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COMMISSION REGULATION (EC) No 1433/2003

of 11 August 2003

laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational funds, operational programmes and financial assistance

(OJ L 203, 12.8.2003, p. 25)

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►**M1**	Commission Regulation (EC) No 1582/2003 of 10 September 2003	L 227	3	11.9.2003
►**M2**	Commission Regulation (EC) No 1813/2004 of 19 October 2004	L 319	5	20.10.2004
►**M3**	Commission Regulation (EC) No 2190/2004 of 20 December 2004	L 373	21	21.12.2004

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COMMISSION REGULATION (EC) No 1433/2003

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laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational funds, operational programmes and financial assistance

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ([1]), as last amended by Commission Regulation (EC) No 47/2003 ([2]), and in particular Article 48 thereof,

Whereas:

(1) In view of the experience gained during last years, it is necessary to amend Commission Regulation (EC) No 609/2001 of 28 March 2001 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational programmes, operational funds and Community financial assistance, and repealing Regulation (EC) No 411/97 ([3]). In the interests of clarity and rationality it is appropriate to repeal and replace that Regulation.

(2) Article 15 of Regulation (EC) No 2200/96 provides for financial assistance to be granted to producer organisations setting up an operational fund in accordance with certain rules and within certain limits. Article 16 of that Regulation lays down certain rules for the implementation of operational programmes. Detailed rules should be laid down for the application of those provisions.

(3) So as to promote regrouping of supply and facilitate the implementation of certain measures within operational programmes, producer organisations should be able to confer the partial or total implementation of actions in their operational programme to a recognised association of producer organisations. However, specific provisions are necessary in order to avoid abuses or duplicate aid.

(4) To facilitate the use of the scheme, the marketed production of producer organisations should be clearly defined, including the specification of the eligibility of product and the marketing stage at which the value of production is to be calculated. To guarantee equal treatment for all products intended for processing eligible for an aid system under Council Regulation (EC) No 2201/96 on the common organisation of the markets in processed fruit and vegetable products ([4]), as last amended by Commission Regulation (EC) No 453/2002 ([5]), and Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for producers of certain citrus fruit ([6]), as last amended by Commission Regulation (EC) No 1933/2001 ([7]), the aid referred to in Article 2 of Regulation (EC) No 2201/96 and Article 1 of Regulation (EC) No 2202/96 should be added to the appropriate value of marketed production. For consistency, the ceilings on aid should be calculated on the basis of the value of production marketed during a 12-month period. To ensure flexibility of this system for operators, Member States may define limited options for calculating this 12-month period. Additional methods of calculation of marketable production

([1]) OJ L 297, 21.11.1996, p. 1.
([2]) OJ L 7, 11.1.2003, p. 64.
([3]) OJ L 90, 30.3.2001, p. 4.
([4]) OJ L 297, 21.11.1996, p. 29.
([5]) OJ L 72, 14.3.2002, p. 9.
([6]) OJ L 297, 21.11.1996, p. 49.
([7]) OJ L 262, 2.10.2001, p. 6.

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should also be made possible in case of yearly fluctuations or insufficient data. To prevent misuse of the scheme, producer organisations should not be permitted to change reference periods within the duration of a programme.

(5) To ensure correct use of aid, rules should be laid down for the management of operational funds and members' financial contributions towards these funds. In particular it should be specified that the financial contributions of members of the producer organisation are based on the marketed production used to calculate the aid. Member States may authorise producer organisations to use their own funds and to set different levels of contributions, on condition that all producers contribute to and take advantage of the operational fund.

(6) In the interests of sound management, procedures for the presentation and approval of operational programmes, including deadlines, should be laid down so as to enable the adequate evaluation of the information by the competent authorities, and measures and activities to be included in, or excluded from, the programmes. Since the programmes are managed on an annual basis, it should be stipulated that programmes not approved before a given date should be postponed for one year.

(7) There should be an annual procedure for amending operational programmes for the following year, so that they can be adjusted to take account of any new conditions which could not have been foreseen when they were initially presented. In addition, it should be possible for measures and amounts of the operational fund to be changed within the year of execution of a programme. All such changes should be subject to certain limits and conditions, to be defined by Member States and including obligatory notification of changes to the competent authorities, to ensure the approved programmes maintain their overall objectives.

(8) For reasons of financial and legal security, lists of operations and expenditure which may or may not be covered by operational programmes should be drawn up. These lists should be exhaustive. For transparency and ease of application of Community rules, eligibility criteria of certain measures should, where appropriate, follow guidelines set in Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds [1], as amended by Regulation (EC) No 1105/2003 [2]. Certain operations and expenditure should be permitted temporarily or within certain limits.

