

SUBSIDIARY LEGISLATION 146.04

**AID TO PRODUCERS OF TOMATOES FOR
PROCESSING REGULATIONS**

10th September, 2004

LEGAL NOTICE 405 of 2004, as amended by Legal Notice 426 of 2012.

PART I

Preliminary

1. (1) The title of these regulations is the Aid to Producers of Tomatoes for Processing Regulations. Title and scope.

(2) The scope of these regulations is to establish the conditions concerning applications for financial aid and relevant controls in the tomato processing sector.

2. Unless the context otherwise requires, words and phrases used in these regulations shall have the same meaning as is assigned to them in regulation 2 of the 2003 Regulations, and "the 2003 Regulations" means the Approval of Processors in the Product Processing Sector Regulations. Interpretation.
S.L. 146.02

PART II

Aid Applications

3. Individual producers or producer organisations intending to benefit from financial assistance for the processing of tomatoes shall submit an aid application to the Director on the appropriate form as reproduced in the Schedule. Submission of aid applications.

4. (1) During each marketing year as established in regulation 6 of the 2003 Regulations, hereinafter in these regulations referred to as "the marketing year", only one aid application may be submitted by each individual producer or producer organisation. Mode of application.

(2) Aid applications must reach the Director by not later than the 30th November of the marketing year concerned; however the Director may, at his discretion, postpone the date for receipt of aid applications to the 15th December of the same year.

(3) An application for advance payment of the aid may be submitted by each individual producer or producer organisation under the conditions laid down in regulation 7.

5. If an aid application is received by the Director after the applicable dates referred to in regulation 4(2), the aid payable to such individual producer or producer organisation shall be reduced by 1% for each day of delay after the applicable date, and no aid shall be granted if the application is received by the Director more than fifteen days after the applicable dates referred to in regulation 4(2): Penalty for late application.

Provided that in exceptional and duly justified cases, the

Director may, at his discretion, accept aid applications after the applicable dates referred to in regulation 4(2), but only if this does not hinder effective checks on the production aid scheme. In the case provided for in this proviso, the reductions referred to in this regulation shall not apply.

Content of
applications.
Amended by:
L.N. 426 of 2012.

6. Aid applications must be signed by the individual producers or by the legal representatives of producer organisations applying for aid, and shall contain at least the following information:

- (a) the name and address of the individual producer or producer organisation;
- (b) the IACS identification number assigned to the contract for supply between the individual producer or producer organisation and the processor, as provided for by regulation 7(3) of the 2003 Regulations;
- (c) a photocopy of a legally valid identification document of the producer in the case of an application submitted by an individual producer;
- (d) the quantity of tomatoes under contract to be covered by the aid application, provided that such quantity, broken down by contract, may not exceed the quantity accepted for processing, after deduction of any reduction rates applied;
- (e) the average selling price for the quantity of tomatoes delivered under contract;
- (f) the quantity of tomatoes delivered during the same period other than under contract, and the average selling price thereof;

Provided that the Director may, at his discretion, request additional information to be submitted together with aid applications.

PART III

Payment of Aid

Advance payment
of aid.

7. (1) The Director may decide that applications for advance payment of aid may be submitted by the individual producer or producer organisation to reach the Director by not later than the 30th September of the marketing year concerned, covering the total quantity of tomatoes delivered for processing up to the 15th September of the same year.

(2) Applications for advance payment of aid as referred to in subregulation (1) shall include the information referred to in paragraphs (a) and (b), and where applicable paragraph (c) of regulation 6.

(3) The Director shall pay the amount due in advance payment of aid as provided for in this regulation to the individual producer or the producer organisation between the 16th and 31st October of the same year in which the application for advance payment of aid

was submitted, after checking the application and, in particular, taking into consideration the delivery certificates referred to in regulation 15 of the 2003 Regulations.

(4) The aid due under this regulation shall be paid in advance provided a security in the form of a bank guarantee equal to 110% of the aid is lodged with the Director. The bank guarantee must be valid for a period of six months and the Director may, at his discretion, request the extension or termination of the bank guarantee.

(5) Where it is found that the amount of advance payment of aid applied for exceeds the amount due, an amount equal to double the excess amount shall be forfeited from the security provided for in subregulation (4).

(6) Without prejudice to subregulation (5), the security provided for in subregulation (4) shall be released when the Director pays the aid, based on the application referred to in regulation 4(1).

