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*(Acts whose publication is obligatory)***COMMISSION REGULATION (EC) No 795/2004
of 21 april 2004****laying down detailed rules for the implementation of the single payment scheme provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) N 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 ⁽¹⁾, and in particular the second subparagraph of Article 40(5), Articles 42(4) and (9), 46(3), 52(2), 54(5), 145(c) and (d) and 155 thereof,

Whereas:

- (1) Detailed rules for the implementation of Title III of Regulation (EC) No 1782/2003 establishing the single payment scheme for farmers should be laid down.
- (2) For clarity reasons it is appropriate to provide for certain definitions. Where appropriate, definitions which already apply in similar situations and/or which have been already used for years should be used.
- (3) In order to facilitate the calculation of the unit value of the payment entitlements, it should be provided for clear rules on the round up of figures and for the possibility to split existing payment entitlements in case the size of the parcel which is declared or transferred with the entitlement only amounts to a fraction of hectares.
- (4) Specific provisions should be provided for the establishment of the national reserve and in particular the calculation of the reductions of the reference amounts or the payment entitlements, as well as the application of the reduction in cases of full or partial decoupling of the dairy premiums and additional payments referred to in Articles 95 and 96 of Regulation (EC) No 1782/2003.
- (5) Article 42(3) and (5) of Regulation (EC) No 1782/2003 provides for optional cases of allocation of payment entitlements from the national reserve. It is appropriate to provide for rules for the calculation of the number and value of the payment entitlements to be allocated in such a way. In order to allow certain flexibility to Member States which are in a better position to evaluate the situation of each farmer applying for such measures, the maximum number of entitlements to be allocated should not be higher than the number of hectares declared and its value should not be higher than an amount to be fixed by the Member State according to objective criteria. According to article 42(6) of Regulation (EC) No 1782/2003, in case of increase of the unit value of existing payment entitlements, a regional average should be respected. Member States should be allowed to establish that regional value at the appropriate territorial level. However, in no case, due to its nature of aid decoupled from the production, the amount should be differentiated or calculated in function of sectorial productions.
- (6) Under certain circumstances farmers could end up with more entitlements than land to use them, for example in case of common use of a forage area, because of the expiry of a lease or the participation to an afforestation program or by buying, in accordance to national provisions, milk reference quantities which were leased in the reference period with land. Therefore it seems appropriate to provide for a mechanism that should guarantee the farmer's support by concentrating it on the remaining available hectares. However, in order to avoid abuse of that mechanism, some conditions for the access to that mechanism should be provided for.
- (7) According to Regulation (EC) No 1782/2003 the national reserve shall be replenished via unused entitlements or, on an optional basis, via retention on sales of payments entitlements or on sales that have taken place before a certain date. It is therefore necessary to provide for a date after which the unused entitlements revert to the national reserve. For administrative reasons, it should also be provided that the payment entitlements accompanied by the authorisation to grow fruit and vegetable or table potatoes or set-aside entitlements when reverting to the national reserve should lose the accompanying obligation or authorisation. Moreover, this is also justified by the fact that that obligation or authorisation is established on the basis of

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation as amended by Regulation (EC) No 21/2004 (OJ L 5, 9.1.2004, p. 8).

- historical references and once the single payment scheme is in place it will not be possible to determine who should receive set-aside entitlements of authorisations out of the reserve as the support will be decoupled.
- (8) In case of application of the retention on sale of payment entitlements, maximum percentages and criteria of application should be established and differentiated taking into account the type of transfers and of payment entitlements to be transferred. If speculative risks exist in the first years of application of the single payment scheme, Member State may be allowed to increase the percentage of retention for sales without land. In no case the application of such retentions should result in a substantial obstacle or prohibition of transfer of payment entitlements.
- (9) In order to facilitate the administration of the national reserve, it is appropriate to provide for management of the national reserve at regional level except in cases referred to in Article 42(3) of Regulation (EC) No 1782/2003, where applicable, and in Article 42(4) of that Regulation, where Member States are obliged to allocate payment entitlements.
- (10) In order to facilitate the implementation of the single payment scheme, it is appropriate to allow Member States to proceed already in the year preceding the first year of application of the scheme to the identification of the potential beneficiaries of the scheme in particular, in case of modifications in the holding due to inheritance or legal changes and to the provisional establishment of payment entitlements.
- (11) Article 33 of Regulation (EC) No 1782/2003 allows farmers to access to the single payment scheme under specific circumstances. In order to avoid that such circumstances may be used to escape the application of the rules on normal transfers of a holding with the attached reference amounts, some conditions and definitions should be set up for the application of such circumstances.
- (12) Article 46(2) of Regulation (EC) No 1782/2003 provides that a farmer may transfer his payment entitlements without land only after he has used, within the meaning of Article 44 of that Regulation, at least 80 % of his payment entitlements during at least one calendar year. In order to take into account the transfers of land that have taken place in the period before the application of the single payment scheme, it is justified to consider the transfer of holding or part of it together with the future payment entitlements as a valid transfer of the payment entitlements with land within the meaning of Article 46 of Regulation (EC) No 1782/2003, subject to certain conditions, in particular the fact that the seller should apply for the establishment of the payment entitlements as far as that Regulation clearly provides that only those who received the direct payment in the reference period have access to the scheme.
- (13) Article 42(4) of Regulation (EC) No 1782/2003 allows the Commission to define the special situations which shall give right to the establishment of reference amounts for certain farmers finding themselves in situations which prevented them, in full or partially, from receiving direct payments in the reference period. It is therefore appropriate to list those special situations by providing for rules in order to avoid cumulating the benefit from the different allocation of payment entitlements on the same farmer without prejudice to the possibility for the Commission to add further cases where the case may be. Moreover, Member States should be given the flexibility to establish the reference amount to be allocated.
- (14) Where a Member State according to national law or well established usual practice includes in the definition of long term lease also lease for 5 years, it is appropriate to allow Member State to apply this shorter term where the case may be.
- (15) Due to the fact that dairy premiums and additional payments will be included in the single payment scheme on the basis of a different reference period than the one referred to in Article 37 of Regulation (EC) No 1782/2003, it is appropriate, for the purpose of establishing the reference amount, to take into account of dairy farmers finding themselves in a situation referred to in Article 40 of Regulation (EC) No 1782/2003 who lease, because of that situation, their individual reference quantity or part of it according to Article 16 of Regulation (EC) No 1788/2003 during the twelve-month period ending on 31 March of the first year of application of the single payment scheme.
- (16) In cases where a farmer retires or dies and provides for transferring his holding or part of it to a member of the family or inheritor who intends to continue the agricultural activity on this holding, it is appropriate to ensure that the transfer of the holding or part of it within a family can easily take place in particular, in the case where the transferred land was leased to a third person during the reference period without prejudging the possibility for the inheritor to continue the agricultural activity.
- (17) Farmers who made investments resulting in a potential increase of the amount in direct payments that they should have been granted if the single payment scheme had not been introduced should also benefit from the allocation of entitlements. Specific rules should be provided for the calculation of the payment entitlements in case a farmer already owns payment entitlements or has no hectares. In the same circumstances, farmers who bought or leased land or participated in national programmes of reconversion of production for which a direct payment under the single payment scheme could have been granted in the reference period would find themselves without payment entitlements whilst they acquired land or participated in such programmes in order to exercise an agricultural activity that could in the future still benefit from certain direct payments. Therefore it is also appropriate to provide for the allocation of payment entitlements in that case.

