

COMMISSION REGULATION (EC) No 270/2007

of 13 March 2007

amending Regulation (EC) No 1973/2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 ⁽¹⁾, and in particular Article 145 thereof,

Whereas:

- (1) Article 3(1) of Commission Regulation (EC) No 1973/2004 ⁽²⁾ provides for the communication of certain data to the Commission. As regards tobacco aid, the communication related to the indicative aid amount is required for the harvest year, and not the following year as mentioned in point (d) of that Article which should be amended accordingly.
- (2) As regards crop-specific payments for cotton, communications to the Commission required by Article 3(1) of Regulation (EC) No 1973/2004 and by Article 171*ai*(3) of the same regulation are redundant. Article 171*ai*(3) should, therefore, be deleted.
- (3) In accordance with Article 71*a*(2)(d) of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers ⁽³⁾, Member States are bound to take into

account the application of reductions or exclusions to be applied to individual aid applications when fixing the reduction coefficient to be applied in case where the budgetary ceilings fixed for certain aid schemes are overshot.

- (4) Article 4 of Regulation (EC) No 1973/2004 provides for the fixing of certain reduction coefficients by 15 November of a given year. The overall effect of reductions and exclusions to be applied to individual aid applications are not necessarily known to the Member States by that date. Moreover, there is no need for the fixing of those coefficients by that date.
- (5) Furthermore, experience shows that the fixation of further coefficients of reduction required by Article 4 of Regulation (EC) No 1973/2004 is often difficult to execute by the deadline of 15 November of the year concerned. Given that there is no particular need for the fixation of those coefficients at such an early stage and that it is sufficient if the data are communicated to the Commission by 31 January of the following year but in any case prior to the granting of any payments, Article 4 should be amended accordingly. That amendment has an impact on Articles 3, 61, 69, 171*bb*, Annex III and Annex VI of that Regulation which should, therefore, also be amended.
- (6) The report from the Commission to the Council on the review of the aid for energy crops provided for in Article 88 of Regulation (EC) No 1782/2003 has underlined the need for enhancing the attractiveness of this aid for both the farmers and the processors. The implementing rules established in Chapter 8 of Regulation (EC) No 1973/2004 should therefore be simplified.
- (7) The system of securities guarantees that the raw material grown on areas benefiting from the aid for energy crops delivered to collectors or first processors is finally processed into energy. However, it appears appropriate to allow Member States to replace the system of securities by an alternative system of approval of operators designed to guarantee the same degree of effectiveness. Such authorised operators would have to comply with minimum requirements and would be sanctioned in case of non-compliance with their obligations, according to detailed rules to be set up at national level by the competent authorities.

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 2013/2006 (OJ L 384, 29.12.2006, p. 13).

⁽²⁾ OJ L 345, 20.11.2004, p. 1. Regulation as last amended by Regulation (EC) No 1679/2006 (OJ L 314, 15.11.2006, p. 7).

⁽³⁾ OJ L 141, 30.4.2004, p. 18. Regulation as last amended by Regulation (EC) No 2025/2006 (OJ L 384, 29.12.2006, p. 81).

