of application of paragraph 4 in the Member States, the Commission elaborates common guidelines for its application. The coordinating authority shall inform the Commission forthwith of the rules for the application of paragraph 4, including the criteria and minimum proportions referred to in paragraph 4, second subparagraph and any subsequent amendment to those rules.'

- 3. The following subparagraph is added to Article 7(5):

'If a Member State perceives a fee to cover the costs of the checks referred to in this paragraph, the level of this fee shall be such as to reflect the lower proportion of consignments and quantities checked for these checks than for those mentioned in Article 6.'

- 4. The following subparagraphs are added to Article 9(3):

'If an inspection body accepts a trader's wish to bring the goods into conformity in a Member State other than that where the check leading to a finding of non-conformity has been carried out, the Member States shall take any measures which they deem appropriate, in particular with regard to cooperation between them, to check that the goods have been brought into conformity.

Where the goods can neither be brought into conformity nor sent to animal feed, industrial processing or any other non-food use, the inspection body may, if necessary, request traders to take adequate measures in order to ensure that the products concerned are not marketed.

Traders shall be obliged to supply all information deemed necessary by the Member States for the application of this paragraph.'

- 5. In Article 11(2), the date '31 December 2002' is replaced by the date '30 June 2003'.
- 6. Annex IV is replaced by the text of the Annex to the present Regulation.

Article 2

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

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

Done at Brussels, 5 March 2003.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

'ANNEX IV

Methods of inspection mentioned in Article 9(1)

Remark: the following methods of inspection are based on the provisions of the guide for the implementation of quality control of fresh fruit and vegetables adopted by the UN/ECE (United Nations Economic Commission for Europe) Working Party for standardisation of perishable goods and improvement of quality.

1. DEFINITIONS

(a) Conformity check

Inspection carried out by an inspector in accordance with this Regulation to check that fruit and vegetables conform to the marketing standards laid down in Regulation (EC) No 2200/96.

This inspection includes:

- where appropriate, an identity and documentary inspection: an inspection of the documents or certificates accompanying the lot and/or the registers referred to in the third indent of the second subparagraph of Article 4(3) and in Article 5(1a) (d) of Regulation (EC) No 1148/2001, and an inspection of the goods and the particulars in these documents, to check that they match,
- a physical inspection, by means of sampling, of the goods in the lot to ensure that it satisfies all the conditions laid down by the marketing standard, including the provisions on the presentation and marking of packages and packaging.

(b) Inspector

Person authorised by the competent inspection body who has an appropriate and regular training enabling them to undertake conformity inspection.

(c) Consignment

Quantity of produce to be sold by a given trader found at the time of control and defined by a document. The consignment may consist of one or several types of produce: it may contain one or several lots of fresh fruit and vegetables.

(d) Lot

Quantity of produce which, at the time of control at one place, has similar characteristics with regard to:

- packer and/or dispatcher,
- country of origin,
- nature of produce,
- class of produce,
- size (if the produce is graded according to size),
- variety or commercial type (according to the relevant provisions of the standard),
- type of packaging and presentation.

However, if during the inspection of consignments, it is not possible to distinguish between different lots and/or presentation of individual lots is not possible, all lots of a specific consignment may be treated as one lot if they are similar in regard to type of produce, dispatcher, country of origin, class and variety or commercial type, if this is provided for in the standard.

(e) Sampling

Collective sample taken temporarily from a lot during conformity check inspection.

(f) Primary sample

Package taken from the lot, or in the case of bulk produce, a quantity taken from a point in the lot.

(g) **Bulk sample**

Several representative primary samples taken from the lot whose quantity is sufficient to allow the assessment of the lot with regard to all criteria.

(h) **Secondary sample**

In the case of nuts, a secondary sample shall be a representative quantity of product taken from each primary sample in the bulk sample, weighing between 300 g and 1 kg. If the primary sample is made up of packaged foods, the secondary sample shall be one package.

(i) **Composite sample**

In the case of nuts a composite sample shall be a mix, weighing at least 3 kg, of all the secondary samples in a bulk sample. Nuts in the composite sample must be evenly mixed.

(j) **Reduced samples**

Representative quantity of produce taken from the bulk sample whose size is sufficient to allow the assessment of certain individual criteria. In the case of nuts, the reduced sample shall include at least 100 nuts taken from the composite sample. Several reduced samples may be taken from a bulk sample.

(k) **Packages**

Individually packaged part of a lot, including contents. The packaging is conceived so as to facilitate handling and transport of a number of sales units or of products loose or arranged, in order to prevent damage by physical handling and transport. Road, rail, ship and air containers are not considered as packages. In some cases, the package constitutes a sales package.

(l) **Sales packages**

Individually packaged part of a lot, including contents. The packaging of sales packages is conceived so as to constitute a sales unit to the final user or consumer at the point of purchase. Among sales packages, pre-packages are such as the packaging encloses the foodstuff completely or only partially, but in such a way that the contents cannot be altered without opening or changing the packaging.