- (18) For the good administration of the scheme, it is appropriate to provide for rules in case of transfers of payment entitlements.
- (19) Article 46 of Regulation (EC) No 1782/2003 provides that a Member State may decide that payment entitlements may only be transferred or used within one and the same region. In order to avoid practical problems, specific rules should be provided for holdings situated in between two or more regions.
- (20) Article 43(2) of Regulation (EC) No 1782/2003 provides that all forage area in the reference period should be included in the calculation of the payment entitlements. In order to facilitate the task of the national administrations in establishing the number of forage hectares, it is appropriate to give them the possibility to take into account the number of forage area declared in the area aid application before the introduction of the single payment scheme, whilst letting the farmer the possibility to prove that his forage area in the reference period was lower.
- (21) Article 52 of Regulation (EC) No 1782/2003 allows for the production of hemp under certain conditions. It is necessary to establish the list of eligible varieties as well as to provide for the certification of those varieties.
- (22) Specific rules should be provided for the calculation of the livestock unit in case of establishment of entitlements subject to special conditions by referring to the existing conversion table provided for in the beef sector.
- (23) Specific rules are also needed to facilitate the establishment of payment entitlements in case of anticipated decoupling of the payments in the milk sector.
- (24) Pursuant to Article 54 of Regulation (EC) No 1782/2003, any set-aside entitlement accompanied by an hectare eligible for set-aside entitlement shall give right to the payment of the amount fixed by the set-aside entitlement. The minimum period for which land is to be set aside should extend at least over the growing cycle of the arable crops. However, in order to take certain specific circumstances into account, it should be possible for land set aside to be used before the minimum set-aside period expires. Provisions should also be laid down regarding environmental protection and the maintenance and utilisation of the areas set aside.
- (25) Where a Member State decides to make use of the option of regionalising the single payment scheme, specific provisions should be established in order to facilitate the calculation of the regional reference amount for holdings situated in between two or more regions, as well as in order to guarantee a full allocation of the regional amount in the first year of application of the scheme. Some of the provisions provided for by this Regulation, notably on the establishment of the national reserve, initial allocation of payment entitlements and transfer of payment entitlements should be adjusted in order to make them applicable in the regional model.
- (26) Article 69 of Regulation (EC) No 1782/2003 allows Member States, within a budgetary limit, to provide for an additional payment for specific types of farming which are important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products. It is therefore necessary to define which farmers should be concerned, how this payment should be compatible with existing measures under the rural development and to define which type of farming should be covered by the measure.
- (27) Article 58 of Regulation (EC) No 1782/2003 provides that Member States shall define the regions in accordance with objective criteria and Article 59 of that Regulation provides that Member States may proceed to a regionalisation of the single payment scheme in duly justified cases and in accordance with objective criteria. It is therefore appropriate to provide for the communication of all the necessary data and information to proceed to the assessment of such criteria.
- (28) In order to assess the application of the single payment scheme, it is appropriate to establish the modalities and deadlines for the exchange of information between the Commission and the Member States and to inform the Commission of the areas for which the aid has been paid, at national, and, where the case may be, at regional level.
- (29) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

SCOPE AND GENERAL PROVISIONS

Article 1

Subject matter and scope

This Regulation lays down detailed rules for the implementation of the single payment scheme provided for in Title III of Regulation (EC) No 1782/2003.

Article 2

Definitions

For the purposes of Title III of Regulation (EC) No 1782/2003 and of this Regulation, the following definitions shall apply:

- (a) 'agricultural area' shall mean the total area taken up by arable land, permanent pasture and permanent crops;

- (b) 'arable land' shall mean 'arable land' within the meaning of Article 2 point (1) of Commission Regulation (EC) No 795/2004 ⁽¹⁾;
- (c) 'permanent crops' shall mean non-rotational crops other than permanent pasture that occupy the land for five years or longer and yield repeated harvests including nurseries as defined in Annex I point (G/05) of Commission Decision 2000/115/EC ⁽²⁾, with the exception of multiannual crops and the nurseries of such multiannual crops;
- (d) 'multiannual crops' shall mean crops of the following products:

CN code	
0709 10 00	Artichokes
0709 20 00	Asparagus
0709 90 90	Rhubarb
0810 20	Raspberries, blackberries, mulberries and loganberries
0810 30	Black-, white or redcurrants and gooseberries
0810 40	Cranberries, bilberries and other fruits of the genus <i>Vaccinium</i>
Ex 0602 90 41	short rotation coppice
Ex 0602 90 51	<i>Miscanthus sinensis</i>
Ex 1214 90 90	<i>Phalaris arundacea</i> (Reed canary grass)

- (e) 'permanent pasture' shall mean 'permanent pasture' within the meaning of Article 2 point (2) of Commission Regulation (EC) No 795/2004;
- (f) 'grassland' shall mean arable land used for grass production (sown or natural); for the purposes of Article 61 of Regulation (EC) No 1782/2003 grassland shall include permanent pasture;
- (g) 'sale' shall mean the sale or any other definitive transfer of ownership of land or payment entitlements. The definition shall not include the sale of land where land is transferred to public authorities and/or for use in the public interest and the transfer is carried out for non agricultural purposes;
- (h) 'lease' shall mean lease or similar types of temporary transactions;
- (i) 'transfer or sale or lease of payment entitlement with land' shall mean the sale or lease of payment entitlements with, respectively, the sale or lease of a corresponding number of hectares of eligible land within the meaning of Article 44(2) held by the transferor.

In case of lease, the payment entitlements and the hectares shall be leased for the same time period.

The case where all the payment entitlements subject to special conditions referred to in Article 49(2) of Regulation (EC) No 1782/2003 are transferred shall be considered as a case of transfer of payment entitlement with land.

⁽¹⁾ OJ L 141, 30.4.2004, p.1.

⁽²⁾ OJ L 38, 12.2.2000, p.1.

- (j) 'Production unit' shall mean at least one area which gave right to direct payments in the reference period, including forage area within the meaning of Article 43(3) of Regulation (EC) No 1782/2003, or one animal which would have given right to direct payments in the reference period, accompanied, where the case may be, by a corresponding premium right;
- (k) For the purposes of Articles 37(2) and 42(3) of Regulation (EC) No 1782/2003, 'farmers commencing an agricultural activity' shall mean a natural or legal person that did not have any agricultural activity in his own name and at his own risk or must not have had the control of a legal person exercising an agricultural activity in the 5 years preceding the start of the new agricultural activity.

In case of a legal person, the natural person(s) who has the control of the legal person must not have had any agricultural activity in his own name and at his own risk or must not have had the control of a legal person exercising an agricultural activity in the 5 years preceding the start of the agricultural activity by the legal person.

Article 3

Calculation of the unit value of payment entitlements

1. Payment entitlements shall be calculated up to three decimals and rounded up or down to the nearest second decimal. If the calculation gives a result which is exactly half-way, the sum shall be rounded up to the nearest second decimal.
2. Where the size of a parcel, which is declared in accordance with Article 44(3) of Regulation (EC) No 1782/2003, or which is transferred with an entitlement in accordance with Article 46(2) of that Regulation, amounts to a fraction of an hectare, the entitlement concerned shall be declared or transferred with the land at a value calculated to the extent of the same fraction. The remaining part of the entitlement shall remain at the disposal of the farmer at a value calculated correspondingly.

