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**COMMISSION REGULATION (EC) No 2090/2002
of 26 November 2002**

laying down detailed rules for applying Council Regulation (EEC) No 386/90 as regards physical checks carried out when agricultural products qualifying for refunds are exported

(OJ L 322, 27.11.2002, p. 4)

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COMMISSION REGULATION (EC) No 2090/2002
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laying down detailed rules for applying Council Regulation (EEC) No 386/90 as regards physical checks carried out when agricultural products qualifying for refunds are exported

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 386/90 of 12 February 1990 on the monitoring carried out at the time of export of agricultural products receiving refunds or other amounts ⁽¹⁾, as amended by Regulation (EC) No 163/94 ⁽²⁾, and in particular Article 6 thereof,

Whereas:

- (1) Commission Regulation (EC) No 2221/95 of 20 September 1995 laying down detailed rules for the application of Council Regulation (EEC) No 386/90 as regards physical checks carried out at the time of export of agricultural products qualifying for refunds ⁽³⁾, as last amended by Regulation (EC) No 2655/1999 ⁽⁴⁾, has been substantially amended. In the interests of clarity and administrative efficiency, therefore, that Regulation should be recast, at the same time making certain amendments which experience has shown to be desirable.
- (2) Account should be taken of existing inspection measures, in particular those introduced by Commission Regulations (EC) No 2298/2001 of 26 November 2001 laying down detailed rules for the export of products supplied as food aid ⁽⁵⁾ and (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products ⁽⁶⁾, as last amended by Regulation (EC) No 1253/2002 ⁽⁷⁾.
- (3) In its supplementary report to the Council on the application of Regulation (EEC) No 386/90 ⁽⁸⁾, the Commission stated its intention to define precisely the term 'physical check' as used in Article 2(a) of Regulation (EEC) No 386/90, in order to achieve uniform application of the Community rules in the Member States.
- (4) To make better use of the inspection possibilities, export declarations involving small quantities of products or a low amount of refund should be disregarded when calculating the minimum rates of checks.
- (5) A verification of laboratory tests has shown that the obligation to carry out a laboratory test should be simplified where satisfactory results, obtained repeatedly, concern the same product from the same exporter.
- (6) A measure should be introduced to take account of cases where the number of exports dealt with by a customs office is minimal.
- (7) Compared to the total amount of the refunds, the share of refunds granted to goods not listed in Annex I to the Treaty is small, while the share of physical checks carried out on these products is large. To make better use of the inspection resources, this discrepancy should be reduced, in particular by lowering the inspection rate for non-Annex I products.

⁽¹⁾ OJ L 42, 16.2.1990, p. 6.

⁽²⁾ OJ L 24, 29.1.1994, p. 2.

⁽³⁾ OJ L 224, 21.9.1995, p. 13.

⁽⁴⁾ OJ L 325, 17.12.1999, p. 12.

⁽⁵⁾ OJ L 308, 27.11.2001, p. 16.

⁽⁶⁾ OJ L 102, 17.4.1999, p. 11.

⁽⁷⁾ OJ L 183, 12.7.2002, p. 12.

⁽⁸⁾ OJ C 218, 12.8.1993, p. 14.

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- (8) There is a substantial difference between the customs treatment of goods intended for export in the large ports, where there is a great diversity of products coming from a wide range of exporters, and the customs treatment of goods at customs offices which handle only a limited range of products from a few exporters. In the latter case, the goods are subjected to a much higher level of checks. For these customs offices, the selection of goods with a view to carrying out physical checks should take account of the fact that the check is being carried out on the basis of a smaller representative sample.
- (9) In order to reduce the risk of substitution, all means of transport or packages should be sealed, save in cases where the products may be identified by some other means.
- (10) Measures should be taken to allow verification at any time of whether the check rate of 5 % has been reached.
- (11) Article 912c of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽¹⁾, as last amended by Regulation (EC) No 444/2002 ⁽²⁾, specifies the office of destination where the T5 control copy should be presented for the check on the use and/or destination of the goods. It should therefore be stipulated that, if the customs office of exit and the office of destination are not the same, the substitution check must be carried out by the office to which the T5 control copy is sent.
- (12) To tackle the risk of substitution in the case of export declarations accepted by an internal customs office within a Member State, a minimum number of 'substitution checks' to be carried out by the customs office of exit from the Community should be laid down. Having regard to the place where such 'substitution checks' are carried out, they must take the form of simplified checks.
- (13) For the purpose of evaluating the application of Regulation (EEC) No 386/90, the Member States are required to submit annual evaluations on the implementation and effectiveness of the checks carried out under this Regulation and of the procedures applied to selecting the goods subject to physical checks.
- (14) In the light of experience gained, appropriate and commensurate measures are required, which must be uniformly applied.
- (15) The measures provided for in this Regulation are in accordance with the opinion of all the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation lays down the detailed rules for applying the physical check and the substitution check referred to in Article 2(a) and (b) of Regulation (EEC) No 386/90.
2. This Regulation shall not apply to exports involving Community or national food aid covered by Regulation (EC) No 2298/2001.
3. For the purposes of this Regulation:
 - 'customs office of export' means the custom office as referred to in Article 5(7)(a) of Regulation (EC) No 800/1999,
 - 'customs office of exit' means the customs office referred to in Article 793(2) of Regulation (EEC) No 2454/93,
 - 'office to which the T5 control copy is sent' means the office of destination as referred to in Article 912c of Regulation (EEC) No 2454/93.