- (8) The contract obligation is an efficient way of ensuring that farmers applying for aid for energy crops will eventually deliver those raw materials to a collector or a processor. However, since permanent crops (e.g. short rotation coppice) cannot be harvested in the first year(s) of plantation, the contract obligation should apply only from the year of the first harvest.
- (9) Representative yields should be used for the calculation of the minimum quantity of raw material to be delivered by the farmer to ensure that the areas concerned are used for energy purposes. However, for certain raw materials any misuse is practically impossible due to their original character and the setting of a representative yield is therefore not necessary.
- (10) The obligation of delivering all raw materials harvested on the areas concerned does not allow replacing the raw material harvested by an equivalent quantity of the same raw material. For annual crops this obligation is not necessary and should be abolished, thus making the implementation of the scheme more flexible, without jeopardising the basic goal of the scheme.
- (11) It is appropriate to provide that, where it is possible, communications to the paying agency by both the farmer and the collector or first processor should be made in a manner allowing to avoid duplication.
- (12) Article 25 of Regulation (EC) No 1973/2004 provides for the possibility for the Member States to allow farmers to use raw materials on their own holding for energy purposes. For the sake of clarity and transparency and taking into account the specificities of this option it is appropriate to establish special rules applicable to this case.
- (13) For cereals and oilseeds used on the holding, the denaturation of the production is explicitly required pursuant to Article 25(4) of Regulation (EC) No 1973/2004. Taking into account the possible limited volume of such production and the technical difficulties for such a process, it would be appropriate to leave it up to the Member State to set the appropriate measures and checks. This approach should also be extended to the determination of the quantities of raw materials harvested.
- (14) In accordance with the third subparagraph of Article 24(3) of Regulation (EC) No 1973/2004 first processors and collectors choosing to replace the raw materials and intermediate products or by-products by their equivalent quantities are required to inform the competent authorities about it. Furthermore, according to this provision, communication between the national authorities of Member States must be ensured in case such transactions concern different Member States, so that sufficient information on such transactions for the national authorities of Member States is available. Therefore the obligation to use the T5 copy provided for in Articles 37 and 38 of the same Regulation is not necessary and should be abolished.
- (15) In order to harmonise the rules under the area related aid schemes and to simplify the administration and the controls of the applications for aid, features referred to in acts listed in Annex III to Regulation (EC) No 1782/2003 or which may form part of the good agricultural and environmental conditions as referred to in Article 5 and Annex IV of that Regulation should be made eligible for all area related aid schemes, including the Single Area Payment Scheme. Therefore Article 30(3) of Regulation (EC) No 796/2004 should also apply to that scheme.
- (16) Information on the yield within the framework of the arable crops area payment is necessary in order to conduct the forecast of expenditure. Moreover, Article 104 of the Regulation (EC) No 1782/2003 establishes differentiated yields for the calculation of aid in case maize is treated separately or not. Therefore Annex IX of the Regulation (EC) No 1973/2004 should be adapted.
- (17) Regulation (EC) No 1973/2004 should therefore be amended accordingly.
- (18) Since the amendments provided for in this Regulation relate to aid applications to be submitted in 2007, this Regulation should apply as of 1 January 2007. However, because of administrative constraints some amendments should apply from 1 January 2008.
- (19) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1973/2004 is amended as follows:

1. Article 3(1) is amended as follows:

(a) The following point (b)*a* is inserted:

'(b)*a* by 15 October following the end of the year in respect of which the aid is granted, all the information needed to evaluate the aid for energy crops and in particular:

- the number of applications,
- the areas corresponding to each species of raw material,
- the quantities of each type of raw material and end product obtained;'

(b) point (c) is amended as follows:

(i) the introductory phrase is replaced by the following:

'by 31 January of the following year at the latest.'

(ii) Point (iii) is replaced by the following:

'(iii) the total determined quantity in the case of the additional payments to producers of dairy products provided for in Article 96 of Regulation (EC) No 1782/2003.'

(c) point (d) is replaced by the following:

'by 31 March of the harvest year at the latest, the indicative aid amount per kg in the case of the tobacco aid provided for in Article 110j of Regulation (EC) No 1782/2003, by group of tobacco varieties as listed in Annex XXV to this Regulation and, where applicable, per quality grade;'

2. Article 4 is replaced by the following:

Article 4

The coefficient of reduction of areas in the case referred to in Articles 75, 78(2), 82, 85, 89(2), 98 and 143 of Regulation (EC) No 1782/2003, or of quantities with the objective criteria in the case referred to in Article 95(4) of that Regulation, shall be fixed before the payments are

granted to the farmers and at the latest by 31 January of the following year on the basis of the data communicated in accordance with Article 3(1)(b), (b)*a* and (c) of this Regulation.'

3. Chapter 8 is replaced by the following:

'CHAPTER 8

AID FOR ENERGY CROPS

SECTION 1

Definitions

Article 23

Definitions

For the purposes of this Chapter:

- (a) "applicant" means any farmer cultivating the areas referred to in Article 88 of Regulation (EC) No 1782/2003 with a view to obtaining the aid provided for in that Article;
- (b) "aid" means the aid for energy crops provided for in Article 88 of Regulation (EC) No 1782/2003;
- (c) "energy product" means one of the energy products referred to in the second paragraph of Article 88 of Regulation (EC) No 1782/2003;
- (d) "first processor" means any user of agricultural raw materials, apart from applicants using raw materials on the holding, who undertakes the first processing thereof with a view to obtaining one or more of the products referred to in the second paragraph of Article 88 of Regulation (EC) No 1782/2003;
- (e) "collector" means any person concluding a contract with an applicant as referred to in Article 25, who purchases on his own account raw materials referred to in Article 24(1) and intended for the uses provided for in the second paragraph of Article 88 of Regulation (EC) No 1782/2003.

