COMMISSION REGULATION (EEC) No 2462/86

of 31 July 1986

amending Regulation (EEC) No 3540/85 laying down detailed rules for the application of special measures for peas, field beans and sweet lupins

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal, and in particular Article 90 thereof,

Having regard to Council Regulation (EEC) No 1431/82 of 18 May 1982 laying down special measures for peas, field beans and sweet lupins (1), as last amended by Regulation (EEC) No 1485/85 (2), and in particular Article 3 (7) thereof,

Whereas Article 2 (2) and (3) of Commission Regulation (EEC) No 3540/85 (3), as last amended by Regulation (EEC) No 604/86 (4), sets out adjustments to the price payable to the producer which require amending so as to bring them more into line with commercial usage; whereas, in order to avoid the application for one month of different arrangements concerning those adjustments, the arrangements which applied until 30 June 1985 should be extended until the date of entry into force of this Regulation;

Whereas failure to observe the time limit referred to in Article 3 (5) of Regulation (EEC) No 3540/85 ought to result in the loss of the right to the certificate of purchase at the minimum price; whereas this penalty should be progressive;

Whereas a limit should be fixed to the period of validity of the certificate of purchase at the minimum price, referred to in Article 6 of Regulation (EEC) No 3540/85 and arrangements should be made to deal with old certificates that are still in circulation;

Whereas Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products (5) entered into force on 1 March 1986; whereas the arrangements referred to in the third subparagraph of Article 12 (1) and in Article 29 (2) of Regulation (EEC) No 3540/85 may be discontinued; whereas definitions should be given of the requirements to be observed in order for Title V of Regulation (EEC) No 2220/85 to be applied;

Whereas Article 16 (3) of Regulation (EEC) No 3540/85 should specify the period within which the declaration of products received is to be lodged by the approved user with the competent authority; whereas that period may extend for more than three months after the products have been received; whereas the particulars provided on the special declaration referred to in paragraph 4 of the abovementioned Article may therefore be indicated on the declaration of products received;

Whereas identification is an administrative act separate from the inspections that must be carried out on the quantities for which aid is requested; whereas the request for identification referred to in Article 17 (2) of Regulation (EEC) No 3540/85 and the certificate referred to in Article 18 of that Regulation are concerned with theoretical quantities calculated on the basis of standard quality; whereas the inspections to be carried out in connection with identified quantities should be set out in Article 28 (2) of that Regulation;

Whereas failure to observe the time limit between identification and usage of the products, as referred to in Article 19 (4) of Regulation (EEC) No 3540/85, should result in a progressive reduction in the aid to be granted; whereas in cases of *force majeure* the obligation resulting from this time limit may be fulfilled in accordance with three procedures that should be specified;

Whereas Article 121 (2) of the Act of Accession laid down an adjustment to the aid for sweet lupins to take account of the activating price applicable in Spain and in the other Member States; whereas it is necessary, in the absence of any system for controlling the origin of products, that aid should be granted only in respect of sweet lupins harvested and used in Spain, or of sweet lupins harvested and used in other Member States, for the period from 1 July 1986 to 31 December 1987;

Whereas Regulation (EEC) No 3540/85 was published in the *Official Journal of the European Communities* on 19 December 1985 and entered into force on 1 January 1986; whereas that Regulation introduced extensive changes in identification procedures; whereas certain operators failed to submit their request for identification in conformity with the new arrangements during the first three months of 1986; whereas, in the interests of fairness, and in view of the fact that the function of the request for identification is primarily administrative, the arrangements formerly in force should be extended;

Whereas Regulation (EEC) No 3540/85 should be amended in consequence;

(1) OJ No L 162, 12. 6. 1982, p. 28.
(2) OJ No L 151, 10. 6. 1985, p. 7.
(3) OJ No L 342, 19. 12. 1985, p. 1.
(4) OJ No L 58, 1. 3. 1986, p. 26.
(5) OJ No L 205, 3. 8. 1985, p. 5.

Whereas certain provisions of Article 1 of this Regulation are, by virtue of their subject matter, applicable with retroactive effect; whereas those provisions that specify progressive penalties should also apply to cases pending;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3540/85 is hereby amended as follows:

1. In Article 2, paragraphs 2 and 3 are replaced by the following:

'2. The price payable to the producer referred to in paragraph 1 shall be for sound, genuine, and merchantable goods in bulk, with moisture and impurity levels corresponding to those of the standard quality, loaded on to the purchaser's vehicle at the farm gate.

Where a producer delivers goods that are not of a quality sufficient for them to be used directly at least in one of the ways referred to in Article 9 (a), the costs of drying and cleaning that it is necessary and sufficient to incur in order for them to be so used, other than those resulting from the losses in weight caused by those operations, shall be settled between the producer and first purchaser and borne by the producer.