2. IMPLEMENTATION OF CONFORMITY CHECK

(a) **General remark**

A physical check shall be made by assessing bulk samples taken at random from different points in the lot to be controlled. It is based on the principle of presumption that the lot conforms to the bulk sample.

(b) **Identification of lots and/or getting a general impression of the consignment**

The identification of lots shall be carried out on the basis of their marking or other criteria, such as the indications laid down under Council Directive 89/396/EEC ⁽¹⁾. In the case of consignments which are made up of several lots it is necessary for the inspector to get a general impression of the consignment with the aid of accompanying documents or declarations concerning the consignments. He then determines how far the lots presented comply with the information in these documents.

If the produce is to be or has been loaded onto a means of transport, the registration number of the latter shall be used for identification of the consignment.

(c) **Presentation of produce**

The inspector decides which packages are to be controlled. The presentation shall be made by the operator or his representative. The procedure should include the presentation of the bulk sample.

If reduced or secondary samples are required, these are identified by the inspector himself from the bulk sample.

⁽¹⁾ OJ L 186, 30.6.1989, p. 21.

(d) **Physical check**

- Assessment of packaging and presentation on the basis of primary samples:

The packaging, including the material used within the package, shall be tested for suitability and cleanness according to the provisions of the marketing standards. If only certain types of packaging are permitted, the inspector checks whether these are being used.

- Verification of marking on the basis of primary samples:

first, it is ascertained whether the produce is marked according to the marketing standards. During control a check is made on the accuracy of marking and/or the extent of amendment required.

Fruit and vegetables individually wrapped in plastic are not considered as pre-packed foodstuff in the meaning of European Parliament and Council Directive 2000/13/EC ⁽¹⁾ and do not necessarily need to be marked in accordance with the marketing standards. In such cases, the plastic wrapping can be considered a simple protection for fragile products.

- Verification of conformity of the produce using bulk sampling or composite and/or reduced sampling:

The inspector shall determine the size of the bulk sample in such way as to be able to assess the lots. He shall at random select the packages to be inspected or in the case of bulk produce the points of the lot from which individual samples shall be taken.

Damaged packages shall not be used as part of the bulk sample. They should be set-aside and may, if necessary, be subject to a separate examination and report.

The bulk sample should comprise the following quantities whenever a consignment is declared unsatisfactory:

Packed produce	
Number of packages in the lot	Number of packages to be taken (primary samples)
Up to 100	5
From 101 to 300	7
From 301 to 500	9
From 501 to 1 000	10
More than 1 000	15 (minimum)
Bulk produce	
Quantity of lot in kg or number of bundles in the lot	Quantity of primary samples in kg or number of bundles
Up to 200	10
From 201 to 500	20
From 501 to 1 000	30
From 1 001 to 5 000	60
More than 5 000	100 (minimum)

In the case of bulky fruit and vegetables (over 2 kg per unit), the primary samples should be made up of at least five units. In the case of lots comprising fewer than 5 packages or weighing less than 10 kg, the check shall cover the entire lot.

If the inspector discovers, after an inspection, that a decision cannot be reached, he may carry out another inspection and express the overall result as an average of the two checks.

Certain criteria on the degree of development and/or ripeness or on the presence or absence of internal defects may be checked on the basis of reduced samples; this applies in particular to control which destroys the trade value of the produce. The size of the reduced sample shall be restricted to the minimum quantity absolutely necessary for the assessment of the lot. If, however, defects are ascertained or suspected the size of the reduced sample shall not exceed 10 per cent of the size of the bulk sample initially taken for the inspection.

⁽¹⁾ OJ L 109, 6.5.2000, p. 29.

(e) **Control of produce**

The produce has to be removed entirely from its packaging for the control; the inspector may only dispense with this in the case of nuts or if the type of packaging and form of presentation allow an inspection without unpacking the produce. The inspection of uniformity, minimum requirements, quality classes and size shall be carried out on the basis of the bulk sample, or on the basis of the composite sample in the case of nuts. When defects are detected, the inspector shall ascertain the respective percentage of the produce not in conformity with the standard by number or weight.

The criteria on the degree of development and/or ripeness can be checked using the instruments and methods laid down to this end in the marketing standards or in accordance with accepted practice.

(f) **Report of control results**

Documents mentioned in Article 9 are issued where appropriate.

If defects are found, the trader or his representative must be informed in writing about the reasons for complaint. If the compliance of produce with the standard is possible by a change in marking, the trader or his representative must be informed about it.

If defects are found in a product, the percentage found not to be in conformity with the standard must be indicated.

(g) **Decline in value by conformity check**

After the control, the bulk sample is put at the disposal of the operator or his representative.

The inspection body is not bound to hand back the elements of the bulk sample destroyed during the control.'
