

COMMISSION REGULATION (EC) No 3338/93

of 3 December 1993

laying down detailed rules for the application of Council Regulations (EC) No 3119/93 and (EEC) No 1035/77 as regards measures to encourage the processing of certain citrus fruits and the marketing of products processed from lemons

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3119/93 of 8 November 1993 laying down special measures to encourage the processing of certain citrus fruits⁽¹⁾, and in particular Article 10 thereof,

Having regard to Council Regulation (EEC) No 1035/77 of 17 May 1977 laying down special measures to encourage the marketing of products processed from lemons⁽²⁾, as last amended by Regulation (EEC) No 1199/90⁽³⁾, and in particular Article 3 thereof,

Whereas the basic conditions for the application of the system of aid for producers' organizations delivering satsumas and of financial compensation for processors of various citrus fruits should be established by stages;

Whereas eligibility under the system provided for must be conditional on submission of an application together with all the particulars necessary to ensure the correct operation of the system;

Whereas the system of financial compensation or aid for citrus fruit producers' organizations is to be based on contracts between producers or producers' groups and processors; whereas the particulars to be included in the contracts should be specified;

Whereas, in order to ensure supplies to undertakings processing mandarins, clementines and satsumas, processing contracts must be concluded before a given date; whereas, taking account of the duration of the marketing year for oranges and lemons, provision should be made for two or four processing contracts respectively to be concluded before given dates; whereas, however, to ensure maximum efficiency of the system, the contracting parties should be allowed, in certain cases and subject to certain limits, to increase, by way of one or more supplementary agreements, the quantities of fruit originally contracted for;

Whereas, because the finished product depends closely on the fruit supplied to the processor, such fruit should meet certain minimum quality criteria;

Whereas applications for financial compensation or for aid must include all the particulars needed to establish that they are fully justified;

Whereas, to ensure that the financial compensation or aid system is correctly applied, processors and citrus fruit producers' organizations must keep up-to-date records; whereas, to prevent irregularities in the operation of the system, processors and citrus fruit producers' organizations must be subjected to such inspection and monitoring as is considered necessary and to financial penalties in cases of failure to comply with the rules, in particular in the case of false statements;

Whereas individual producers may obtain part of the aid for 1993/94 only; whereas provision should therefore be made for a derogation in their case for that marketing year;

Whereas, in view of the extent and significance of the amendments made to Commission Regulation (EEC) No 1562/85⁽⁴⁾, as last amended by Regulation (EEC) No 1203/93⁽⁵⁾, it should be replaced, for reasons of clarity, by this Regulation;

Whereas the marketing year for citrus begins on 1 October; whereas it is necessary, therefore, to set the same date for the application of this Regulation as for Regulation (EEC) No 3119/93;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

TITLE I

Field of application

Article 1

This Regulation lays down detailed rules for applying the system of aid for citrus fruit producers' organizations and of financial compensation to encourage the processing of sweet oranges, mandarins, clementines, satsumas and lemons, as provided for in Regulations (EC) No 3119/93 and (EEC) No 1035/77 respectively.

⁽¹⁾ OJ No L 279, 12. 11. 1993, p. 17.

⁽²⁾ OJ No L 125, 19. 5. 1977, p. 3.

⁽³⁾ OJ No L 119, 11. 5. 1990, p. 61.

⁽⁴⁾ OJ No L 152, 11. 6. 1985, p. 5.

⁽⁵⁾ OJ No L 122, 18. 5. 1993, p. 32.

Article 2

For the purposes of this Regulation :

- 'processor' means an undertaking operating commercially on its own responsibility one or more plants equipped to process oranges, mandarins, clementines or lemons into juice and/or to process satsumas into segments,
- 'producer' means any natural or legal person growing, on his own holding, fruit to be processed,
- 'citrus fruit producers' organization' means an organization recognized as a producers' organization within the meaning of Article 13a of Council Regulation (EEC) No 1035/72⁽¹⁾.

TITLE II**Information required of producers' organizations and processors***Article 3*

1. Producers' organizations and processors wishing to qualify for the system of aid or financial compensation shall inform the competent authorities of the Member State in which processing is to take place not later than 45 days before the start of the marketing year during which they intend to apply for aid or financial compensation and shall at the same time transmit all the information required by the Member State for the proper management and monitoring of the system. Member States may stipulate that such information :

- (a) need only be transmitted by producers' organizations or processors wishing to qualify for the first time, if the requisite information for the others is already available ;
- (b) should relate to a single marketing year, several marketing years or an unlimited period.

