

COMMISSION REGULATION (EC) No 1586/97

of 29 July 1997

laying down detailed implementing rules for the use of set-aside land for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops⁽¹⁾, a last amended by Regulation (EC) No 1422/97⁽²⁾, in particular Articles 12 and 16 thereof,

Having regard to Council Decision 93/355/EEC of 8 June 1993 concerning the conclusion of a Memorandum of Understanding on certain oil seeds between the European Economic Community and the United States of America within the framework of the GATT⁽³⁾, in particular point 7 of the Memorandum of Understanding on oil seeds,

Whereas Article 7 (4) of Council Regulation (EEC) No 1765/92 allows set-aside land to be used for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption, provided that effective control systems are applied;

Whereas in the light of experience it is necessary to make further amendments to the implementing rules for the use of set-aside land for the provisions of materials for the manufacture within the Community of products not primarily intended for human or animal consumption; whereas Commission Regulation (EEC) No 334/93 of 15 February 1993 laying down detailed implementing rules for the use of land set aside for the provisions of materials for the manufacture within the Community of products not primarily intended for human or animal consumption⁽⁴⁾, as last amended by Regulation (EC) No 2991/95⁽⁵⁾, has been amended on several occasions; whereas in order to clarify matters, Regulation (EEC) No 334/93 should be recast; whereas Regulation (EEC) No

334/93 should, therefore, be repealed whilst the legitimate expectations established thereby should be safeguarded;

Whereas the raw materials, and the end products which may be produced from them, should be restricted in order to safeguard traditional markets without minimizing the scope for finding new outlets for the raw materials;

Whereas it is necessary to continue to define the concept of an end product not primarily intended for human or animal consumption;

Whereas the application of this scheme should, on the one hand, take into consideration any specific conditions prevailing in certain Member States, in particular conditions relating to agricultural practice, control, public health or the environment, or in terms of their criminal law, but on the other hand, the disparities in the treatment of such factors should be minimized within the Community;

Whereas neither the raw material cultivated on set-aside land nor any product derived from the raw material should benefit from any aid granted by the Community;

Whereas it is appropriate in laying down implementing measures to distinguish between raw materials which have the potential to be used for human or animal consumption and those which do not have that potential;

Whereas the role of each principal intervening party in the market should be clearly defined; whereas, since it is necessary to continue to provide explicitly for the form of commerce in this market, the concept of the collector should be defined; whereas it is necessary to define the raw materials which may be grown on set-aside land as well as the end use for which the raw materials may be destined in order to allow the agricultural producer to benefit from this regime without delay;

Whereas it is necessary to distinguish explicitly between the responsibilities of the claimant, which end with delivery of the entire amount of raw material harvested, and the responsibilities of the collector or first processor, which commence at delivery and end with the processing of the raw materials into the intended final non-food end products; whereas a failure on the part of the claimant to fulfil his responsibilities will lead to the application to him of penalties pursuant to Commission Regulation

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 12.

⁽²⁾ OJ No L 196, 24. 7. 1997, p. 18.

⁽³⁾ OJ No L 147, 18. 6. 1993, p. 25.

⁽⁴⁾ OJ No L 38, 16. 2. 1993, p. 12.

⁽⁵⁾ OJ No L 312, 23. 12. 1995, p. 9.

(EEC) No 3887/92⁽¹⁾, as last amended by Regulation (EC) No 2015/95⁽²⁾; whereas a failure on the part of the collector or first processor to fulfil his responsibilities will lead to the forfeiture of part or all of the security lodged by him pursuant to Commission Regulation (EEC) No 2220/85⁽³⁾, as last amended by Regulation (EC) No 3403/93⁽⁴⁾;

Whereas it is further necessary to specify a method to be used to evaluate those products which are not considered to be intended for human or animal consumption, and those products which are intended for those destinations in order to determine the ratio between those two types of product, that ratio being the criterion serving to identify the primary end use;

Whereas, for reasons of control, it is necessary to require that the raw material cultivated be the subject of a contract between the agricultural producer designated as the claimant and either a first processor or a collector; whereas that contract should serve as a significant instrument in contributing to a balanced market; whereas, by virtue of Article 6 (9) of Council Regulation (EEC) No 3508/92⁽⁵⁾, as last amended by Regulation (EC) No 820/97⁽⁶⁾, that contract is considered to be part of the area aid application; whereas experience has shown that for reasons of control that contract should be submitted by both the claimant and the collector or first processor to their respective competent authorities before compensation should be paid;

Whereas effective control of the scheme requires the claimant to inform the competent authority in the case where he will be unable to provide all or part of the raw material specified in the contract; whereas it is appropriate to allow the contract to be amended or rescinded in the case of specific circumstances outside normal agronomic conditions; whereas it is appropriate to clarify conditions under which the amendment may lead to a reduction in the land covered by the contract without the claimant's right to compensation being lost;

Whereas the requirement to conclude a contract before the first sowing of the raw material creates logistical difficulties for the claimant; whereas effective control of the scheme would not be diminished if the contract were to be concluded by the date of the submission of the area aid application or the submission of a copy of the contract by the collector or first processor, whichever is the earlier;

Whereas, for reasons of control, it is necessary to ensure that the yield which is specified in the contract between

the claimant and the collector or first processor should at least comply with the forecast yield;

Whereas it is necessary to ensure that the quantity of raw material harvested on the area under contract is delivered in its entirety to a first processor or a collector; whereas, in order to ensure that this condition has been met, both the claimant and the collector or first processor must submit a declaration to their respective competent authorities;