(9) In the case of investments on individual holdings, so as to prevent the unjustified enrichment of a private party who has severed links with the organisation during the useful life of the investment, provisions should be laid down to allow the organisation to recover the residual value of the investment, whether such an investment is owned by the member or by the organisation

(10) In the interests of sound management of aid, a written undertaking should be made by the producer organisation, on behalf of itself and its members, not to receive duplicate aid of Community or national funding in respect of measures qualifying for Community aid under this Regulation.

(11) To ensure the effective implementation of operational programmes, producer organisations should receive notification of the decisions of the competent authorities on operational programmes and the approved amount of aid on 15 December of the year preceding implementation of the programme at the latest.

(12) To prevent cash-flow difficulties, a system of advance payments accompanied by appropriate securities should be available to producer organisations. It should be stipulated that, in order to

[1] OJ L 161, 26.6.1999, p. 1.
[2] OJ L 158, 27.6.2003, p. 3.

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prevent the systematic recovery of advances, such payments should not exceed the minimum level of aid. It should be possible for furnished securities to be progressively released as implementation of the operational programme proceeds, to the extent of up to 80 % of the advances paid, the remaining amount being retained until the balance of the aid has been paid. An alternative system should be available for the reimbursement, at periods throughout the year, of expenditure already incurred.

(13) To ensure correct application of the scheme, the information to be included in applications for aid should be specified. To provide against unforeseen circumstances in the implementation of operational programmes, applications for advances or payment may be carried over to the following year for operations which for reasons beyond the control of the producer organisation could not be implemented within the time limits laid down. All applications should be subject to administrative checks for verification. In the interests of sound financial management, penalties should be determined for late submission of applications for aid.

(14) The ceiling on aid should apply to all applications at the level fixed by Article 15(5) of Regulation (EC) No 2200/96.

(15) The activities of producer organisations and their effectiveness should be monitored. This can be achieved by means of periodical reports and an assessment.

(16) Strict control procedures should be laid down, together with deterrent penalties in the event of infringement, given the high degree of responsibility and initiative conferred on the producer organisations. These penalties should be weighted according to the severity of the infringement. To ensure fair treatment, conditions should be laid down to cover ineligible actions included in error by the producer organisation in an operational programme and approved by the Member State, whereby Member States should not be obliged to withhold aid payments or recover aid paid, in accordance with the jurisprudence of the Court of Justice.

(17) The competent authorities responsible for verifying the eligibility of the proposed measures in operational programmes and their execution should be provided with the possibility of introducing complementary national measures to ensure the correct application of this scheme.

(18) This Regulation should apply to all operational programmes to be implemented from 2004. Programmes already approved whose application continues into 2004 should be amended unless their advanced state of implementation makes this inappropriate.

(19) To ensure correct application of this scheme, Member States should forward all details of complementary and additional measures taken in the framework of this Regulation. An adequate record of the activities of producer organisations and use of the operational funds should be made available to the Commission for statistical, budget and control purposes.

(20) The Management Committee for fresh Fruit and Vegetables has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. This Regulation lays down rules applicable to Community financial assistance, hereinafter referred to as ‘aid’, to operational funds

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and to operational programmes as provided for in Articles 15 and 16 of Regulation (EC) No 2200/96.

2. Producer organisations may qualify for aid on the terms set out in Articles 15 and 16 of Regulation (EC) No 2200/96 and those laid down herein.

Article 2

Definitions

1. For the purposes of this Regulation, 'producer organisations' means those recognised pursuant to Article 11 of Regulation (EC) No 2200/96.

2. For the purposes of this Regulation, a recognised 'association of producer organisations' acting on behalf of its members for the purposes of fully or partially managing their operational funds and programmes in accordance with Article 16(3) of Regulation (EC) No 2200/96 shall be considered as a producer organisation.

CHAPTER II

VALUE OF MARKETED PRODUCTION

Article 3

Basis for calculation

1. For the purposes of this Regulation, the value of marketed production is based on the production of members of producer organisations, according to paragraphs 2 to 6.

2. The production shall include the amount of the aid as provided for in Article 2 of Regulation (EC) No 2201/96 and Article 1 of Regulation (EC) No 2202/96 received by the producer organisations for the same reference period referred to in article 4.

3. The production shall include the production of members who leave or join the producer organisation. The Member States shall determine the conditions to avoid duplicate counting.

4. The production shall include the value of products withdrawn for free distribution within the meaning of Article 30(1)(a) and (b) of Regulation (EC) No 2200/96, estimated at the average price of those products marketed by the producer organisation.

5. The production shall be disposed of in accordance with the first and second subparagraphs of Article 11(1)(c)(3) of Regulation (EC) No 2200/96.

