

CIRCULAR
DETAILING A NUMBER OF ARTICLES OF THE GOVERNMENT'S DECREE NO. 109/2010/ND-CP
OF NOVEMBER 4, 2010, ON RICE EXPORT BUSINESS

Pursuant to the Government's Decree. No. 189/2007/ND-CP of December 27, 2007, defining the functions, tasks, powers and organizational structure of the Ministry of Industry and Trade;

Pursuant to the Government's Decree No. 109/2010/ND-CP of November 4, 2010, on rice export business (below referred to as the Government's Decree No. 109/2010/ND-CP);

After consulting with the Ministry of Finance, the Ministry of Agriculture and Rural Development and the Vietnam Food Association.

The Minister of Industry and Trade details a number of articles of the Government's Decree No. 109/2010/ND-CP as follows:

Chapter I
GENERAL PROVISIONS

Article 1. Scope of regulation

This Circular provides the registration of rice export contracts and contracts on centralized rice export (below referred to as centralized contracts) and related matters under the Government's Decree No. 109/2010/ND-CP.

Article 2. Subjects of application

This Circular applies to rice exporters, responsible agencies and organizations in rice export contract registration and in transactions, signing and performance of centralized contracts, and concerned agencies, organizations and individuals.

Chapter II
RICE EXPORT CONTRACT REGISTRATION

Article 3. Dossiers and procedures for rice export contract registration

1. A dossier of rice export contract registration comprises:

a/ A written request for rice export contract registration.

b/ The original or valid copy of the signed rice export contract.

c/ The original report on the volume of available rice, clearly stating the total volume of rice available in the trader's warehouses; addresses of the trader's warehouses and the volume of rice in each warehouse.

d/ A valid copy of the valid certificate of eligibility for rice export business (below referred to as certificate), for first contract registration.

e/ To be given priority under Clause 2, Article 18 of the Government's Decree No. 109/2010/ND-CP, the trader shall additionally submit a request for prioritized registration and a summary report on direct procurement of rice under farm produce procurement contracts signed with producers, enclosed with supporting documents.

2. The order and procedures for rice export contract registration comply with Article 17 of the Government's Decree No. 109/2010/ND-CP.

Traders shall submit contract registration dossiers directly or by registered (or express) mail to the Vietnam Food Association. The Vietnam Food Association shall register and certify every page of a trader's rice export contract under the Government's Decree No. 109/2010/ND-CP and this Circular.

3. Prioritized registration under Clause 2, Article 18 of the Government's Decree No. 109/2010/ND-CP shall be made as follows:

a/ A contract registration dossier which meets prescribed criteria shall be registered right on the date of its receipt.

b/ For a dossier which needs to be modified, the Vietnam Food Association shall notify such to the trader on the date of dossier receipt and register the contract right on the date of receiving the valid modified dossier.

c/ When a dossier is received at the end of a working day and there is not enough time to process it, this dossier shall be examined and processed before other dossiers at the beginning of the subsequent working day.

Article 4. Application of floor export prices of rice and verification of traders' available rice volume

1. Floor export prices of rice

a/ The time for applying the floor export price of rice in contract registration is at least 3 (three) days after the Vietnam Food Association's announcement under regulations.

b/ When the export price under a contract is not lower than the floor export price of rice announced by the Vietnam Food Association at the time of contract signing, but is lower than the floor price at the time of contract registration, the floor price at the time of contract signing will apply provided that the time of contract registration does not pass the time limit provided in Clause 2, Article 17 of the Government's Decree No. 109/2010/ND-CP.

2. Traders' available rice

a/ A trader shall declare its available rice in the report specified at Point c, Clause 1, Article 3 of this Circular and take responsibility before law for the truthfulness of reported figures.

b/ When detecting a trader's untruthful reporting, right after contract registration, the Vietnam Food Association shall request in writing a provincial-level Industry and Trade Department to examine and verify such reporting.

Article 5. Rice export contracts

1. A rice export contract must comply with Vietnamese law and international practices and contain the following information:

a/ Names and addresses of the buyer and seller.

b/ Name, quantity, type, quality, packing specification and packaging of goods. Allowable quantitative error is five per cent at most ($\pm 5\%$).

c/ Goods delivery mode and time, loading and unloading ports; transshipment ports (if any).

d/ Price and payment mode and time.

2. A rice export contract must contain a term on rice export to a third country (re-export term) as follows:

a/ The buyer's re-export to a third country being a country or territory with centralized contract transactions with Vietnam is subject to the seller's consent.

b/ The seller may accept the buyer's re-export or delivery of goods to a third country being a country or territory with centralized contract transactions with Vietnam within the time limit specified in Clause 2, Article 15 of this Circular only when obtaining the Ministry of Industry and Trade's written approval.

3. The time limit for delivering the first lot of rice under a rice export contract is 90 (ninety) days after the contract is signed.

