

COMMISSION REGULATION (EC) No 149/2009**of 20 February 2009****amending Regulation (EC) No 214/2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in skimmed milk powder**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

of skimmed milk powder at fixed price to a quantity offered of 109 000 tonnes for the period 1 March to 31 August.

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 43, in conjunction with Article 4 thereof,

Whereas:

(1) Article 10(1)(f) of Regulation (EC) No 1234/2007 provides for public intervention of skimmed milk powder.

(2) Commission Regulation (EC) No 214/2001 ⁽²⁾ has laid down the detailed rules concerning the public intervention of skimmed milk powder.

(3) In view of new arrangements and in the light of the experience gained, it is appropriate to amend and, where necessary, simplify the detailed rules governing intervention on the market in skimmed milk powder.

(4) Article 10(1)(f) of Regulation (EC) No 1234/2007 sets a new standard of 34 %, by weight of the fat free dry matter, for protein in skimmed milk powder, therefore the definition of the eligible product should be amended.

(5) Article 13(1)(d) in conjunction with Article 18(2)(e) of Regulation (EC) No 1234/2007 limit public intervention

(6) In order to comply with the limit of 109 000 tonnes it is appropriate to provide for a reflexion period during which, before a decision is taken on the offers, special measures can be taken applying in particular to pending offers. Those measures may consist of closure of intervention, application of an allocation percentage and rejection of pending offers. They require swift action and the Commission should be enabled to take all necessary measures without delay. In view of the public holidays in April 2009, derogation should be made as regards the dates for submitting the offers in order to ensure compliance with the limit of 109 000 tonnes to be purchased at fixed price.

(7) The level of the security shall ensure that the offers presented are not withdrawn, therefore a security of EUR 5 per 100 kg shall apply to all the tenders in the framework of this Regulation.

(8) Private storage of skimmed milk powder has been abolished by Council Regulation (EC) No 1152/2007 ⁽³⁾, the references to this scheme should be deleted.

(9) Small residual quantities, left in storehouses, should be avoided and quantities up to 5 000 kg should be offered to awarded tenderers.

(10) Regulation (EC) No 214/2001 should be amended accordingly.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of the Agricultural Markets,

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 37, 7.2.2001, p. 100.

⁽³⁾ OJ L 258, 4.10.2007, p. 3.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 214/2001 is amended as follows:

1. Article 1 is replaced by the following:

'Article 1

This Regulation lays down the detailed rules for intervention on the market in skimmed milk powder as provided for in Article 10(1)(f) of Council Regulation (EC) No 1234/2007 (*), as regards:

- (a) buying-in at fixed price as referred in Article 13(1)(d) in conjunction with Article 18(1)(c) of Regulation (EC) No 1234/2007;
- (b) buying-in under a standing invitation to tender as referred in Article 13(3) of Regulation (EC) No 1234/2007;
- (c) the sale of skimmed milk powder from public storage in a standing invitation to tender.

(*) OJ L 299, 16.11.2007, p. 1.'

2. Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

'1. The intervention agency shall buy in only skimmed milk powder which complies with Article 10(1)(f) of Regulation (EC) No 1234/2007 and paragraphs 2 to 7 of this Article and which is offered for intervention in the period from 1 March to 31 August.;

(b) paragraph 2 is replaced by the following:

'2. The competent authorities shall check the quality of skimmed milk powder using the analytical methods set out in Annex I to this Regulation on the basis of samples taken in accordance with the rules set out in Annex III to this Regulation. The checks must establish that, except authorised raw materials used for protein adjustment as referred to in Annex I(4)(b) to Council Directive 2001/114/EC (*) the skimmed milk powder does not contain other products, in particular buttermilk or whey, as defined in Annex I to this Regulation.

Protein adjustment, if applicable, shall occur in liquid phase.

However, if the Commission so agrees, Member States may set up a system of self-checking under their own supervision for certain quality requirements and certain approved undertakings.