Whereas experience has shown that the requirement to inform the competent authority concerned of the variety of the raw material that has been delivered by the claimant and that has been received by the collector or first processor is not necessary for effective control of the scheme;

Whereas the claimant should submit, in return for the compensation received for the obligation to set land aside, to a control discipline whereby he must declare the areas concerned as well as the quantities harvested;

Whereas, for reasons of control, it is necessary that for raw materials which may benefit from public intervention buying outside this scheme, as well as those produced from certain rape and colza seeds and sunflower seeds, a representative individual yield or, as the case may be, a representative local yield is established; whereas the localities used in the calculation of the representative local yield may, but need not, correspond to the regions as set out in the regionalization plan pursuant to Regulation (EEC) No 1765/92; whereas effective control will be improved for such raw materials if the quantity delivered complies with those representative yields; whereas in duly justified cases, a shortfall of up to 10 % of those yields would be acceptable; whereas in specific circumstances outside normal agronomic conditions a greater shortfall could be justified;

Whereas, to preclude speculation and to ensure processing of the raw material into the intended end product, it is necessary to set up a control system requiring the collector or first processor to lodge a security; whereas the level of this security should be sufficient to guard against the risk of the raw materials being put to an end use for human or animal consumption; whereas a level of ECU 250 per hectare of land used to grow the raw material would be sufficient; whereas the security may be released *pro rata*, in accordance with the quantities of end products produced within a specific time-limit; whereas by virtue of the last indent of Article 12 (4) of Commission Regulation (EEC) No 1068/93⁽⁷⁾, as last amended by Regulation (EC) No 1482/96⁽⁸⁾, the operative event for the agricultural conversion rate for the security is the date on which the security takes effect;

⁽¹⁾ OJ No L 391, 31. 12. 1992, p. 36.

⁽²⁾ OJ No L 197, 22. 8. 1995, p. 2.

⁽³⁾ OJ No L 205, 3. 8. 1985, p. 5.

⁽⁴⁾ OJ No L 310, 14. 12. 1993, p. 4.

⁽⁵⁾ OJ No L 355, 5. 12. 1992, p. 1.

⁽⁶⁾ OJ No L 117, 7. 5. 1997, p. 1.

⁽⁷⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ No L 188, 27. 7. 1996, p. 22.

Whereas experience has shown that, when a collector who has lodged a security subsequently delivers the raw material under contract to a first processor, it is the first processor and not the collector who will process the raw material into its end product; whereas therefore it would be appropriate to enable that security to be released if the first processor has lodged an equivalent security with his competent authority;

Whereas, for reasons of clarity, it is appropriate to specify that equivalent quantities of intermediate or by-products to those resulting from the harvested raw material may be used in the scheme; whereas, when equivalents to the harvested raw material, or intermediate or by-products resulting from the harvested raw material, originating in a Member State other than that where the raw material is harvested, are used in the scheme, it is necessary for the Member States to inform each other of the transaction so that appropriate controls may be made;

Whereas the scheme would better correspond with commercial practice if the collector or first processor were allowed to change the end uses envisaged mentioned in the contract, after the claimant has delivered the raw material under this Regulation, whilst maintaining effective control of the scheme;

Whereas certain transport operations around the Community of raw materials and products derived from them should be covered by control systems so as to ensure their traceability and to ensure that the requirements of this Regulation have been met in respect of them; whereas such control systems should include the use of declarations and T5 control copies; whereas the raw materials, intermediate products, co-products or by-products governed by a contract under the scheme should be accompanied by a control copy T5, to be issued in accordance with Commission Regulation (EEC) No 2454/93⁽¹⁾, as last amended by Regulation (EC) No 1427/97⁽²⁾, until the manufacture of the end product envisaged in the contract;

Whereas it is necessary to specify that the processing of the raw materials into one of the eligible end products should take place by 31 July of the second year which follows the harvest;

Whereas Regulation (EEC) No 1765/92 enables the Commission to set conditions for the cultivation of crops without compensation on set-aside land; whereas it is desirable to allow the cultivation of sugar beet, Jerusalem artichokes and chicory roots without compensation on set-aside land provided that this does not have a detri-

mental effect on the sugar market; whereas it is nevertheless necessary to ensure that such cultivation is in conformity with the rules relating to the use of set-aside land for the growing of non-food crops; whereas to preclude speculation and to ensure processing of the raw material into the intended end product, a security should be lodged notwithstanding the fact that no compensation is payable;

Whereas, in order to comply with the Memorandum of Understanding on certain oil seeds between the European Economic Community and the United States of America within the framework of the GATT, it is necessary to introduce a monitoring system to assess the quantities of by-products destined for human or animal consumption, in terms of soya bean meal equivalents, resulting from rapeseeds, colza seeds, sunflower seeds and soya beans grown on set-aside land for purposes other than human or animal consumption;

Whereas in relation to raw materials which do not have the potential to be used for human or animal consumption, simplified rules may be adopted; whereas it suffices for the claimant to make a declaration in respect of the plots under such crops and the harvest cycle thereof and to give an undertaking that, in the event of the utilization or sale of the raw materials, they will be put to an end use not primarily intended for human or animal consumption;

Whereas a demonstrable measure of control should be established for each type of principal intervenor; whereas, wherever it is discovered that the rules established by this Regulation have not been observed, controls will be stepped up;

Whereas an evaluation of the scheme with a view to ensuring that the objectives of the reform of the common agricultural policy have been adhered to should be carried out on the basis of information about the actual use made of the scheme in the Member States;

Whereas anomalies between the textual description of certain raw materials and their CN codes have appeared because of amendments to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽³⁾, as last amended by Commission Regulation (EC) No 1195/97⁽⁴⁾; whereas it is therefore appropriate to adjust the CN codes concerned;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

⁽¹⁾ OJ No L 253, 11. 10. 1993, p. 1.