4. When a registered contract is modified, the trader shall sign and register the contract annex at the Vietnam Food Association within 3 (three) working days after the contract annex is signed.

Article 6. Handling of violations in export contract registration

1. In the course of rice export contract registration, if detecting frauds in prices or violations of regulations and direction of state agencies in charge of markets with centralized contracts, the Vietnam Food Association or traders shall report such in writing to the Ministry of Industry and Trade and propose handling measures.

On the basis of the Vietnam Food Association's reporting, the Ministry of Industry and Trade shall inspect and handle violations under regulations.

2. Traders shall fully and promptly provide related documents for competent agencies to inspect and verify the matters specified in Clause 1 of this Article.

Article 7. Updating of information on rice export contract performance

1. Rice exporters shall report on their performance of registered contracts to the Vietnam Food Association at the latter's request.

2. The Vietnam Food Association shall consider canceling registration of an export contract when the trader fails to report under Clause 1 of this Article or fails to deliver goods under Clause 3, Article 5 of this Circular, or request such trader to renegotiate with its partner to determine its contract performance capacity and to re-register the contract with the Vietnam Food Association.

Chapter III PERFORMANCE OF CENTRALIZED CONTRACTS

Article 8. Designation of key traders

1. After consulting concerned agencies and organizations, the Ministry of Industry and Trade shall designate key traders for centralized contract transactions according to the following criteria:

a/ The trader's rice export performance in the market expected for centralized contract transactions in the latest 2 (two) years.

b/ The trader's rice export performance in the latest 2 (two) years.

c/ Transactions with foreign partners designated or to be designated as key rice importers.

2. Those designated as key traders before the effective date of this Circular may retain their designation till termination of signed contracts.

Article 9. Responsibilities of the Vietnam Food Association

1. To monitor and balance commodity rice sources and guide and assist traders in transactions, negotiation and signing of centralized contracts.

2. To register centralized contracts for key traders when receiving the dossiers provided in Clause 3, Article 10 of this Circular.

Article 10. Responsibilities of key traders

1. A key trader shall report in writing to the Ministry of Industry and Trade on:

a/ The expected time for starting and completing transactions; bidding plan, negotiation and signing of a centralized contract, guaranteeing the effectiveness of and accountability for the signed contract.

b/ Contract signing results and the plan on contract performance right after the centralized contract is signed.

2. A key trader shall, based on commodity rice sources, negotiate rice volumes and delivery schedules suitable to domestic harvests without adversely affecting domestic market prices of rice. The export price of rice under a centralized contract must not be lower than the export market price under a commercial contract at the same time to ensure efficient export.

3. A key trader shall register a centralized contract with the Vietnam Food Association within 5 (five) working days after the contract is signed. A dossier of centralized contract registration contains the papers specified at Points a and b, Clause 1, Article 3 of this Circular.

4. A key trader shall assure the fulfillment of a signed centralized contract and conduct entrusted export for the quotas which are returned or not realized or for which no traders conduct entrusted export.

Article 11. Criteria for allocation of entrusted export quotas

1. The allocation of export quotas under centralized contracts to rice exporters for entrusted export is based on the criteria specified in Clause 4, Article 16 of the Government's Decree No. 109/2010/ND-CP.

2. The Vietnam Food Association shall elaborate plans on quota allocation under the criteria specified in Article 16 of the Government's Decree No. 109/2010/ND-CP and submit them to the Ministry of Industry and Trade for consideration before allocating quotas to traders; allocate quotas under the Government's Decree No. 109/2010/ND-CP and this Circular; and monitor and urge the signing and performance of entrusted export contracts and report on their performance to the Ministry of Industry and Trade.

Article 12. Allocation procedures

1. After receiving key traders' reports on centralized contract signing, the Vietnam Food Association shall notify such in writing for rice exporters to register entrusted export quotas.

2. Within 5 (five) working days after receiving the Vietnam Food Association's notice, a trader shall submit a dossier of entrusted export quota registration to the Vietnam Food Association. A dossier comprises:

a/ The trader's written request for allocation of entrusted export quotas, clearly indicating the volume and type of rice for entrusted export.

b/ A report on the trader's direct rice export performance in the 6 (six) previous months and its inventory of rice, clearly indicating the rice inventory procured as reserve under the direction of a competent agency or organization (if any).

3. Based on traders' registration dossiers, commodity rice balances and domestic harvests, the Vietnam Food Association shall elaborate quota allocation plans under Clause 2, Article 11, of this Circular.

The leadership of the Vietnam Food Association shall decide on the quota allocation, notify such in writing, enclosed with the list of registering traders, for these traders to implement and report performance results to the Ministry of Industry and Trade.

Article 13. Return of entrusted export quotas

1. A trader that fails to realize allocated quotas in force majeure circumstances shall return those quotas in writing to the key trader and the Vietnam Food Association.