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

⁽²⁾ OJ L 68, 12.3.2002, p. 11.

▼B*Article 2*

1. Without prejudice to the inspection measures referred to in Article 36(4), Article 37(4) and Article 44(4) of Regulation (EC) No 800/1999, Member States may opt to waive the physical and substitution checks provided for in this Regulation on deliveries as referred to in Articles 36 and 44 of Regulation (EC) No 800/1999.

2. When calculating the minimum rates of checks to be carried out in accordance with Article 3(2) and Article 3a of Regulation (EEC) No 386/90, Member States shall disregard export declarations involving:

(a) either quantities not exceeding:

- (i) 5 000 kg in the case of cereals and rice,
- (ii) 1 000 kg in the case of fruit and vegetables and products not listed in Annex I to the Treaty,
- (iii) 500 kg in the case of other products;

(b) or refund amounts of less than EUR 200.

3. When implementing paragraphs 1 and 2, Member States shall adopt appropriate provisions to prevent fraud and abuses. Any checks made to that end may be counted for the purposes of calculating compliance with the minimum rates of checks referred to in paragraph 2.

Article 3

With a view to determining the basis for calculating the percentage for the physical checks referred to in Article 2(a) of Regulation (EEC) No 386/90, for the purposes of the first indent of the first subparagraph of Article 3(2) of that Regulation, 'customs office' shall mean all offices competent to complete the export formalities for the products concerned.

Article 4

For the purposes of the third indent of the first subparagraph of Article 3(2) of Regulation (EEC) No 386/90, products covered by the same agricultural market organisation shall be regarded as coming under one product sector.

However, products covered by the common organisations of the markets in cereals and rice, on the one hand, and goods not listed in Annex I to the Treaty, on the other hand, shall each be treated as a single product sector.

Article 5

1. For the purposes of Article 2(a) of Regulation (EEC) No 386/90, 'physical check' shall mean verification that the export declaration, including documents submitted in support thereof, corresponds with the goods as regards quantity, nature and characteristics.

In the cases referred to in Annex I, the methods indicated therein shall be applied.

The customs office of export shall ensure compliance with Article 21 of Regulation (EC) No 800/1999. Where there are specific grounds for suspecting the sound, fair and merchantable quality of a product, the customs office shall verify compliance with the applicable Community provisions, in particular those relating to animal and plant health. Where the customs office deems it necessary, it shall perform laboratory tests, or have them performed, stating the grounds for such tests.

2. Physical checks concerning which the exporter has received express or tacit prior warning shall not count as checks.

The first subparagraph shall not apply where the accounts of an undertaking are audited in accordance with point 3(a) of Annex I.

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3. Where a customs office of export accepts fewer than 20 export declarations per sector per year, at least one export declaration per sector per year must be subjected to a physical check.

This requirement shall not apply where the customs office of export, having carried out a risk analysis in accordance with the second subparagraph of Article 3(2) of Regulation (EEC) No 386/90, has not checked the first two declarations and no further exports are carried out thereafter in that sector.

4. Where the refund rate depends on the level of a particular component, as part of the physical check the customs office of export shall take representative samples with a view to having the composition analysed by a competent laboratory.