⁽²⁾ OJ No L 196, 24. 7. 1997, p. 31.

⁽³⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽⁴⁾ OJ No L 170, 28. 6. 1997, p. 11.

HAS ADOPTED THIS REGULATION:

Article 3

CHAPTER I

Definitions

Article 1

The following definitions shall apply for the purposes of this Regulation:

- 'the claimant' means the person who applies for the compensatory payment referred to in Article 2 (5) of Regulation (EEC) No 1765/92, hereinafter called 'compensation';
- 'the first processor' means the user of the raw materials who undertakes their first processing with a view to obtaining one or more of the products mentioned in Annex III;
- 'the collector' means each signatory of the contract provided for in Article 4 of this Regulation who buys on his own account the raw material mentioned in Annex I intended for the end uses mentioned in Annex III;
- 'the collector or first processor' means the collector or the first processor as the case may be.

CHAPTER II

Raw materials which need to be subject to a contract

Article 2

1. The provisions of this Chapter shall apply to the raw materials listed in Annex I, and in this Chapter the phrase 'raw materials' shall mean those raw materials.
2. No compensation, within the meaning of Article 2 (5) of Regulation (EEC) No 1765/92, shall be payable under the scheme established under this Chapter in respect of set-aside land on which sugar beet, Jerusalem artichokes or chicory roots are grown. All the provisions of this Chapter shall, however, apply where sugar beet, Jerusalem artichokes or chicory roots are grown on set-aside land in the same way as if compensation were payable.

1. Raw materials may be grown on set-aside land only on condition that their primary final use is in the manufacture of one of the products specified in Annex III. The economic value of the non-food products obtained from any processing of those raw materials must be higher than that of all other products destined for human or animal consumption obtained during the same processing, according to the valuation method set out in Article 6 (3).

2. Raw materials grown on set-aside land must be the subject of a contract pursuant to Article 4.

3. The claimant must deliver all the raw material harvested. The collector or first processor must take delivery of all the raw material delivered by the claimant and guarantee that an equivalent quantity of this raw material be used within the Community in the manufacture of one or more of the end products specified in Annex III.

Where the collector or first processor uses the actual raw material harvested in the manufacture of an intermediate or by-product, he may use an equivalent quantity of such intermediate or by-product in the manufacture of one or more end products referred to in the first subparagraph.

Where the collector or first processor makes use of the possibility in the first or second subparagraph, he shall inform the competent authority with which the security has been lodged. Where the equivalent quantity is used in a Member State other than that in which the raw material is harvested, the competent authorities of the Member States involved shall inform each other of the transaction.

Article 4

1. The claimant shall submit to his competent authority in support of his area aid application, a contract concluded between himself and either the collector or first processor.

2. The claimant shall ensure that the contract contains the following:

- (a) names and addresses of all the contracting parties;
- (b) duration of the contract;
- (c) the species of each raw material concerned and the area under each species;
- (d) the forecast quantity for each species and any conditions which may apply to its delivery. That quantity shall at least accord with the forecast yield considered representative by the competent authority for the raw material in question. The forecast yield shall take account of, *inter alia*, the stated average yield, if any, for the region concerned;

(e) an undertaking to comply with the obligations pursuant to Article 3 (3);

(f) the principal end uses envisaged for the raw material, each end use being in conformity with the conditions in Article 3 (1) and Article 6 (3).

3. The claimant shall ensure that the contract is concluded by a date which permits the collector or first processor to deposit a copy of the contract with his competent authority by the dates set out in Article 6 (1).

4. Where the contract relates to rapeseed, colza seeds, sunflower seeds or soya beans falling under CN codes ex 1205 00 90, 1206 00 90 or 1201 00 90, in addition to providing the information required under paragraph 2, the claimant shall ensure that the contract specifies the forecast quantity of by-products to be produced, destined for purposes other than human or animal consumption.

5. For control reasons, Member States may provide that each claimant may conclude only one supply contract for each raw material.

Article 5

1. Each year, in the area aid application submitted to his competent authority, the claimant shall identify the parcel or parcels in respect of which the raw materials are to be cultivated. For each parcel set aside and for each raw material cultivated thereon, the following particulars shall be mentioned:

- the species of the raw material and their varieties,
- the forecast yields for each species and variety.

Where, in a single holding, the same species or variety is also cultivated on non-set-aside land, that species or variety and its forecast yields shall be indicated, together with the parcels concerned, their location and identification.

2. If the parties to the contract amend or rescind the contract after the claimant has made an area aid application, the claimant shall remain entitled to claim compensation only if:

- he notifies his competent authority of the amendment or rescission, in order to enable all necessary controls to be carried out,
- he makes such notification at the latest by the final date allowed for the amendment of the area aid application in the Member State concerned.