SECTION 2

Use of raw material

Article 24

Use of raw material

1. Any agricultural raw material may be grown on the areas covered by the aid provided that they are intended primarily for use in the production of energy products under the conditions laid down in paragraphs 2 to 8.

2. Sugar beet may be grown on the areas referred to in the paragraph 1 provided that any intermediate product is used in the production of energy products and that any co-product or by-product containing sugar is used in accordance with Council Regulation (EC) No 318/2006 (*).

3. For hemp, Article 29 of Commission Regulation (EC) No 795/2004 (**) and Article 33 of Regulation (EC) No 796/2004 shall apply.

4. The Member States may exclude any agricultural raw material from aid where such materials raise difficulties from the viewpoint of controls, public health, the environment, criminal law, or a reduced rate of final energy products.

5. For any raw material, the Member States may set a minimum cultivated area.

6. The economic value of the energy products obtained by processing raw materials shall be higher than that of all other products intended for other uses and obtained by such processing, as determined by the valuation method set out in Article 38(6) of this Regulation.

7. By way of derogation from paragraph 6, soya beans may be grown on the areas referred to in paragraph 1 provided that any intermediate product apart from soya bean meal is used in the production of energy products.

8. Energy products shall be obtained at the most by a third successive processor.

SECTION 3

Contract

Article 25

Contract

1. The production of raw materials referred to in Article 24 shall be covered by a contract in accordance with Article 90 of Regulation (EC) No 1782/2003 under the conditions laid down in this Chapter.

2. By way of derogation from paragraph 1, for the years prior to the first harvest of crops other than annual crops, applicants may undertake by way of a written declaration to plant during the year concerned and to use the raw materials to be harvested for the production of energy products. The declaration shall contain at least the following information:

(a) the species of all raw materials concerned and the area planted with each species;

(b) the indication of the year foreseen for the first harvest.

3. In support of the single application and by the date provided for in Article 11 of Regulation (EC) No 796/2004, applicants shall submit to their competent authorities a copy of the contract concluded with a collector or first processor or, where appropriate, the declaration referred to in paragraph 2.

Member States may decide that the contract may only be concluded between an applicant and a first processor.

Member States may require applicants to conclude a single contract for each raw material.

4. Applicants shall ensure that the contract specifies at least the following:

(a) the names and addresses of the parties to the contract;

(b) the duration of the contract;

(c) the species of all raw materials concerned and the area planted with each species;

(d) any conditions applicable to the delivery of the forecast quantities of raw materials;

(e) an undertaking by the farmer to fulfil his obligation pursuant to Article 27(1);

(f) an undertaking of the first processor or the collector to use the raw materials in accordance with this Chapter.

SECTION 4

Representative yields, delivery of raw materials and quantities to be delivered

Article 26

Representative yields

1. Member States shall establish each year and in due time, using an appropriate procedure, representative yields which must be attained for each species of raw materials, and shall inform the applicants concerned thereof.

2. By way of derogation from paragraph 1, Member States may decide to not establish representative yields for crops other than annual crops. In that case, where the controls provided for in the second subparagraph of Article 27(1) show a risk of non-compliance with the obligation to deliver all the raw material harvested, the Member States shall, using an appropriate procedure, establish representative yields for those crops concerned by that risk.

Article 27

Delivery of raw materials and quantities to be delivered

1. Applicants shall deliver to a collector or first processor:

- (a) the quantities of raw material at least equal to the representative yield;
- (b) all raw material derived from crops for which the Member States have decided to use the option provided for in Article 26(2).

Member States shall set up appropriate control measures in order to ensure that the obligation to deliver all the raw materials provided for in point (b) of the first subparagraph is complied with.