Article 6

Where the Member States apply a selection system based on risk analysis as referred to in the second subparagraph of Article 3(2) of Regulation (EEC) No 386/90, the following rules shall apply:

- (a) The percentage of physical checks carried out on products not listed in Annex I to the Treaty shall not be taken into account when calculating the overall rate of 5 % for all sectors. In this case, a minimum rate of 0,5 % shall be compulsory for non-Annex I goods.
- (b) As an exception to Article 5(4), where the refund rate depends on the level of a particular component and the same exporter regularly exports a product with the same refund code or CN code, and where laboratory tests during the past six months have revealed no non-conformities having financial consequences greater than EUR 200 on the gross amount of the refund, then representative samples need be taken in only 50 % of physical checks. If laboratory testing detects a non-conformity having financial consequences greater than EUR 200 on the gross amount of the refund, samples must be taken for all physical checks in the following six months.
- (c) For customs offices of export where a range of products from no more than two sectors is presented for export by no more than five exporters, physical checks may be reduced to a minimum rate of 2 % per product sector. Sectors with fewer than 20 export declarations per year per customs office shall not be taken into account when determining the number of sectors. Customs offices may apply these rules for a full calendar year, based on the statistics for the previous calendar year, even where export declarations are made by additional exporters or for additional product sectors during the course of the year.

Article 7

In order to ensure that the goods passing through the customs office of exit from the Community's customs territory or the office to which the T5 control copy is sent, where this is not the customs office of exit, are the same goods that passed through the customs office of export, the means of transport or packaging shall be sealed in accordance with Article 357 of Regulation (EEC) No 2454/93.

Article 8

1. Each customs office of export shall make the necessary arrangements to ensure that compliance with the inspection rate of 5 % can be verified at any time.

These arrangements must show, for each sector:

- (a) the number of export declarations taken into account for the physical checks;
- (b) the number of physical checks carried out.

2. The competent customs officer shall produce a detailed inspection report on each physical check carried out.

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Inspection reports shall bear the date and the name of the competent officer. They shall be kept accessible for consultation at the customs office of export or at another office for three years from the year of export.

3. On the control copy T5 accompanying the goods, the following shall be noted in box D:

- (a) 'Regulation (EEC) No 386/90', if the customs office of export has carried out a physical check;
- (b) 'Regulation (EC) No 2298/2001', in the case of food aid exports.

Where the customs office of exit from the Community's customs territory is located in the same Member State as the customs office of export, this information shall appear on the national document accompanying the goods.

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Article 10

1. Where the export declaration has been accepted at a customs office of export which is not the customs office of exit or the office to which the T5 control copy is sent, the customs office of exit from the Community's customs territory shall perform a substitution check in accordance with this Article. If the customs office of exit is not the customs office to which the T5 control copy is sent, the substitution check must be carried out by the latter.

2. If the customs office of export has not sealed the means of transport or the packaging, then substitution checks shall be carried out, wherever possible in the light of a risk analysis, without prejudice to checks carried out under other provisions.

The number of substitution checks carried out each calendar year shall not be less than the number of days on which export refund products leave the Community's customs territory through the customs office of exit concerned.

Where only one exporter is subject to the substitution check, that number may not be less than half the number of days on which export refund products leave the Community's customs territory through the customs office of exit concerned.

3. Where, in addition to a customs seal, a veterinary seal has been applied in compliance with the requirements of the third country of destination, the substitution check is required only if there is a suspicion of fraud.

4. The substitution check shall be carried out by checking, visually, whether the goods tally with the document which has accompanied them from the customs office of export to the customs office of exit.

A sample for testing shall be taken only in cases where the customs office of exit cannot check, visually and using the information on the packaging and in the documentation, whether the goods tally with the accompanying document. In such cases, Article 5(4) shall not apply.

5. Each customs office of exit or office to which the T5 control copy is sent shall apply measures to allow verification at any time of:

- (a) the number of export declarations taken into account for the substitution checks;
- (b) the number of substitution checks carried out.

If the customs office of exit or the office to which the T5 control copy is sent has taken a sample, one of the following shall be noted on the T5 control copy or, where applicable, on the national document to be returned to the competent authorities:

- muestra recogida
- udtaget prøve

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- Probe gezogen
- ελήφθη δείγμα
- Sample taken
- échantillon prélevé
- campione prelevato
- monster genomen
- Amostra colhida
- näyte otettu
- varuprov.

A duplicate or a copy of the document shall remain at the customs office of exit or the office to which the T5 control copy is sent, as the case may be.

