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REGULATION (EEC) No 1108/68 OF THE COMMISSION

of 27 July 1968

on detailed rules of application for public storage of skimmed milk powder

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 804/68[1] of 27 June 1968 on the common organisation of the market in milk and milk products, and in particular Article 7 (5) thereof;

Whereas Council Regulation No 1014/68[2] of 20 July 1968 laid down general rules for the public storage of skimmed milk powder; whereas the detailed rules of application to be laid down must include conditions for buying in by the intervention agency and for replacement on the market of the skimmed milk powder stored;

Whereas Article 1 (1) of Regulation (EEC) No 1014/68 lays down that intervention agencies shall buy in only skimmed milk powder which reaches certain standards as to keeping quality and satisfies certain requirements on minimum quantity, packaging and labelling; whereas, to ensure the rational functioning of public storage, quality and packaging requirements with a view to the disposal of stored skimmed milk powder must be laid down which correspond to those applying to international trade in first-quality skimmed milk powder;

Whereas, in accordance with Article 3 (3) of Regulation (EEC) No 1014/68, additional transport costs must be borne by the intervention agency whenever delivery is made to a storage depot further than a given distance; whereas that distance must be determined on the basis of normal conditions; whereas the flat rate for additional transport costs per metric ton/km must be fixed with reference to average costs in the Community;

Whereas Article 4 of Regulation (EEC) No 1014/68 lays down that only storage depots satisfying certain criteria shall appear on the lists of storage depots; whereas those conditions must therefore be determined;

Whereas the introduction of a Community tendering procedure requires that general rules be laid down for the execution of the various operations connected with tendering;

Whereas, to ensure equal access for all interested parties, the invitation to tender must be published in good time; whereas the maximum number of tenders will be received if each invitation to tender is published in the *Official Journal of the European Communities,* in addition to any national publicity;

Whereas tenders are facilitated if tenderers are permitted to inspect the product; whereas, therefore, it should be laid down that no claim can be accepted from tenderers as to the quality of the skimmed milk powder assigned to them;

Whereas the amount of the deposit securing fulfilment of the obligations involved in a tender can be fixed according to the tenderer's interest in accepting the award of the tender;

Whereas since the object of the tendering procedure is to obtain the best price, the award must go to the highest tender; whereas, moreover, provision must be made for several tenders being submitted at the same price;

Whereas, however, the highest price can be accepted only if it corresponds to the actual market situation; whereas, therefore, a minimum selling price should be determined in accordance with a Community procedure in the light of the tenders submitted;

Whereas, to ensure that the quantities for which a contract has been awarded are taken over as quickly as possible, it should be provided that the

[1] OJ No L 148, 28.6.1968, p. 13.
[2] OJ No L 173, 22.7.1968, p. 4.

rights and obligations arising from the sale contract must be fulfilled within a certain time limit;

Whereas, therefore, successful tenderers should be informed as soon as possible and, immediately on payment of the purchase price, supplied with a release order bearing all the necessary details;

Whereas the measures provided for in this Regulation are in accordance with the Opinion of the Management Committee for Milk and Milk products;

HAS ADOPTED THIS REGULATION:

Article 1

1. The intervention agencies shall buy in only first-quality skimmed milk powder which fulfils the conditions set out in the Annex to this Regulation as to quality packing and marking and which is not more than three months old.

2. The intervention agencies shall only buy in lots of at least 20 metric tons.

Article 2

1. The maximum distance referred to in Article 3 (2) of Regulation (EEC) No 1014/68 shall be 100 km.

2. The additional transport costs referred to in Article 3 (3) of Regulation (EEC) No 1014/68 shall be 0·025 units of account per metric ton/km.

Article 3

1. Only storage depots which:

(a) are dry and free from vermin,

(b) are free from extraneous odour,

(c) have adequate ventilation,

shall appear on the list referred to in Article 4 of Regulation (EEC) No 1014/68.

2. Products shall be stored on pallets or similar equipment.

Article 4

1. When a decision is taken to sell stored skimmed milk powder by a tendering procedure the intervention agencies shall publish an invitation to tender.

2. The invitation to tender shall specify in particular:

(a) the weight of each lot offered for sale,

(b) the age, origin and quality,

(c) the location of the stored skimmed milk powder,

(d) the period within which and the place where tenders must be submitted.

Article 5

1. The invitations to tender shall be published in the *Official Journal of the European Communities*. In addition, intervention agencies may arrange for publication elsewhere.

2. Publication in the *Official Journal of the European Communities* shall take place at least eight days before the closing date for tenders.

Article 6

The intervention agencies shall take all measures necessary to enable interested parties to inspect, prior to bidding, samples of the skimmed milk powder put on sale.

Article 7

1. Tenders shall be submitted to the intervention agency concerned by registered letter with recorded delivery, by telex or by telegram.

2. The tender shall specify:

(a) the name and address of the tenderer,

(b) the number of the invitation tender in question,

(c) the price offered per metric ton, expressed in the currency of the Member State where the skimmed milk powder is stored,

(d) any additional information required by the invitation to tender.

3. The tender shall not be valid unless:

(a) it relates to a minimum of twenty metric tons,

(b) it is accompanied by a deposit.

4. The tender shall not be valid unless it is accompanied by a statement in which the tenderer agrees to forgo any claim as to the quality or characteristics of the skimmed milk powder which may be assigned to him.

Article 8

1. The deposit shall be 10 units of account per metric ton.

2. It shall be paid either by a cheque made out to the intervention agency, or in the form of a guarantee issued by a credit institution meeting the criteria laid down by the Member State concerned.