In the case of a first purchaser who has taken delivery of goods, which are not sound, genuine and merchantable and who carries out operations enabling them to attain that condition, the price payable for the delivered products must correspond to the price referred to in paragraph 1, for products of the quality referred to in the first subparagraph, less the costs arising from those operations, including costs resulting from any loss in weight that may be involved.

3. The weight to be taken into account for the comparison between the price payable referred to in paragraph 1 and the minimum price, shall be the weight of sound, genuine and merchantable goods delivered to the first purchaser, adjusted in conformity with the method given in Annex I.

For the purposes of this Regulation, 'impurity' shall mean any foreign body, organic or inorganic, not originating from the seeds of the species in question.'

2. In Article 6 (2) the two following subparagraphs, are added:

'In cases where the delivery declaration is not lodged within the time limit referred to in Article 3 (5), the certificate shall be issued after payment by the first purchaser to the agency responsible for supervision of an amount equal to 0,2 ECU per 100 kilograms of the quantity entered on the declaration in question for each working day by which the submission of that declaration is delayed beyond the due date.

The period of validity of the certificate shall be 24 months, starting from the month following that in which it was issued. Certificates issued before 1 August 1986 shall be valid until 31 July 1988.'

3. Article 11 (6) is replaced by the following:

'6. Where the provisions of Article 5a (4) of Regulation (EEC) No 2036/82 are applied, the Member State shall withdraw approval temporarily, for a period proportional to the seriousness of the infringement, in particular when the request for the advance referred to in Article 29 relates to an identified quantity which exceeds, systematically or by a considerable margin, the corresponding quantity for which entitlement to aid has been recognized.'

4. In Article 12 (1), the third subparagraph is deleted.

5. Article 13 (3) is replaced by the following:

'3. Except in cases of *force majeure*, the certificate of aid fixed in advance carries the obligation to lodge the request for identification referred to in Article 17 during its term of validity. The security referred to in Article 12 (1) shall guarantee this obligation.

The principal requirement referred to in Article 20 of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the system of securities for agricultural products (1), which shall apply in respect of the obligation referred to in the first subparagraph, shall be the identification before the time limit concerned of a quantity of product equivalent to between 93 % and 107 % of the quantity shown on the certificate of aid fixed in advance.

The minimum quantity referred to in Article 27 of Regulation (EEC) No 2220/85, above which the security shall be at least partially released, shall be 7 % of the quantity shown on the certificate of aid fixed in advance.

If the quantity identified is 7 % or more but less than 93 % of that indicated on the certificate of aid fixed in advance, the security shall be forfeited in proportion to the difference between 93 % of the quantity indicated on the certificate and the quantity actually identified.

(1) OJ No L 205, 3. 8. 1985, p. 5.'

6. Article 16 is amended as follows :

(a) In paragraph 3, the following is inserted as the second subparagraph :

'The declaration of products received shall be submitted to the competent agency during the three months which follow the month in which the products concerned have been received. If the approved user fails to submit the declaration of products received by the due date, the competent agency shall deduct 1 % of the aid allowable for the quantities concerned for each working day by which the submission of the declaration is delayed beyond the due date.' ;

(b) Paragraph 4 is replaced by the following :

'4. Where the quantites which have entered the undertaking are not intended to be used exclusively therein, the approved user shall indicate on the declaration of products received referred to in paragraph 3 those quantities of products which it has been decided should be used within the undertaking and those which it has been decided should be moved elsewhere.

If the approved user lodges an application for provisional identification in accordance with the provisions of Article 17 (5), the declaration of products received relating to the quantities that are covered by that application shall, where necessary, carry an indication of the identified quantities entered on and divided between the certificate or certificates of aid fixed in advance.' ;

(c) In paragraph 6, the first subparagraph is replaced by the following :

'The agency appointed by the Member State in which the products are actually used shall check that the quantity indicated on the certificate of purchase at the minimum price referred to in Article 6 corresponds to that which has entered the undertaking, as shown in the declaration of products received referred to in paragraph 3, and shall also check the validity of the certificate in question on the date when the quantities concerned were received. The quantity which has entered shall be that expressed in adjusted weight.'

7. Article 17 is amended as follows :

(a) The second indent of paragraph 2 is replaced by the following :

'— the description of the product, and the quantity of product to which the application relates on the basis of the moisture and impurity levels of standard quality,' ;

(b) Paragraph 5 is replaced by the following :

'5. In the circumstances referred to in Article 16 (4) the approved user may request identification for a provisional quantity of products. In that event the request for provisional identification shall :

— include the words "provisional request under Article 17 (5) of Regulation (EEC) No 3540/85",

— be provisionally based on the total quantity for which the destination remains to be decided,

— be based definitively on the quantity given, less the quantity moved out of the undertaking, as indicated in the relevant declaration of products received,

— not necessarily include an indication of the quantities which are entered on the relevant certificate or certificates of aid fixed in advance.'