However, the conditions laid down in the first indent of that point and, in cases of marginal quantities of product marketed fresh or to the processing industry by the producer members themselves, in the second indent thereof shall not apply.

6. The production shall be invoiced at the 'ex-producer organisation' stage:

(a) where applicable, as 'packaged or prepared but not processed product';

(b) excluding VAT;

(c) excluding internal transport costs, where the distance between the centralised collection or packing points of the producer organisation and the point of distribution of the producer organisation is significant.

Member States shall provide for reductions to be applied to the invoiced value for products invoiced at different stages of processing or delivery or transport.

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Article 4

Reference period

1. The annual ceiling on aid referred to in the third subparagraph of Article 15(5) of Regulation (EC) No 2200/96 shall be calculated each year on the basis of the value of marketed production during a 12-month reference period to be determined by Member States.

2. The reference period may be:

(a) a 12-month period, starting no earlier than 1 January two years preceding the year in which the operational programme is implemented and ending no later than 1 July of the same year, or

(b) the average value of three subsequent 12-month periods starting no earlier than 1 January four years preceding the year in which the operational programme is implemented and ending no later than 1 July of the same year.

3. Member States may use different reference periods for different producer organisations to take into account various production, sales and accounting periods for different products or groups of products.

The reference period shall not vary during an operational programme except in duly justified situations.

4. Where a reduction in the value of a product has occurred due to reasons, duly justified to the satisfaction of a Member State, falling outside the responsibility and control of the producer organisation, the value of the marketed production referred to in paragraph 1 shall not be less than 65 % of the value of the product concerned in the previous reference period.

The reasons referred to in the first subparagraph shall be duly justified.

5. Where recently recognised producer organisations have insufficient historical data on marketed production for the application of paragraph 2 the value of marketed production shall be considered to be the value of marketable production provided by the producer organisation for the purposes of recognition.

6. Member States shall take the measures necessary to gather information on the value of marketed production of producer organisations which have not submitted operational programmes.

CHAPTER III

OPERATIONAL FUNDS

Article 5

Management

1. Operational funds set up by producer organisations as referred to in Article 15(1) of Regulation (EC) No 2200/96 shall be used solely for transactions connected with:

(a) the implementation of the operational programme;

(b) the administration of the operational fund;

(c) Community compensation for withdrawals, in accordance with Article 15(3) of Regulation (EC) No 2200/96.

2. Member States shall ensure that operational funds are managed in such a way that it is possible for external auditors to identify, check and certify their expenditure and revenue annually.

3. Expenditures relating to the operational fund may be executed by a producer organisation's subsidiary, within the meaning of Article 2 of Regulation (EC) No 1432/2003 ([1]).

([1]) See page 18 of this Official Journal.

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Article 6

Financing of operational funds

1. The financial contributions of members to the operational fund referred to in Article 15(1) of Regulation (EC) No 2200/96 shall be determined on the basis of volume and/or value of the marketed production.

2. Member States may authorise producer organisations to:

(a) use all or part of their own funds, generated by the sales of fruit and vegetable products of their members related to the recognition categories, with the exception of those coming from other public support;

(b) set individual levies on producer members at different levels.

In case of application of the first subparagraph, the following conditions shall be respected:

(a) all producers shall contribute to the operational fund;

(b) all producers shall have the opportunity to benefit from the operational fund;

(c) all producers shall have the opportunity to participate democratically in decisions concerning the use of funds of the producer organisation and the financial contributions to the operational funds.

Article 7

Communication of estimated amount

The producer organisations shall communicate the estimated amounts of the operational funds for the following year to the Member States by 15 September at the latest, together with the operational programmes or requests for amendments to be approved.

Calculation of the estimated amount of operational funds shall be based on the operational programmes, the estimated expenditure on withdrawals and the value of marketed production.

CHAPTER IV

OPERATIONAL PROGRAMMES

Article 8

Contents of operational programmes

1. Operational programmes shall include the following:

(a) a description of the initial situation, in particular as regards production, marketing and equipment;

(b) the objectives of the programme, bearing in mind the outlook for production and outlets;

(c) a detailed description of the measures, containing separate actions, to be taken and the means for attaining those objectives in each year of implementation of the programme;

(d) the duration of the programme;

(e) the financial aspects, namely:

(i) the method of calculation and the level of financial contributions;

(ii) the procedure for financing the operational fund;

(iii) information necessary to justify different levels of contribution;

(iv) the budget and timetable for undertaking operations for each year of implementation of the programme.

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2. Operational programmes may include points not provided for in paragraph 1, in particular the points set out in Annex I.

3. Operational programmes shall not include operations or expenditure referred to in the list set out in Annex II or any other ones included in measures adopted by Member States under Article 25.

