# Commission Regulation (EU) No 90/2011 of 3 February 2011 laying down detailed rules for implementing the system of export licences in the poultrymeat sector (codification)

## COMMISSION REGULATION (EU) No 90/2011

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(codification)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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 161(3), Article 170 and Article 192(2), in conjunction with Article 4, thereof,

Whereas:

(1) Commission Regulation (EC) No 633/2004 of 30 March 2004 laying down detailed rules for implementing the system of export licences in the poultrymeat sector[(2)] has been substantially amended several times[(3)]. In the interests of clarity and rationality the said Regulation should be codified.

(2) Specific implementing rules should be laid down for export licences in the poultrymeat sector which should, in particular, include provisions for the submission of applications and the information which must appear on the applications and licences, in addition to those contained in Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products[(4)].

(3) In order to assure proper administration of the system of export licences, the rate of the security for export licences under that system should be fixed. In view of the risk of speculation inherent in the system in the poultrymeat sector, export licences should not be transferable and precise conditions governing access by traders to the said system should be laid down.

(4) Article 169 of Regulation (EC) No 1234/2007 provides that compliance with the obligations arising from agreements concluded during the Uruguay Round of multilateral trade negotiations regarding the export volume shall be ensured on the basis of the export licences. Therefore, a detailed schedule for the lodging of applications and for the issuing of licences should be laid down.

(5) In addition, the decision regarding applications for export licences should be notified only after a period of consideration. This period would allow the Commission to

appreciate the quantities applied for as well as the expenditure involved and, if appropriate, to take specific measures applicable in particular to the applications which are pending. It is in the interest of traders to allow the licence application to be withdrawn after the acceptance coefficient has been fixed.

(6) The Commission should have precise information concerning applications for licences and the use of licences issued, in order to be able to manage the licence system. In the interests of efficient administration, Member States should use the information systems in accordance with Commission Regulation (EC) No 792/2009 of 31 August 2009 laying down detailed rules for the Member States' notification to the Commission of information and documents in implementation of the common organisation of the markets, the direct payments' regime, the promotion of agricultural products and the regimes applicable to the outermost regions and the smaller Aegean islands[(5)].

(7) In the case of applications concerning quantities equal to or less than 25 tonnes, the export licence should be issued immediately if the trader requests it. However, such licences should be restricted to short-term commercial transactions in order to prevent the mechanism provided for in this Regulation from being circumvented.

(8) In order to ensure an exact follow up of the quantities to be exported, a derogation from the rules regarding the tolerances laid down in Regulation (EC) No 376/2008 should be laid down.

(9) Article 167(3) of Regulation (EC) No 1234/2007 provides that for day-old chicks export refunds may be granted on the basis of an *ex post* export licence. Therefore implementing rules for such a system should be laid down with the aim of ensuring efficient verification that the obligations arising from the agreements concluded in the framework of the Uruguay Round of multilateral trade negotiations are complied with. However, it would appear unnecessary to require the lodging of a security in the case of licences applied for after exportation.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

*Article 1*

All exports of products in the poultrymeat sector for which an export refund is requested, with the exception of chicks falling within **[**[F1]CN codes 0105 11, 0105 12 00, 0105 13 00, 0105 14 00 and 0105 15 00**]**, shall be subject to the presentation of an export licence with advance fixing of the refund, in accordance with the provisions of Articles 2 to 8.

**Textual Amendments**

**F1** Substituted by Commission Implementing Regulation (EU) No 1379/2011 of 20 December 2011 amending Regulations (EC) No 382/2008, (EU) No 1178/2010 and (EU) No 90/2011 as regards the CN codes and the product codes of the agricultural product nomenclature for export refunds in the beef and veal, egg and poultrymeat sectors.

*Article 2*

1 Export licences shall be valid for 90 days from their actual day of issue within the meaning of Article 22(2) of Regulation (EC) No 376/2008.

2 Applications for licences and licences shall bear, in Section 15, the description of the product and, in Section 16, the 12-digit product code of the agricultural product nomenclature for export refunds.

3 The categories of products referred to in the second subparagraph of Article 13(1) of Regulation (EC) No 376/2008, as well as the rate of the security for export licences, are set out in Annex I.

4 Applications for licences and licences shall bear, in Section 20, at least one of the entries listed in Annex II.

5 By way of derogation from paragraph 1, licences for category 6(a) referred to in Annex I shall be valid 15 days from the actual date of issue within the meaning of Article 22(2) of Regulation (EC) No 376/2008.

6 In the case of licences for products of category 6(a) referred to in Annex I it is obligatory to export to the country of destination indicated in Section 7 or to any country referred to in Annex VIII.

To this end, licence applications and licences shall contain at least one of the entries listed in Annex III.

7 In the case of licences for products of category 6(b) referred to in Annex I it is obligatory to export to the country of destination indicated in Section 7 or to any other country not referred to in Annex VIII.

To this end, licence applications and licences shall contain at least one of the entries listed in Annex IV.

*Article 3*

1 Applications for export licences may be lodged with the competent authorities from Monday to Friday of each week.

2 Applicants for export licences shall be natural or legal persons who, at the time applications are submitted, are able to prove to the satisfaction of the competent authorities in the Member States that they have been engaged in trade in the poultrymeat sector for at least 12 months. However, retail establishments or restaurants selling their products to end consumers may not lodge applications.

