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COMMISSION REGULATION (EC) No 2461/1999

of 19 November 1999

laying down detailed rules for the application of Council Regulation (EC) No 1251/1999 as regards the use of land set aside for the production of raw materials

(OJ L 299, 20.11.1999, p. 16)

Amended by:

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►**M1**	Commission Regulation (EC) No 827/2000 of 25 April 2000	L 101	21	26.4.2000
►**M2**	Commission Regulation (EC) No 2555/2000 of 20 November 2000	L 292	18	21.11.2000
►**M3**	Commission Regulation (EC) No 587/2001 of 26 March 2001	L 86	15	27.3.2001

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops [1], and in particular Article 9 thereof,

Whereas:

(1) since Regulation (EC) No 1251/1999 has replaced the support system for producers of certain arable crops established by Council Regulation (EEC) No 1765/92 [2], it is necessary to amend, in accordance with the new scheme and in the light of the experience gained, 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 [3]. On the occasion of those amendments, and for reasons of clarity, that Regulation should be recast;

(2) without prejudice to receipt of the payment provided for therein, Article 6(3) of Regulation (EC) No 1251/1999 allows land set aside to be used for the production of raw materials intended for the manufacture within the Community of products not intended for direct human or animal consumption, provided that effective controls are applied;

(3) those raw materials and their end uses should be defined; the raw materials and the end products that may be obtained from such materials should be limited in order to safeguard traditional markets without reducing the scope for identifying new outlets for such raw materials; a distinction should be made between those raw materials that can potentially be used for human or animal consumption and those which cannot; the cultivation of sugarbeet, Jerusalem artichokes or chicory roots on land set aside should not be ruled out; however, such crops cannot qualify for area payments in view of the risk of affecting the markets for sugar and cereals; care should nonetheless be taken to ensure that such crops comply with the rules governing the use of land set aside for the production of non-food products; in order to prevent any speculation and to ensure that the raw materials are processed into the intended end products, a security must be lodged even though no payment is made;

(4) the role of all principal parties involved in the market need to be defined clearly; it is essential that an explicit distinction be drawn between the applicant's obligations, which end once the total quantity of raw material harvested is delivered, and the obligations, including the requirement concerning securities, incumbent on collectors, first processors and any subsequent processors, which commence at the time of delivery and are extinguished when the raw materials are processed into the intended non-food end products; the amount of the security lodged should be high enough to prevent any risk of the raw materials ending up in use for human or animal consumption; reference should be made to Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes [4], as last amended by Regulation (EC) No 1036/1999 [5], and to Commission Regulations (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural

(1) OJ L 160, 26.6.1999, p. 1.
(2) OJ L 181, 1.7.1992, p. 12.
(3) OJ L 215, 7.8.1997, p. 3.
(4) OJ L 355, 5.12.1992, p. 1.
(5) OJ L 127, 21.5.1999, p. 4.

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products [1], as last amended by Regulation (EC) No 1932/1999 [2], and (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes [3], as last amended by Regulation (EC) No 1678/98 [4], which impose horizontal rules on the subject; special provisions should be laid down to cover biennial crops in view of the length of the production cycle;

(5) a method should also be laid down for assessing those products deemed not for human or animal consumption and those which are intended for such uses, in order to determine the ratio between those two types of product, that ratio being the criterion serving to identify the primary end use;

(6) in the interests of verification, the raw materials grown need to be covered, compulsorily, by contracts between the agricultural producer (hereinafter referred to as 'the applicants') and the first processor or collector; pursuant to Article 6(9) of Regulation (EEC) No 3508/92, such contracts are to be regarded as forming an integral part of area-aid applications; experience has shown that, for the purposes of inspection, before any payment is made, such contracts should be presented by the applicants as well as by the collectors or first processors, to the relevant competent authorities; different dates of submission may be laid down depending on the sowing periods; in specific circumstances, the Member States may allow certain raw materials to be processed direct by the producers themselves on their holdings;

(7) it should be made clear that intermediate products or by-products obtained from the raw materials harvested may be used under the scheme, in quantities equivalent to the harvested raw materials. Where such equivalent quantities come from a Member State other than that in which the raw material is harvested, the Member States need to inform each other of the transaction so that suitable checks may be conducted;

(8) in the interests of verification, applicants should be required to declare the areas involved, the anticipated yields and the quantities harvested. The yields shown in contracts concluded between applicants and collectors or first processors, as the case may be, must be at least equal to the yields forecast. In the case of raw materials that can be bought into intervention otherwise than under this scheme and of raw materials obtained from certain rapeseed and sunflower seed, a representative individual yield or, where appropriate, a representative local yield should be fixed. The localities on the basis of which the representative local yields are calculated can, but need not necessarily, be coextensive with the regions mentioned in the regionalisation plans provided for in Regulation (EC) No 1251/1999. Checks of such raw materials will be more effective if the quantities delivered correspond to such representative yields. In duly justified cases, a shortfall may be allowed;

(9) the whole quantities of raw materials harvested on areas covered by contracts should be delivered to the first processors or collectors. To ensure that this condition is met, applicants should be required to submit a declaration to the relevant competent authorities. Applicants need to inform the competent authorities should they be unable to deliver all or part of the quantity of raw material stipulated in the contract. Contracts should be amended or terminated in the event of special circumstances falling outside normal agricultural conditions. The conditions under which an amendment may lead to a reduction in the land covered by the contract without affecting the applicant's right to payment should be clearly defined;

(10) the scheme would be more in line with commercial practice if the collectors or first processors, as the case may be, were allowed to change the end uses envisaged and shown in contracts, after the applicants have delivered the raw materials covered by this Regulation, provided that the scheme is effectively verified;

(1) OJ L 205, 3.8.1985, p. 5.
(2) OJ L 240, 10.9.1999, p. 11.
(3) OJ L 391, 31.12.1992, p. 36.
(4) OJ L 212, 30.7.1998, p. 23.