(7) When an application for advance payment of the aid is submitted, the quantities referred to in regulation 6(d) and (f) shall be broken down into two periods, namely up to the 15th September and from the 16th September of the same year.

8. (1) The aid shall be paid by the Director to the individual producer or producer organisation signing the contract as soon as the aid application has been checked and it is established that the tomatoes covered by such application have been delivered and accepted for processing, on the basis, in particular, of the checks provided for in regulation 12(1)(a) and in regulation 13.

Payment of aid.

(2) Where aid is paid to a producer organisation, such producer organisation shall pay in full the amounts received, by cheque or bank transfer, to its members within fifteen working days following receipt of such aid.

(3) Where a producer organisation is wholly or partly made up of members which are themselves organisations with legal personality made up of individual members, payments as provided for in subregulation (2) shall be paid by such member organisations to the individual members within fifteen working days.

(4) No aid shall be granted on quantities in respect of which the necessary checks on entitlement to the aid have not been conducted.

(5) Where applicable, the aid shall be paid to individual producers or producer organisations by not later than sixty days after the date on which the application, including all the information required under regulation 6, is received and approved by the Director.

PART IV

Control Measures

9. The Director shall take the necessary steps to:

Controls by the Director.

- (a) ensure that these regulations are complied with;
- (b) prevent and prosecute irregularities and apply the penalties provided for in regulation 18(2) of the 2003 Regulations;
- (c) recover sums lost as a result of irregularities or negligence;
- (d) verify the records provided for in regulations 10 and 11;
- (e) carry out unannounced checks as referred to in regulations 12 and 13;
- (f) after sowing, carry out checks on areas sown to tomatoes as referred to in regulation 12(1) and in regulation 13;
- (g) refer to the relevant authorities cases where fraud is reasonably suspected.

Records and information to be kept by producers and producer organisations.

10. (1) Individual producers and producer organisations shall keep records for tomatoes delivered for processing, containing at least the following information:

- (a) in the case of quantities of tomatoes delivered under contract:
 - (i) the number of consignments delivered each day, and the identification number of the contract to which the consignments relate;
 - (ii) the quantity of each consignment delivered, the quantity accepted for processing, after deduction of any reduction, and the identification number of the relevant delivery certificate;
- (b) in the case of quantities of tomatoes delivered other than under contract:
 - (i) the number of consignments delivered each day, and the identity of the processor concerned;
 - (ii) the quantity of each consignment delivered and accepted for processing;
- (c) the quantities sold on the fresh market, those withdrawn from the market and stocks of the products concerned.

(2) Individual producers and producer organisations shall keep available for the national inspection authorities all the information needed for ensuring that this regulation is complied with. This information must make it possible to identify for each producer, the link between the areas, the quantities delivered, the delivery certificates, and payment of the aid and prices.

(3) The financial records, books of accounts or any related documents required under national law may be used for the purposes of this regulation, provided they contain all the information referred to in subregulation (1).

(4) Individual producers and producer organisations shall

submit to all inspections and checks deemed necessary by the Director and shall keep all additional records required by the Director for the purposes of the said necessary checks.

11. (1) The Director may decide that the records referred to in regulation 17(1) and (2) of the 2003 Regulations are to be certified in the same way as records or accounting documents required under national law.

Records and information to be kept by processors.

(2) The records or accounting documents required under national law may be used for the purposes of this regulation, provided they contain all the information referred to in regulation 17(1) and (2) of the 2003 Regulations.

12. (1) For each producer organisation delivering tomatoes for processing, the following checks shall be conducted by the competent authority for each marketing year:

Checks on producer organisations and processors.

(a) physical checks on:

- (i) at least 5% of areas planted with tomatoes intended for processing,
- (ii) at least 7% of quantities of tomatoes delivered for processing, in order to check that they tally with the certificates referred to in regulation 15 of the 2003 Regulations and comply with the minimum quality requirements as indicated in Article 19 of Regulation (EC) 1535/2003;

(b) administrative and accounting checks on at least 5% of producer members covered by contracts, in order to check that the details for each producer, in particular the areas, the total harvest, the quantity marketed by the producer organisation, the quantity delivered for processing and the quantity indicated in the delivery certificates, are consistent with the prices paid and the aid paid as provided for in regulation 8;

(c) administrative and accounting checks to verify that the total quantities of products delivered to the producer organisation by producer members as referred to in regulation 12 of the 2003 Regulations, the total quantities delivered for processing, all the delivery certificates referred to in regulation 15 of the 2003 Regulations and the total quantities stated in the aid application, tally with the prices paid and the aid paid as provided for in regulation 8;

(d) checks on all aid applications and supporting documents and crosschecks on all declared parcels.