Article 9

Documents to be submitted

Operational programmes shall be accompanied by:

(a) evidence of the setting-up of an operational fund;

(b) a written undertaking from the producer organisation to comply with Regulation (EC) No 2200/96 and this Regulation;

(c) a written undertaking from the producer organisation and its members that they have not received, directly or indirectly, duplicate Community or national funding in respect of measures and/or operations qualifying for aid under this Regulation.

Article 10

Partial operational programmes

1. In case of application of Article 16(3) of Regulation (EC) No 2200/96, Member States may authorise recognised associations of producer organisations to present a partial operational programme of their own, which shall consist of actions identified, but not implemented by the member producer organisations in their operational programmes.

2. The same rules shall apply to partial operational programmes as to other operational programmes and they shall be considered together with the operational programmes of the member producer organisations.

3. Member States shall ensure that:

(a) the actions are fully financed from contributions of member producer organisations paid out of the operational funds of those organisations;

(b) the actions and the corresponding financial participation are listed in the operational programme of each participating producer organisation;

(c) there is no risk of duplicate aid.

Article 11

Time limit for submission

Operational programmes shall be submitted by the producer organisation for approval to the competent authority in the Member State in which the producer organisation has its headquarters on 15 September of the year preceding that in which they are to be implemented at the latest.

However, the Member States may postpone that date.

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Producer groups applying for recognition as producer organisations under Article 11(2) of Regulation (EC) No 2200/96 may at the same time submit the operational programmes referred to in the first paragraph for approval. Approval of those programmes shall be subject to obtainment of recognition no later than the final date laid down in Article 13(2).

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Article 12

Verification

The competent national authority shall verify by all appropriate means, including on-the-spot inspections:

(a) the accuracy of information provided pursuant to Article 8(1)(a), (b) and (e);

(b) compliance of the objectives of programmes with Article 15(4) of Regulation (EC) No 2200/96;

(c) eligibility of the operations and the expenditure proposed, account being taken of Article 8(2) and (3);

(d) the economic consistency and technical quality of programmes, the soundness of the estimates and the aid plan, and the planning of its implementation.

Article 13

Decision

1. The competent national authority shall, as appropriate:

(a) approve amounts of funds and programmes which meet the requirements of Articles 15 and 16 of Regulation (EC) No 2200/96 and those of this Chapter;

(b) approve the programmes, on condition that certain amendments are accepted by the producer organisation; or

(c) reject the programmes.

2. The competent national authority shall take decisions on programmes and funds on 15 December of the year in which they are submitted at the latest.

Member States shall notify the producer organisations of those decisions on 15 December at the latest.

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However, for duly justified reasons, Member States may take a decision on operational programmes and funds not later than 20 January following the date of the application. The approval decision may stipulate that expenditure is eligible from 1 January of the year following the application.

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Article 14

Amendments to operational programmes for subsequent years

1. Producer organisations may request amendments to operational programmes on 15 September at the latest to be applied from 1 January of the following year.

However, Member States may postpone the date for submitting requests.

2. Requests for amendments shall be accompanied by supporting documents giving the reason, nature and implications of the changes.

3. The competent authority shall take decisions on requests for amendments to operational programmes on 15 December at the latest, after considering the documents supplied, and in accordance with Article 12. Where a decision is not taken within that time limit, the request shall be deemed to have been rejected.

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However, for duly justified reasons, Member States may take a decision on amendments to operational programmes not later than 20 January following the date of the application. The approval decision may stipulate that expenditure is eligible from 1 January of the year following the application.

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Article 15

Amendments to operational programmes during the year

1. Member States may authorise amendments to operational programmes during the year, under conditions to be determined by them.

2. Producer organisations may be authorised by the competent national authority, during the year to:

(a) implement their operational programmes in part only;

(b) change the contents of the operational programme, including the extension of its duration up to a total duration of five years;

(c) change the amount of the operational fund up to a maximum of 20 % of the amount initially approved provided the overall objectives of the operational programme are maintained.

3. Member States shall determine the conditions under which operational programmes may be amended during the year without prior approval by the competent national authority.

However, any increase in the amount of operational fund approved for aid withdrawals as in Article 15(2)(a) of Regulation (EC) No 2200/96 shall in all cases be the subject of prior approval by the competent authority.

These changes are only eligible for aid if they are communicated by the producer organisation to the competent authority without delay.

Article 16

Operational programmes format

1. Operational programmes shall be implemented in annual periods running from 1 January to 31 December.

2. Operational programmes approved on 15 December at the latest shall be implemented as from 1 January of the following year.

The implementation of programmes approved after 15 December shall be postponed for one year.