CHAPTER 2

NATIONAL RESERVE

Section 1

Establishment of the national reserve

Article 4

Reductions

1. The reduction provided for in Article 42(1) of Regulation (EC) No 1782/2003 shall apply to all reference amounts after any possible reduction under Article 41(2) of that Regulation and, where applicable, after any possible reduction under Article 65(1) and the second subparagraph of Article 70(2) of that Regulation.

2. In case of application of the reduction referred to in Article 42(7) of Regulation (EC) No 1782/2003, the unit value of all payment entitlements which have been established at the date of application of the linear reduction shall be reduced proportionately.

Article 5

Dairy premiums and additional payments

1. The percentage of reduction fixed by the Member States in accordance with Article 42(1) of Regulation (EC) No 1782/2003 shall apply in 2007 to the amounts resulting from dairy premiums and additional payments to be included in the single payment scheme.

2. Where a Member State makes use of the option, provided for in the first subparagraph of Article 62 of Regulation (EC) No 1782/2003, to include in full the amounts resulting from dairy premiums and additional payments in the single payment scheme, it shall apply the percentage of reduction referred to in paragraph 1 of this Article in the year in which it makes use of that option. In the following years, the Member State concerned shall apply the reduction within the limit of the increase of the amounts provided for in Articles 95(2) and 96(2) of Regulation (EC) No 1782/2003.

3. Where a Member State makes use of the option, provided for in the first subparagraph of Article 62 of Regulation (EC) No 1782/2003, to include in part the amounts resulting from dairy premiums and additional payments in the single payment scheme, it shall apply the percentage of reduction referred to in paragraph 1 of this Article to the corresponding amounts included in the single payment scheme in the year in which it makes use of that option, taking into account the increase of the amounts provided for in Article 95(2) and 96(2) of Regulation (EC) No 1782/2003.

Section 2

Establishment of payment entitlements from the national reserve

Article 6

Establishment of payment entitlements

1. Where a Member State makes use of the options provided for in Article 42(3) and (5) of Regulation (EC) No 1782/2003, farmers may receive, in accordance with the conditions laid down in this Section and in accordance with the objective criteria laid down by the Member State concerned, payment entitlements from the national reserve.

2. When a farmer who does not own any payment entitlement applies for payment entitlements from the national reserve, he may receive a number of payment entitlements not higher than the number of hectares he holds (owned or leased) at that time.

3. When a farmer who owns payment entitlements applies for payment entitlements from the national reserve, he may receive a number of payment entitlements not higher than the number of hectares he holds for which he does not own any payment entitlement.

The unit value of each payment entitlement he already owns may be increased within the limit of the regional average referred to in paragraph 4.

Article 42(8) of Regulation (EC) No 1782/2003 shall apply to payment entitlements whose unit value has been increased by more than 20 % in accordance with the second subparagraph of this paragraph.

4. The regional average shall be established by Member States at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion. It shall be established at a date to be fixed by the Member States. It may be reviewed annually. It shall be based on the value of the payment entitlements allocated to the farmers in the region concerned. It shall not be differentiated per sector of production.

5. The value of each payment entitlement received in accordance with paragraph 2 or 3, except second subparagraph of paragraph 3, shall be calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares referred to in paragraph 2.

Article 7

Application of Article 42(5) of Regulation (EC) No 1782/2003 in case of fewer hectares than payment entitlements

1. Where a Member State makes use of the option provided for in Article 42(5) of Regulation (EC) No 1782/2003, it may in particular allocate, upon request, in accordance with this Article, payment entitlements to farmers, in the areas concerned, who declare fewer hectares than the number corresponding to payment entitlements they would be or would have been allocated in accordance with Article 43 of that Regulation.

In that case, the farmer shall give up to the national reserve all the payment entitlement he owns or should have been allocated, except set-aside entitlements and payment entitlements subject to special conditions referred to in Article 49 of Regulation (EC) No 1782/2003.

2. The number of payment entitlements allocated from the national reserve shall be equal to the number of hectares the farmer declares.

3. The five years period provided for in Article 42(8) of Regulation (EC) No 1782/2003 shall apply or, where the case may be, restart to apply to all the payment entitlements allocated.

4. The unit value of the payment entitlements allocated from the national reserve shall be calculated by dividing the farmer's reference amount by the number of hectares he declares reduced by a number of hectares equal to the number of set-aside entitlements he owns. The regional average provided for in Article 6 (4) shall not apply.

5. Paragraphs 1, 2, 3 and 4 shall not apply to a farmer who declares less than 50 % of the total number of hectares, within the meaning of Article 43(1) and (2) of Regulation (EC) No 1782/2003, which he held (leased and owned) in the reference period.

6. Paragraph 1, 2, 3 and 4 shall not apply to a farmer who declares fewer hectares than the number corresponding to payment entitlements he would be or have been allocated in accordance with Article 43 of Regulation (EC) No 1782/2003 due to the fact that he transferred those hectares by sale or lease.

7. The farmer concerned shall declare all the hectares he holds at the time of the request.

Section 3

Replenishment of the national reserve

Article 8

Unused payment entitlements

1. Without prejudice to Article 34(3) of Regulation (EC) No 1782/2003, unused payment entitlements shall revert to the national reserve on the day following the last day for modifying the application under the single payment scheme in the calendar year in which the period referred to in the second subparagraph of Article 42(8) or in Article 45(1) of Regulation (EC) No 1782/2003 expires.

For the purposes of this Article, 'unused payment entitlement' shall mean that no payment has been granted for that entitlement during the period referred to in the first subparagraph. Payment entitlements for which an application is made and accompanying an area determined within the meaning of Article 2 point (22) of Regulation (EC) No 795/2004 shall be deemed as being used.

2. Set-aside entitlements and payment entitlements accompanied by the authorisation provided for in Article 60 of Regulation (EC) No 1782/2003 when reverting to the national reserve shall lose the accompanying obligation or authorisation.

Article 9

Retention on sales of payment entitlements

1. Where a Member State makes use of the option provided for in Article 46(3) of Regulation (EC) No 1782/2003, the Member State may decide that it shall revert to the national reserve:

(a) in case of sale of payment entitlements without land, up to 30 % of the value of each payment entitlement or the equivalent amount expressed in number of payment entitlements. However during the first 3 years of application of the single payment scheme, the percentage of 30 % may be replaced by 50 %;

and/or

(b) in case of sale of payment entitlements with land, up to 10 % of the value of each payment entitlement or the equivalent amount expressed in number of payment entitlements;

and/or

(c) in case of sale of set-aside entitlements without land, up to 30 % of the value of each payment entitlement. However during the first 3 years of application of the single payment scheme, the percentage of 30 % may be replaced by 50 %;

and/or

(d) in case of sale of payment entitlements with an entire holding, up to 5 % of the value of each payment entitlement and/or the equivalent amount expressed in number of payment entitlements;

and/or

(e) in case of sale of payment entitlements to which it is linked the authorisation referred to in Article 60 of Regulation (EC) No 1782/2003, up to 10 % of the value of each payment entitlement.

In case of sale of payment entitlements with or without land to a farmer commencing an agricultural activity and in case of actual or anticipated inheritance of payment entitlements no retention shall apply.