2. A trader that fails to realize allocated quotas in cases not defined in Clause 1 of this Article may not obtain quotas for performing a subsequent centralized contract within 6 (six) months after its violation.

Article 14. Signing and performance of entrusted export contracts

1. A contract on entrusted export of rice under quotas allocated from a centralized contract must provide liabilities of the parties for breaches of the entrusted export contract in accordance with the terms of the signed centralized contract.

2. A trader that fails to duly perform the signed entrusted export contract shall take responsibility under such contract and may not obtain quotas under Clause 2, Article 13 of this Circular.

Article 15. Rice export and re-export to markets with centralized contracts

1. A trader may neither make transactions for and sign a rice export contract nor let the buyer re-export rice to a market with centralized contracts within the time limit specified in Clause 2 of this Article unless so approved in writing by the Ministry of Industry and Trade under Clause 3 of this Article.

2. The Ministry of Industry and Trade shall send to the Vietnam Food Association notices of the time and markets having centralized contract transactions with Vietnam for notification to rice exporters for compliance with Clause 1 of this Article.

3. Traders may make transactions and sign rice export contracts or export rice to foreign traders for re-export to markets with centralized contracts as follows:

a/ A trader shall send a written request enclosed with relevant documents to the Ministry of Industry and Trade and a copy to the Vietnam Food Association.

b/ After receiving such request, the Ministry of Industry and Trade shall consider and issue a written reply.

4. Upon contract registration, if detecting a trader's signs of violation of Clause 1 of this Article, the Vietnam Food Association shall not register the export contract and submit a report proposing handling measures to the Ministry of Industry and Trade for consideration and handling under regulations.

When disagreeing with the Vietnam Food Association's handling, a trader may send a request to the Ministry of Industry and Trade for consideration and handling under regulations.

Chapter IV

HIRING OF RICE WAREHOUSES AND MILLS TO MEET RICE EXPORT REQUIREMENTS

Article 16. Hiring and lease of rice warehouses and mills to meet rice export requirements

1. Lessors of rice warehouses and mills to traders to meet rice export requirements may not sign lease contracts beyond the actual capacity of their warehouses and mills.

Lessees of rice warehouses and mills to meet rice export requirements shall conduct physical inspection of those warehouses and mills and take responsibility before law for their signed hiring contracts.

2. Traders with certificates may not lease their own or hired rice warehouses and mills to other traders who use those warehouses and mills for certificate application.

3. Lessees of rice warehouses and mills to meet rice export requirements must have written hiring contracts which must comply with Clauses 1 and 2 of this Article and other relevant laws.

4. Rice exporters violating Clauses 1 and 2 of this Article shall be handled under the Government's Decree No. 109/2010/ND-CP.

Article 17. Dossiers of application for grant, re-grant and modification of certificates

In addition to the papers specified in Articles 6 and 7 of the Government's Decree No. 109/2010/ND-CP, a lessee of rice warehouses and mills to meet rice export requirements shall submit the original hiring contract in the dossier of application for grant, re-grant or modification of a certificate.

Article 18. Validity of certificates granted to lessees of rice warehouses and mills to meet rice export requirements

1. Certificates granted to lessees of rice warehouses and mills to meet rice export requirements are valid through September 30, 2012.

2. After the point of time specified in Clause 1 of this Article, traders may continue rice export business only when owning rice warehouses and mills under Article 4 of the Government's Decree No. 109/2010/ND-CP.

Chapter V IMPLEMENTATION PROVISIONS

Article 19. Implementation responsibilities

1. The Vietnam Food Association shall:

a/ Develop and publicize the professional process and forms of export application and statistical and reporting forms for the performance of assigned tasks under the Government's Decree No. 109/2010/ND-CP and report them to the Ministry of Industry and Trade prior to their issuance.

b/ Notify addresses for dossier receipt with telephone and fax numbers and email addresses for rice exporters to contact; publicize the process to receive and process dossiers and dossier processing results at places of dossier receipt and on its website.

c/ Send a notice of the full name, title and signature of the person competent to certify rice export contract registration and sign documents issued by the Vietnam Food Association under the Government's Decree No. 109/2010/ND-CP and this Circular to the Ministry of Industry and Trade, People's Committees and Industry and Trade Departments of provinces and centrally run cities having export commodity rice, customs offices and rice exporters.

2. The Vietnam Food Association, rice exporters and concerned agencies, organizations and individuals shall implement this Circular and related laws.

Article 20. Effect

1. This Circular takes effect on February 14, 2011.

2. Rice export contracts registered and centralized contracts allocated before the effective date of this Circular may be performed without re-registration or re-allocation.

3. Any problems arising in the course of implementing this Circular shall be reported in writing to the Ministry of Industry and Trade for settlement.-

**FOR THE MINISTER OF INDUSTRY AND TRADE
DEPUTY MINISTER**

Nguyen Thanh Bien