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Where Article 13(2) or Article 14(3) are applied, and notwithstanding the first and second subparagraphs, the implementation of operational programmes approved in accordance with these provisions shall commence not later than 31 January following their approval.

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CHAPTER V

AID

Article 17

Approved amount of aid

After the programmes have been approved, Member States shall establish the approved amount of aid as referred to in the first subparagraph of Article 16(2) of Regulation (EC) No 2200/96.

Member States shall notify the producer organisations on 15 December at the latest of the approved amount of aid.

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Where Article 13(2) or Article 14(3) are applied, and notwithstanding the second subparagraph, Member States shall give notification of the approved amount of aid not later than 20 January.

Member States shall communicate to the Commission not later than 31 January the total amount of aid approved for all operational programmes.

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Article 18

Applications

1. Producer organisations shall submit an application for aid or the balance thereof to the competent authority for each operational programme for which aid is requested on 31 January of the year following that for which the aid is requested at the latest.

2. Applications shall be accompanied by supporting documents showing:

(a) the value of the marketed production;

(b) the financial contributions levied on members and paid into the operational fund;

(c) the expenditure incurred in respect of the operational programme;

(d) the proportion of the operational fund spent on the aid for market withdrawals;

(e) the level of compensation and/or supplements paid to members;

(f) compliance with the limits laid down in the third subparagraph of Article 15(3) and in Article 23(3), (4) and (5) of Regulation (EC) No 2200/96.

3. Applications may cover expenditure programmed but not incurred if the following elements are proved:

(a) the operations concerned could not be carried out on 31 December at the latest of the year of implementation of the operational programme for reasons beyond the control of the producer organisation concerned;

(b) those operations can be carried out on 30 April of the following year at the latest;

(c) an equivalent contribution from the producer organisation remains in the operational fund.

The aid shall be paid and the security lodged in accordance with Article 20(3) shall be released only on condition that proof of implementation of the programmed expenditure referred to in point (b) of the first subparagraph is provided on 30 April of the year following that for which the expenditure in question was programmed at the latest, and on the basis of the entitlement to the aid actually established.

4. Where applications are submitted after the date provided for in paragraph 1, the aid shall be reduced by 1 % for each day late.

In exceptional and duly justified cases, the competent authority may accept applications after the date provided for in paragraph 1, if the checks provided for in Article 23 have been carried out and the time limit for payment provided for in Article 19 is complied with.

Article 19

Payment of the aid

Member States shall pay the aid applied for on 30 June of the year following the year of implementation of the programme at the latest.

However, Member States may postpone this date until 15 October.

Article 20

Advance payments

1. Producer organisations may apply for the advance payment of the part of the aid corresponding to the foreseeable expenditure resulting from the operational programme during the three-month period starting in the month in which the application is submitted.

2. Applications for advance payments shall be made in January, April, July and October.

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Total advance payments made for a given year may not exceed 90 % of the initially approved amount of aid for the operational programme.

3. Advances shall be paid subject to the lodging of a security equivalent to 110 % thereof in accordance with Commission Regulation No 2220/85 ([1]).

Conditions shall be provided for by the Member States to ensure that financial contributions to the operational fund have been levied in accordance with Article 5(2) and Article 6 and previous advance payments have actually been spent.

4. Applications for the release of securities may be submitted during the year and shall be accompanied by the relevant supporting documents.

Securities shall be released in respect of up to 80 % of advances paid.

5. The primary requirement within the meaning of Article 20 of Regulation (EC) No 2220/85 shall cover the performance of the operations set out in the operational programmes subject to the undertakings provided for in Article 9(b) and (c) of this Regulation.

In the event of failure to comply with the primary requirement or of serious failure to meet the obligations provided for in Article 9(b) and (c) the security shall be forfeited, without prejudice to other penalties to be applied in accordance with Article 24.

In the event of failure to comply with other requirements, the security shall be forfeited in proportion to the gravity of the irregularity that has been established.

Article 21

Partial payments

1. Producer organisations may apply for the payment of the part of the aid corresponding to the expenditure resulting from the operational programme incurred during the three preceding months.

Applications shall be submitted in April, July and October. They shall be accompanied by suitable supporting documents.

Total payments in respect of applications for parts of the aid may not exceed 90 % of the initially approved amount of aid for the operational programme or of the real expenditure, whichever is less.

2. Producer organisations may apply for the payment of part of the aid for market withdrawals.

Applications may be submitted together with applications referred to in paragraph 1. They shall be subject to the limits laid down in the third subparagraph of Article 15(3) and in Article 23(3), (4) and (5) of Regulation (EC) No 2200/96.