(2) In the case of processors, the following checks shall be conducted by the competent authority for each factory and marketing year:

- (a) checks on at least 5% of finished products to verify that the applicable minimum quality standards have been complied with;

- (b) physical and accounting checks on at least 5% of finished products to verify the yield of raw materials processed into the finished product obtained under contract and otherwise than under contract;
- (c) administrative and accounting checks to verify, on the basis of the invoices issued and received and on the basis of the accounting data, that the quantity of finished product obtained from the raw materials received and the quantities of finished products purchased tally with the quantities of finished products sold;
- (d) physical and accounting checks on all stocks of finished products at least once each year, to ensure that they tally with the finished products manufactured, purchased and sold:

Provided that in the case of newly approved undertakings, such checks shall be conducted at least twice in the first year; and

- (e) administrative and accounting checks on at least 10% of payments of the prices paid.

Checks on individual producers.

13. For individual producers delivering tomatoes for processing, the following physical checks shall be conducted by the competent authority for each marketing year:

- (a) at least 5% of areas planted with tomatoes intended for processing,
- (b) at least 7% of quantities delivered for processing, in order to check that they tally with the certificates referred to in regulation 15 of the 2003 Regulations, and comply with the minimum quality requirements as indicated in Article 19 of Regulation (EC) 1535/2003.

PART V

Penalties and Aid Reductions

Aid reductions for discrepancies between the aid applied for and the amount due.

14. (1) Where it is ascertained that the aid applied for in respect of any marketing year exceeds the amount due, then that amount shall be reduced, unless the difference is, to the satisfaction of the Director, clearly due to error. This reduction in aid shall be equal to the difference between the aid applied for and the amount due. If the aid has already been paid, the beneficiary shall pay back to the Director twice the difference between the aid applied for and the amount due, plus interest calculated in accordance with regulation 18.

(2) If the difference referred to in subregulation (1) is more than 20% of the amount of aid applied for, the beneficiary shall lose entitlement to the aid and, if the aid has already been paid to such beneficiary, shall reimburse the total aid plus interest calculated in accordance with terms provided for in subregulation (1). If the difference referred to in subregulation (1) is more than

30% of the amount of aid applied for, the beneficiary shall also forfeit any entitlement to aid for the product concerned for the following three marketing years.

15. Where one of the parties to the contracts referred to in Articles 3 and 6A of Regulation (EC) 2201/96 is not in a position to comply with its contractual obligations due to the fault of the other party, the party concerned may be authorized by the Director to cancel such contracts or to transfer them, unchanged, to another approved processor in the case of an individual producer or a producer organisation, or to another producer organisation in the case of processors.

Compliance with contractual obligations.

16. (1) If the area checks referred to in regulation 12(1)(a) and in regulation 13 reveal that the area declared is larger than that actually determined, at the level of the total area checked, the aid payable shall be reduced as follows, unless the difference is, to the satisfaction of the Director, clearly due to error:

Aid reductions resulting from checks on area.

- (a) by the percentage of the discrepancy established, if it is more than 5% but no more than 20% of the area determined,
- (b) by 30% if the discrepancy is more than 20% of the area determined:

Provided that where the area declared is less than the area actually determined, and the discrepancy is more than 10% of the area determined, the aid payable shall be reduced by half the percentage of the discrepancy established.

(2) The reductions provided for in subregulation (1) shall not apply where the individual producer or producer organisation has submitted factually correct information or can prove, to the satisfaction of the Director, that it is not at fault:

Provided that the reductions provided for in subregulation (1) shall not apply to data which the individual producer, producer organisation or its members inform the competent authority in writing are incorrect or have become incorrect since the information referred to in regulation 12(1) of the 2003 Regulations was sent, provided that the individual producer, producer organisation or its members were not informed of the Director's intention to carry out an on-the-spot check and that they were not informed by the Director of any irregularity found.

(3) Where a producer organisation commits a repeated infringement, the Director shall withdraw that organisation's recognition, or preliminary recognition in the case of a producer group granted preliminary recognition.