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(11) in order to comply with the Memorandum of Understanding on oil seeds between the European Economic Community and the United States of America within the framework of the GATT, as approved by Council Decision 93/355/EEC [1], a monitoring system should be introduced to assess the quantities, in soya-bean-meal equivalent, of by-products intended for human or animal consumption and obtained from colza seed, rapeseed, sunflower seed or soya beans grown on land set aside for purposes other than production for human or animal consumption;

(12) a clear time limit should be set for the processing of the raw materials into eligible end products;

(13) certain transport operations within Community territory involving raw materials and products derived therefrom should be subject to controls to guarantee traceability and to ensure that the provisions of this Regulation have been applied to them. Such controls should entail the use of declarations and T5 control copies to be issued in accordance with Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code [2], as last amended by Regulation (EC) No 1662/1999 [3];

(14) a demonstrable measure of control must be established for each of the principal parties involved; whereas controls are to be stepped up wherever failures to observe the rules laid down in this Regulation emerge;

(15) simplified rules may be adopted in respect of raw materials that cannot in any circumstances be used for human or animal consumption;

(16) application of this scheme should take account of special conditions obtaining in certain Member States, in particular as regards controls, public health, the environment and criminal law provisions, without thereby accentuating the differences as to the manner in which such factors are treated within the Community. To that end, any proposal to exclude any of the raw materials listed in Annexes I or II should, prior to its enactment, be duly justified and notified to the Commission by the Member State concerned;

(17) provision should be made whereby raw materials grown on set-aside land, and products derived therefrom, do not generally qualify for any other Community aid financed under Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations [4], or Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy [5];

(18) with a view to determining whether the objectives of the reform of the common agricultural policy have been achieved, this scheme should be evaluated on the basis of information on its actual application in the Member States;

(19) the system provided for in Regulation (EC) No 1251/1999 will apply from the 2000/2001 marketing year; whereas, so that the producers concerned can carry out sowing and submit their contracts and applications for area payments in respect of that marketing year in full knowledge of, and in compliance with, the rules on the application of the new arrangements, this Regulation should enter into force immediately on publication in the *Official Journal of the European Communities*;

(20) the measures laid down in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

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(1) OJ L 147, 18.6.1993, p. 25.
(2) OJ L 253, 11.10.1993, p. 1.
(3) OJ L 197, 29.7.1999, p. 25.
(4) OJ L 160, 26.6.1999, p. 80.
(5) OJ L 160, 26.6.1999, p. 103.

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HAS ADOPTED THIS REGULATION:

CHAPTER I

Aim and definitions

Article 1

1. Land set aside under the support system for producers of certain arable crops, as set out in Regulation (EC) No 1251/1999, may be used in accordance with Article 6(3) thereof for the production of the raw materials listed in Annexes I and II to this Regulation and intended for the purposes set out in Annex III.

Such land may qualify for payment of area-aid (hereinafter referred to as 'the payment') pursuant to Article 2(2) of Regulation (EC) No 1251/1999, subject to the conditions contained in this Regulation.

The provisions of Commission Regulation (EC) No 2316/1999 [1] shall govern land set aside and used to grow the raw materials listed in Annexes I or II.

However, the cultivation of such raw materials shall be deemed compatible with those provisions. Furthermore, by way of derogation from Article 19(2) of that Regulation, the areas concerned need not be left fallow from 15 January, provided that the requirements of this Regulation are satisfied.

2. No payment shall be made in respect of set-aside land on which sugarbeet, Jerusalem artichokes or chicory roots are grown. However, all the provisions of Chapter II shall apply to sugarbeet, Jerusalem artichokes and chicory roots grown on land set aside in the same way as if such a payment were made.

Article 2

For the purposes of this Regulation:

(a) 'applicant' means any person applying for an area payment;

(b) 'collector' means any person signing a contract as provided for in Article 4 who purchases on his own account raw materials listed in Annex I and intended for use in products listed in Annex III;

(c) 'first processor' means any user of raw materials who undertakes the first processing thereof with a view to obtaining one or more of the products listed in Annex III.

CHAPTER II

Raw materials which need to be covered by a contract

Section 1

Use of raw material — Contract and application for payment

Article 3

1. The raw materials listed in Annex I (hereinafter referred to as 'raw materials') may be grown on land set aside solely on condition that they are intended primarily for use in the manufacture of the end products listed in Annex III. The economic value of non-food products obtained by processing such raw materials as determined by the valuation method set out in Article 13(3) shall be higher than that of all other products intended for human or animal consumption and obtained by such processing.