2. Applicants or collectors or first processors shall declare to the competent authority the delivery of raw materials by a written declaration signed by the collector or first processor and by the applicant. The declaration shall contain at least the following information:

- (a) the date of the delivery;
- (b) the quantities delivered for each species.

3. The collectors or first processors shall take delivery of the raw material as referred to in paragraph 1 and ensure that an equivalent quantity of such raw materials is used within the Community for the manufacture of one or more energy products.

4. Collectors shall deliver to the first processor(s) an equivalent quantity of all the raw materials taken over from the applicants.

5. The first processor may use an equivalent quantity of the raw material, intermediate products or by-products to manufacture one or more energy products.

In the case referred to in the first subparagraph, or where the collector sells an equivalent quantity of the raw material harvested, the first processor or the collector shall accordingly inform the competent authority with whom the security referred to in Article 31 is lodged or, in the event of application of Article 37, the competent authority responsible for the approval of the collector or first processor concerned. Where such equivalent quantity is used in a Member State other than the Member State in which the raw material is harvested, the competent authorities of the Member States concerned shall inform each other of the details of such transactions.

6. In accordance with the national provisions governing contractual relations, the first processor may delegate to a third party the collection of the raw material from the farmer applying for the aid. The first processor remains solely responsible with regard to the obligations laid down by this Chapter.

Article 28

Exceptional circumstances

In case of exceptional circumstance or force majeure as provided for in Article 40(4) of Regulation (EC) No 1782/2003, an applicant may inform his competent authority following the procedure established in Article 72 of Regulation (EC) No 796/2004 that, owing to such circumstances, he is unable to deliver all or part of the raw materials specified in the contract referred to in Article 25. The competent authority may, after obtaining sufficient evidence of such exceptional circumstances, authorise amendments to the quantities to be delivered to the collector or first processor.

SECTION 5

Conditions of payment of the aid

Article 29

Payment

1. Without prejudice to the sanctions provided for in Article 51 of Regulation (EC) No 796/2004 and in Article 30 of this Regulation, the aid shall be paid only where:

- (a) a copy of the contract has been deposited to the competent authority in accordance with Article 25;

(b) the security provided for in Article 31 has been lodged, save where Article 37 is applied;

(c) the declaration provided for in Article 27(2) has been submitted to the competent authority;

(d) the competent authority has checked that the conditions laid down in Articles 25 and 27 have been met in respect of each application.

2. By way of derogation from paragraph 1 and without prejudice to reductions and exclusions provided for in Article 51 of Regulation (EC) No 796/2004 and to sanctions provided for in Article 30 of this Regulation, the aid in respect of the years prior to the first harvest for crops other than annual crops shall be paid provided that the declaration referred to in Article 25(2) has been submitted to the competent authority and that the competent authority has checked the compliance with Article 25(2).

Article 30

Sanctions in the case of false delivery declaration

Where it is revealed during the controls that the delivery declaration as provided for in Article 27(2) is intentionally false, the applicant shall lose his eligibility for the aid. If the aid has already been paid, it shall be recovered in accordance with the provisions of Article 73 of Regulation (EC) No 796/2004. For crops other than annual crops, payments already made are subject to recovery until the last eligible payment.

SECTION 6

Obligations on collectors and first processors

Article 31

Securities

1. Collectors or first processors shall lodge a security as provided for in paragraph 2 with their competent authorities by the final date for the amendments to the payment applications for the year in question in the Member State concerned, as referred to in Article 15(2) of Regulation (EC) No 796/2004. However, Member States may waive the requirement of a security under the conditions set up in Article 5 of Commission Regulation (EEC) No 2220/85 (**).

2. The securities to be lodged in respect of each raw material shall be calculated by multiplying the sum of all

areas covered by a contract signed by the collector or first processor concerned and used to produce that raw material, by the rate of EUR 60 per hectare.

3. In case of the production of crops other than annual crops, however, securities shall be lodged in respect of the year of the first harvest only and shall remain valid for the consecutive years during the period of validity of the contract.

4. Where contracts are amended in accordance with Article 28, the securities lodged shall be adjusted accordingly.

5. Without prejudice to Articles 20 to 24 of Regulation (EEC) No 2220/85, where the security has been lodged by the collector, it shall be released once the raw material in question has been delivered to the first processor, provided that the collector's competent authority has evidence that the first processor has lodged an equivalent security with their competent authority. In case of first processing in a Member State applying the provisions of Article 37, the security lodged by the collector shall be released once the raw material in question has been delivered to an approved first processor.