2. In exceptional cases for which proper justification satisfying the competent authority concerned is provided, Member States may accept information received after the time limit specified in paragraph 1 where there is no adverse impact on the system of aid or financial compensation.

Article 4

1. In respect of each marketing year, producers' organizations or processors shall notify the competent authorities of the week in which deliveries or processing is to commence. The information must reach the competent

authorities not later than five working day before the start of deliveries or processing.

2. In exceptional cases for which proper justification satisfying the competent authority concerned is provided, Member States may accept information received after the time limit specified in paragraph 1 ; however, no aid or financial compensation shall be granted in such cases in respect of fruit already delivered or processed or in the course of being delivered or processed if the necessary checks on the eligibility for aid or financial compensation cannot be carried out to the satisfaction of the competent authority.

TITLE III**Processing contracts***Article 5*

1. Individual contracts as referred to in Articles 2 and 6 of Regulation (EC) No 3119/93 and Article 1 of Regulation (EEC) No 1035/77, hereinafter referred to as 'processing contracts', shall be concluded in writing between, on the one hand, producers or producers' groups, or associations legally recognized in the Community and, on the other, processors or legally recognized processors' groups or associations, or between the latter and the producers' organizations.

A processing contract may also take the form of a commitment to supply fruit by one or more producers or a producers' organization to the recognized group or association to which they belong, or to a producers' organization, where it is acting as a processor.

2. Processing contracts must contain :

- (a) the name and address of the producer or recognized producers' group or association or of the producers' organization ;
- (b) the name and address of the processor or the recognized processor's group or association or of the producer's organization where it is acting as a processor ;
- (c) the quantity of fruit covered ;
- (d) the timetable of deliveries to the processor ;
- (e) the price to be paid to the other contracting party for the fruit, not including costs relating to packing, loading, transport and unloading and the payment of fiscal charges which must, where relevant, be detailed separately.

3. Member States may stipulate further requirements concerning processing contracts, in particular with regard to deadlines, the terms of payment of the minimum price and penalties to be paid by a contracting party if he fails to fulfil his contractual obligations.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

Article 6

Where production and processing are carried out by the same natural or legal person, a processing contract as referred to in the second subparagraph of Article 5 (1) shall be deemed to exist if a schedule has been drawn up showing:

- the total area devoted to fruit growing,
- an estimate of the total crop,
- the quantity to be sent for processing,
- the timetable of deliveries for processing.

Article 7

1. Processing contracts shall be concluded:

- before 15 February in the case of oranges to be delivered for processing before 30 April; before 30 April in the case of oranges to be delivered before the end of the marketing year;
- before 15 November in the case of satsumas,
- before 1 December in the case of clementines,
- before 15 January in the case of mandarins,
- before 20 May, 20 August, 20 November and 20 February in the case of lemons to be supplied for processing during the periods between:
 - 1 June and 31 August,
 - 1 September and 30 November,
 - 1 December and 28 or 29 February,
 - 1 March and 31 May, respectively.

However, for mandarins, clementines, satsumas and oranges, a Member State may, in exceptional circumstances, be authorized at its request to defer the date in accordance with the procedure laid down in Article 33 of Regulation (EEC) No 1035/72.

For the 1993/94 marketing year the deadline for the conclusion of contracts in respect of satsumas and clementines shall be 15 December 1993.

2. The contracting parties may increase the quantities of fruit initially specified in a contract, by means of a

written supplementary agreement. Such agreements shall be concluded at the latest by:

- (a) 15 March or 31 May in the case of oranges depending on whether the fruit is to be delivered to the processing industry in the first period or second period specified in the first indent of paragraph 1;
- (b) 1 January in the case of satsumas;
- (c) 15 January in the case of clementines;
- (d) 28/29 February in the case of mandarins;
- (e) 15 July, 15 October, 15 January, 15 April for lemons depending on which of the periods specified in the fifth indent of paragraph 1 is involved.

However, such supplementary agreements may cover:

- not more than 40 % of the original quantity of oranges,
- not more than 40 % of the original quantities of mandarins, clementines and satsumas,
- not more than 40 % of the original quantities of lemons.

3. Where the minimum price to be paid to producers or producers' organizations for a given type of fruit has not been published in the *Official Journal of the European Communities* at least 21 days before one of the dates given in paragraph 1, the final date for the conclusion of contracts for that product shall, by way of derogation from paragraph 1, be the 21st day following publication of the said price.