[1] OJ L 280, 30.10.1999, p. 43.

▼M3

1a. In the case of a hemp crop, payment shall also be subject to the use of varieties whose tetrahydrocannabinol content does not exceed 0,2 % and which are listed in Annex XII to Regulation (EC) No 2316/1999 on 15 May preceding the marketing year for which the payment is sought. The seeds of these varieties must have been certified in accordance with Council Directive 69/208/EEC [1].

With a view to the controls laid down in Article 21a of this Regulation, the hemp must continue growing for at least a further 10 days after flowering. However, the Member State may permit the hemp to be harvested before this 10-day deadline if the producer in question has already been checked under Article 21a or if all the controls under Article 21a have been completed.

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2. Raw materials grown on land set aside shall be covered by contracts as provided for in Article 4.

3. Applicants shall deliver all raw materials harvested to a collector or first processor, who shall take delivery of them and ensure that an equivalent quantity of such raw materials is used within the Community for the manufacture of one or more end products listed in Annex III.

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

Where the collector or first processor avails himself of the possibility provided for in the first and second subparagraphs, he shall so inform the competent authority with whom the security is lodged. Where such 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 concerned shall inform each other of the details of such transaction.

▼M3

4. Paragraphs 2 and 3 notwithstanding, Member States may permit applicants:

(a) to use all the cereals or all the oilseeds falling within CN codes 1201 00 90, ex 1205 00 90 and 1206 00 91 harvested on certain set-aside land:

(i) as fuel for heating their agricultural holding,

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

(b) to process into biogas falling within CN code 2711 29 00, on their holdings, all the raw material harvested on certain set-aside land.

In this case applicants shall undertake, by way of a declaration in place of the contract referred to in Article 4, to use or process directly the raw material covered by the declaration.

Member States applying the first subparagraph shall introduce adequate control measures to ensure that the raw material is directly used on the holding or is processed into biogas falling within CN code 2711 29 00. Furthermore, cereals or oilseeds used directly on the holding as fuel must be denatured in accordance with the method laid down by the Member State.

The measures as provided for in the preceding subparagraphs and any amendments thereto shall be notified to the Commission by 30 November of the year preceding the harvest year to which these measures apply. In the case of the 2001/02 marketing year, the measures shall be communicated before 31 May 2001.

Articles 4 to 21 shall apply *mutatis mutandis*.

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Article 4

1. In support of their applications for payment, applicants shall submit to their competent authorities the contracts they have concluded with a collector or first processor.

[1] OJ L 169, 10.7.1969, p. 3.

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2. Applicants shall ensure that such contracts specify the following:

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

(b) the duration of the contract;

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

(d) the forecast quantities of raw materials, classified by species, and any conditions governing their delivery. Such quantities shall be no less than those calculated on the basis of the anticipated yield considered by the competent authority to be representative for the raw material in question. Such anticipated yields shall take account *inter alia* of the average yield, if any, set for the region concerned;

(e) an undertaking to fulfil their obligations pursuant to Article 3(3);

(f) the intended primary end uses for the raw material, each end use complying with the conditions laid down in Articles 3(1) and 13(3).

3. Applicants shall ensure that the contracts are concluded in time to allow the collector or first processor to deposit a copy with his competent authority within the time limits laid down in Article 13(1).

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4. Where contracts relate to rapeseed, colza seed, sunflower seed or soya beans covered by CN codes ex 1205 00 90, 1206 00 91, 1206 00 99 or 1201 00 90, the applicants shall ensure that, in addition to the information required under paragraph 2, they specify the total anticipated quantity of by-products and the anticipated quantity of by-products intended for uses other than human or animal consumption, by species in both cases.

The quantities shall be calculated on the basis of the following ratios:

(a) 100 kilograms of rapeseed and/or colza seed covered by CN code 1205 00 90 shall be deemed equivalent to 56 kilograms of by-products;

(b) 100 kilograms of sunflower seed covered by CN codes 1206 00 91 or 1206 00 99 shall be deemed equivalent to 56 kilograms of by-products;

(c) 100 kilograms of soya beans covered by CN code 1201 00 90 shall be deemed equivalent to 78 kilograms of by-products.

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5. For the purposes of control, Member States may require each applicant to conclude a single supply contract for each raw material.

Article 5

Each year, in their payment applications submitted to the competent authorities, applicants shall identify the parcel or parcels on which the raw materials are to be grown. The following particulars must be provided in respect of each parcel set aside and each raw material grown thereon:

(a) the species of raw material and varieties thereof;

(b) the anticipated yield per species and variety.

Where the same species or variety is also grown on land not set aside within the same holding, the species or variety and the forecast output shall be shown, together with details of the parcels concerned, their location and identification.

▼M3

In the case of a hemp crop, the application must also:

(a) provide information on the quantities of seed used, in kilograms per hectare;

(b) be accompanied by the official labels introduced under Article 10 of Directive 69/208/EEC or by provisions adopted pursuant to that Article, appearing on the packaging of the seed used.

Where sowing takes place after the final date for lodging payment applications, the labels must be lodged no later than 30 June following the lodgement of the application.

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Member States may lay down that the labels are to be returned to the grower after their presentation to the competent authorities in cases where they need to be presented to other national authorities.