6. The customs office of exit or the office to which the T5 control copy is sent shall inform the competent authorities referred to in paragraph 5 in writing, using a copy of the original document, of the result of the tests, reporting:

- (a) either one of the following:
- resultado del análisis conforme
 - analyseresultat i orden
 - konformes Analyseergebnis
 - αποτέλεσμα της ανάλυσης σύμφωνο
 - Results of tests conform
 - résultat d'analyse conforme
 - risultato di analisi conforme
 - analyseresultaat conform
 - Resultado da análise conforme
 - analyysin tulos yhtäpitävä
 - Analysresultatet överensstämmer med exportdeklarationen
- (b) or the results of the tests if there is a discrepancy between the results and the product declared.

7. Where the substitution check reveals that the refund rules have not been complied with, the paying agency shall inform the customs office referred to in paragraph 5, at the latter's request, of the action taken as a result of the findings.

In such cases, the customs office of exit or the office to which the T5 control copy is sent shall indicate one of the following on the T5 control copy or, where applicable, on the national document to be returned to the competent authorities:

- Solicitud de aplicación del apartado 7 del artículo 10 del Reglamento (CE) nº 2090/2002
Oficina de aduana de salida o de destino del T5: ...
- Anmodning om anvendelse af artikel 10, stk. 7, i forordning (EF) nr. 2090/2002
Identifikation af udgangstoldstedet eller bestemmelsestoldstedet for T5: ...
- Antrag auf Anwendung von Artikel 10 Absatz 7 der Verordnung (EG) Nr. 2090/2002
Identifizierung der Ausgangszollstelle oder der Bestimmungsstelle des Kontroll-exemplars T5: ...
- Αίτηση εφαρμογής του άρθρου 10 παράγραφος 7 του κανονισμού (ΕΚ) αριθ. 2090/2002
Εξακρίβωση του τελωνείου εξόδου ή του τελωνείου προορισμού του T5: ...
- Request for application of Article 10(7) of Regulation (EC) No 2090/2002
Identity of the customs office of exit or customs office receiving the control copy T5: ...
- Demande d'application de l'article 10, paragraphe 7, du règlement (CE) nº 2090/2002

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- Identification du bureau de douane de sortie ou de destination du T5: ...
- Domanda di applicazione dell'articolo 10, paragrafo 7, del regolamento (CE) n. 2090/2002
- Identificazione dell'ufficio doganale di uscita o di destinazione del T5: ...
- Verzoek om toepassing van artikel 10, lid 7, van Verordening (EG) nr. 2090/2002
- Identificatie van het kantoor van uitgang of van bestemming van de T5: ...
- Pedido de aplicação do n.º 7 do artigo 10.º do Regulamento (CE) n.º 2090/2002
- Identificação da estância aduaneira de saída ou de destino do T5: ...
- Asetuksen (EY) N:o 2090/2002 10 artiklan 7 kohdan soveltamista koskeva pyyntö
- Poistumistullitoimipaikan tai toimipaikan, johon T5-valvontakapale toimitetaan, tunnistustiedot: ...
- Begäran om tillämpning av artikel 10.7 i förordning (EG) nr 2090/2002
- Uppgift om utfartstullkontor eller bestämmelsetullkontor enligt kontrollexemplaret T5: ...

Article 11

Before 1 May each year, the Member States shall send the Commission a report evaluating the implementation and effectiveness of the checks carried out under this Regulation and the procedures applied to selecting the goods subject to physical checks.

The report to be submitted on 1 May 2003 shall cover export declarations accepted between 1 January and 31 December 2002.

Article 12

1. Regulation (EC) No 2221/95 is hereby repealed with effect from 1 January 2003.
2. References to the repealed Regulation shall be construed as references to this Regulation and are to be read in accordance with the correlation table in Annex II hereto.

Article 13

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

It shall apply from 1 January 2003 for export declarations accepted from that date.

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



ANNEX I

METHODS TO BE FOLLOWED FOR PHYSICAL CHECKS

1. (a) Where an exporter uses sealed facilities for automatic loading and calibrated automatic weighing of bulk goods, verification that the goods tally with the export declaration shall consist of measuring the quantity by calibrated automatic weighing and checking the nature and characteristics of the goods by representative sampling.

The customs office of export shall also check by sampling that:

- the weighing and loading systems do not permit goods to be re-routed inside these sealed circuits or any other manipulations,
- the time limits specified for calibrated weighing equipment have not expired and that seals are intact where sealed weighing systems are used,
- the consignments weighed are actually loaded on the means of transport specified,
- the data entered in the weighing records or certificates correspond to the data contained in the loading documents.