4. Payment by the processor to the producer or producers' organization shall be made by bank or post office transfer only.

Article 8

1. Processors and groups or associations of processors shall send copies of each processing contract, together with any supplementary agreements, to the body designated by the Member State where the fruit has been grown and, where relevant, the corresponding body in the Member State where processing takes place. These copies must reach the competent authorities within 10 working days of the conclusion of the contract or supplementary agreement.

2. Producers' organizations delivering satsumas for processing shall send a copy of each processing contract, together with any supplementary agreements, to the body designated by the Member State where the fruit has been grown within 10 working days of the conclusion of the contract or supplementary agreement.

3. In exceptional cases for which proper justification satisfying the Member State concerned has been provided, Member States may validate processing contracts and supplementary agreements reaching their authorities out of time provided that the validation is compatible with the aims of the system of aid or financial compensation and does not adversely affect the monitoring of that system.

TITLE IV

Raw materials

Article 9

Fruit supplied to processors under processing contracts must:

- in the case of mandarins, clementines and oranges processed into juice and satsumas processed into segments, satisfy at least the minimum quality and size requirements laid down for Class III,
- in the case of lemons, satisfy at least the minimum quality characteristics laid down in point B (i) of Title II of Annex II to Commission Regulation (EEC) No 920/89⁽¹⁾, with not more than 15 % by weight of off-grade fruit fit for processing.

Article 10

1. At the time each batch of oranges, mandarins, clementines, satsumas or lemons is delivered to the processing plant under a processing contract, the competent authorities designated by the Member State where the processing takes place shall verify the weight of fruit delivered and its conformity with the quality requirements referred to in Article 9.

When these checks have been completed, a certificate shall be issued to the processor in respect of each batch stating:

- the names and addresses of the contracting parties,
- the conformity of the fruit with the quality and net weight requirements.

A copy of the certificate shall be given to the producer or producers' organization. One copy shall be kept by the competent authority.

2. Where the checks referred to in paragraph 1 show that all or part of the fruit does not conform with Article 9 the authorities specified in paragraph 1 shall notify the contracting parties of that fact at the same time and indicate the consequences with regard to payment of financial compensation or aid.

TITLE V

Application for aid and financial compensation

Article 11

1. Processors shall submit applications for financial compensation to the competent body in the Member State where processing took place:

(a) in the case of oranges, one or more applications may be submitted within not more than 60 days as from:

- 15 February or 30 April for fruit processed before these dates,
- completion of the processing for the marketing year;

(b) in the case of satsumas and clementines not more than 60 days as from:

- 1 January for fruit processed before that date,
- completion of the processing;

(c) in the case of mandarins not more than 60 days as from:

- 15 February for quantities processed before that date,
- completion of the processing;

(d) in the case of lemons, one or more applications may be submitted not more than 60 days as from:

- 31 August, 30 November, 28/29 February, 31 May for quantities processed before those dates,
- completion of processing for the marketing year.

2. Producers' organizations delivering satsumas for processing shall send applications for aid to the competent body of the Member State where the fruit was produced, not more than 60 days as from:

- 1 January for quantities delivered before this date,
- on completion of the deliveries.

⁽¹⁾ OJ No L 97, 11. 4. 1989, p. 19.

3. Processors or producers' organizations delivering satsumas may, should they wish, submit their applications for financial compensation in respect of mandarins, satsumas, clementines and oranges or aid for satsumas altogether not more than 60 days after completion of the processing.

Article 12

1. Applications for financial compensation must include:

- (a) the name and address of the applicant;
- (b) an indication of the total quantities of:
 - oranges purchased during the marketing year up to 15 February and 30 April respectively and from 1 May, and/or
 - mandarins purchased during the marketing year up to 15 February and after 16 February, and/or
 - clementines and satsumas purchased during the marketing year up to 1 January and after 2 January, and/or
 - lemons delivered since the beginning of the marketing year, after deduction of any quantities specified in any previous application(s);
- (c) a statement of the corresponding quantities purchased under any contracts or supplementary agreements;
- (d) total quantities of each product obtained after processing of mandarins, clementines, satsumas, oranges and/or lemons, and quantities of juice obtained from each product, together with the degree of concentration in degrees Brix;
- (e) total quantities of each product obtained after processing of mandarins, clementines, satsumas, oranges or lemons purchased under contracts, and the quantities of juice obtained from each product, together with the degree of concentration in degrees Brix;
- (f) a statement by the processor to the effect that a price at least equivalent to the minimum price was paid for the fresh products.