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Section 2

Amendment and termination of contract — Applicant's obligations

Article 6

Where the parties to the contract amend or terminate the latter after the applicant has lodged a payment application, the applicant may maintain such payment application only on condition that, with a view to allowing the requisite inspections to be carried out, he informs the relevant competent authority of such amendment or termination, no later than the closing date set in the Member State concerned for amendment of the application.

Article 7

Without prejudice to Article 6, where applicants inform their competent authorities that, owing to special circumstances, they will be unable to supply all or part of the raw materials specified in the contract, the competent authorities may, after obtaining sufficient evidence of such special circumstances, authorise such amendments to contracts as appear justified, or may authorise their termination.

Where the land covered by contracts is reduced as a result of their amendments, or where contracts are terminated, then, in order to maintain their right to payments, applicants shall:

(a) once more set aside the land in question by any means permitted by the competent authorities;

(b) abstain from selling, transferring or using raw materials grown on land struck out of the contracts.

Article 8

Without prejudice to Article 6, collectors or first processors may alter the intended primary end uses of raw materials, as referred to in Article 4(2)(f), once the raw materials under contract have been delivered to the collector or first processor and once the conditions laid down in Article 10(1) and in the first subparagraph of Article 13(4) have been fulfilled.

Changes in end uses shall be made in compliance with the conditions laid down in Articles 3(1) and 13(3).

The collectors or first processors shall give prior notice to their competent authorities with a view to the requisite controls.

Section 3

Representative yields and quantities delivered

Article 9

1. Each year before the harvest, the Member States shall establish representative yields, which shall be attained in practice, for raw materials that may be bought into intervention otherwise than under this scheme and for rapeseed or colza seed covered by CN code ex 1205 00 90, with the exception of varieties having a high erucic acid content, and sunflower seeds covered by CN codes 1206 00 91 or 1206 00 99. Those representative yields shall be established:

(a) for each individual holding concerned; or

(b) on a local basis.

2. In the case set out in point 1, Member States shall select the localities to be used to calculate representative yields, which may, but need not necessarily, correspond to the regions set out in their regionalisation plans drawn up in accordance with Regulation (EC) No 1251/1999. Each year

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before the harvest, Member States shall inform the applicants concerned of those representative yields, doing so by:

(a) 31 July at the latest in the case of raw materials that may be bought into intervention otherwise than under this scheme and rapeseed as referred to in the first subparagraph; and

(b) 31 August at the latest in the case of sunflower seeds as referred to in paragraph 1.

Article 10

1. Applicants shall declare the total quantity of raw materials harvested by species to their competent authorities and shall confirm the quantities of raw materials delivered and the parties to whom such deliveries are made.

2. In the case of raw materials as referred to in Article 9, the actual quantities to be delivered by the applicants to the collectors or first processors must at least correspond to the representative individual yield or, as the case may be, the representative local yield for the parcels concerned established by the Member States pursuant to that Article.

However, in duly justified cases, the Member States may, by way of an exception, allow a shortfall of up to 10 % in the yield.

Furthermore, where they have authorised the amendment or termination of contracts in accordance with Article 7, the competent authorities may, where it seems justified to do so, reduce the quantities that applicants are required to deliver under the first subparagraph of this paragraph.

Article 11

Where applicants fail to deliver the requisite quantity of any given raw material pursuant to this Regulation, they shall be deemed, for the purposes of Article 9(2) of Regulation (EEC) No 3887/92, to have failed to fulfil their obligations under the set-aside scheme for non-food purposes in respect of an area calculated by multiplying the area of land set aside and used by them for the production of the raw materials in accordance with the criteria laid down in this Regulation by the percentage shortfall in deliveries of that raw material.

Section 4

Conditions of payment

Article 12

1. Payments may be made to applicants in respect of land set aside in accordance with Regulation (EC) No 1251/1999 before the raw materials are processed. However, such payments shall only be made where the requisite quantities of raw materials pursuant to this Regulation have been delivered to the collector or first processor and where:

(a) the declaration referred to in Article 10 has been made;

(b) a copy of the contract has been deposited with the collector's or first processor's competent authority, the conditions referred to in Article 13(2) have been fulfilled, and the information specified in the first subparagraph of Article 13(4) has been forwarded by either the collector or first processor;

(c) the competent authority has received proof that the full security provided for in Article 15(2) has been lodged;

(d) the competent authority responsible for the payment has checked that the conditions laid down in Article 4 have been met in respect of each application.

2. In the case of biennial crops, where the raw materials are harvested, and hence delivered, in the course of the second year of cultivation only, payment shall be made in each of the two years following the conclusion of the contract as provided for in Article 4, on condition that the competent authorities establish that:

(a) the obligations laid down in point (b) of paragraph 1, with the exception of the communication of the information referred to in the first

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subparagraph of Article 13(4), and in point (d) thereof, are fulfilled as from the first year of cultivation; and

(b) the obligations laid down in points (a) and (c) of paragraph 1 are fulfilled, and the information referred to in the first subparagraph of Article 13(4) is communicated, in the second year of cultivation.

However, payments shall only be made in respect of the first year of cultivation if the competent authorities receive proof that 50 % of the security as provided for in Article 15(2) has been lodged.