3 Export licences are issued on the Wednesday following the period referred to in paragraph 1, provided that none of the particular measures referred to in paragraph 4 have since been taken by the Commission.

4 Where the issue of export licences would or might result in the available budgetary amounts being exceeded or in the maximum quantities which may be exported with a refund being exhausted during the period concerned, in view of the limits referred to in Article 169 of Regulation (EC) No 1234/2007 or where the issue of export licences would not allow exports to continue during the remainder of the period, the Commission may:

a set a single acceptance percentage for the quantities applied for;

b reject applications for which licences have not yet been granted;

**Changes to legislation:** *There are currently no known outstanding effects for the Commission Regulation (EU) No 90/2011. (See end of Document for details)*

c suspend the lodging of licence applications for a maximum period of 5 working days, extendable by the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.

Licence applications made during the suspension period shall be invalid.

The measures provided for in the first subparagraph may be implemented or modulated by category of product and by destination.

5 The measures provided for in paragraph 4 may be adopted where export licence applications relate to quantities which exceed or might exceed the normal disposable quantities for one destination and issuing the licences requested would entail a risk of speculation, distortion of competition between operators, or disturbance of the trade concerned or of the internal market.

6 Where quantities applied for are rejected or reduced, the security shall be released immediately for all quantities for which an application was not satisfied.

7 Notwithstanding paragraph 3, where a single percentage of acceptance less than 80 % is set, the licence shall be issued at the latest by the 11th working day following publication of that percentage in the *Official Journal of the European Union*. During the 10 working days following its publication, the operator may:

— either withdraw his application, in which case the security is released immediately,

— or request immediate issuing of the licence, in which case the competent authority shall issue it without delay but no sooner than the normal issue date for the relevant week.

8 By way of derogation from paragraph 3, the Commission can set a day other than Wednesday for the issuing of export licences when it is not possible to respect this day.

*Article 4*

1 On application by the operator, licence applications for up to 25 tonnes of products shall not be subject to any special measures as referred to in Article 3(4) and the licences applied for shall be issued immediately.

In such cases, notwithstanding Article 2(1) and (5), the term of validity of the licences shall be limited to 5 working days from their actual day of issue within the meaning of Article 22(2) of Regulation (EC) No 376/2008 and Section 20 of licence applications and of licences shall show one of the entries listed in Annex V.

2 The Commission may, where necessary, suspend the application of this Article.

*Article 5*

Export licences shall not be transferable.

*Article 6*

1 The quantity exported within the tolerance referred to in Article 7(4) of Regulation (EC) No 376/2008 shall not give entitlement to payment of the refund.

2 In Section 22 of the licence, at least one of the entries listed in Annex VI shall be indicated.

*Article 7*

1 By Friday each week, Member States shall notify the Commission of the following information:

a the applications for export licences as referred to in Article 1 lodged from Monday to Friday of the same week, stating whether they fall within the scope of Article 4 or not;

b the quantities covered by export licences issued on the preceding Wednesday, not including those issued immediately pursuant to Article 4;

c the quantities covered by export licence applications withdrawn pursuant to Article 3(7) during the preceding week.

2 The notification of the applications referred to in point (a) of paragraph 1 shall specify:

a the quantity in product weight for each category referred to in Article 2(3);

b the breakdown by destination of the quantity for each category in the case where the rate of refund varies according to the destination;

c the rate of refund applicable;

d the total amount of refund prefixed in euro per category.

3 Member States shall communicate to the Commission on a monthly basis following the expiry of validity of export licences the quantity of unused export licences.

*Article 8*

1 For chicks falling within **[**[F1]CN codes 0105 11, 0105 12 00, 0105 13 00, 0105 14 00 and 0105 15 00**]**, operators shall declare at the time when customs formalities for exports are fulfilled, that they intend to claim an export refund.

2 Not later than 2 working days after exporting, operators shall lodge with the competent authority the application for an *ex post* export licence for the chicks which have been exported. In Section 20 of the licence application and of the licence, the term *ex post* shall be indicated together with the customs office where customs formalities have been fulfilled as well as the day of export within the meaning of Article 5(1) of Commission Regulation (EC) No 612/2009[(6)].

By way of derogation from Article 14(2) of Regulation (EC) No 376/2008 no security shall be required.

3 Member States shall notify the Commission, by Friday each week, of the number of *ex post* export licences applied for during the current week, including 'nil' notifications. The notifications shall specify, where applicable, the details referred to in Article 7(2).

4 *Ex post* export licences shall be issued each following Wednesday, provided that none of the particular measures referred to in Article 3(4) are taken by the Commission after the export concerned. Where such measures are taken they shall apply to the exports already carried out.

This licence accords entitlement to payment of the refund applicable on the day of export within the meaning of Article 5(1) of Regulation (EC) No 612/2009.

5 Article 23 of Regulation (EC) No 376/2008 shall not apply to the *ex post* licences referred to in paragraphs 1 to 4 of this Article.

The licences shall be presented directly by the interested party to the agency in charge of the payment of export refunds. This agency shall attribute and stamp the licence.

**Textual Amendments**

**F1** Substituted by Commission Implementing Regulation (EU) No 1379/2011 of 20 December 2011 amending Regulations (EC) No 382/2008, (EU) No 1178/2010 and (EU) No 90/2011 as regards the CN codes and the product codes of the agricultural product nomenclature for export refunds in the beef and veal, egg and poultrymeat sectors.