(*) OJ L 15, 17.1.2002, p. 19.'

3. in Article 4(1), the second subparagraph is replaced by the following:

'The certificate shall contain the information referred to in points (a), (b) and (c) of Article 2(6) and a confirmation that the skimmed milk powder has been produced from skimmed milk in an approved undertaking in the Community and protein adjustment, if applicable, occurred in liquid phase, as laid down in Article 10(1)(f) of Regulation (EC) No 1234/2007.'

4. the title of Section 2 is amended as follows:

'Section 2

Procedure for buying-in at fixed price'

5. Article 5 is amended as follows:

(a) paragraph 2 is amended as follows:

- (i) The second subparagraph is deleted;
- (ii) a new subparagraph is added:

'Offers submitted on a Saturday, Sunday or public holiday shall be deemed to be received by the intervention agency on the first working day following the day on which they were submitted.

Offers submitted in the period from 6 to 13 April 2009 shall be deemed to be received by the intervention agency on 14 April 2009.'

(b) in paragraph 3, point (c) is replaced by the following:

'(c) proof is furnished that the seller has lodged a security of EUR 5 per 100 kg in the Member State in which the offer is submitted, no later than the day on which the offer is received.;

(c) a new paragraph is added:

'5. Offers may not be withdrawn after they have been received by the intervention agency.'

6. Article 6 is replaced by the following:

'Article 6

Maintenance of the offer, delivery of the skimmed milk powder to the warehouse designated by the intervention agency within the time limit laid down in Article 7(2) of this Regulation and compliance with the requirements of Article 2 of this Regulation shall constitute primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 (*).

(*) OJ L 205, 3.8.1985, p. 5.'

7. Article 7 is amended by the following:

(a) paragraph 1 is replaced by the following:

'1. After checking the offer, and on the fifth working day following the day of receipt of the offer to sell, the intervention agency shall issue a delivery order provided that the Commission does not adopt special measures in accordance with Article 9a(3).

The delivery order shall be dated and numbered and shall show:

- (a) the quantity of the skimmed milk powder to be delivered;
- (b) the final date for delivery;
- (c) the storage depot to which it must be delivered.

Delivery orders shall not be issued for quantities that had not been notified in accordance with Article 9a(1).';

(b) paragraphs 3 and 4 are replaced by the following:

'3. The security provided for in Article 5(3)(c) shall be released as soon as the seller has delivered the quantity indicated on the delivery order within the time limit laid down therein and conformity with the requirements of Article 2 has been established.

Where the skimmed milk powder does not conform to the requirements laid down in Article 2, the skimmed milk powder shall be rejected and the security shall be forfeited in respect of the quantities rejected.

4. The skimmed milk powder shall be deemed to be taken over by the intervention agency on the day when the full quantity of skimmed milk powder covered by the delivery order enters the storage depot designated by the intervention agency, but no earlier than the day after the delivery order is issued.'

8. in Article 8, paragraph 2 is deleted;

9. the following Article 9a is added in Section 2:

'Article 9a

1. Not later than 14.00 (Brussels time) each Monday, the Member States shall inform the Commission of the quantities of skimmed milk powder which, during the preceding week, have been the subject of an offer to sell in accordance with Article 5.

2. Once it is observed that the offers referred to in Article 5, in a certain year, approach 80 000 tonnes, the Commission shall inform the Member States as of which date they shall communicate the information referred to in paragraph 1 each working day before 14.00 (Brussels time) for the quantities of skimmed milk powder offered the preceding working day.

3. In order to comply with the limit referred to in Article 13(1)(d) of Regulation (EC) No 1234/2007 the Commission shall decide, without assistance of the Committee referred to in Article 195(1) of the same Regulation:

- (a) to close intervention buying-in at fixed price;
- (b) where acceptance of the full quantity offered on a certain day would lead to the maximum quantity being exceeded, to set a single percentage by which the total quantity of the offers received on that day from each seller are reduced;
- (c) where appropriate, to reject offers for which no delivery order has been issued.