Section 5

Contract and obligations on collector or first processor

Article 13

1. Collectors or first processors shall deposit copies of the contracts with their competent authorities:

(a) in respect of raw materials to be sown from 1 July to 31 December, by 31 January of the following year; or

(b) in respect of raw materials to be sown from 1 January to 30 June, by the closing date for the submission of payment applications for the year in question in the Member State concerned.

Where applicants and collectors or first processors amend or terminate contracts prior to the date referred to in Article 6 in a given year, the collectors or first processors shall deposit with their competent authorities a copy of the amended or terminated contract, no later than that date.

2. The competent authorities referred to in paragraph 1 shall check that contracts submitted comply with the conditions laid down in Article 3(1). Where those conditions are not met, the applicants' competent authorities shall be notified.

With a view to facilitating such checks, collectors or first processors shall provide their competent authorities with the requisite information on the processing chain in question, in particular as regards prices and the technical processing coefficients to be used for determining the quantities of end products that may be obtained. The coefficients shall be those set out in Article 21(1).

3. With a view to monitoring compliance with Article 3(1), the competent authorities concerned shall, on the basis of the information referred to in paragraph 2, compare the sum of the values of all non-food products with the sum of the values of all other products intended for human or animal consumption and obtained from the same processing operation. Each figure shall equal the relevant quantity multiplied by the average of the ex-factory prices recorded during the previous marketing year. Where such prices are not available, the competent authorities shall determine the relevant prices, in particular on the basis of the information referred to in paragraph 2.

4. Collectors or first processors who have taken over the raw materials from applicants shall inform their competent authorities of the quantities of raw materials received, specifying the species, the name and address of the party to the contract who delivered the raw materials, the place of delivery and the contract reference, within a time limit to be set by the Member States that allows the payments to be made within the period specified in Article 8 of Regulation (EC) No 1251/1999.

Within 40 working days of the date on which they deliver the raw materials to the first processors, the collectors shall inform their competent authorities of the names and addresses of those first processors. Within 40 working days of receipt by the first processors, the latter shall in turn inform their competent authorities of the names and addresses of the collectors who delivered the raw materials to them, the quantities and type thereof and the dates of delivery.

Where delivery of the raw materials to the first processors is not made by the collectors direct, the latter shall inform their competent authorities of the names and addresses of the parties involved in the delivery, together with the names and addresses of the first processors. That information shall be provided within 40 working days of receipt of the raw materials by the first processors.

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Within 40 working days of the transaction, all other parties involved in the delivery shall, in turn, inform their competent authorities of the names and addresses of the purchasers of raw materials and the quantities sold to them.

Where the competent authorities are not the same, the competent authorities of the first processors and the competent authorities of all other parties involved in delivering the raw materials as referred to in the third subparagraph shall inform the collectors' competent authorities of the quantities supplied to the first processors.

Where the Member States of the collectors or first processors are not the same as the Member States in which the raw materials have been grown, then, within 40 working days of receipt of the information referred to in the first and third subparagraphs, the competent authorities concerned shall inform the authorities of the applicants of the total quantities of raw materials delivered.

Section 6

Soya-flour equivalents for oleaginous by-products

Article 14

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1. Without prejudice to Article 13, as soon as possible and by 30 June at the latest of the year in which the raw materials are to be harvested, the competent authorities referred to in paragraph 1 of that Article shall inform the Commission of the total quantity of each species of by-products intended for human or animal consumption resulting from the contracts provided for in Article 4, covering rapeseed, colza seed, sunflower seeds and soya beans falling within CN codes ex 1205 00 90, 1206 00 91, 1206 00 99 and 1201 00 90.

2. On the basis of the information provided pursuant to paragraph 1, the Commission shall calculate the forecast total quantity of by-products for human or animal consumption, expressed in terms of soya bean meal equivalent, applying the method based on the following coefficients:

— soya cake: 48 %,

— colza cake: 32 %,

— sunflower cake: 28 %.

If, as a result of the calculation made pursuant to the first subparagraph, the Commission finds that there is an overrun of the 1 million tonnes ceiling for by-products intended for food or feed uses, it shall fix, as soon as possible and by 31 July at the latest of the year in which the raw materials are to be harvested, the percentage reduction to be applied to each contract, for the purpose of calculating the maximum quantity of by-products for human or animal consumption.

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Section 7

Securities

Article 15

1. The collectors or first processors shall lodge a full security as provided for in paragraph 2 with their competent authorities by the closing date for submission of payment applications for the year in question in the Member State concerned.

2. The securities to be lodged in respect of each raw material shall be calculated by multiplying the sum of all areas set aside under this scheme, covered by a contract signed by the collector or first processor concerned and used to produce that raw material, by the rate of EUR 250 per hectare.

3. Where contracts are amended or terminated in accordance with Article 6 or Article 7, the securities lodged shall be adjusted accordingly.

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4. The security shall be released on a proportional basis on condition that the competent authority of the collector or first processor concerned is in possession of proof:

(a) that the quantity of raw material in question has been processed in compliance with the requirement laid down in Article 4(2)(f), account being taken, where necessary, of any changes pursuant to Article 8; and

(b) where contracts relate to rapeseed, colza seed, sunflower seed or soya beans covered by CN codes ex 1205 00 90, 1206 00 91, 1206 00 99 or 1201 00 90 and the procedure laid down in Article 14(2) applies, that the quantity of by-products in excess of the maximum quantity for human or animal consumption has found outlets other than the feed or foodstuffs markets.