2. Applications for financial compensation must include:

- (a) invoices for the quantities of fresh products referred to in paragraph 1 (c) duly receipted by the other contracting party, showing that the price paid was not less than the minimum price referred to in Article 3 of Regulation (EC) No 3119/93 and Article 1 (3) of Regulation (EEC) No 1035/77, or
- (b) where growers have entered into a commitment to supply the fruit, a statement by them that the processor has paid or credited to them a price not less than the minimum price;

(c) the certificate referred to in Article 10;

(d) a copy of the transfer order referred to in Article 7 (4).

Article 13

Applications for aid by producers' organizations must include:

- (a) the name and address of the organization and the processor;
- (b) the total quantities of satsumas delivered during the marketing year up to and including 1 January and from 2 January;
- (c) the corresponding quantities of satsumas delivered under contracts or supplementary agreements during the marketing year up to and including 1 January and from 2 January;
- (d) a statement by the producers' organization to the effect that a price at least equal to the minimum price was paid to it for the quantities of fresh product specified under (c);
- (e) a copy of the transfer order provided for in Article 7 (4);
- (f) the certificate provided for in Article 10.

TITLE VI

Monitoring

Article 14

1. Processors shall keep records containing the following minimum information for each of the periods referred to in Article 12 (1) (b):

- batches of fruit purchased or entering an undertaking each day, with separate entries for fruit covered by processing contracts and written supplementary agreements, together with the serial numbers of any receipts issued for such batches,
- the weight of each batch and the name and address of the other contracting party,
- the quantities of finished products manufactured each day from the fruit, identifying the quantities eligible for financial compensation, and the quantities of juice obtained from each product, together with the degree of concentration in degrees Brix,
- the quantities of products leaving the processing plant, with the degree of concentration in degrees Brix for each batch, and the address of the consignee. Entries in the records may consist of references to supporting documents where these contain the prescribed particulars.

In addition, the register shall contain the following information: the quantities of juice purchased, by product, and their degree of concentration in degrees Brix.

2. Processors shall keep proof of payment in respect of all fruit purchased under a processing contract or supplementary agreement for five years after the end of the marketing year. Processors shall also keep proof of payment in respect of all fruit bought for processing for five years.

3. Processors shall be subject to any inspection or monitoring considered necessary and shall keep such additional records as are prescribed by the national authorities to enable them to carry out the checks that they consider necessary.

Article 15

1. Producers' organizations delivering satsumas for processing shall keep records containing the following minimum information for each of the periods referred to in Article 13 (b) and (c):

- the batches delivered to the processing industry each day, distinguishing between those covered by processing contracts or written supplementary agreements, together with the serial numbers of any receipts issued for such batches,
- the weight of each batch together with the name and address of the other contracting party.

2. Producers' organizations shall be subject to any inspection or monitoring considered necessary and shall keep such additional records as are prescribed by the national authorities to enable them to carry out the checks that they consider necessary.

Article 16

1. In respect of each marketing year, the competent authorities shall check the records of producers' organizations and processors and verify by random checks of not less than 10 % of applications for aid and not less than 10 % of applications for financial compensation, in particular:

(a) for producers' organizations:

- whether the quantities of satsumas delivered under processing contracts correspond to those given in the application for aid,
- whether the quantities given in the application for aid correspond to those in respect of which the certificate referred to in Article 10 was issued,
- whether the quality requirements are satisfied;

(b) for processors:

- whether the quantities of oranges, mandarins, clementines, satsumas or lemons purchased under

contracts and processed in the undertaking correspond to those indicated in the application for financial compensation,

- whether the quantities of fruit referred to in the first indent are consistent with the juice obtained from processing, taking account of the yield of the fruit and the degree of concentration of the finished product in degrees Brix. The equivalence between the quantity of fruit and the quantity of juice obtained and the degree of concentration shall be assessed on the basis of the table set out in the Annex,
- whether the quantities given in the application for financial compensation correspond to those in respect of which the certificate referred to in Article 10 was issued,
- whether the price paid for the products referred to in the first indent for processing is not less than the minimum price, and
- whether the quality requirements are satisfied.

2. In respect of each marketing year, the competent authorities shall also make random checks, for each processor, of not less than 10 % of the invoices relating to applications for financial compensation, selected for the checks referred to in paragraph 1, in order to establish the authenticity of the signatures, the accuracy of the invoices and the payment thereof, for instance by consulting the parties concerned.