17. (1) Except in cases of *force majeure*, where it is found that the full quantity of tomatoes accepted for processing under contract has not been processed into one of the products listed in the First Schedule to the 2003 Regulations, the processor shall pay the Director an amount equal to twice the unit amount of the aid multiplied by the quantity of the raw material concerned which has not been processed, plus interest calculated in accordance with

Penalties for discrepancies between quantities accepted for processing and quantities actually processed.

regulation 18. In addition, except in cases duly justified to the satisfaction of the Director, the processor's approval as provided for in regulation 3(6) of the 2003 Regulations shall be suspended:

- (a) for the marketing year following the finding, if the difference found between the quantity accepted for processing and the quantity actually processed is more than 10% but no more than 20% of the quantity accepted for processing;
- (b) for two marketing years following the finding, if the difference is more than 20% of the quantity accepted for processing.

For the purposes of applying paragraphs (a) and (b), any quantities of tomatoes used in the manufacture of finished products not complying with the minimum quality requirements, in excess of an 8% tolerance, shall be treated as quantities not processed.

(2) Where the conditions for applying subregulation (1) are met, the Director shall provide that such approval as referred to in regulation 3(6) of the 2003 Regulations is to be withdrawn from processors in the following cases:

- (a) where the individual producer or producer organisation makes false declarations with the collaboration of the processor;
- (b) where the processor fails to pay the price referred to in regulation 7(6)(e) of the 2003 Regulations;
- (c) where the processor fails to pay the penalties provided for in subregulation (1);
- (d) where the processor repeatedly fails to pay the penalties as provided for in subregulation (1);
- (e) where the processor fails to comply with the obligations referred to in regulation 17 of the 2003 Regulations.

The duration of the exclusion of the processor from the aid scheme shall not be for less than one marketing year and such duration shall be determined by the Director having regard to the seriousness of the failure.

Payment of
amounts
recovered.

18. (1) Amounts recovered and interest due pursuant to these regulations shall be paid to the Director and deducted from expenditure financed by the European Agricultural Guidance and Guarantee Fund.

(2) The interest rate to be applied shall be calculated in accordance with Maltese law, and shall not be lower than the interest rate generally applicable to recovery under Maltese law.

Penalties.

19. (1) The Director shall take appropriate measures to ensure the correctness of both prices paid to producers and aid paid in accordance with regulation 8.

(2) The Director shall also provide in particular for penalties to be imposed on the officers of a producer organisation

commensurate with the seriousness of any irregularity.

Amended by:
L.N. 426 of 2012.

SCHEDULE
(Regulation 3)



Minister for Rural Affairs and the
Environment

Department of Agriculture



Application No.	<i>Reg (EC) 1535/2003</i>
Date	Processed agricultural products

Application submitted by	
Legally valid identification document number	
as an individual producer ☐	or as a producer organisation ☐
Product: Tomatoes for processing ☐	Other ☐
Application for:	
<i>advance payment</i> ☐	
<i>payment of balance</i> ☐	(Advance Payment Application No.)
<i>final payment</i> ☐	

A. Applicant's details

A1. Producer Organisation	
Name of PO	
VAT No.	
Address	
.....	
Legal Representative:	
Surname	First Name
Date of birth	Legally valid identification document no.
Address	
.....	
Tel.	

A2. Individual Producer

Producer's Name

VAT No. Legally Valid Identification Document No.

Address

.....

Tel. No.

B. Method of Payment

By cheque ☐

Bank Account ☐ Bank Account No.

C. Total quantities for which aid is being requested

IACS Contract No	Processor	Contracted quantity (kg)	Consigned up to 15/9 (kg)	Consigned after 15/9 (kg)	Total quantity consigned (kg)	Average price
	TOTALS					

D. Application Summary

D1 Application for Advance Payment

Total quantity consigned before 15/9kg Average price /kg

D2 Application for payment of balance or full payment

Total quantity consignedkg Average price /kg

E. Declarations

I, the undersigned, According to European Union Regulations and the Laws of Malta hereby declare that: • I recognise and understand that penalties and sanctions are applicable if my application contains information which is incorrect or false, even if this entails loss of my right to aid given under national or community schemes. • I understand all Regulations which regulate the aid measures for fruit and vegetables, as well as the conditions stipulated in Reg (EC) 1535/2003. • I am in possession of all documentation required by community and national regulations. • that the Producer Organisation is officially recognised by authorisation No. dated • that I have submitted an application for advance payment for the current market year ? I undertake to: • permit the competent authority to carry out any necessary checks and controls. • pay back any aid received, with due interest, if I fail to observe the required conditions. I am also submitting: • a photocopy of my I.D. Card • a Bank Guarantee (only in the case of an application for advance payment)					
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