8. In Article 18, paragraphs 1 and 2 are replaced by the following :

'1. The agency appointed by the Member State in which the products are used shall, on the day on which the application is lodged, certify that the quantity of the product which is the subject of an application has been identified, after having checked that Article 17 is complied with.

2. The certificate referred to in paragraph 1 shall be made out on a form to be issued by the Member State concerned giving at least :

— the name, forename and address of the applicant,

— the reference of the application for identification and the date on which it was lodged,

— the description of the product and the quantity identified,

— the aid in national currency to be granted for the quantity identified.

In accordance with Article 6 of Regulation (EEC) No 2036/82, the amount of the aid to be granted for the quantity identified shall be determined by multiplying that quantity by :

— in the case of aid fixed in advance, the amount entered on the certificate of aid fixed in advance, valid for the day on which the application for identification is lodged,

— in other cases, the amount of aid in force on the day on which the application for identification is lodged.'

9. Article 19 is amended as follows :

(a) in paragraph 1 the following subparagraph is added :

'In the event of failure to observe the time limit referred to in the first subparagraph, the competent agency shall, in respect of quantities identified and not used, deduct 2 % of the aid in question for each working day by which usage of the identified quantity is delayed beyond the due date.' ;

(b) In paragraph 2 the fourth subparagraph is replaced by the following :

'If following circumstances of *force majeure*, the quantity identified is not used in its entirety during the period referred to in the first subparagraph of paragraph 1, then according to the particular circumstances involved :

— the obligation shall be considered to have been fulfilled in proportion to the quantities actually used, or

— the obligation must be fulfilled within a period set by the Member State, or

— the obligation must be fulfilled for a quantity determined by the Member State within a period set by that Member State.' ;

(c) In the last subparagraph of paragraph 3, '2 %' is replaced by '1 %'.

10. Article 28 is amended as follows :

(a) In paragraph 1 the second subparagraph is replaced by the following :

'During the period 1 July 1986 to 31 December 1987,

— aid for sweet lupins that are used in Spain shall only be allowed for products that were harvested in the territory of that Member State,

— aid for sweet lupins used in other Member States shall only be allowed for products harvested in the territory of those other Member States.'

(b) In paragraph 2 the following is added as the second subparagraph :

'In addition, the agency responsible for supervision shall check that the quantity concerned has been identified after its entry into the undertaking and before its actual use, on the basis of the quantities received and actually used that have been determined in conformity with the method given in Annex I. Where appropriate, aid shall be paid for the quantity shown on the declaration of usage concerned, less the quantity in respect of which that obligation has not been satisfied.'

11. In Article 29, paragraph 2 is repealed and paragraph 3 becomes paragraph 2.

12. Article 32 is amended as follows :

(a) In the third indent, '1 July 1986' is replaced by '1 August 1986' ;

(b) The following paragraph is added :

'The request for identification referred to in Article 6 of Regulation (EEC) No 2036/82 may be considered to have been lodged on the day that the products concerned entered the processing undertaking, in the case of quantities that entered such an undertaking and were used in accordance with Article 9 during January, February and March 1986.'

13. Annex I is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 August 1986.

However :

— Article 1 (12) shall apply with effect from 1 January 1986,

— Article 1 (10) (a) shall apply with effect from 1 July 1986, and

— Article 1 (9) (a) and the first of the two subparagraphs set out in Article 1 (2) shall, at the request of the interested party, apply to cases that are pending on the date of publication of this Regulation.

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

Done at Brussels, 31 July 1986.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX

'ANNEX I

Method of calculating the weight of peas, field beans and sweet lupins

(a) general formula : $\frac{100 - (i + h)}{100 - (i_1 + h_1)} \times q = X$

i = impurity of peas, field beans and sweet lupins the weight of which is to be determined,

h = moisture of peas, field beans and sweet lupins the weight of which is to be determined,

i_1 = impurities
h_1 = moisture
of the quality for which the aid is fixed,

q = quantity of the products as received, expressed in kilograms, the weight of which is to be determined,

X = weight of the products expressed in kilograms.

'Impurities' means all foreign bodies, organic or non-organic, not originating from the seeds of the species in question.

Only the first two decimal places shall be taken into consideration for the moisture and impurities content.

(b) When the moisture level of the peas, field beans and sweet lupins is between 17 and 23 %, the weight resulting from the application of the general formula referred to at (a) shall be reduced by (0,0060 × q) kilograms for each percentage point by which the moisture level exceeds 17 %.

(c) When the moisture level of the peas, field beans and sweet lupins is equal to or greater than 23 %, the weight resulting from the application of the general formula referred to at (a) shall be reduced :

— by (0,0340 × q) kilograms, and

— by (0,0040 × q) kilogram for each percentage point by which the moisture level exceeds 23 %.'