Article 9

1. In the light of the tenders received, a minimum selling price shall be fixed for each category of skimmed milk powder in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

2. For the purposes of this Article, 'category of skimmed milk powder' means a quantity of skimmed milk powder of uniform characteristics.

Article 10

1. If the tender is for less than the minimum price valid for that category of skimmed milk powder, the tender shall be refused.

2. Without prejudice to the provisions of paragraph 1, the contract shall be awarded to the highest tender for the category in question.

If the quantity of skimmed milk powder of the category in question is not disposed of completely under that tender, the contract for the remaining quantity shall be awarded to the next highest tender.

3. However, if the procedure laid down in paragraph 2 were to result, through acceptance of a tender, in the quantity of skimmed milk powder of the category in question being exceeded, the contract shall be awarded to the tenderer concerned only for the remaining quantity of that category of skimmed milk powder.

If several tenders at the same price represent in total a quantity exceeding the awardable quantity of the category in question, that available quantity shall be divided between them proportionately to the quantity to which each of the tenders relates.

4. A tender may indicate that it should only be considered as submitted if the contract is awarded for the whole quantity specified in the tender. Such tender shall not be taken into consideration if application of the provisions of paragraph 3 would result in the contract being awarded for a quantity smaller than that indicated in the tender.

5. The rights and obligations involved in the tender shall not be transferable.

Article 11

1. Each successful tenderer shall be immediately informed by the intervention agency concerned of the decision to award him the contract.

Within eight days of receipt of that information, the successful tenderer shall pay to the intervention agency concerned the sum corresponding to his tender or to that part of it which has been accepted.

The deposit shall be returned immediately this sum has been paid.

2. Each tenderer whose tender has not been accepted shall be immediately informed thereof by the intervention agency concerned, which shall return the deposit without delay.

Article 12

1. When the sums referred to in the second subparagraph of Article 11 (1) is paid, the intervention agency shall issue a release order showing the quantity covered by the contract, where it is stored and the time limit for taking delivery.

2. The successful tenderer shall take delivery of the skimmed milk powder within twelve days following receipt of the information referred to in the first subparagraph of Article 11 (1).

Article 13

1. The deposit shall be forfeited if the tenderer:

(a) withdraws his tender before the award of the tender is decided,

(b) fails to make the payment provided for in the second subparagraph of Article 11 (1) within the specified period.

2. However, the deposit shall not be forfeited where the tender is prevented from fulfilling his obligations by circumstances to be considered as *force majeure.*

Article 14

This Regulation shall enter into force on 29 July 1968.

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

Done at Brussels, 27 July 1968.

For the Commission

The President

Jean REY

ANNEX I

Spray skimmed milk powder

1. *Quality*

(a) fat content	1·5% maximum
(b) water content	4·0% maximum
(c) total acidity in lactic acid	0·15% maximum (18° Dornic)
(d) test for neutralisation agents	negative
(e) authorised additives[1]	none
(f) phosphatase test	negative
(g) solubility	0·5 ml maximum (99% minimum)
(h) degree of purity	disc B (15·0 mg minimum)
(i) germ content[1]	50 000 per g maximum
(j) colon bacillus titer	negative in 0·1 g
(k) taste and smell	clean
(l) appearance	white or slightly yellowish colour, free from impurities or coloured particles

2. *Packing*[2]

(a) Containing a net weight of 25 km.

(b) composition of packing:
4 Kraft paper bags of a strength representing at least 70 g per m²;
1 interposed tar-lined paper bag, of a strength representing at least 140 g per m²,
1 polyethylene inner bag at least 0·06 mm thick, welded or double bound.

3. *Marking*

(a) Name and address of the producer or merchant or registered control number of the producer or merchant,

(b) description in one of the languages of the Community 'Spray skimmed milk powder',

(c) net weight,

(d) month of manufacture, possibly in code.

[1] In respect of characteristics falling within (e) and (i) each Member State may continue until 31 March 1969 to apply the provisions operative on 28 July 1968 within its own territory.
[2] Until 31 December 1968 other packings may be used, provided they offer equivalent protection.

ANNEX II

Hatmaker skimmed milk powder

1. *Quality*

(a) fat content	1·5% maximum
(b) water content	4·0% maximum
(c) total acidity in lactic acid	0·15% maximum (18° Dornic)
(d) test for neutralisation agents	negative
(e) authorised additives[1]	none
(f) phosphatase test	negative
(g) degree of purity	disc C (22·5 mg minimum)
(h) germ content[1]	50 000 per g maximum
(i) colon bacillus titer	negative in 0·1 g
(j) taste and smell	clean or slight taste of having been boiled
(k) appearance	slightly yellowish colour

2. *Packing*[2]

(a) content of a net weight of 25 km.

(b) composition of packing:
4 Kraft paper bags of a strength representing at least 70 g per m².
1 interposed tar-lined paper bag of a strength representing at least 140 g per m²;
1 polyethylene inner bag at least 0·06 mm thick, welded or double bound.

3. *Marking*

(a) Name of the producer or merchant or registered control number of the producer or merchant;

(b) description in one of the languages of the Community 'Hatmaker skimmed milk powder';

(c) net weight;

(d) month of manufacture, possibly in code.

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[1] In respect of characteristics falling within 1 (e) and (h), each Member State may continue until 31 March 1969 to apply the provisions operative on 28 July 1968 within its own territory.
[2] Until 31 December 1968 other packings may be used, provided they offer equivalent protection.