3. The competent authorities designated by Member States shall carry out physical checks at least twice a year on the stocks of processed products held by the processor and on the stocks of processed products purchased, and shall compare the data thus obtained with those contained in the processor's records.

4. Verifications undertaken pursuant to this Article shall be without prejudice to any additional checks by the competent authorities or the possible consequences of the application of national provisions.

5. Member States shall take all necessary steps to prevent and punish fraud in connection with the system of aid and financial compensation and to ensure its correct application.

6. Where, in relation to paragraphs 1 and 2, irregularities attain 5 % of the applications for aid or financial compensation or invoices checked, the competent authorities shall step up the checks and inform the Commission thereof without delay.

7. Member States shall recover the amounts unduly paid, with interest at the rate in force in the Member State for similar cases. Member States shall inform the Commission of the interest rates applied.

Article 17

Where it is established that the aid or financial compensation applied for by a producers' organization or processor in respect of any marketing year is greater than the aid or financial compensation due, a reduction shall be applied where the disparity is due to false statements or documents or to negligence on the part of the producers' organization or processor. The reduction shall be :

- 10 % where the disparity is equivalent to between 1 and 5 % of the aid or financial compensation due,
- 40 % where the disparity is equivalent to between more than 5 and 25 %.

Where the disparity is greater than 25 %, no aid or financial compensation shall be due for the marketing year concerned. Moreover, the producers' organization or processor shall lose any entitlement to aid or financial compensation for the following year.

Where aid or financial compensation has already been paid, the Member State shall recover any amounts paid in excess of the aid or financial compensation due, reduced as indicated in the first paragraph, without prejudice to any interest as referred to in Article 16 (7).

TITLE VII

Notification

Article 18

Each Member State shall notify to the Commission not later than three months after the end of the marketing year for each product :

1. the total quantity, in net weight, of each of the finished products obtained by the processing industry, after complete processing of oranges, mandarins, clementines, satsumas and lemons ;
2. the total quantity, in net weight, of each of the finished products obtained from oranges, mandarins, clementines, satsumas and lemons in respect of which financial compensation was granted ;
3. total quantities of oranges, mandarins, clementines, satsumas and lemons processed, broken down according to the finished product obtained ;
4. total quantities of oranges, mandarins, clementines, satsumas and lemons covered by processing contracts as referred to Article 5, broken down by finished product ;
5. total quantities of oranges, mandarins, clementines, satsumas and lemons, for each period referred to in Article 12 (1) (b), indicated in the applications for

financial compensation as having been used for the manufacture of the products referred to in point 2 of this Article, broken down by finished product ;

6. the expenditure, given in national currency, incurred in relation to the financial compensation paid in respect of the quantities referred to in point 5 ;
7. the combined net weight of products not sold and remaining in store at the end of the processing year ;
8. the finished products referred to in points 1 to 5 and 7, with the degree of concentration expressed in degrees Brix ;
9. the total quantity of satsumas delivered by the producers' organizations, with a separate indication of quantities delivered under contract ;
10. the expenditure, given in national currency, incurred in relation to the aid to producers' organizations paid in respect of the quantities delivered under contract.

Each Member State shall notify to the Commission, by 31 March each year at the latest, the quantities of lemons delivered for processing between 1 March of the preceding year and 28/29 February of the current year pursuant to Regulation (EEC) No 1035/77.

TITLE VIII

Derogating provisions

Article 19

For the 1993/94 marketing year, the provisions of Article 11 (2) and (3) and Article 13 and the penalties provided for in Article 17 shall apply to an individual producer as referred to in Article 19c of Regulation (EEC) No 1035/72 who applies for aid for satsumas.

TITLE IX

Final provisions

Article 20

Regulation (EEC) No 1562/85 is repealed.

Article 21

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

It shall apply with effect from 12 November 1993.

However, in the case of products processed from lemons, Regulation (EEC) No 1562/85 shall continue to apply until the end of the 1993/94 marketing year.

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

Done at Brussels, 3 December 1993.

For the Commission
René STEICHEN
Member of the Commission

ANNEX

TABLE OF EQUIVALENCE

Juice	Juice yields between	Degrees Brix natural juice between
Oranges	30 to 40 %	10 to 12°
Mandarins and clementines	22,5 to 30 %	10 to 12°
Lemons	20 to 30 %	7 to 8°