Article 32

Primary, secondary and subordinate requirements for collectors and processors

1. The following obligations shall constitute primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85:

(a) the obligation for collectors to deliver the total quantities of raw materials to the first processor provided for in Article 27(4);

(b) the obligation for first processors to process at least the quantities of raw materials determined in accordance with Article 27(1) into the end products specified in the contract;

(c) the obligation for first processors related to the economic value of the energy products obtained by processing raw materials referred to in Article 24(6).

2. The obligation for first processors to process raw materials by 31 July of the second year following that of harvest shall constitute a secondary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85.

3. The following obligations shall constitute subordinate requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85:

(a) or collectors and first processors:

(i) the obligation to take delivery of the relevant quantities of raw materials, as delivered by applicants in accordance with Article 27(3);

(ii) the obligation to sign the declaration of delivery referred to in Article 27(2);

(b) for first processors, the obligation, where applicable, to lodge a security within the time limit set up in Article 31(1).

4. By way of derogation from Article 20(2) of Regulation (EEC) No 2220/85, the obligation for a collector or a first processor to accept or facilitate the on-the-spot checks to be performed by the competent authorities or to provide the records referred to in Article 38 of this Regulation shall constitute a primary requirement.

SECTION 7

Special rules for the use of raw material on the holding

Article 33

Use of raw material on the holding

1. Notwithstanding Article 25(1), Member States may permit applicants to:

(a) use short rotation forest trees covered by ex 0602 90 41 or all the cereals or the oilseeds covered by CN codes 1201 00 90, 1205 10 90, 1205 90 00, 1206 00 91 and 1206 00 99 harvested:

(i) as fuel for heating their agricultural holding;

(ii) for the production on the holding of power or biofuels;

(b) process into biogas covered by CN code 2711 29 00 on their holdings all raw materials harvested.

2. Where paragraph 1 of this Article applies, Article 25 shall not apply. Applicants shall, by the date provided for in Article 11 of Regulation (EC) No 796/2004 and in support of the single application, submit to their competent authorities a written declaration which shall contain at least the following information:

(a) the species of all raw materials concerned and the area planted with each species;

(b) where appropriate, the indication of the year foreseen for the first harvest;

(c) an undertaking by the applicant to use or process directly the raw material covered by the declaration in accordance with paragraph 1 of this Article and Article 24(1) and by a date to be fixed by the Member States which shall not be later than the 31 July of the second year following that of the harvest;

(d) the intended end use of the raw material and the technical description of the envisaged transformation.

3. Save as otherwise provided in this Section, the provision of this Chapter shall apply to the concerned farmers.

Article 34

Quantities of raw materials to be used on the holding

1. Applicants shall use on the holding:

(a) a quantity of raw material at least equal to the representative yield referred to in Article 26; or

(b) for raw material for which no representative yield has been established, all the raw material harvested.

Member States shall introduce adequate control measures to ensure compliance with the obligation provided for in point (b) of the first subparagraph.

2. Applicants shall, by a date to be fixed by the Member States, submit to the competent authority a harvest declaration that shall contain at least the following information:

(a) the date of the harvest;

(b) the quantities of raw materials harvested.

3. In case of exceptional circumstance or force majeure as provided for in Article 40(4) of Regulation (EC) No 1782/2003, an applicant may, in accordance with Article 72 of Regulation (EC) No 796/2004, inform his competent authority that he will be unable to harvest or to use all or part of quantity of raw material referred to in paragraph 1 of this Article. The competent authority may, after obtaining sufficient evidence of such exceptional circumstances, authorise amendments to the quantities to be used on the holding.

*Article 35***Controls**

Without prejudice to the controls provided for in Articles 24 and 26 of Regulation (EC) No 796/2004 and Articles 37(4) to 37(6) of this Regulation, Member States applying Article 33(1) of this Regulation shall introduce adequate control measures to ensure that:

- (a) the relevant quantities of raw materials are harvested in accordance with Article 34.