2. When fixing the percentages referred to in paragraph 1, a Member State may differentiate the percentage within one of the cases referred to in paragraph 1 a) to e) in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

Article 10

Windfall profit clause

1. In cases referred to in Article 42(9) of Regulation (EC) No 1782/2003, the following shall revert to the national reserve:

(a) in case of sale, up to 90 % of the reference amount to be established in accordance with Article 37 of Regulation (EC)

No 1782/2003 for the seller in respect of the production units and the hectares of the holding or part of the holding transferred;

(b) in case of six-year lease, up to 50 % of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the lessor in respect of the production units and the hectares of the holding or part of the holding transferred;

(c) in case of a lease of more than six years, 5 % per any year after the six-year period but corresponding to no more than 20 % of the reference amount to be established in accordance with Article 37 of Regulation (EC) No 1782/2003 for the lessor in respect of the production units and the hectares of the holding or part of the holding transferred.

2. The payment entitlements to be established for the seller or the lessor shall be calculated in accordance with Article 43 of Regulation (EC) No 1782/2003 on the basis of the remaining reference amount and hectares.

3. Paragraph 1 shall not apply in cases where, within one year but not later than 30 April 2004 from the sale or the lease, the seller or the lessor bought or rented for six or more years another holding or part of it. In that case, the seller or the lessor shall keep a number of payment entitlements at least equal to the number of payment entitlements that the farmer may use on the new holding pursuant to Article 44 of Regulation (EC) No 1782/2003.

4. Paragraph 1 shall not apply in cases where the farmer proves, to the satisfaction of the Member State, that the price of sale or lease corresponds to the value of the holding or, in case of partial transfer of part of the holding without payment entitlements.

Section 4

Regional administration

Article 11

Regional reserves

1. Member States may administer the national reserve at regional level.

In that case, Member States may allocate, in full or in part, the amounts available at national level in accordance with Articles 4, 5, 8, 9 and 10.

2. The amounts allocated to each regional level may be considered available for allocation within the region concerned only, except in cases referred to in Article 42(4) of Regulation (EC) No 1782/2003 or, according to the Member State's choice, in case of application of Article 42(3) of that Regulation.

CHAPTER 3

ALLOCATION OF PAYMENT ENTITLEMENTS

Section 1

Initial allocation of payment entitlements

Article 12

Applications

1. Starting from the calendar year preceding the first year of application of the single payment scheme Member States may proceed to the identification of the eligible farmers referred to in Article 33 of Regulation (EC) No 1782/2003, to the provisional establishment of the amounts and the number of hectares referred to respectively in Article 34(1) (a) and (b) of that Regulation and to a preliminary verification of the conditions referred to in paragraph 5 of this Article.

2. For the provisional establishment of payment entitlements, Member States may send the application form referred to in Article 34(1) of Regulation (EC) No 1782/2003, by a date to be fixed by the Member States but not later than 15 April of the first year of application of the single payment scheme, to the farmers referred to in Article 33(1) (a) of that Regulation or, where the case may be, to the farmers identified in accordance with paragraph 1 of this Article. In this case and by the same date, farmers other than those referred to in Article 33(1) (a) of Regulation (EC) No 1782/2003 shall make an application to establish their payment entitlements.

3. Where a Member State does not make use of the option provided for in paragraph 2, the Member State shall send the application form referred to in Article 34(1) of Regulation (EC) No 1782/2003 by a date to be fixed by the Member State but not later than one month before the last date for lodging an application under the single payment scheme.

4. The definitive establishment of payment entitlements to be allocated in the first year of application of the single payment scheme shall be subject to the application under the single payment scheme in accordance with Article 34(3) of Regulation (EC) No 1782/2003.

No transfer of payment entitlements shall be possible before the definitive establishment.

5. The applicant shall prove to the satisfaction of the Member State that, at the date of application for the payment entitlements, he is a farmer within the meaning of Article 2(a) of Regulation (EC) No 1782/2003.

6. A Member State may decide to set up a minimum size per holding for which the establishment of payment entitlements may be requested. However, the minimum size shall not be higher than 0,3 ha.

No minimum size shall be set up for the establishment of the payment entitlements subject to special conditions referred to in Articles 47 to 50 of Regulation (EC) No 1782/2003.

7. A Member State may decide that the application for the definitive establishment of payment entitlements referred to in paragraph 4 may be lodged at the same time as the application for payment under the single payment scheme.

Section 2

Allocation of payment entitlements outside the national reserve

Article 13

Inheritance and anticipated inheritance

1. In cases referred to in Article 33(1)(b) of Regulation (EC) No 1782/2003, the farmer who has received the holding or part of the holding shall claim, in his name, the payment entitlements to be calculated for the holding or part of the holding received.

The number and value of the payment entitlements shall be established on the basis of the reference amount and number of hectares relating to the production units inherited.

2. In cases of revocable anticipated inheritance, the access to the single payment scheme shall be given only once to the designated inheritor by the date for lodging an application for the payment under the single payment scheme.

Succession under a contract lease or inheritance or anticipated inheritance from a farmer who is a natural person and who was a lessee of a holding or part of it, in the reference period, which would give right to payment entitlements, shall be treated as the inheritance of a holding.

3. In cases where a farmer referred to in paragraph 1 is already entitled to payment entitlements, the number and value of his payment entitlements shall be established on the basis of, respectively, the sum of the reference amounts and the sum of the number of hectares relating to his original holding and the inherited production units.

4. In cases where a farmer referred to in paragraph 1 meets the condition for applying two or more of Articles 19 to 23 of this Regulation or Articles 37(2), 40, 42(3) or 42(5) of Regulation (EC) No 1782/2003, he shall receive a number of payment entitlements not higher than the highest number between the hectares he inherited and those he declares in the first year of application of the single payment scheme and whose value shall be the highest value he may obtain by applying separately each of the Articles for which he meets the conditions.

5. For the purposes of Article 33(1)(b) of Regulation (EC) No 1782/2003 and of this Regulation, the definition in the national legislation for 'inheritance' and 'anticipated inheritance' shall be used.

Article 14

Changes in legal status or denomination

1. For the purposes of Article 33(2) of Regulation (EC) No 1782/2003, in cases of changes of legal status or denomination, the farmer shall have access to the single payment scheme under the same conditions as the farmer originally managing the holding within the limit of the payment entitlements to be allocated for the original holding under the following conditions:

- (a) the number and the value of the payment entitlements shall be established on the basis of the reference amount and number of hectares relating to the original holding;
- (b) in case of changes of the legal status of a legal person or from a natural person to a legal person or from a legal person to a natural person, the farmer managing the new holding shall be the farmer who was in control of the original holding in terms of management, benefits and financial risk;

2. Where the cases referred to in Article 33(2) of Regulation (EC) No 1782/2003 occur in the period between 1 January and the date for lodging an application in the first year of application of the single payment scheme, paragraph 1 of this Article shall apply.

Article 15

Mergers and scissions

1. For the purposes of the first subparagraph of Article 33(3) of Regulation (EC) No 1782/2003, 'merger' shall mean the merger of two or more separate farmers within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 into one new farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 controlled in terms of management, benefits and financial risks by the farmers originally managing the holdings or one of them.

The number and value of the payment entitlements shall be established on the basis of the reference amount and number of hectares relating to the original holdings.

2. For the purposes of the second subparagraph of Article 33(3) of Regulation (EC) No 1782/2003, 'scission' shall mean the scission of one farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 into at least

two new separate farmers within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 of which at least one remains controlled, in terms of management, benefits and financial risks, by at least one of the legal or natural persons originally managing the holding or the scission of one farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 into at least one new separate farmer within the meaning of Article 2 (a) of Regulation (EC) No 1782/2003 the other one remaining controlled, in terms of management, benefits and financial risks, by the farmer originally managing the holding.