Without prejudice to the first subparagraph, if the claimant informs his competent authority that, because of specific circumstances, he will be unable to provide all or

part of the raw material specified in the contract, the competent authority may, after having obtained sufficient evidence of these specific circumstances, allow the contract to be amended to the extent which appears justified or rescinded. In the event that the amendment of the contract leads to a reduction of the land covered by the contract or if the contract is rescinded, in order to maintain his right to compensation, the claimant shall:

- by any means authorized by the competent authority return any land in question to fallow,
- lose the right to sell, give away or use the raw material which has been taken out of the contract.

Without prejudice to the first subparagraph, the collector or first processor may change the principal end uses envisaged for the raw material mentioned in Article 4 (2) (f) after the raw material under contract has been delivered to the collector or first processor and the conditions referred to in the first subparagraph of paragraph 4 of this Article and Article 6 (4), first subparagraph, have been fulfilled. The change of end uses shall comply with the conditions set out in Article 3 (1) and Article 6 (3). The collector or first processor shall give prior notice to his competent authority in order to allow all necessary controls to be carried out.

3. For raw materials which may benefit from public intervention buying outside this scheme, as well as those rape or colza seeds falling under CN code ex 1205 00 90, with the exception of high erucic acid varieties, and sunflower seeds falling under CN code 1206 00 90, Member States shall establish each year before the harvest representative yields which are actually to be obtained. These representative yields shall be established either:

- on an individual basis for the holdings concerned, or
- on a local basis Member States shall select the localities to be used for the calculation of those yields, which may, but need not, correspond to the regions set out in their regionalization plan made pursuant to Regulation (EEC) No 1765/92.

Each year before the harvest, and not later than:

- for raw materials which may benefit from public intervention buying outside this scheme and for the rape or colza seeds mentioned in the first subparagraph, 31 July, and
- for the sunflower seeds mentioned in the first subparagraph, 31 August, Member States shall inform the claimants concerned of those representative yields.

4. The claimant shall declare to his competent authority the total quantity of raw material harvested, by species, and shall confirm the quantity delivered and the party to whom he has delivered this raw material.

For the raw materials specified in paragraph 3, the quantity actually to be delivered by the claimant to the collector or first processor shall at least accord with the representative individual yield or, as the case may be, the representative local yield relevant to the parcels concerned, as established by the Member States pursuant to that paragraph.

However:

- in duly justified cases, Member States may exceptionally accept a shortfall of up to 10 % of this yield, or
- in cases where the competent authority has allowed the contract to be amended or rescinded, pursuant to paragraph 2, second subparagraph, the competent authority may reduce the quantity that the claimant is required to deliver under the second subparagraph of this paragraph by the extent which appears justified.

Where, in relation to a given raw material, the claimant fails to deliver the amount required pursuant to this Regulation, he shall, for the purposes of Article 9 (2) of Regulation (EEC) No 3887/92, be considered not to have met all the obligations incumbent on him in regard to parcels fallowed for non-food purposes, in relation to an area calculated by multiplying the total area of set-aside land that he has used to produce that raw material under the scheme set up by this Regulation by the proportionate shortfall in delivery of that raw material.

5. For land set aside under the conditions set out in Regulation (EEC) No 1765/92, payment of the compensation to the claimant may be made before the processing of the raw material. However, this payment shall be made only when the quantity of raw material required to be delivered under the present Regulation has been delivered to the collector or first processor, and if:

- (a) the declaration mentioned in paragraph 4 has been made;
- (b) a copy of the contract has been deposited with the competent authority of the collector or first processor, the conditions referred to in Article 6 (2) have been fulfilled, and the information specified in Article 6 (4), first subparagraph, has been transmitted by either the collector or first processor;
- (c) the competent authority has received proof that the full security referred to in Article 7 (2) has been lodged;
- (d) the competent authority in charge of payment of the compensation has verified for each request that the conditions in Article 4 have been met.

Article 6

1. The collector or first processor shall deposit a copy of the contract with his competent authority:

- in respect of raw materials to be sown between 1 July and 31 December inclusive, by 31 December of the year concerned, or
- in respect of raw materials to be sown between 1 January and 30 June inclusive, by the final date for submission of the area aid application in the year concerned in the Member State concerned.

If the claimant and the collector or first processor amend or rescind the contract prior to the date referred to in Article 5 (2), first subparagraph, second indent, in any year, the collector or first processor shall deposit a copy of that amended or rescinded contract with his competent authority by that date of the year in question.

2. The competent authority mentioned in paragraph 1 shall verify that the contracts submitted comply with the conditions mentioned in Article 3 (1). If the conditions are not complied with, the competent authority of the claimant shall be notified.

To permit this verification, the collector or first processor shall submit to his competent authority the necessary information concerning the processing chain in question and, in particular, information on the prices and technical processing coefficients which are to serve to determine the quantities of end product obtainable. Those coefficients shall be those referred to in Article 9 (2).

3. With a view to monitoring compliance with Article 3 (1), the competent authority concerned shall, on the basis of the information in paragraph 2, compare the sum of the values of each non-food product with the sum of the values of all other products yielded by the same processing operation but destined for human or animal consumption.

Each value is the result of the relevant quantity multiplied by the average of ex-factory prices verified during the previous marketing year.

In cases where those prices are not available, the competent authority shall determine the appropriate prices, in particular on the basis of the information referred to in paragraph 2.

4. The collector or first processor who has received the raw material from the claimant shall inform his competent authority of the quantity of raw material received, specifying the species as well as the name and address of the contracting party who delivered the raw material, the place of delivery and the reference of the contract concerned by a date to be fixed by the Member States so as to ensure that the compensation can be paid within the period specified in Article 10 of Regulation (EEC) No 1765/92.