By way of derogation from Article 5(5) of this Regulation, a seller which is subject to a reduced acceptance of his offer as referred in point (b) of this paragraph may decide to withdraw his offer within five working days from the publication of the regulation fixing the reduction percentage.;

10. Article 11 is replaced by the following:

'Article 11

1. The intervention agency shall choose the nearest available warehouse to the place where the skimmed milk powder is stored.

However, the intervention agency may choose another warehouse situated within a maximum distance of 350 km provided that the choice of that warehouse does not result in additional storage costs.

The intervention agency may choose a warehouse situated beyond that distance if the resulting expenditure, including storage and transport costs, is lower. In that case the intervention agency shall notify the Commission of its choice forthwith.

2. Where the intervention agency buying-in the skimmed milk powder is in a Member State other than the one in whose territory the offered skimmed milk powder is stored, no account shall be taken, in calculating the maximum distance referred to in paragraph 1 of the distance between the store of the vendor and the border of the Member State of the purchasing intervention agency.

3. Beyond the maximum distance referred to in paragraph 1, the additional transport costs borne by the intervention agency shall be EUR 0,05 per tonne and per kilometre.;

11. Article 13 is replaced by the following:

'Article 13

Where the Commission decides that skimmed milk powder is to be bought in through an open standing invitation to tender pursuant to Article 13(3) of Regulation (EC) No 1234/2007 in conjunction with 18(2)(e) of the said Regulation and in accordance with the procedure referred to in Article 195(2) thereof, Articles 2, 3, 4, 10, 11 and 12 of this Regulation shall apply unless otherwise provided in this Section.'

12. Article 14(2) is replaced by the following:

'2. The time limit for the submission of tenders in response to the individual invitations to tender shall be 11.00 (Brussels time) on the third Tuesday of the month except for the fourth Tuesday of August. If Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.'

13. in Article 15, paragraph 3 is amended as follows:

(a) point (a) is replaced by the following:

'(a) they relate to skimmed milk powder manufactured during the 31 days or, where applicable, four weeks preceding the closing date for submission of tenders as referred to in Article 14(2).';

(b) point (d) is replaced by the following:

'(d) proof is furnished that the tenderer has lodged a security of EUR 5 per 100 kg for the invitation to tender concerned, in the Member State in which the tender was submitted, before the closing date for submission of tenders.'

14. Article 16 is replaced by the following:

'Article 16

Maintenance of the offer, delivery of the skimmed milk powder to the warehouse designated by the intervention agency within the time limit laid down in Article 19(3) of this Regulation and compliance with the requirements of Article 2 thereof shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85.;

15. in Article 17, paragraph 2 is replaced by the following:

'2. In the light of the tenders received for each invitation to tender, the Commission shall fix a maximum buying-in price in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007.'

16. Article 19 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The intervention agency shall immediately issue to successful tenderers a dated and numbered delivery order indicating:

- (a) the quantity to be delivered;
- (b) the final date for delivery of the skimmed milk powder;
- (c) the storage depot to which it must be delivered.

Delivery orders shall not be issued for quantities that had not been notified in accordance with Article 17(1).;

- (b) paragraph 4 is replaced by the following:

'4. The security provided for in Article 15(3)(d) shall be released as soon as the seller has delivered the quantity indicated on the delivery order within the time limit laid down therein and conformity with the requirements of Article 2 has been established.

Where the skimmed milk powder does not conform to the requirements laid down in Article 2, the skimmed milk powder shall be rejected and the security shall be forfeited in respect of the quantities rejected.'

