COMMISSION REGULATION (EEC) No 1844/77

of 10 August 1977

on the granting by tender of special aid for skimmed-milk powder intended as feed for animals other than young calves

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 of 27 June 1968 on the common organization of the market in milk and milk products (1), as last amended by Regulation (EEC) No 559/76 (2), and in particular Articles 10 (3) and 28 thereof,

Having regard to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (3), as last amended by Regulation (EEC) No 557/76 (4), and in particular Article 6 thereof,

Whereas Article 2a (4) of Council Regulation (EEC) No 986/68 of 15 July 1968 laying down general rules for granting aid for skimmed milk and skimmed-milk powder for use as feed (5), as last amended by Regulation (EEC) No 876/77 (6), provides that special aid may be fixed for the skimmed-milk powder referred to in Article 2 (1) (d) of that Regulation if it is used for feeding animals other than young calves ; whereas, in view of the current situation on the market in skimmed-milk powder, use should be made of this possibility and the requisite implementing rules should be laid down ;

Whereas, to fix the amount of the special aid, it would be appropriate to have recourse to a tendering procedure which takes into account the general situation on the market in skimmed-milk powder and to establish coordination with the individual sales of skimmed-milk powder from the public stocks provided for in Commission Regulation (EEC) No 368/77 of 23 February 1977 on the sale by tender of skimmed-milk powder for use in feed for pigs and poultry (7), as last amended by Regulation (EEC) No 1825/77 (8), and Commission Regulation (EEC) No 443/77 (9) of 2 March 1977 on the sale at a fixed price of skimmed-milk powder for use in feed for pigs and poultry and amending Regulations (EEC) No 1687/76 and (EEC) No 368/77 ; whereas, to make the tendering procedure more effective, a standing invitation to tender should be opened ; whereas the rules laid down in Regulation (EEC) No 368/77 for the standing invitation to tender may be applied, subject to such adjustment as is required by the particular circumstances of the granting of aid ;

Whereas, in view of the size of aid to be granted, it is necessary to take measures which will guarantee that the skimmed-milk powder is not diverted from its final use ; whereas purchasers should therefore again be made subject to the obligation provided for in Regulation (EEC) No 368/77 to denature the skimmed-milk powder or incorporate it directly in compound feedingstuffs in such a way as to exclude its use for calf feed ; whereas the denaturing methods laid down in the aforementioned Regulation should be applied ; whereas it is also advisable to provide for the lodging of a tendering and denaturing security ;

Whereas, in order to ensure equality of treatment between processors in the different Member States and to facilitate supervision of denaturing, provision should be made for tenders to be submitted to the intervention agency of the Member State in which denaturing will take place ;

Whereas a time limit should be fixed for the payment of the aid, so as to limit the financial charge upon purchasers of skimmed-milk powder and to prevent payment terms from varying substantially from one Member State to another ;

Whereas, in view of the size of the aid to be granted, the monetary compensatory amounts provided for in Regulation (EEC) No 974/71 should be altered accordingly ;

Whereas the Member States must supply the Commission with the information needed to assess the progress of the operation ;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) OJ No L 67, 15. 3. 1976, p. 9.
(3) OJ No L 106, 12. 5. 1971, p. 1.
(4) OJ No L 67, 15. 3. 1976, p. 1.
(5) OJ No L 169, 18. 7. 1968, p. 4.
(6) OJ No L 106, 29. 4. 1977, p. 25.
(7) OJ No L 52, 24. 2. 1977, p. 19.
(8) OJ No L 203, 9. 8. 1977, p. 20.
(9) OJ No L 58, 3. 3. 1977, p. 16.

HAS ADOPTED THIS REGULATION :

TITLE I

Tendering procedure

Article 1

1. Special aid shall be granted for skimmed-milk powder as referred to in Article 2 (1) (d) of Regulation (EEC) No 986/68 if it is denatured in accordance with one of the formulae referred to in Article 9 (2) of this Regulation, excluding skimmed-milk powder sold pursuant to Regulations (EEC) No 368/77 and (EEC) No 443/77.

2. The aid shall be granted by the Member State on whose territory the skimmed-milk powder is denatured.

3. The amount of the special aid shall be fixed by means of a standing invitation to tender.

Article 2

1. The intervention agencies shall draw up a notice of invitation to tender stating in particular :

(a) the time limit and place for the submission of tenders ;

(b) the formalities regarding provision of the security for tender and denaturing.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* not later than 30 August 1977.

The intervention agencies may also publish the notice elsewhere.

Article 3

1. The time limit for the submission of tenders shall expire each second Tuesday of the month at 12.00 hours. If the Tuesday falls on a public holiday the time limit shall be extended to the following working day at 12.00 hours.

2. With respect to the first individual invitation to tender, the time limit for the submission of tenders shall expire on 13 September 1977 at 12.00 hours.

Article 4

1. A tenderer may not take part in the invitation to tender unless he gives a written undertaking to denature, pursuant to Article 9 (2) and within the time limit laid down in Article 6 (2), the quantity of skimmed-milk powder specified in his tender.

2. Tenderers may participate in the individual invitation to tender either by submitting a tender in writing against acknowledgement of receipt to the intervention agency of the Member State where denaturing takes place, or by registered letter addressed to the intervention agency. Intervention agencies may authorize the use of telex.

3. Tenders shall include particulars as follows :

(a) the name and address of the tenderer ;

(b) the level of aid offered, expressed per 100 kilograms of skimmed-milk powder in the currency of the Member State in which the tender is submitted ;

(c) the quantity of skimmed-milk powder to which the aid relates and which is to be denatured within the time limit laid down in Article 6 (2).