The number and value of the payment entitlements shall be established on the basis of the reference amount and number of hectares relating to the transferred production units of the original holding.

3. Where the cases referred to in the first or second subparagraph of Article 33(3) of Regulation (EC) No 1782/2003 occur in the period between 1 January and the date for lodging an application in the first year of application of the single payment scheme, paragraph 1 or 2 of this Article shall apply respectively.

Article 16

Hardship cases

1. In cases referred to in Article 40(5) of Regulation (EC) No 1782/2003, where the agri-environmental commitments referred to in that Article expire after the last date for lodging an application for payment under the single payment scheme in its first year of application, the Member State shall establish, in the first year of application of the single payment scheme, reference amounts for each farmer concerned in accordance with Article 40(1), (2), (3) or (5) second subparagraph of that Regulation, provided that any double payment under those agri-environmental commitments is excluded.

Amounts of less than EUR 10 per payment entitlement or less than a total amount of EUR 100 per farmer shall not be considered a double payment.

Where the Member State concerned may not modify the amounts to be paid under those agri-environmental commitments, the farmer concerned may:

a) receive a reduced reference amount and apply, under a program to be established by the Member State according to Article 42(5) of Regulation (EC) No 1782/2003, after the expiry of his agri-environmental commitment, to adjust the unit value of his payment entitlements by a date to be fixed by the Member State but not later than, the latest date for application under the single payment scheme in the following year,

or alternatively

b) receive a full reference amount subject to the condition that he accepts to modify the amounts to be paid under those agri-environmental commitments.

2. In the case referred to in the second subparagraph of Article 40(5) of Regulation (EC) No 1782/2003, the farmer shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he declares in the first year of application of the single payment scheme.

Article 17

Private contract clause in case of sale

1. Where a sales contract concluded or modified by the last date for lodging an application under the single payment scheme in its first year of application at the latest stipulates that all the holding or part of the holding is sold, in full or in part, together with the payment entitlements to be established in accordance with Article 43 of Regulation (EC) No 1782/2003, in respect of the hectares of the holding or part of the holding transferred, the sales contract shall be considered as a transfer of the payment entitlements with land within the meaning of Article 46 of that Regulation subject to the conditions provided for in paragraph 2, 3 and 4 of this Article.

2. Articles 42(9) and 46(3) of Regulation (EC) No 1782/2003 shall apply, where the case may be, to the payment entitlements to be calculated on the basis of the production units and hectares which were the object of the contract.

3. The seller shall apply for the establishment of the payment entitlements in accordance with Article 12, adding to his application a copy of the sales contract and indicating the production units and the number of hectares for which he intends to transfer the payment entitlements.

A Member State may allow the buyer to apply on behalf of the seller and with the explicit authorisation of the seller for the establishment of the payment entitlements in accordance with Article 12. In this case the Member State shall verify that the seller fulfils the eligibility criteria provided for in Article 33 of Regulation (EC) No 1782/2003 and in particular the condition referred to in Article 12(5) of this Regulation.

4. The buyer shall apply for payment under the single payment scheme in accordance with Article 12, adding to his application a copy of the sales contract.

5. A Member State may require that the applications of the buyer and of the seller are lodged together or that the second application contains a reference to the first one.

Section 3

Allocation of payment entitlements within the national reserve

Article 18

General provisions for farmers in a special situation

1. For the purposes of Article 42(4) of Regulation (EC) No 1782/2003, 'farmers in a special situation' shall mean the farmers referred to in Articles 19 to 23 of this Regulation.

2. In cases where a farmer in a special situation meets the condition for applying two or more of Articles 19 to 23 of this Regulation or Articles 37(2), 40, 42(3) or 42(5) of Regulation (EC) No 1782/2003, he shall receive a number of payment entitlements not higher than the number of hectares he declares in the first year of application of the single payment scheme and whose value shall be the highest value he may obtain by applying separately each of the Articles for which he meets the conditions.

3. Article 6 shall not apply to farmers in a special situation, except the third subparagraph of Article 6(3).

4. In cases where the lease referred to in Articles 20 and 22 or the programs referred to in Article 23 expire after the last date for lodging an application under the single payment scheme in its first year of application, the farmer concerned may apply for the establishment of his payment entitlements, after the expiry of the lease or program, by a date to be fixed by the Member States but not later than the latest date for application under the single payment scheme in the following year.

5. Where, in accordance with their national law or well-established usual practice, the definition of long term lease also includes lease for five years, Member States may decide to apply Articles 20, 21 and 22 to those lease.

Article 19

Dairy farmers

For the purpose of establishing the reference amount of a dairy farmer finding himself in a situation referred to in Article 40 of Regulation (EC) No 1782/2003 who leases, because of that situation, his individual reference quantity or part of it according to Article 16 of Regulation (EC) No 1788/2003 during the twelve-month period ending on 31 March of the first year of application of the single payment scheme to the dairy premiums and additional payments, that individual reference quantity shall be deemed to be available on the holding of that farmer for that calendar year.

Article 20

Transfer of leased land

1. A farmer who received, by transfer free of charge or by lease for six or more years or by way of actual or anticipated inheritance, a holding or part of a holding, that was leased to a third person during the reference period, from a farmer who retired or died before the date for lodging an application under the single payment scheme in its first year of application, shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares of the holding or part of the holding he received.

2. Farmers referred to in paragraph 1 shall be any person who may receive the holding or part of the holding referred to in paragraph 1, by way of actual or anticipated inheritance.

Article 21

Investments

1. A farmer who made investments in production capacity or purchased land in accordance with the conditions laid down in paragraphs 2 to 6, by 29 September 2003 at the latest, shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he purchased.

2. Investments shall be provided for in a plan or programme whose implementation has already started by 29 September 2003 at the latest. The plan or programme shall be communicated by the farmer to the competent authority of the Member State.

Where no written plan or programs exists, Member States may take account of other objective proof of the investment.

3. The increase in the production capacity shall concern only those sectors for which a direct payment listed in Annex VI to Regulation (EC) No 1782/2003 would have been granted in the reference period taking into account the application of the options provided for in Articles 66 to 70 of that Regulation.

The purchase of land shall only concern the purchase of eligible land within the meaning of Article 44(2) of Regulation (EC) No 1782/2003.

In any case, the part of the increase in production capacity and/or the purchase of land for which the farmer is already entitled to be allocated payment entitlements and/or reference amounts for the reference period shall not be taken into account for the application of this Article.

4. Long term lease of six and more years started by 29 September 2003 at the latest shall be considered as a purchase of land for the application of paragraph 1.

5. Where a farmer already owns payment entitlements, in case of purchase or long term lease, the number of payment entitlements shall be calculated on the basis of the hectares purchased or rented and, in case of other investments, the total value of the existing payment entitlements may be increased within the limit of the reference amount referred to in paragraph 1.

6. Where a farmer has no hectares or does not own any payment entitlements, the number of payment entitlements shall be calculated by dividing the reference amount referred to in paragraph 1 by a unit value that shall not be higher than EUR 5 000.

The value of each payment entitlement shall be that unit value.

The payment entitlements shall be subject to the conditions referred to in Article 49 of Regulation (EC) No 1782/2003. The 50 % of the agricultural activity referred to in paragraph 2 of that Article shall be established by the Member State in accordance with objective criteria.