CHAPTER VI

GENERAL PROVISIONS

Article 22

Producer organisation reports

1. Producer organisations shall submit annual reports, accompanying applications for aid, on the implementation of operational programmes and withdrawal operations eligible for aid under an operational fund.

Those reports shall concern the following:

(a) operational programmes implemented during the preceding year and market withdrawals;

(b) main amendments to operational programmes;

([1]) OJ L 205, 3.8.1985, p. 5.

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(c) variances between estimated aid and aid applied for.

2. For the final year of application of an operational programme, a final report shall replace the annual report referred to in paragraph 1.

Final reports shall include an assessment of the operational programmes, which may be prepared with the aid of a specialised consultancy office. They shall show to what extent the objectives pursued by the programmes have been achieved. They shall explain changes to operations and/or methods, which have been or will be considered when subsequent operational programmes are drawn up, or when existing operational programmes are amended.

Article 23

Checks

1. Member States shall carry out on-the-spot checks on producer organisations, with little or no prior notification, so as to ensure compliance with the conditions for grant of aid.

Those checks shall in particular concern:

(a) the implementation of the measures contained in the operational programme, paying particular attention to measures relating to investments;

(b) real costs and expenses incurred compared with declared aid.

2. The checks referred to in paragraph 1 shall relate to a significant sample of applications each year. The sample shall represent at least 20 % of the producer organisations and 30 % of the total aid amount.

If the checks reveal significant irregularities in a region or part of a region or for a specific producer organisation, the competent authority shall carry out additional checks during the year in question and shall increase the percentage of corresponding applications to be checked the following year.

3. The competent authority shall determine which producer organisations to check on the basis of a risk analysis and the representativeness of the aid.

The risk analysis shall take account of:

(a) the amount of aid,

(b) the trend of annual programmes in relation to the previous year,

(c) the findings of the checks in previous years,

(d) other parameters to be determined by Member States, in particular whether producer organisations are involved in a quality approach officially recognised by the Member States or by independent certifying bodies.

4. At least one check must be made on each producer organisation before the payment of the aid or the balance thereof relating to the final year of its operational programme.

Article 24

Recovery and penalties

1. Aid unduly paid or application for aid in accordance with paragraph 3 shall be recovered or withheld and penalties shall be applied to the beneficiary/applicant concerned, where:

(a) the real value of marketed production is less than the amount used to calculate the aid;

(b) the operational fund has been maintained in a manner which does not comply with the second subparagraph of Article 15(1) of Regulation (EC) No 2200/96 or has been used for purposes other than those referred to in Article 15(2) of that Regulation; or

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(c) the operational programme has been implemented in a manner which does not comply with the conditions for its approval by the Member State concerned, without prejudice to Article 14 and 15 of this Regulation.

2. Without prejudice to Article 7(4) of Council Regulation (EC) No 1258/1999 ([1]), in the case of a measure which is subsequently found to be ineligible, and which has been implemented in conformity with an operational programme approved by the Member State, the latter may pay the relevant aid due, or not proceed to the recovery of aid already paid out, if it would proceed in such a way for comparable cases financed from the national budget and if the producer organisation has not acted negligently.

3. Where paragraph 1 applies, the beneficiary of the aid/applicant shall be required:

(a) where aid has already been paid:

(i) in the case of obvious error, to reimburse the aid unduly paid, plus interest;

(ii) in the case of fraud, to reimburse double the aid unduly paid, plus interest;

(iii) in all other cases, to reimburse the aid unduly paid out, increased by 50 %, plus interest;

(b) where applications for aid have been submitted but no aid has been paid:

(i) in the case of fraud, to pay the aid unduly applied for;

(ii) in all other cases other than those of obvious error, to pay 50 % of the aid unduly applied for.

4. The interest referred to in paragraph 3(a) shall be calculated:

(a) on the basis of the period elapsing between payment and reimbursement by the beneficiary;

(b) at the rate applied by the European Central Bank to its main refinancing operations published in the 'C' series of the *Official Journal of the European Union* and in force on the date on which the undue payment is made, plus three percentage points.

5. Aid recovered in accordance with paragraph 3 shall be paid to the responsible paying agency and deducted by it from expenditure financed by the European Agricultural Guidance and Guarantee Fund.

6. In the event of a false declaration made deliberately or by serious negligence, the producers' organisation concerned shall not receive aid for the year following that in respect of which the false declaration was discovered.

Article 25

Member State provisions

Member States may adopt complementary rules to Regulation (EC) No 2200/96 and to this Regulation concerning operations or expenditure eligible for aid.

Article 26

Member State reporting

1. By ►M2 15 November ◄ of each year, Member States shall report financial and qualitative data on producer organisations, operational funds and operational programmes and checks and penalties as set out in Annex III.

([1]) OJ L 160, 26.6.1999, p. 103.