Such control measures shall cover at least the following:

- (i) administrative control for the compliance with Article 34 concerning the quantities harvested;
- (ii) on-the-spot checks on at least 10 % of the farms for checking the quantity harvested declared by the applicant in accordance with Article 34(2);

- (b) the raw materials referred to in point (a) are directly used on the holding or processed into biogas falling within CN code 2711 29 00.

*Article 36***Payments**

1. Without prejudice to the reductions and exclusions established in Article 51 of Regulation (EC) No 796/2004 and in paragraph 2 of this Article, the aid shall be paid to applicants provided that:

- (a) the requisite quantities of raw materials pursuant to Article 34 have been harvested;
- (b) the declarations provided for in Articles 33(2) and 34(2) have been submitted to the competent authority;
- (c) The checks provided for in Article 35(a) have been completed by the Competent Authority.

2. Without prejudice to Article 40 of Regulation (EC) No 1782/2003, if it is revealed that an applicant has submitted intentionally a false harvest declaration referred to in Article 34(2) of this Regulation he shall not be eligible for the aid. If the aid has already been paid, it shall be recovered in accordance with Article 73 of Regulation (EC) No 796/2004.

If the raw materials have not been processed into energy products by the date referred to in Article 33(2)(c), the aid paid for the harvest in question shall be recovered in accordance with Article 73 of Regulation (EC) No 796/2004 and the farmer shall be excluded from the aid for energy crops for the following year.

Article 36a

Member States may decide to apply this Section as from 1 January 2008.

*SECTION 8****Optional system of approval****Article 37****Optional system of approval***

1. By way of derogation from Article 31, Member States may decide to set up a system of approval of the collectors and first processors (hereinafter referred to as approved operators).

Member States shall make available to public the decision referred to in the first subparagraph by 1 November of the year preceding its application. However, for 2007, Member States shall make their decision available to public by 1 March 2007.

Save as otherwise provided in this Section, the provisions of this Chapter shall apply to the Member States having decided to apply the first subparagraph.

2. Where a Member State has decided to apply paragraph 1, it shall adopt the necessary provisions and take the necessary measures to ensure that the provisions of this Chapter are complied with. In particular, Member States shall lay down conditions for approval of the operators ensuring that at least the following criteria are met:

- (a) for collectors:
- (i) have the administrative capacities for operating as a collector and performing the record keeping referred to in Article 38;
- (ii) have a contractual relationship with at least one processor for the delivery of raw materials or have carried on trading activities for a sufficient period;

(b) for first processors:

(i) have the administrative capacities for operating as a first processor and the administrative capacities for performing the record keeping referred to in Article 38;

(ii) have the appropriate production capacities for the production of at least one energy product referred to in Article 24(1).

3. Member States shall set up a procedure of controls of the approval for approved operators before the list referred to in paragraph 6 is published.

4. Where it is found that an approved operator fails to comply with the obligations laid down in this Chapter or with the national provisions adopted on its basis, or where a collector or first processor does not accept or facilitate the on-the-spot checks to be performed by the competent authorities and/or does not provide the information referred to in Article 38, Member States shall impose appropriate penalties. The rate of penalties shall be calculated in the light of the seriousness of the infringement and proportionally to the securities forfeited for non-compliance with the requirements as set up in Article 32.

5. If an approved operator, as a result of a serious negligence to be determined by the Member State fails to comply with the provisions of this Chapter or with the national provisions, Member States may decide to withdraw its approval for a period to be determined by the Member State.

6. Before 15 December of the year prior to the year in respect of which the aid is granted, Member States shall make available to the public a list of approved collectors and first processors. However, for the aid to be granted in respect of the year 2007 the list of approved collectors and first processors shall be made available to the public by 15 April 2007 at the latest.

7. Where a Member State has decided to apply paragraph 1, the aid shall be paid only to applicants who have concluded contracts with approved collectors or processors.

SECTION 9

Checks

Article 38

Record keeping

1. The competent authority of the Member State shall specify the records to be kept by collectors, processors or applicants referred to in Article 33(1) and the frequency of the update of those records, which shall be at least monthly.

2. For processors, such records shall comprise at least the following information:

(a) the quantities of different raw materials purchased for processing;

(b) the quantities of raw materials processed and the quantities and types of end products, co-products and by-products obtained there from;

(c) wastage during processing;

(d) the quantities destroyed and the reasons for such destruction;

(e) the quantities and types of products sold or transferred by the processor and the prices obtained;

(f) where applicable, the names and addresses of the subsequent processors.