The collector shall inform his competent authority of the name and address of the first processor of the raw material which he has received, within 40 working days of its delivery to that first processor. The first processor shall, in turn, inform his competent authority of the name and address of the collector who delivered the raw material, the quantity and type of raw material received and the date of delivery, within 40 working days of receipt by that first processor.

Where the delivery of the raw material to the first processor is not made directly by the collector, the latter shall inform his competent authority of the name and address of the parties who intervened in the delivery circuit, including the name and address of the first processor. That communication shall be made within 40 working days after the first processor received the raw material.

Every party who intervenes shall, in turn, inform his competent authority within 40 working days of the name and address of the buyer of the raw material and the quantity sold to him.

Should they be different, the competent authority of the first processor and the authority of each party who intervenes in the delivery circuit of the raw material referred to in the third subparagraph shall inform the competent authority of the collector of the quantities supplied to the first processor.

Where the Member State of the collector or first processor is different from the Member State in which the raw material has been cultivated, the competent authority concerned shall inform that of the claimant within 40 working days from the reception of the communication referred to in the first and third subparagraphs of the total quantity of raw material delivered.

5. Without prejudice to paragraphs 1 to 4, the competent authority referred to in paragraph 1 shall inform the Commission as soon as possible, and not later than 31 May of the year in which the raw material is to be harvested, of the forecast total quantity of by-products destined for human or animal consumption, resulting from the contracts referred to in Article 4, when such contracts relate to rapeseed, colza seeds, sunflower seeds or soya beans falling under CN codes ex 1205 00 90, 1206 00 90 or 1201 00 90.

The competent authority shall calculate that forecast quantity as follows:

- (a) the forecast quantity of all by-products to be produced from rapeseed, colza seeds, sunflower seeds or soya beans falling under CN codes ex 1205 00 90, 1206 00 90 or 1201 00 90 shall be calculated by applying the following coefficients:
- 100 kg of rapeseed or/and colza seed under CN code 1205 00 90 shall be deemed to be equivalent to 56 kg of by-products,
 - 100 kg of sunflower seed under CN code 1206 00 90 shall be deemed to be equivalent to 56 kg of by-products,

— 100 kg of soya beans under CN code 1201 00 90 shall be deemed to be equivalent to 78 kg of by-products;

- (b) the forecast quantity of by-products to be produced referred to in Article 4 (4) shall be deducted from the forecast quantity of all by-products calculated in accordance with point (a).

6. The Commission shall, from the information provided pursuant to paragraph 5, calculate the forecast total quantity of by-products destined for human and animal consumption, expressed in terms of soya bean meal equivalents.

Article 7

1. The collector or first processor shall lodge the entirety of the security referred to in paragraph 2 with his competent authority by the final date for submission of the area aid application in the year concerned in the Member State concerned.

2. The security shall be calculated, for each raw material, at a rate of ECU 250 per hectare multiplied by the sum of all the areas set aside under this scheme which are subject to a contract signed by the collector or first processor concerned and which are used to produce that raw material.

3. If a contract is amended or rescinded pursuant to the first or second subparagraphs of Article 5 (2), the security shall be adjusted accordingly.

4. The security shall be released *pro rata*, for each raw material, according to the quantities of that raw material processed into the intended primary non-food end product provided that the competent authority of the collector or first processor has evidence that that amount of raw material has been processed in compliance with the conditions set out in Article 4 (2) (f), where necessary taking into account any changes made in accordance with Article 5 (2), third subparagraph.

Without prejudice to the first subparagraph, where the collector lodged the security, that security shall be released after the raw material in question is delivered to the first processor, provided that the collector's competent authority has proof that the first processor has lodged an equivalent security with this competent authority.

Article 8

1. The competent authority of the Member State in which any processing takes place shall take the necessary measures to ensure that the processors in its territory give all assurances as regards the obligations undertaken.

2. The processing of quantities of raw materials primarily into the end products specified in the contract constitutes the primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85.

Processing into one or more of the end products mentioned in Annex III shall take place by 31 July of the second year following the year of harvest of the raw material by the claimant.

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

- the obligation to take delivery of all the raw material delivered by the claimant pursuant to Article 3 (3),
- the obligation to deposit a copy of the contract pursuant to Article 6 (1),
- the obligation to make communications pursuant to the first, second and third subparagraphs of Article 6 (4), and
- the obligation to lodge the security pursuant to Article 7 (1).

4. Where the collector or first processor sells or gives away to a processor in another Member State the raw materials or intermediate products and/or co-products or by-products governed by a contract pursuant to Article 4, the product shall be accompanied by a control copy T5, to be issued in accordance with Regulation (EEC) No 2454/93. Box 104 of the control copy T5 shall be completed under heading 'Other' by inserting one of the following endorsements:

- Producto destinado a su transformación o entrega de acuerdo con lo establecido en el artículo 4 del Reglamento (CE) n° 1586/97 de la Comisión
- Skal anvendes til forarbejdning eller levering i overensstemmelse med artikel 4 i Kommissionens forordning (EF) nr. 1586/97
- Zur Verarbeitung oder Lieferung gemäß Artikel 4 der Verordnung (EG) Nr. 1586/97 der Kommission zu verwenden
- Πρέπει να χρησιμοποιηθεί για μεταποίηση ή παράδοση σύμφωνα με το άρθρο 4 του κανονισμού (ΕΚ) αριθ. 1586/97 της Επιτροπής
- To be used for processing or delivery in accordance with Article 4 of Commission Regulation (EC) No 1586/97
- À utiliser pour transformation ou livraison conformément aux dispositions de l'article 4 du règlement (CE) n° 1586/97 de la Commission
- Da consegnare o trasformare conformemente all'articolo 4 del regolamento (CE) n. 1586/97 della Commissione