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2. Member States shall communicate to the Commission all measures and conditions provided for by them in the framework of this Regulation, and in particular:

(a) the method, procedure and information referred to in Article 8(1)(e)(i), (ii) and (iii);

(b) estimates of operational funds referred to in Article 7;

(c) details on applications for aid;

(d) conditions set for allowing amendments to be made to operational programmes during the year as provided for in Article 15;

(e) provisions made, if relevant, for the application of Article 24(2);

(f) provisions adopted under Article 25.

CHAPTER VII

REPEAL AND FINAL PROVISIONS

Article 27

Repeal

Regulation (EC) No 609/2001 is repealed.

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

Article 28

Transitional provisions

Operational programmes which were approved by Member States before the entry into force of this Regulation and which continue to apply in 2004 shall comply with this Regulation. The producer organisations shall request the necessary amendments on ►**M1** 15 October 2003 ◄ at the latest.

Member States may provide for the retention of programmes approved before the entry into force of this Regulation.

Article 29

Entry into force

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

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

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ANNEX I

Optional contents of operational programmes

1. Costs of plants in the case of perennial crops (perennials, trees and shrubs).

2. For a maximum of 10 years per action, specific costs for:

   (a) organic, integrated or experimental production ([1]);

   (b) organic plant protection materials ([2]);

   (c) environmental measures, including costs generated by the environmental management of packaging ([3]);

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   (d) quality improvement measures, including certified mycelium and plants and seed of the categories 'basic seed' and 'certified seed', as defined by Council Directive 2002/55/EC ([4]).

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   For each category of eligible specific costs referred to above, in order to calculate additional costs compared with conventional ones, Member States may fix standard flat rates in a duly justified way.

3. Overheads specifically related to the operational fund or programme ([5]) by means of the payment of a lump sum equal to 2 % of the approved operational fund and up to a maximum of EUR 180 000 ([6]). This 2 % consist of 1 % of Community aid plus 1 % from the producer organisation.

   In the case of an association of producer organisations as referred to in Article 9 of Regulation (EC) No 1432/2003 ([7]), that lump sum may be multiplied for the number of producer organisations member of that association, up to a maximum of EUR 1 250 000.

4. Personnel costs (including charges linked to wages and salaries, if these are borne by the producer organisation) resulting from measures:

   (a) to improve or maintain a high level of quality or environmental protection;

   (b) to improve the level of marketing.

   The implementation of those measures shall essentially involve the use of qualified personnel. If, in such cases, the producer organisation uses its own employees or member producers, the time worked shall be documented.

   If a Member State wishes to provide an alternative to restricting funding to the real costs, for all the eligible personnel costs referred to above, it shall fix, *ex ante* and in a duly justified way, lump sums up to a maximum of 20 % of the approved operational fund. This percentage may be increased in duly justified cases.

   In order to request those lump sums, producer organisations shall furnish proof of the implementation of the action to the satisfaction of the Member State.

5. Investments in means of transport equipped with cold-storage or controlled-atmosphere transport.

6. Additional external transport costs, compared with road haulage costs, incurred when using rail and/or ship as part of a measure to respect the environment, set by Member States per kilometre on a flat-rate basis.

7. Costs of meetings and training programmes related to implementation of actions in the operational programme, including daily allowances of partici-

([1]) The competent national authority shall lay down the eligibility criteria for an experimental production taking account of the newness of the procedure or concept and the risk involved.
([2]) Organic plant protection materials (such as pheromones and predators), whether used in organic, integrated or conventional production.
([3]) The environmental management of packaging needs to be properly justified and follow the criteria of Annex II to Directive 94/62/EC of the European Parliament and of the Council on Packaging and Packaging waste (OJ L 365, 31.12.1994, p. 10).
([4]) OJ L 193, 20.7.2002, p. 33.
([5]) Including management and personnel costs, reports and evaluation studies; the costs of keeping accounts and the management of accounts referred to in Article 3(1)(b).
([6]) Member States may restrict funding to the real costs, in which case they should define the eligible costs.
([7]) See page 18 of this Official Journal.

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pants covering transport and accommodation costs (where appropriate on a flat-rate basis).

8. Generic promotion and promotion of quality labels. Geographical names are allowed only:

   (a) if they are a protected designation of origin or a protected geographical indication, covered by Council Regulation (EEC) No 2081/92 ([1]), or

   (b) if, in all cases where the provision of point (a) does not apply, these geographical names are secondary to the principal message.

   Promotional material shall bear the emblem of the European Community (in the case of visual media only) and include the following legend: 'Campaign financed with the aid of the European Community'.