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5. Without prejudice to paragraph 4:

(a) where the security has been lodged by the collector, it shall be released once the raw material in question is delivered to the first processor,

(b) where the security has been lodged by a processor, it shall be released once the raw material or the intermediate products covered by the contract are delivered to another processor,

provided that the competent authority of the party selling or transferring the goods in question has proof that the party purchasing or taking over the goods has lodged an equivalent security with his competent authority.

Article 16

1. The competent authorities of the Member States in which processing takes place shall take the necessary steps to ensure that processors established in their territory provide all assurances as regards the obligations undertaken.

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

(a) the obligation to process the quantities of raw materials principally into the end products specified in the contract;

(b) where the procedure laid down in Article 14(2) applies, the obligation to seek outlets other than the feed or foodstuffs markets for quantities of by-products in excess of the maximum quantity for human or animal consumption.

Processing into one or more of the end products specified in Annex III shall be carried out by 31 July of the second year following the year in which the applicant harvests the raw material. Where the procedure laid down in Article 14(2) applies, this deadline shall be observed also for the disposal on markets other than the feed or foodstuffs markets of the quantity of by-products in excess of the maximum quantity for human or animal consumption.

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

(a) the obligation to take delivery of all raw materials delivered by applicants pursuant to Article 3(3);

(b) the obligation to deposit copies of contracts in accordance with Article 13(1);

(c) the obligation to provide the information required in accordance with the first, second and third subparagraphs of Article 13(4);

(d) the obligation to lodge a security in accordance with Article 15(1).

▼B

Section 8

Documents for sale, transfer, or delivery in another Member State, or export

Article 17

Where collectors or first processors sell or transfer raw materials or intermediate products and/or co-products or by-products covered by contracts as provided for in Article 4 to processors established in other Member States, the products shall be accompanied by T5 control copies issued in accordance with Regulation (EEC) No 2454/93.

One of the following shall be entered under the heading 'Other' in box 104 of the T5 control copies:

— Producto destinado a su transformación o entrega de acuerdo con lo establecido en el artículo 4 del Reglamento (CE) nº 2461/1999 de la Comisión

— Skal anvendes til forarbejdning eller levering i overensstemmelse med artikel 4 i Kommissionens forordning (EF) nr. 2461/1999

— Zur Verarbeitung oder Lieferung gemäß Artikel 4 der Verordnung (EG) Nr. 2461/1999 der Kommission zu verwenden

— Πρέπει να χρησιμοποιηθεί για μεταποίηση ή παράδοση σύμφωνα με το άρθρο 4 του κανονισμού (ΕΚ) αριθ. 2461/1999 της Επιτροπής

— To be used for processing or delivery in accordance with Article 4 of Commission Regulation (EC) No 2461/1999

— À utiliser pour transformation ou livraison conformément aux dispositions de l'article 4 du règlement (CE) nº 2461/1999 de la Commission

— Da consegnare o trasformare conformemente all'articolo 4 del regolamento (CE) n. 2461/1999 della Commissione

— Te gebruiken voor verwerking of aflevering overeenkomstig artikel 4 van Verordening (EG) nr. 2461/1999 van de Commissie

— A utilizar para transformação ou entrega em conformidade com o artigo 4º do Regulamento (CE) nº 2461/1999 da Comissão

— Käytetään jalostamiseen tai toimittamiseen komission asetuksen (EY) N:o 2461/1999 mukaisesti

— Används till bearbetning eller leverans i enlighet med kommissionens förordning (EG) nr 2461/1999.

The provisions of the first and second paragraphs shall apply to all subsequent sales to processors in other Member States up to the stage of manufacture of the end product shown in the contract. In the case of co-products or by-products, they shall apply only where the products would attract export refunds if they were obtained from raw materials grown otherwise than under this scheme.

Article 18

1. Where collectors deliver all or part of the raw materials which they have received, to first processors who are not established in the same Member State, they shall complete a T5 control copy, entering the following under 'Other' in box 104:

(a) the quantities they have delivered direct to the first processors;

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

(c) the names and addresses of the other parties involved in the delivery circuit, even where those parties are located in the Member State where first processing has taken place;

(d) the quantities delivered by each other party involved.

▼B

2. All parties involved in deliveries as referred to in paragraph 1(c) who are not established in the same Member State as the first processor shall complete a T5 control copy, entering, under the heading 'Other' in box 104, the names and addresses of the collector and the information specified in points (a) and (b) of that paragraph.

Article 19

Where one or more end products, intermediate products, co-products or by-products covered by contracts as provided for in Article 4 are intended for export to third countries, a T5 control copy shall be drawn up by the competent authority of the Member State in which those products are obtained to cover their transport within the Community.