- Te gebruiken voor verwerking of levering overeenkomstig artikel 4 van Verordening (EG) nr. 1586/97 van de Commissie
- A utilizar para transformação ou entrega em conformidade com o artigo 4º do Regulamento (CE) n° 1586/97 da Comissão
- Käytetään jalostamiseen tai toimittamiseen komission asetuksen (EY) N:o 1586/97 mukaisesti
- Används till bearbetning eller leverans i enlighet med kommissionens förordning (EG) nr 1586/97.

The same procedure shall apply to all subsequent sales to processors in other Member States until the manufacture of the end product envisaged in the contract.

In the case of a co-product or by-product, this requirement shall apply only in the event that the product would enjoy export refunds if obtained from raw materials cultivated outside this scheme.

5. Where part or all of the delivery of the raw material to the first processor is not made by a collector established in a Member State other than that of the first processor, a collector shall prepare a control copy T5, specifying under 'Other' in Box 104 of the copy the following:

- (a) the quantity delivered by him direct to the first processor;
- (b) the name and address of the first processor;
- (c) the names and addresses of the other parties who have intervened in the delivery circuit, even in the case where those parties are located in the Member State where the first processing has taken place;
- (d) the quantities delivered by each of the other parties involved.

6. Any party intervening in the delivery circuit mentioned in paragraph 5 (c) who is not established in the Member State of the first processor shall complete a control copy T5 specifying in Box 104 the name and address of the collector, and the information set out in points (a) and (b) of paragraph 5.

7. Where one or more end products, intermediate products, co-products or by-products to which a contract pursuant to Article 4 relates are intended for export to third countries, their transport within the Community shall be covered by a control copy T5 issued by the competent authority of the Member State in which those products were obtained.

The following remark shall appear in Box 104 of the control copy T5:

- Este producto no podrá acogerse a ninguna de las medidas previstas en el apartado 2 del artículo 1 del Reglamento (CEE) n° 729/70 del Consejo (1)
- De finansieringsforanstaltninger, der er omhandlet i artikel 1, stk. 2, i Rådets forordning (EØF) nr. 729/70 (1) kan ikke anvendes på dette produkt
- Dieses Erzeugnis kommt für keine Finanzierungen gemäß Artikel 1 Absatz 2 der Verordnung (EWG) Nr. 729/70 des Rates (1) in Betracht
- Το προϊόν αυτό δεν μπορεί να επωφεληθεί από τα μέτρα που προβλέπονται στο άρθρο 1 παράγραφος 2 του κανονισμού (ΕΟΚ) αριθ. 729/70 του Συμβουλίου (1)
- This product shall not qualify for any benefit pursuant to Article 1 (2) of Council Regulation (EEC) No 729/70 (1)
- Ce produit ne peut pas bénéficier des financements prévus à l'article 1^{er} paragraphe 2 du règlement (CEE) n° 729/70 du Conseil (1)
- Questo prodotto non può beneficiare delle misure di cui all'articolo 1, paragrafo 2 del regolamento (CEE) n. 729/70 del Consiglio (1)
- Dit product komt niet in aanmerking voor financieringen als bedoeld in artikel 1, lid 2, van Verordening (EEG) nr. 729/70 van de Raad (1)
- O presente produto não pode beneficiar de medidas ao abrigo do n° 2 do artigo 1° do Regulamento (CEE) n° 729/70 do Conselho (1)
- Tähän tuotteeseen ei sovelleta neuvoston asetuksen (ETY) N:o 729/70 (1) 1 artiklan 2 kohdan mukaisia toimenpiteitä
- De åtgärder som avses i artikel 1.2. i rådets förordning (EEG) nr 729/70 (1) kan inte användas för denna produkt.

This requirement shall apply only in the event that the end product, referred to in Annex III, intermediate product, co-product or by-product to which a contract pursuant to Article 4 relates would enjoy export refunds if obtained from raw materials cultivated outside this scheme.

Article 9

1. Member States shall specify the records which the collector and the processor shall keep. The records shall specify at least the following:

(a) in the case of a collector:

- the quantities of all raw materials bought and sold for processing within the framework of this scheme,

- the name and address of subsequent buyers/processors;
- (b) in the case of a processor, on a regular basis to be determined by the competent authority:
 - the quantities of all raw materials purchased for processing,
 - the quantities of raw materials processed, together with the quantities and types of end products, co-products and by-products obtained from them,
 - wastage during processing,
 - the quantities destroyed, and the justification for such action,
 - the quantities and types of products sold or given away by the processor and the prices obtained,
 - the names and addresses of subsequent buyers/processors.

2. The competent authority of the collector, and those of the Member States in which processing has taken place, shall carry out controls, including physical checks and inspection of commercial documents, in order to ensure:

- in the case of the collector, consistency between the purchases of raw materials and deliveries made, and, in the case of the processor, consistency between the delivery of raw materials, end products, co-products and by-products.

The competent authority shall conduct the inspection in particular by reference to technical processing coefficients for the raw materials concerned.