9. Promotion of producer organisations brands/trademarks.

10. Legal and administrative costs of mergers of producer organisations or their acquisition, as well as legal and administrative costs related to creating transnational producer organisations or transnational associations of producer organisations; feasibility studies and proposals commissioned by producer organisations in this respect.

11. Second-hand equipment within the conditions laid down in Rule No 4 of Commission Regulation (EC) No 1685/2000 ([2]).

12. Land not built on where purchase is necessary to carry out an investment included in the programme, within the conditions laid down in paragraphs 1 (1.1)(a), (b) and (c) and 1.2 of Rule No 5 of Regulation (EC) No 1685/2000 ([3]).

13. Leasing within the limits of the net market value of the item and within the conditions laid down in paragraph 3 of Rule No 10 of Regulation (EC) No 1685/2000.

14. Financial charges within the conditions laid down in Rule No 3 of Regulation (EC) No 1685/2000.

15. Hire as an alternative to purchase where economically justified, at the satisfaction of the Member States.

16. Real estate purchase within the conditions laid down in paragraphs 2.1, 2.2 and 2.3 of Rule No 6 of Regulation (EC) No 1685/2000.

17. Investments or actions on individual holdings, on condition that they contribute to the objectives of the operational programme. Member States shall ensure that appropriate provisions are made in order to recover the investment or its residual value if the member leaves the organisation.

18. Investments in shares of companies if the investment contributes to the achievement of the goals of the operational programme.

19. Replacements for investments, provided that the residual value of the replaced investments is:

   (a) added to the operational fund of the producer organisation, or

   (b) subtracted from the cost of the replacement.

   Investments, including those under leasing contracts, whose repayment period exceeds the length of the operational programme may be carried over to a subsequent operational programme on duly justified economic grounds, and in particular in cases where the fiscal depreciation period is longer than five years.

([1]) OJ L 27, 30.1.1997, p. 50.
([2]) OJ L 242, 27.9.2000, p. 18.
([3]) The competent national authority may set additional conditions to Rule No 5 of Regulation (EC) No 1685/2000 for the acceptance of this type of expenditure in order to avoid all speculation; these conditions may include in particular forbidding the sale of the investment/land during a minimum period and the setting of a maximum correlation between the value of the land and the value of the investment.

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ANNEX II

Ineligible operations and expenditure

1. General production costs, and in particular:
   - — seeds, mycelium and plants,
   - — plant protection products, including integrated control materials, fertilisers and other inputs,
   - — packing costs, storage costs, packaging costs, even as part of new processes, costs of packages,
   - — costs of collection or transport (internal or external),
   - — operating costs (in particular electricity, fuel and maintenance).
2. Overheads.
3. Income or price supplements.
4. Insurance costs including individual or group insurance premiums and the creation of insurance funds within a producer organisation.
5. Reimbursement (especially in the form of annual payments) of loans taken out for an operation carried out in full or in part before the beginning of the operational programme.
6. Purchase of land not built on.
7. Payments to producers, participating in meetings and training programmes, to compensate for loss of income.
8. Operations or costs relating to the quantities produced by the members of the producer organisation outside the Community.
9. Operations that could distort competition in the other economic activities of the producer organisation; operations or measures which profit directly or indirectly other economic activities of the producer organisation should be financed in proportion to their use by the sectors or products for which the producer organisation is recognised.
10. Second hand equipment.
11. Investment in means of transport to be used for marketing or distribution by the producer organisation.
12. Hire as an alternative to purchase; the operating cost of the goods hired.
13. Expenditure linked to leasing contracts (taxes, interest, insurance costs, etc.) and operating costs.
14. Promotion of individual commercial labels or containing geographic references.
15. Subcontracting contracts relating to the operations or expenditure mentioned in this list.
16. VAT and other taxes or charges within the conditions laid down in paragraph 4 of Rule No 7 of Regulation (EC) No 1685/2000.
17. Investments for the processing of fresh products (operations carried out by producer organisations concerning preparation of the product, in particular cleaning, cutting, trimming, drying and packaging, with a view to its marketing, are not deemed processing).

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ANNEX III

MEMBER STATE REPORTING REQUIREMENTS

Information to be forwarded by Member States to the Commission, according to formats provided by the Commission

Part 1: Producer organisations

1. Administrative information (including recognition number, legal form, number of physical and legal members).
2. Production information (including the calculation of the value of marketed production and information on key products).

Part 2: Operational funds and operational programmes

1. Reference period(s) used.
2. Aid estimates.
3. Applications for aid and aid payments actually made, including the percentage of operational fund spent on withdrawals.
4. Main categories of expenditure (including significant changes made in-year).

Part 3: Checks, recovery and penalties

1. Producer organisations checked.
2. Checking authority and summary including results of checks (key points only).

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