One of the following remarks shall be entered under 'Other' in box 104 of the T5 control copy:

— Este producto no podrá acogerse a ninguna de las medidas previstas en el apartado 2 del artículo 1 del Reglamento (CE) nº 1258/1999 del Consejo

— De finansieringsforanstaltninger, der er omhandlet i artikel 1, stk. 2, i Rådets forordning (EF) nr. 1258/1999 kan ikke anvendes på dette produkt

— Dieses Erzeugnis kommt für keine Finanzierungen gemäß Artikel 1 Absatz 2 der Verordnung (EG) Nr. 1258/1999 des Rates in Betracht

— Το προϊόν αυτό δεν μπορεί να επωφεληθεί από τα μέτρα που προβλέπονται στο άρθρο 1 παράγραφος 2 του κανονισμού (ΕΚ) αριθ. 1258/1999 του Συμβουλίου

— This product shall not qualify for any benefit pursuant to Article 1(2) of Council Regulation (EC) No 1258/1999

— Ce produit ne peut pas bénéficier des financements prévus à l'article 1er paragraphe 2 du règlement (CE) nº 1258/1999 du Conseil

— Questo prodotto non può beneficiare delle misure di cui all'articolo 1, paragrafo 2 del regolamento (CE) n. 1258/1999 del Consiglio

— Dit product komt niet in aanmerking voor financieringen als bedoeld in artikel 1, lid 2, van Verordening (EG) nr. 1258/1999 van de Raad

— O presente produto não pode beneficiar de medidas ao abrigo do nº 2 do artigo 1º do Regulamento (CE) nº 1258/1999 do Conselho

— Tähän tuotteeseen ei sovelleta neuvoston asetuksen (EY) N:o 1258/1999 1 artiklan 2 kohdan mukaisia toimenpiteitä

— De åtgärder som avses i artikel 1.2. i rådets förordning (EG) nr 1258/1999 kan inte användas för denna produkt.

The provisions of the first and second paragraphs shall apply only where end products listed in Annex III, intermediate products, co-products or by-products covered by contracts as provided for in Article 4 would attract export refunds if they were obtained from raw materials grown otherwise than under this scheme.

Section 9

Controls

Article 20

Member States shall lay down the records which collectors and processors are to keep.

In the case of collectors, such records shall include the following entries:

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

(b) the names and addresses of subsequent purchasers/processors;

In the case of processors, such records shall include, at regular intervals to be determined by the competent authority, the following entries:

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

▼B

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

(c) wastage during processing;

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

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

(f) the names and addresses of subsequent purchasers/processors.

Article 21

1. The competent authorities of collectors and those of the Member States in which processing takes place shall carry out controls comprising physical checks and inspections of commercial documents, with a view to verifying, in the case of collectors, consistency between the purchases of raw materials and the corresponding deliveries, and, in the case of processors, between deliveries respectively of raw materials, finished products, co-products and by-products.

For the purpose of such controls, the competent authorities shall base themselves in particular on the technical processing coefficients for the raw materials concerned.

Where such coefficients for exports are to be found in Community legislation, they shall be applied. Where there are none but other coefficients may be found 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 controls shall also seek to establish that the correct end use is made of the raw materials, co-products and by-products, and that Articles 3(1) and 13(3) are complied with.

Controls shall cover at least 10 % of the transactions and processing operations that take place in the Member State concerned and shall be determined by the competent authority on the basis of a risk analysis and taking account of how representative the contracts submitted are.

2. The competent authorities shall step up the controls as referred to in paragraph 1, and shall inform the Commission immediately, where:

(a) irregularities are revealed by at least 3 % of the controls as referred to in paragraph 1;

(b) there is a deviation from the previous performances of processors;

(c) there are processing operations where:

(i) the quantities or values of end products, by-products or co-products are disproportionate in relation to the coefficients referred to in the second and third subparagraphs of paragraph 1; or where

(ii) there is a disparity relative to the criteria for determining the economic value of products set out in Articles 3(1) and 13(3).

▼M3

Article 21a

In the case of hemp crops, the system for checking the hemp's tetrahydrocannabinol content established by the Member States for hemp for fibre production in accordance with Article 5a(2) of Regulation (EC) No 1251/1999 and Article 7b(1) and (2) of Regulation (EC) No 2316/1999 shall also apply.

▼B

CHAPTER III

Raw materials which need not be covered by contracts

Article 22

The raw materials listed in Annex II (hereinafter referred to as 'raw materials') may be grown on land set aside, on condition that they are intended for use in the manufacture of the end products listed in Annex III.

▼B

They do not need to be covered by a contract.

Article 23

1. To qualify for payments, applicants wishing to use land set aside for growing raw materials shall submit a written undertaking with their payment applications to the competent authorities in their Member States, to the effect that the raw materials concerned will only be used or sold for purposes in accordance with Annex III.

2. Each year applicants shall inform their competent authorities, in their payment applications, of the parcels set aside in accordance with this Chapter, the crops grown on such parcels, the duration of the crop cycle and the foreseeable frequency of harvesting.

CHAPTER IV

General provisions

Section 1

Exclusion from the scheme and prohibition of overlapping aid

Article 24

The Member States may exclude any of the raw materials listed in Annexes I or II from the scheme established by this Regulation where such materials raise difficulties in terms of controls, public health, the environment or criminal law. In such cases, the Member State concerned shall notify the Commission of the raw material(s) which it intends to exclude and shall provide grounds therefor.