Article 22

Lease and purchase of leased land

1. A farmer who leased, between the end of the reference period and 29 September 2003 at the latest, for six or more years a holding or part of it whose lease conditions may not be adjusted shall receive payment entitlements calculated by dividing a reference amount, established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he leased.

2. Paragraph 1 shall apply to a farmer who bought, in the reference period or before, or by 29 September 2003 at the latest, a holding or part of it whose land was under a lease during the reference period, with the intention to commence or expand his agricultural activity within one year after the expiry of the lease.

Article 23

Reconversion of production

1. A farmer who participated, in the reference period and by 29 September 2003 at the latest, in national programs of reorientation of production for which a direct payment under the single payment scheme could have been granted, such as, in particular, programs of conversion of production, shall receive payment entitlements calculated by dividing a reference amount,

established by the Member State, in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion, by a number of hectares not higher than the number of hectares he declares in the first year of application of the single payment scheme.

2. Paragraph 1 shall apply to a farmer who converted during the reference period and by 29 September 2003 at the latest, his milk production into any other production of a sector referred to in Annex VI of Regulation (EC) No 1782/2003.

CHAPTER 4

SPECIFIC PROVISIONS

Section 1

Declaration and transfer of payment entitlements

Article 24

Declaration and use of payment entitlements

1. Payment entitlements may only be declared for payment, once per year, by the farmer who holds them at the latest date for lodging an application under the single payment scheme

2. Member States shall fix the beginning of the 10 month period referred to in Article 44(3) of Regulation (EC) No 1782/2003 for each individual farmer at a single date within a period to be fixed between 1st September of the calendar year preceding the year of lodging an application under the single payment scheme and 30 April of the following calendar year or leave it at the farmer's choice within the fixed period.

Article 25

Transfers of payment entitlements

1. Payment entitlements may be transferred at any time of the year.

2. The transferor shall inform the competent authority of the Member State of the transfer within a period to be established by the Member State

3. A Member State may require that the transferor shall communicate the transfer to the competent authority of the Member State where the transfer will operate, within a time period to be established by that Member State but not earlier than six weeks before the transfer shall take place and taking into account the last date for lodging an application under the single payment scheme. The transfer shall take place six weeks after the day of communication unless the competent authority objects to the transfer and notifies the transferor thereof within that period. The competent authority may only object to a transfer where the latter is not in accordance with provisions of Regulation (EC) No 1782/2003 and of this Regulation.

*Article 26***Regional limitation**

1. Where a Member State makes use of the option provided for in the third subparagraph of Article 46 (1) of Regulation (EC) No 1782/2003, Member States shall define the region at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

2. The Member State shall define the region referred to in paragraph 1 at the latest one month before the date of beginning of the 10 month period referred to in Article 44(3) of Regulation (EC) No 1782/2003.

A farmer, whose holding is situated in the region concerned, may not transfer or use outside that region his payment entitlements corresponding to the number of hectares which he declares in the first year of application of the option provided for in the third subparagraph of Article 46(1) of Regulation (EC) No 1782/2003.

A farmer, whose holding is partly situated in the region concerned, may not transfer or use outside that region his payment entitlements corresponding to the number of hectares, situated in that region, which he declares in the first year of application of the option.

3. The limitation to the transfer of payment entitlements referred to in the third subparagraph of Article 46(1) of Regulation (EC) No 1782/2003 shall not apply in case of actual or anticipated inheritance of payment entitlements without an equivalent number of eligible hectares.

4. A Member State may decide to apply the limitation to the transfer of payment entitlements referred to in the third subparagraph of Article 46 (1) of Regulation (EC) No 1782/2003 only to set-aside payment entitlements.

*Article 27***Private contract clause in case of lease**

1. Subject to paragraphs 2 and 3, a clause in a lease contract providing for the transfer of a number of entitlements not higher than the number of hectares leased shall be considered as a lease of the payment entitlements with land within the meaning of Article 46 of Regulation (EC) No 1782/2003, in cases where:

- (a) a farmer has leased to another farmer his holding or part of it no later than the date for lodging an application under the single payment scheme in its first year of application,
- (b) the lease contract expires later than the last date for lodging an application under the single payment scheme,

and

- (c) he decides to lease his payment entitlements to the farmer to whom he leased the holding or part of it.

2. The lessor shall apply for the establishment of the payment entitlements in accordance with Article 12, adding to the application a copy of the lease contract and indicating the number of hectares for which he intends to lease the payment entitlements. Where the case may be, Article 42(9) of Regulation (EC) No 1782/2003 shall apply.

3. The lessee shall apply for payment under the single payment scheme in accordance with Article 12, adding to the application a copy of the lease contract.

4. A Member State may require that the applications of the lessee and of the lessor are lodged together or that the second application contains a reference to the first one.

*Section 2***Other specific provisions***Article 28***Forage area**

For the purposes of Article 43(2) (b) of Regulation (EC) No 1782/2003, a Member State may decide to use the forage area declared by the farmer in the area aid application for 2004 or in the year preceding the first year of application of the single payment scheme unless the farmer proves, at the satisfaction of the competent authority, that his forage area in the reference period was lower.

*Article 29***Production of hemp**

For the purposes of Article 52 of Regulation (EC) No 1782/2003, the payment of the entitlements for areas on hemp shall be subject to the use of seed of the varieties listed in Annex II to Regulation (EC) No 795/2004 in the version applicable for the year in respect of which the payment is granted. In the case of hemp grown for fibre, the seed shall be certified in accordance with Council Directive 2002/57/EC ⁽¹⁾ and in particular Article 12 thereof.

*Article 30***Entitlements subject to special conditions**

1. For the purposes of calculating the agricultural activity expressed in livestock units (LU) referred to in Article 49(2) of Regulation (EC) No 1782/2003, the conversion table provided for in Article 131(2) (a) of that Regulation shall apply to the number of animals for which a direct payment referred to in Annex VI of that Regulation was granted in the reference period.

2. Male and female bovine animals of less than six months shall be converted in LU by using the coefficient 0,2.

⁽¹⁾ OJ L 193, 20.7.2002, p. 74.

3. In order to check that the minimum agricultural activity expressed in livestock units in accordance with paragraph 1 is respected, Member States shall determine the number of animals in accordance with one of the following methods:

(a) Member States shall ask each producer to declare, on the basis of his farm register, prior to a date to be determined by the Member State but not later than the date of payment, the number of LUs;

and/or

(b) Member States shall use the computerised database set up in accordance with Council Directive 92/102/EEC ⁽¹⁾ and Regulation (EC) No 1760/2000 of the European Parliament and of the Council ⁽²⁾ to determine the number of LUs on condition that the database offers, to the satisfaction of the Member State, adequate assurances as to the accuracy of the data it contains for the purposes of the single payment scheme.

4. The minimum agricultural activity requirement shall be deemed to be respected when the number of LUs reaches 50 % during a period or at certain dates to be determined by the Member States. All the animals sold or slaughtered during the calendar year concerned shall be taken into account.

5. Member States shall take the measures necessary to apply Article 29 of Regulation (EC) No 1782/2003 in the case of producers who, by means of abnormally low numbers of LUs during part of the year, artificially create the conditions required to respect the minimum agricultural activity.