- (b) In the rare cases where the quantity of bulk goods is not recorded by a calibrated automatic weighing system, the customs office shall use any other means of checking which is satisfactory from the commercial point of view.

2. (a) Where an exporter has declared goods packaged using automatic systems for bagging, canning, bottling, etc., and calibrated automatic weighing/measuring equipment, or put up in packaging or bottles within the meaning of Council Directives 75/106/EEC ⁽¹⁾, 75/107/EEC ⁽²⁾ and 76/211/EEC ⁽³⁾, the total number of bags, cans, bottles, etc., must in principle be counted and the nature and characteristics of the goods must be checked on the basis of a representative selection made by the customs office of export. The weight or volume shall be determined by calibrated automatic weighing/measuring or by the packaging or bottles, within the meaning of the above Directives. The customs office of export may weigh or measure one bag, can or bottle.

If the equipment has a calibrated automatic counter, the records of the automatic counter may be taken into account for the physical check on quantity.

The second subparagraph of point 1(a) shall apply *mutatis mutandis*.

Where an exporter uses pallets loaded with cartons, cans, etc., the customs office of export shall select representative pallets and check whether the number of cartons, cans, etc. declared is really present. It shall select from these pallets a number of representative cartons, cans, etc., and check whether the number of bottles, units, etc., is present.

- (b) Where the exporter does not use facilities as referred to in the first and second subparagraphs, the customs office of export must count the number of bags, cans, etc. The nature, characteristics and weight/volume shall be checked on the basis of a representative selection. The preceding subparagraph shall apply *mutatis mutandis*.

Notwithstanding the second sentence of the preceding paragraph, where the contents and exact weight are indicated on the immediate packaging of the goods, that information need be verified only in 50 % of physical checks if the goods are packed in containers or packs intended for wholesale, and the goods are exported regularly by the same exporter and no non-conformities having financial consequences greater than EUR 200 have been found during the previous six months.

3. (a) In the case of goods not listed in Annex I to the Treaty which are packaged for retail sale or subject to appropriate marking with details of content and weight on the immediate packaging and which either meet the requirements of the third subparagraph of Article 3(2) of Commission Regulation (EC) No 1520/2000, or for which the quantities of product used are those set out in Annex C to that Regulation, the customs office of export may begin by checking the weight and content of the non-Annex I goods put up in immediate packaging against the details on the immediate packaging. It may weigh a unit without packaging. It shall

⁽¹⁾ OJ L 42, 15.2.1975, p. 1.

⁽²⁾ OJ L 42, 15.2.1975, p. 14.

⁽³⁾ OJ L 46, 21.2.1976, p. 1.

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then count and/or weigh — in principle — the total quantity of non-Annex I goods in immediate packaging.

Points 2(a) and (b) shall apply *mutatis mutandis*.

The customs office may take a sample to verify that no substitution has taken place. Article 5(4) of this Regulation shall not apply.

The composition of the non-Annex I goods may be assumed by the customs office of export to be correct if the description and the content indicated on the immediate packaging are consistent with the details given in the export declaration or the registered manufacturing formula.

If the manufacturing formula has not yet been checked by the competent authorities, the customs office of export shall have the auditor of the competent authorities verify the formula and the identity of the goods afterwards.

For the purposes of this method for verifying the composition of goods not listed in Annex I to the Treaty, Member States shall introduce in advance a procedure whereby:

- the composition of non-Annex I goods can be checked through the accounts and specific documents relating to production,
 - it is verified, through the undertaking's production documents, that the non-Annex I goods produced are the same as those covered by the export declaration and the manufacturing formula and the goods to be exported, and
 - the auditor of the competent authority can verify ex-post that the goods exported tally with the export declaration concerned, the manufacturing formula and the goods produced.
- (b) The specific documents relating to the manufacture of non-Annex I goods must be kept by the undertakings concerned for three years from the year of export.
- (c) In cases where the procedure provided for in point 3(a) is not applied, the customs office of export must take representative samples, without prejudice to Article 16(1) of Regulation (EC) No 1520/2000.

▼B*ANNEX II***CORRELATION TABLE**

This Regulation	Regulation (EC) No 2221/95
Article 1	Article 1
Article 2	Article 2
Article 3	Article 3
Article 4	Article 4
Article 5	Article 5
Article 6	Article 5a
Article 7	Article 6
Article 8	Article 7
Article 9	Article 8
Article 10	Article 9
Article 11	Article 9a
Article 12	Article 10
Article 13	Article 11