3. For collectors, such records shall comprise at least the following information:

(a) the quantities of all raw materials purchased and sold for processing under this scheme;

(b) the names and addresses of the first processors.

4. In the case of applicants referred to in Article 33(1), the records shall comprise at least a stock record allowing for the traceability of the harvests and processing on the holding.

5. The competent authority of the collector or first processor shall check that the contract submitted complies with the conditions referred to in Article 24(1). Where those conditions are not met, the applicants' competent authorities shall be notified.

6. With a view to calculating the economic value of the products referred to in Article 24(6), the competent authorities concerned shall, on the basis of the information referred to in paragraph 2, compare the sum of the values of all energy products with the sum of the values of all other products intended for other uses and obtained from the same processing operation. Each value shall equal the relevant quantity multiplied by the average of the ex-factory prices recorded during the previous marketing year. Where such prices are not available, the competent authorities shall determine the relevant prices, in particular on the basis of the information referred to in Article 39(1).

Article 39

Controls of the processing

1. First processors shall provide their competent authorities with the required information on the processing chain in question, in particular as regards prices and the technical processing coefficients to be used for determining the quantities of end products that may be obtained.

2. The competent authorities of the Member States in which collectors are located shall carry out checks on the premises of at least 25 % of the collectors established in their territory, selected on the basis of a risk analysis. Such checks shall comprise physical checks and inspections of commercial documents, with a view to verifying consistency between the purchases of raw materials and the corresponding deliveries and compliance with primary, secondary and subordinate requirements laid down in Article 32.

3. The competent authorities of the Member States in which processing takes place shall check compliance with Article 24(1) and primary, secondary and subordinate requirements laid down in Article 32(2) at the premises of at least 25 % of the processors located in their territory, selected on the basis of a risk analysis. Such checks shall involve at least:

- (a) a comparison of the sum of the values of all the energy products with the sum of the values of all other products intended for other uses and obtained from the same processing operation;
- (b) analysis of the processor's production system, comprising physical checks and inspections of commercial documents, with a view to verifying that deliveries of raw materials, end products, co-products and by-products tally.

For the purpose of the checks referred to in point (b) of the first subparagraph, the competent authorities shall base themselves in particular on the technical processing coefficients for the raw materials concerned. Where such coefficients exist for exports in Community legislation, they shall be applied. Where they do not, but other coefficients do exist in Community legislation, they shall be applied. In all other cases, inspection shall rely mainly on the coefficients generally accepted by the processing industry.

4. For the processing operations referred to in Article 33(1), checks shall be carried out on 10 % of applicants selected on the basis of a risk analysis taking account of:

- (a) aid amounts;
- (b) type of production declared for the processing, in particular crops other than annual crops;
- (c) the number of agricultural parcels;
- (d) developments since the previous year;
- (e) the findings of checks made in past years;
- (f) other parameters to be defined by the Member States, based on the representativeness of the declarations submitted.

5. The checks referred to in paragraph 4 shall involve at least:

- (a) a comparison of the sum of the values of all the energy products with the sum of the values of all other products intended for other uses and obtained from the same processing operation;
- (b) existence of facilities for using or processing the raw materials on the holding.

6. Where the checks referred to in paragraph 4 reveal irregularities, the competent authority shall carry out additional checks during the year and shall consequently increase the percentage of applicants to be subject to an on-the-spot check the following year, in accordance with Article 26(3) of Regulation (EC) No 796/2004.

7. If it has been provided that certain elements of the checks referred to in paragraphs 2, 3 and 4 may be carried out on the basis of a sample, that sample shall guarantee a reliable and representative level of inspection.

8. Every on-the-spot check shall be the subject of an inspection report signed by the inspector giving the details of the checks carried out. The report shall indicate in particular:

- (a) the date of the check;
- (b) the persons present;
- (c) the period checked;
- (d) the checking techniques used including, where applicable, reference to sampling methods;
- (e) results of the check.