Article 31

Dairy premium and additional payments

1. Where a Member State makes use of the option provided for in the first paragraph of Article 62 of Regulation (EC) No 1782/2003 in 2005 or, in case of application of Article 71 of Regulation (EC) No 1782/2003, in the first year of application of the single payment scheme:

(a) in the case where a dairy farmer received other direct payments in the reference period:

— if he had hectares in the reference period, the payment entitlements shall be calculated, in accordance with Article 43 of Regulation (EC) No 1782/2003, on the basis of all the hectares which in the reference period gave right to those direct payments including the forage area;

— if he had no hectares in the reference period, he shall receive payment entitlements subject to special conditions calculated in accordance with Article 48 of Regulation (EC) No 1782/2003;

(b) in the case where a dairy farmer did not receive other direct payments in the reference period:

— if he has hectares, the payment entitlements shall be calculated by dividing the amount to be granted under Articles 95 and 96 of Regulation (EC) No 1782/2003 by the hectares he owns in 2005 or, in case of application of Article 71 of Regulation (EC) No 1782/2003, in the first year of application of the single payment scheme;

— If he has no hectares, he shall receive payment entitlements subject to special conditions calculated in accordance with Article 48 of Regulation (EC) No 1782/2003.

2. Where a Member State makes use of the option provided for in the first subparagraph of Article 62 of Regulation (EC) No 1782/2003 in 2006, Article 50 of that Regulation shall apply.

CHAPTER 5

SET-ASIDE

Article 32

Conditions for set aside

1. Areas set aside must so remain for a period commencing on 15 January at the latest and ending on 31 August at the earliest. However, Member States shall lay down the conditions under which producers may be authorised to sow seed from 15 July for harvesting in the following year and the conditions to be met for grazing to be authorised from 15 July or, in case of exceptional climatic condition, from 15 of June in Member States where transhumance is practised traditionally.

2. Member States shall apply suitable measures compatible with the specific situation of areas set aside in order to ensure they are maintained in good agricultural and environmental condition and that the environment is protected.

Such measures may involve green cover. In that case, the measures shall ensure that the green cover cannot be used for seed production and that it cannot be used for agricultural purposes before 31 August or, before 15 January thereafter, to produce crops for marketing.

3. Paragraph 2 shall not apply to areas set aside or afforested pursuant to Articles 22, 23, 24 and 31 of Council Regulation (EC) No 1257/1999 ⁽³⁾ and counting for the purposes of compulsory set-aside, where the measures referred to in paragraph 2 prove to be incompatible with the environmental or afforestation requirements laid down in those Articles.

⁽¹⁾ OJ L 355, 5.12.1992, p. 32.

⁽²⁾ OJ L 204, 11.8.2000, p. 1.

⁽³⁾ OJ L 160, 26.6.1999, p. 80.

Article 33

Exchange of eligible land for set-aside

For the purpose of applying Article 54(5) of Regulation (EC) No 1782/2003, Member States may derogate from the first subparagraph of paragraph 2 of that Article only under the following situations and conditions:

- (a) For areas subject to a restructuring programme, defined as a 'change to the structure and/or eligible area of a holding imposed by the public authorities',
- (b) In case of one or other form of public intervention, where such intervention results in a farmer setting-aside land previously regarded as ineligible in order to continue his normal agricultural activity and the intervention in question means that land originally eligible ceases to be so with,
- (c) Where farmers are able to give relevant and objective reasons for exchanging ineligible land for eligible land on their holdings,

In these cases, Member States shall take action to prevent any significant increase in the total area eligible to set aside entitlements. This may in particular involve deeming previously eligible areas ineligible as an offsetting measure. Areas newly declared eligible by the Member States must not exceed the area newly declared ineligible by more than 5 %. The Member States may provide for a system for the prior notification and approval of such exchanges.

Article 34

Organic production

1. The exemption from set-aside provided for in Article 55 (a) of Regulation (EC) No 1782/2003 shall apply for a number of hectares not higher than the number of set-aside entitlements which a farmer received in the first year of application of the single payment scheme.

2. In case of transfer of set-aside entitlements with land, paragraph 1 shall not apply under the condition that Article 55 (a) of Regulation (EC) No 1782/2003 is respected.

CHAPTER 6

REGIONAL AND OPTIONAL IMPLEMENTATION

Section 1

Regional implementation

Article 35

General provisions

Where a Member State makes use of the options provided for in Articles 58(1) and 59(1) of Regulation (EC) No 1782/2003, save as otherwise provided for in this Section, the other provisions of this Regulation shall apply.

Article 36

Calculation of the regional ceiling

1. Where a Member State makes use of the option provided for in Articles 58(1) and 59(1) of Regulation (EC) No 1782/2003, in case of farmers whose holdings are partly situated in the region concerned, and without prejudice to Article 58(3) of that Regulation, the regional ceiling shall be calculated on the basis of the reference amount corresponding to the production units which gave right to direct payments in the reference period situated in the region concerned, or in accordance with objective criteria established by the Member State.

2. In the case referred to in paragraph 1, the individual reference amount referred to in Article 59(3) second subparagraph of Regulation (EC) No 1782/2003 shall be that which corresponds to the production units which gave right to direct payments in the reference period situated in the region concerned or established according to objective criteria established by the Member State.

3. Article 26 (2) shall apply *mutatis mutandis*.

Article 37

Establishment of the national reserve

Where a Member State makes use of the option provided for in Articles 58 and 59 of Regulation (EC) No 1782/2003, for the purpose of establishing the national reserve, the reduction referred to in Article 42(1) of that Regulation shall be applied to the ceiling referred to in Annex VIII of that Regulation and, where the case may be, adjusted before the definitive establishment of the payment entitlements as referred to in Article 38(3) of this Regulation.

Article 38

Initial allocation of payment entitlements

1. For the purposes of Article 59(2) and (3) of Regulation (EC) No 1782/2003, Member States shall establish the number of eligible hectares referred to in those paragraphs including the

grassland by using the number of hectares declared for the establishment of the payment entitlements in the first year of application of the single payment scheme.

2. By way of derogation from paragraph 1, Member States may establish the number of eligible hectares referred to in Article 59(2) and (3) of Regulation (EC) No 1782/2003 including the grassland by using the number of hectares declared in the area aid declarations for 2004 or for the year preceding the first year of application of the single payment scheme. In cases where the number of eligible hectares declared by farmers in the first year of application of the single payment scheme is lower than the number of eligible hectares established in accordance with the first subparagraph, a Member State may reallocate, in part or in full, the amounts corresponding to the hectares which have not been declared as a supplement to each payment entitlement allocated in the first year of application of the single payment scheme. The supplement shall be calculated by dividing the amount concerned by the number of payment entitlements allocated.

3. The value and number of the payment entitlements allocated on the basis of the farmers' declarations for the establishment of the payment entitlements in the first year of application of the single payment scheme shall be provisional. The definitive value and number shall be established, by 31 December of the first year of application of the single payment scheme at the latest, after the checks made pursuant to Commission Regulation (EC) No 795/2004 are carried out.

Article 39

Initial allocation of set-aside entitlements

1. For the purposes of Article 63(2) 3rd subparagraph of Regulation (EC) No 1782/2003, Member States shall establish the set-aside rate by using the data available related to the land concerned.

2. The number of hectares corresponding to the set-aside entitlements allocated in the first year of application of the single payment scheme shall not vary by a margin of more than 5 % of the average number of hectares set aside in the reference period.