If such coefficients exist in Community legislation in relation to exports, they shall be applied. In their absence, if other coefficients 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;

- the correct end use of the raw material, co-products and by-products;
- compliance with Article 3(1) and Article 6(3).

Those controls shall cover at least 10 % of the transactions and processing operations which take place in the Member State and shall be selected by the competent authority on the basis of risk analysis and an element of representativeness of the contracts submitted.

3. In the case of:

- irregularities affecting 3 % or more of the checks mentioned in paragraph 2,
- deviation from the previous performances of a processor,
- detection of processing operations where:

(1) OJ No L 94, 28. 4. 1970, p. 13.

- (i) the quantities or values of end products, by-products or co-products are disproportionate in relation to the coefficients referred to in the first subparagraph of paragraph 2,
- (ii) the rate is disproportionate according to the criteria for the economic exploitation of products set out in Article 3(1) and Article 6(3),

the competent authorities shall step up the checks referred to in paragraph 2 and shall inform the Commission without delay.

CHAPTER III

Raw materials which need not be subject to a contract

Article 10

The provisions of this Chapter shall apply to the raw materials listed in Annex II and in this Chapter the phrase 'raw materials' shall mean those raw materials.

Article 11

Raw materials may be grown on set-aside land on condition that their final use is in the manufacture of one of the products specified in Annex III.

Article 12

1. In order to be eligible for compensation, a claimant wishing to use set-aside land for the cultivation of raw materials shall, when submitting his area aid application, provide to the competent authority in his Member State a written undertaking that in the event of the utilization or sale of the raw materials concerned, they will be put to the uses set out in Annex III.

2. Each year claimants shall inform their competent authority in their area aid applications of the parcels subject to set-aside under this Chapter, the crops corresponding to such parcels, the length of the crop cycle and the envisaged harvest frequency.

CHAPTER IV

General provisions

Article 13

Member States may exclude any of the raw materials listed in Annex I and/or Annex II from the scheme established by this Regulation if difficulties are thereby raised as regards agricultural practice, control, public health, the environment, or their criminal law. In that event, the Member State concerned shall inform the Commission of

the raw material(s) which it proposes to exclude, as well as the justification for such exclusion. If the Commission has not reacted within 20 working days following receipt of such notification, the exclusions envisaged may be introduced.

Article 14

1. Raw materials listed in Annex I grown on set-aside land and intermediate products, end products, co-products and by-products derived from them, raw materials listed in Annex II grown on set-aside land and products derived from them, and land used to produce such raw materials shall not be eligible for:

- any benefits financed by the European Agricultural Guidance and Guarantee Fund, Guarantee Section, pursuant to Article 1(2) of Regulation (EEC) No 729/70, or
- the Community aid provided for in Council Regulations (EEC) No 2078/92 ⁽¹⁾ and (EEC) No 2080/92 ⁽²⁾.

2. Set-aside land used for the cultivation of the raw materials listed in Annex I or Annex II shall be subject to the provisions of Commission Regulation (EC) No 762/94 ⁽³⁾.

However,

- the cultivation of these raw materials shall be regarded as compatible with these provisions, and
 - in derogation from the second indent of Article 3(4) of Regulation (EC) No 762/94, the areas concerned need not be fallowed from 15 January,
- provided the requirements of this Regulation are satisfied.

Article 15

Member States shall forward to the Commission within three months of the end of each marketing year all the information needed to assess the scheme provided for in this Regulation.

The communications shall include, in particular:

(a) in respect of Chapter II:

- the areas containing each species of raw material, the forecast yields referred to in Article 4(2)(d) and the representative yields referred to in Article 5(3),
- the quantities of each species of raw material which have not been sold by the collectors,
- the quantities of each type of end product, by-product and co-product obtained, the type of raw material used being also indicated,

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 85.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 96.

⁽³⁾ OJ No L 90, 7. 4. 1994, p. 8.

(b) in respect of Chapter III, the amount of land subject to set-aside for each species cultivated on it.

Article 16

1. Member States shall appoint the competent authorities referred to in this Regulation.

2. Member States may adopt any additional measures needed for the application of this Regulation and shall notify the Commission thereof.

Article 17

Regulation (EEC) No 334/93 is hereby repealed but shall continue to apply in respect of contracts concluded before the entry into force of this Regulation.