Article 40

Additional measures and mutual assistance

1. The Member States shall take all further measures required for the proper application of this Chapter and shall give the mutual assistance needed for the purposes of checks required pursuant to this Chapter. Where this Chapter does not provide for appropriate reductions and exclusions, the Member States may apply appropriate national sanctions against market participants involved in the procedure for granting aid.

2. As far as necessary or as required by this Chapter, the Member States shall assist one another mutually to ensure effective controls, and enable the authenticity of documents submitted and the accuracy of the data exchanged to be verified.

(*) OJ L 58, 28.5.2006, p. 1.

(**) OJ L 141, 30.4.2004, p. 1.

(***) OJ L 205, 3.8.1985, p. 5.

4. In Article 61 the paragraph 1 is replaced by the following:

'1. Where the areas referred to in Articles 59 and 60 are found to be exceeded, the Member State concerned shall determine the definitive rate of overshoot truncated to two decimal points, before the payments are granted to the farmers and by 31 January of the following year at the latest.;

5. Article 69 is replaced by the following:

'Article 69

Communications

Where the areas referred to in Articles 59 and 60 are found to have been exceeded, the Member State concerned shall fix the definitive rate of the overshoot before the payments are granted to the farmers and by 31 January of the following year at the latest and shall communicate it to the Commission by 31 January of the following year at the latest. The data used to calculate the rate by which a base area is exceeded shall be communicated using the form set out in Annex VI.;

6. In Article 136, the term 'Article 30(3)' is deleted;

7. In Article 171*ai*, paragraph 3 is deleted;

8. In Article 171*bb*(2) the first subparagraph is replaced by the following:

'The Member States shall fix the amount of aid per olive GIS-ha for each category of olive grove, before the payments are granted to the farmers and by 31 January of the following year at the latest.;

9. In Annex III, the heading 'TRANSMISSION DEADLINE: 15 NOVEMBER EACH YEAR' is deleted;

10. In Annex VI, the heading 'TRANSMISSION DEADLINE: 15 NOVEMBER EACH YEAR' is deleted;

11. Annex IX is replaced by the text set out in the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 2007. However, Sections 3, 4, 5, 6 and 9 of Chapter 8 of Regulation (EC) No 1973/2004 as amended by Article 1(3) of this Regulation shall apply from 1 January 2008.

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

Done at Brussels, 13 March 2007.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX

'ANNEX IX

referred to in Article 3(1)(a)(i), (c)(i) and (e)(i)

ARABLE CROPS AREA PAYMENTS

The information is to be presented in the form of a series of tables drawn up in accordance with the model described below:

- a set of tables giving information in respect of each base area region within the meaning of Annex IV to this Regulation;
- a single table summarising the information for each Member State.

The tables are to be sent in computerised form.

Notes:

Each table must quote the region in question.

Line 1 relates only to durum wheat eligible for the supplement to the area payment provided for in Article 105(1) of Regulation (EC) No 1782/2003.

The line "Arable crops declared as fodder areas for premiums for bovine animals and sheep" corresponds to the areas referred to in Article 102(3) of Regulation (EC) No 1782/2003.

Model A: In case of a separate treatment of maize (*):

Crop	Area (hectares)	Yield (tonnes/hectare)
Durum wheat, Article 105(1)		
Maize (separate base area), Article 104(2)		
Other crops: cereals, oilseeds, flax, hemp, Article 104(2)		
Protein crops, Article 104(2)		
Voluntary set-aside, Article 107(6)		
Arable crops declared as fodder areas for premiums for bovine animals and sheep		
Total		

Model B: In case maize is not treated separately (**):

Crop	Area (hectares)	Yield (tonnes/hectare)
Durum wheat, Article 105(1)		
Crops as listed in Annex IX of Council Regulation (EC) No 1782/2003, Article 104(1)		
Voluntary set-aside, Article 107(6)		
Arable crops declared as fodder areas for premiums for bovine animals and sheep		
Total		

(*) Following Article 104 of Council Regulation (EC) No 1782/2003, the "maize" yield determined in the regionalisation plan for the region concerned is used for maize; the "cereals other than maize" yield is used for cereals, oilseeds, linseed, and flax and hemp grown for fibre; the average cereal yield is used for protein crops.

(**) Following Article 104 of Council Regulation (EC) No 1782/2003, the average cereal yield determined in the regionalisation plan for the region concerned is used for the crops.'