Where the margin referred to in the first subparagraph is exceeded, the number of hectares shall be adjusted by 1 August of the first year of application of the single payment scheme at the latest. However, the set-aside obligation related to the new set-aside payment entitlements shall apply to the farmer concerned only starting from the following year.

Article 40

Application of Article 42(5) of Regulation (EC) No 1782/2003 in case of fewer hectares than payment entitlements

Where a Member State makes use of the option provided for in Article 59 of Regulation (EC) No 1782/2003, and it decides to apply Article 7 of this Regulation, for the purpose of the

allocation of payment entitlements in accordance with that Article 7, the number of payment entitlements to which an authorisation as referred to in Article 60 of Regulation (EC) No 1782/2003 is linked shall be equal to the initial number of payment entitlements with the authorisation and, where the case may be, no higher than the number of payment entitlements allocated.

Article 41

Establishment and transfer of payment entitlements with authorisation

1. Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, the authorisations established according to Article 60 of that Regulation shall be linked to each individual payment entitlement to be allocated to the farmer concerned.

2. In case the number of authorisation is lower than the number of payment entitlements, the authorisation shall be linked to the payment entitlements starting from those with the highest unit value. In case of transfer of the payment entitlements, the authorisation shall follow the payment entitlement to which it is linked.

3. A Member State may authorize, on farmer's request, the transfer of an authorization linked to a set-aside entitlement to a payment entitlement.

Article 42

Dairy premium and additional payments

1. Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in the first subparagraph of Article 62 of that Regulation in 2005 or, in case of application of Article 71 of Regulation (EC) No 1782/2003, in the first year of application of the single payment scheme, Articles 59(2) and (3) of that Regulation shall apply respectively.

2. Where a farmer has no hectares, he shall receive payment entitlements subject to special conditions calculated in accordance with Article 48 of Regulation (EC) No 1782/2003

3. Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in the first paragraph of Article 62 in 2006 or 2007, Articles 48, 49 and 50 of that Regulation shall apply *mutatis mutandis*.

Article 43

Set-aside

1. Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, it shall establish and communicate to farmers the set-aside rate referred to in the third subparagraph of Article 63(2) of that Regulation by 1 August of the year preceding the first year of application of the single payment scheme.

2. In case of farmers whose holding is partly situated in the region concerned by the application of Article 59 of Regulation (EC) No 1782/2003, the set aside rate shall apply to the farmer's eligible land, referred to in Article 63(2) second subparagraph of that Regulation, situated in the region concerned.

Article 44

Retention on sale of payment entitlements

Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in Article 46(3) of that Regulation, the percentages of reduction provided for in Article 9 of this Regulation shall apply after deduction from the value of the payment entitlements of a franchise equal to the regional unit value calculated in accordance with Article 59(2) or (3) of Regulation (EC) No 1782/2003.

Article 45

Windfall profit clause

Where a Member State making use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003 decides to make use of the option provided for in Article 42(9) of that Regulation, the percentages of reduction provided for in Article 10 of this Regulation shall apply to the value of each payment entitlement and/or to the equivalent amount expressed in number of payment entitlements to be allocated.

Article 46

Private contract clause

Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, for the purposes of Article 17 of this Regulation, the reference amount calculated for the production units which have been transferred shall be taken into account for the establishment of the value of all the payment entitlements of the buyer.

Article 27 shall not apply.

Section 2

Optional implementation

Article 47

Overrun of the ceilings

Where the sum of the amounts to be paid under each of the schemes provided for in Articles 66 to 69 exceeds the ceiling fixed in accordance with Article 64(2) of Regulation (EC) No 1782/2003, the amount to be paid shall be reduced proportionately in the year concerned.

Article 48

Implementation of Article 69 of Regulation (EC) No 1782/2003

1. The additional payment provided for Article 69 of Regulation (EC) No 1782/2003 shall be granted, without prejudice to Article 37(3) of Regulation (EC) No 1257/1999 and its implementing rules, under the conditions provided for in paragraphs 2 to 6 of this Article.

2. The payment shall be made only to farmers within the meaning of Article 2(a) of Regulation (EC) No 1782/2003, irrespective whether they have applied or not to the single payment scheme or they hold payment entitlements.

3. 'In the sector or sectors concerned by the retention' shall mean that the payment may be claimed, in principle, by all the farmers producing, at the time for lodging an application for the additional payment and under the conditions provided for by this Article, the products covered by the sector or sectors referred to in Annex VI to Regulation (EC) No 1782/2003.

4. In case the payment covers types of farming or quality and marketing measures for which no specific production is identified or the production is not directly covered by a sector, payment may be provided for under the condition that the retention is done in all the sectors referred to in Annex VI to Regulation (EC) No 1782/2003 and only the farmers belonging to any of the sectors referred to in that Annex shall participate to the scheme.

5. In case of application of Article 69 of Regulation (EC) No 1782/2003 at regional level, the retention shall be calculated on the basis of the component of the payments of the sectors concerned in the region concerned.

Member States shall define the region at the appropriate territorial level in accordance with objective criteria and in such a way as to ensure equal treatment between farmers and to avoid market and competition distortion.

6. Member States concerned shall communicate the details of the payment they intend to grant and, in particular, the eligibility conditions and the sectors concerned by 1 August of the year preceding the first year of application of the single payment scheme at the latest.

Any change to the communication referred to in the first subparagraph shall be done by 1 August of a given year at the latest and shall apply to the following year. It shall be immediately communicated to the Commission accompanied by the objective criteria justifying such changes. However, a Member State may not modify the sectors concerned nor the percentage of retention.

CHAPTER 7

COMMUNICATIONS*Article 49***Regionalisation**

Where a Member State makes use of the option provided for in Article 59(1) of Regulation (EC) No 1782/2003, it shall communicate to the Commission, by 1 August of the year preceding the first year of application of the single payment scheme at the latest, the justification and objective criteria on the basis of which the decision of applying that option has been taken and, where necessary, justification of the application of that Article only in a given region, or justification of the partial division provided for in paragraph 3 of that Article.

*Article 50***Payments data**

1. Member States shall communicate, by electronic means, to the Commission each year:

- (a) by 15 September of the first year of application of the single payment scheme at the latest and, in the following years, by 31 August at the latest, the total number of applications under the single payment scheme for the current year, together with the corresponding total amount of the payment entitlements giving right to payment and the total number of accompanying eligible hectares, as well as the total sum of the amounts remaining in the national reserve;

- (b) by 15 September at the latest, definitive data on the total number of applications under the single payment scheme accepted for the preceding year and the corresponding total amount of the payments which have been granted, after application, as the case may be, of the measures referred to in Articles 6, 10, 11, 24 and 25 of Regulation (EC) No 1782/2003.

2. In case of regional implementation of the single payment scheme as provided for in Article 58 of Regulation (EC) No 1782/2003, Member States shall communicate the information referred to in paragraph 1 (a) and (b) for each of the regions concerned, and, by 1 August of the first year of application of the single payment scheme at the latest, the corresponding part of the ceiling established in accordance with Article 58(3) of Regulation (EC) No 1782/2003.

For the first year of application of the single payment scheme, the information referred to in paragraph 1 (a) shall be based on the provisional payment entitlements. The same information based on the definitive payment entitlements shall be communicated by 1st March of the following year.

Chapter 8

Final provisions*Article 51***Entry into force**

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

It shall apply from 1 January 2005 except Article 12(1) and (2) which shall apply from 1st January 2004.

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

Done at Brussels, 21 April 2004

For the Commission
Franz FISCHLER
Member of the Commission