Article 25

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

▼M1

(a) financing by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund pursuant to Article 1(2)(a) and (b) of Regulation (EC) No 1258/1999;

(b) Community aid as provided for in Chapter VIII of Regulation (EC) No 1257/1999 with the exception of support granted in respect of the costs of planting fast-growing species as provided for in the second subparagraph of Article 31(3) thereof.

▼B

Section 2

Evaluation and additional national measures

Article 26

Within three months of the end of each marketing year, the Member States shall forward to the Commission all the information needed to evaluate the scheme introduced by this Regulation.

Where Chapter II is concerned, such information shall include the following information:

(a) the areas corresponding to each species of raw material, the anticipated yields as referred to in Article 4(2)(d) and the representative yields as referred to in Article 9;

(b) the quantities of each species of raw material not sold by collectors;

(c) the quantities of each type of end product, by-product and co-product obtained, with details of the type of raw material used.

Where Chapter III is concerned, the information shall include the surface area set aside for each species grown.

▼B

Article 27

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

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

Section 3

Final provisions

Article 28

Regulation (EC) No 1586/97 is hereby repealed with effect from 1 July 2000.

It shall continue to apply to contracts in respect of the 1999/2000 and earlier marketing years.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 29

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

It shall apply to contracts and payment applications submitted in respect of 2000/2001 and subsequent marketing years.

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

▼B

ANNEX I

RAW MATERIALS REFERRED TO IN CHAPTER II

CN code	Brief description
0602 90 59	Other outdoor plants (e.g. *Kenaf Hibiscus Cannabinus* L. and *Cheopodium*) with the exception of *Euphorbia lathyris*; *Sylibum marianum* and *Isatis tinctoria*
0701 90 10	Potatoes
ex 0713 10 90	Peas (*Pisum arvense* L.), other than those for sowing
0713 50 00	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 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 *Aronia Arbutifolia*, sea buckthorn and elder
0904 20	Fruits of the genus *Capsicum* or of the genus *Pimenta*, dried or crushed or ground
0909	Seeds of anise, badian, fennel, coriander, cumin or caraway; juniper berries
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
▼M2	
ex 1204 00 90	Linseed other than for sowing but intended for uses other than fibre production
▼B	
ex 1205 00 90	Rape or colza seeds other than for sowing (only those types referred to in Articles 4(1) and 4(2)(a), (b) and (e) of Commission Regulation (EC) No 2316/1999 [2]
1206 00 91 1206 00 99	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

▼B

	CN code	Brief description
	1207 60 90	Safflower seeds other than for sowing
▼M2		
▼B	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 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 oligofructose, 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 (*Sorghum vulgare* var. *technicum*))
▼M3	ex 5302 10 00	True hemp, raw or retted for processing into products not covered by Regulation (EC) No 1673/2000 (*Cannabis sativa* L.)

(1) OJ L 158, 9.6.1982, p. 17.

(2) OJ L 280, 30.10.1999, p. 43.

▼B

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. *Miscanthus sinensis*) other than those wich 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	*Euphorbia lathyris*, *Sylibum marianum* and *Isatis tinctoria*
1211 90 95	*Digitalis lanata*, *Secale cornutum* and *Hypericum perforatum*, excluding plant material which can be used for human or animal consumption

▼B

ANNEX III

End-products that may be manufactured from raw materials listed in Annexes I and II:

— all products falling within Chapters 25 to 99 of the Combined Nomenclature,

— all products falling within Chapter 15 of the Combined Nomenclature and intended for uses other than human or animal consumption,

— products covered by CN code 2207 20 00 and intended for direct use in motor fuel or for processing for use in motor fuel,

— packaging material covered by 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 in accordance with Article 15(4) of this Regulation,

— mushroom spawn covered by CN code 0602 91 10,

— lac, natural gums, resins, gum-resins and balsams covered by CN code 1 301,

— saps and extracts of opium covered by CN code 1302 11 00,

— saps and extracts of pyrethrum or of the roots of plants containing rotenone covered by CN code 1302 14 00,

— other mucilages and thickeners covered by CN code 1302 39 00,

— all agricultural products listed in Annex I and products derived therefrom by an intermediate process and used as fuel for energy production,

— all products listed in Annex II and products derived therefrom and intended for energy purposes,

▼M2

— *Miscanthus sinensis* falling within CN code 0602 90 51, shredded, intended for use as horse litter, mulch, additives to improve compost and litter for the drying and cleaning of plants,

▼B

— all products referred to in Commission Regulation (EEC) No 1722/93 [1], as last amended by Regulation (EC) No 87/1999 [2], on condition that they are not obtained from cereals or potatoes cultivated on land set aside and that they do not contain products derived from cereals or potatoes cultivated on land set aside,

— all products referred to in Council Regulation (EEC) No 1010/86 [3], as last amended by Commission Regulation (EC) No 1148/98 [4], on condition that they are not obtained from sugarbeet cultivated on land set aside, and that they do not contain products derived from sugarbeet cultivated on land set aside.

(1) OJ L 159, 1.7.1993, p. 112.
(2) OJ L 9, 5.1.1999, p. 8.
(3) OJ L 94, 9.4.1986, p. 9.
(4) OJ L 159, 3.6.1998, p. 38.