Article 18

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

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

Done at Brussels, 29 July 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

RAW MATERIALS REFERRED TO IN CHAPTER II

CN Code	Brief description
0602 90 59	Other outdoor plants (e.g. <i>Kenaf Hibiscus Cannabinus</i> L. and <i>Cheopodium</i>) with the exception of <i>Euphorbia lathyris</i> , <i>Sylibum marianum</i> and <i>Isatis tinctoria</i>
0701 90 10	Potatoes
ex 0713 10 90	Peas (<i>Pisum arvense</i> L.), other than those for sowing
0713 50 90	Broad beans other than those for sowing
ex 0714 90	Jerusalem artichokes (provided that they do not undergo the process known as hydrolysis as defined by the Commission Regulation (EEC) No 1443/82 ⁽¹⁾ , either in their natural state or as an intermediate product such as inuline, or as a by-product such as oligo fructose, or as any co-products)
0810 30 10	Blackcurrants
ex 0810 90 85	Fruits of the species <i>Aronia arbutifolia</i> , sea buckthorn and elder
0904 20	Fruits of the genus <i>Capsicum</i> or of the genus <i>Pimenta</i> , dried or crushed or ground
0909	Seeds of anise, badian, fennel, coriander, cumin or caraway
0910 50 00	Curry
0910 99 10	Fenugreek seed
ex 0910 99 91	Spices, other than mixtures
ex 0910 99 99	Spices, other than mixtures
1001 90 99	Spelt, common wheat and meslin other than for sowing
ex 1002 00 00	Rye other than seed
1003 00 90	Barley other than seed
1004 00 00	Oats other than seed
1005 90 00	Maize (corn) other than seed
1007 00 90	Grain sorghum, other than hybrids for sowing
ex 1008 10 00	Buckwheat other than seed
ex 1008 20 00	Millet other than seed
ex 1008 90 10	Triticale other than seed
ex 1008 90 90	Other cereals other than seed
1201 00 90	Soya beans other than for sowing
1202 20 00	Shelled ground nuts
ex 1204 00 90	Linseed other than for sowing but destined for uses other than textiles
ex 1205 00 90	Rape or colza seeds other than for sowing (only those types referred to in Article 4 (3) (a), (b), and (e) of Commission Regulation (EEC) No 658/96 ⁽²⁾)
1206 00 90	Sunflower seeds other than for sowing
1207 30 90	Castor oil seeds other than for sowing
1207 40 90	Sesamum seeds other than for sowing
1207 50 90	Mustard seeds other than for sowing
1207 60 90	Safflower seeds other than for sowing

CN Code	Brief description
ex 1207 99 91	Hemp seeds other than for sowing and mentioned in Annex B of Commission Regulation (EEC) No 1164/89 ⁽¹⁾ , destined for uses other than textiles
1207 99 99	Other oil seeds and oleaginous fruits other than for sowing
ex 1209 29	Bitter lupin
ex 1211	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, other than lavender, lavandin and sage
1212 91	Sugar beet (provided that sugar, as defined by Commission Regulation (EEC) No 1443/82, is not produced from it, either as an intermediate product, co-product or by-product)
1212 99 10	Chicory roots (provided that they do not undergo the process known as hydrolysis as defined by the Commission Regulation (EEC) No 1443/82, either in their natural state or as an intermediate product such as inuline, or as a by-product such as oligo fructose, or as any co-products)
1214	Swedes, mangolds, fodder roots, hay, lucerne (alfalfa), clover, sainfoin, forage kale, lupins, vetches and similar forage products
Chapter 14	Vegetable plaiting, stuffing or padding materials, or those used in brooms or brushes; vegetable products not elsewhere specified or included (e.g. Broomcorn (<i>Sorghum vulgare var. technicum</i>))

⁽¹⁾ OJ No L 158, 9. 6. 1982, p. 17.

⁽²⁾ OJ No L 91, 12. 4. 1996, p. 46.

⁽³⁾ OJ No L 121, 25. 4. 1989, p. 4.

ANNEX II

RAW MATERIALS REFERRED TO IN CHAPTER III

CN Code	Brief description of products
ex 0602 90 41	Short rotation forest trees with a harvest cycle of 10 years or less
ex 0602 90 49	Trees, shrubs and bushes, producing plant material covered by CN code 1211 and by Chapter 14 of the combined nomenclature, excluding all those which can be used for human or animal consumption
ex 0602 90 51	Outdoor multiannual plants (e.g. <i>Miscanthus sinensis</i>) other than those which can be used for human or animal consumption, in particular those producing plant material covered by CN code 1211, other than lavender, lavandin and sage, and by Chapter 14 of the combined nomenclature
ex 0602 90 59	<i>Euphorbia lathyris</i> , <i>Sylibum marianum</i> and <i>Isatis tinctoria</i>

ANNEX III

End products which are considered as permissible uses, other than for human or animal consumption, derived from the raw materials in Annex I and Annex II

All products of the combined nomenclature:

(a) with the exception of:

- all of the products falling within Chapters 1 to 24 of the combined nomenclature with the exception of:
 - all products falling within CN Chapter 15 which are intended for uses other than for human or animal consumption,
 - CN code 2207 20 00, for direct use in motor fuel or for processing for use in motor fuel,
 - packaging material falling within CN codes ex 1904 10 and ex 1905 90 90 on condition that proof has been obtained that the products have been used for non-food purposes according to the provisions of Article 7 (2) of this Regulation,
 - mushroom spawn falling within CN code 0602 91 10,
 - lac, natural gums, resins, gum-resins and balsams falling within CN code 1301,
 - saps and extracts of opium falling within CN code 1302 11 00,
 - saps and extracts of pyrethrum or of the roots of plants containing rotenone falling within CN code 1302 14 00,
 - other mucilages and thickeners falling within CN code 1302 39 00,

(b) with the inclusion of:

- all agricultural products set out in Annex I and their derivatives obtained by an intermediate transforming process which are burned in power stations for energy,
- all products mentioned in Annex II and their processed derivatives intended for energy purposes,
- all products referred to in Commission Regulation (EEC) No 1722/93⁽¹⁾ on condition that they are not obtained from cereals or potatoes cultivated on set-aside land, and that they do not contain products derived from cereals or potatoes cultivated on set-aside land,
- all products referred to in Council Regulation (EEC) No 1010/86⁽²⁾ on condition that they are not obtained from sugarbeet cultivated on set-aside land and that they do not contain products derived from sugarbeet cultivated on set-aside land.

⁽¹⁾ OJ No L 159, 1. 7. 1993, p. 112.

⁽²⁾ OJ No L 94, 9. 4. 1986, p. 9.