17. Article 20 is amended as follows:

- (a) paragraph 1 is replaced by the following:

'1. The intervention agency shall pay the successful tenderer the price indicated in his tender as referred in Article 15(2)(c) between the 120th and the 140th day following the date on which the skimmed milk powder is taken over, provided that it is found to comply with Article 2(1), (2), (3), (5), (6) and (7) and Article 15(3)(a).';

- (b) paragraph 2 is deleted.

18. in Article 22, paragraph 2 is replaced by the following:

'2. The time limit for the submission of tenders in response to the individual invitations to tender shall be

11.00 (Brussels time) on the third Tuesday of the month. However, in August it shall be 11.00 (Brussels time) on the fourth Tuesday and in December it shall be 11.00 (Brussels time) on the second Tuesday. If Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.'

19. Article 24c is amended as follows:

- (a) paragraph 6 is replaced by the following:

'6. Where after the acceptance of all successful tenders the quantity left in the warehouse is less than 5 000 kg, this remaining quantity shall be offered by the intervention agency to the successful tenderers starting with the one who offered the highest price. The successful tenderer shall be offered the option to buy the remaining quantity for the same price as the one awarded to him.';

- (b) the following paragraph is added:

'7. No later than the third working day of the week following publication of the decision referred to in Article 24a(2), Member States shall send the Commission the name and address of each tenderer corresponding to the coded number referred to in Article 24a(1).'

20. in Article 24e, the following paragraph is added:

'3. Except in cases of *force majeure*, if the successful tenderer has not complied with the requirement provided for in paragraph 2 of this Article the tendering security referred to in Article 23(3)(c) shall be forfeited and the sale of the quantities involved shall be cancelled.'

21. Chapter III is deleted;

22. Chapter IV is deleted;

23. Annex I is replaced by the text set out in the Annex to this Regulation.

Article 2

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

It shall apply from 1 March 2009.

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

Done at Brussels, 20 February 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX

‘ANNEX I

COMPOSITIONAL REQUIREMENTS, QUALITY CHARACTERISTICS AND ANALYTICAL METHODS

Parameters	Content and quality characteristics	Reference method
Protein content	Minimum 34,0 % of the non-fat dry matter	(¹)
Fat content	Maximum 1,00 %	(¹)
Water content	Maximum 3,5 %	(¹)
Titrate acidity in ml of decinormal sodium hydroxide solution	Maximum 19,5 ml	(¹)
Lactate content	Maximum 150 mg/100 g	(¹)
Additives	None	(¹)
Phosphatase test	Negative, i.e., not more than 350 mU of phosphatase activity per litre of reconstituted milk	(¹)
Solubility index	Maximum 0,5 ml (24 °C)	(¹)
Burnt-particles index	Maximum 15,0 mg, i.e. disc B minimum	(¹)
Micro-organism content	Maximum 40 000 per gram	(¹)
Detection of coliforms	Negative in 0,1 g	(¹)
Detection of buttermilk (²)	Negative (³)	(¹)
Detection of rennet whey (⁴)	None	(¹)
Detection of acid whey (⁴)	None	Method approved by the competent authority
Taste and smell	Clean	(¹)
Appearance	White or slightly yellowish colour, free from impurities and coloured particles	(¹)
Antimicrobial substances	Negative (⁵)	(¹)

(¹) The reference methods to be applied shall be those laid down in Commission Regulation (EC) No 273/2008 (OJ L 88, 29.3.2008, p. 1).

(²) “Buttermilk” means the by-product of butter manufacture obtained after churning of the cream and separation of the solid fat.

(³) The absence of buttermilk can be established either by an on-the-spot inspection of the production plan carried out without prior notice at least once a week, or by a laboratory analysis of the end product indicating a maximum of 69,31 mg of FEDP per 100 g.

(⁴) “Whey” means the by-product of cheese or casein manufacture obtained by the action of acids, rennet and/or chemico-physical processes.

(⁵) Raw milk used for the manufacture of skimmed milk powder must meet the requirements specified in Section IX of Annex III to Regulation (EC) No 853/2004.’