The quantity referred to in (c) may not be less than 50 tonnes.

4. A tender shall not be valid unless the following conditions are met :

(a) it must contain the written undertakings referred to in paragraph 1 ;

(b) proof must be supplied that, before expiry of the time limit for the submission of tenders in response to the individual invitation to tender concerned, the tenderer has lodged the security for the tender and denaturing referred to in Article 5 ;

(c) it must not contain any conditions and/or reservations that are not expressly authorized.

5. A tender may not be withdrawn.

Article 5

1. The security for tender and denaturing shall be five units of account per 100 kilograms.

2. It shall be provided, at the option of the tenderer, in cash or in the form of a guarantee given by an establishment that meets the criteria laid down by the Member States with which the security is lodged.

3. The security shall be lodged in the Member State in which the tender is submitted.

Article 6

1. In accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum amount of aid, expressed per 100 kilograms of skimmed-milk powder, shall be fixed for each individual invitation to tender, account being taken of the minimum price valid pursuant to Regulation (EEC) No 368/77 for the individual invitation to tender of the month concerned, of the situation on the skimmed-milk powder and soya markets and of the quantities offered.

It may also be decided under the abovementioned procedure to make no award.

2. The amount of aid applicable to the quantity of skimmed-milk powder specified in the tender shall be valid for three months from the date of forwarding of the information specified in Article 8.

Article 7

1. A tender shall be refused if the level of aid proposed is above the maximum amount fixed for the individual invitation to tender in question.

2. Without prejudice to the provisions of paragraph 1, the successful tenderers shall be those who propose a level of aid below or equal to the maximum amount of aid fixed.

3. The rights and obligations arising from the award shall not be transferable.

Article 8

1. Each tenderer shall be informed without delay by the intervention agency, by registered letter, of the outcome of his tender.

2. If the tenderer is successful, he shall be informed of the following :

(a) the expiry of the time limit for the submission of tenders in response to the individual invitation to tender concerned ;

(b) the particulars specified in Article 4 (3) (b) and (c) ;

(c) the time limit for denaturing the quantity of skimmed-milk powder stated in the tender.

TITLE II

Denaturing of skimmed-milk powder for which special aid will be granted

Article 9

1. Within the time limit laid down in Article 6 (2), the successful tenderer shall denature the quantity of skimmed-milk powder specified in the tender.

2. Denaturing shall be carried out either :

— in accordance with one of the formulae set out in section 1 of the Annex to Regulation (EEC) No 368/77, with the rules set out in section 3 thereof, in a denaturing centre approved in accordance with Article 10 of this Regulation and meeting the conditions set out in Article 12, or

— by direct incorporation in a feedingstuff under the conditions laid down in Article 11 of this Regulation and in accordance with section 2 of the Annex to Regulation (EEC) No 368/77, with the rules set out in section 3 thereof, and in an undertaking that meets the conditions laid down in Article 12 of this Regulation.

3. A Member State may decide that, on its territory :

— the denaturing of skimmed-milk powder by direct incorporation will not be allowed,

— the products obtained from application of one or more of the denaturing formulae in section 2 of the Annex to Regulation (EEC) No 368/77 shall not be manufactured or marketed.

Article 10

1. To be approved as a denaturing centre an establishment must :

(a) have suitable equipment, a minimum capacity to be determined by the Member State concerned and administrative and accounting facilities sufficient to permit the implementation of this Regulation ;

(b) undertake not to denature skimmed-milk powder sold pursuant to Regulations (EEC) No 368/77 and (EEC) No 443/77.

However, where the establishment for which approval is requested can offer safeguards adequate for effective control to be exercised, the Member State concerned may waive condition (b) and, where appropriate, limit approval to a particular unit of the establishment in question.

2. The abovementioned minimum capacity shall not be less than 10 tonnes of skimmed-milk powder to be denatured per day pursuant to this Regulation.

3. Approval shall be withdrawn where the requirements set out in paragraph 1 are no longer met or where it is found that the undertaking concerned has been in breach of an obligation arising from this Regulation.

Article 11

1. Denaturing by direct incorporation in a feedingstuff in accordance with the conditions set out in section 2 of the Annex to Regulation (EEC) No 368/77 may be carried out only by undertakings having an establishment approved for the purpose by the competent authorities of the Member State on whose territory the establishment is situated.

2. The approval referred to in paragraph 1 shall be granted to an undertaking only in respect of an establishment :

(a) in which no compound feedingstuffs within the meaning of Article 4 of Regulation (EEC) No 990/72 are produced and in which no skimmed-milk powder sold pursuant to Regulations (EEC) No 368/77 and (EEC) No 443/77 is denatured or incorporated ;

(b) capable of regularly processing a minimum quantity of skimmed-milk powder determined by the Member State concerned ;

(c) which has suitable equipment and administrative and accounting facilities sufficient to permit the implementation of this Regulation.

However, where the establishment for which approval is requested is able to offer safeguards adequate for effective control to be exercised, the Member State concerned may waive condition (a) and, where appropriate, limit approval to a particular unit of the establishment in question.

3. Approval shall be withdrawn where the requirements set out in paragraph 2 are no longer met or where it is found that the undertaking concerned has been in breach of an obligation under this Regulation.

Article 12

The undertakings referred to in Articles 10 and 11 shall keep a daily record including at least the following particulars :

(a) intake of skimmed-milk powder and the name and address of the supplier ;

(b) date of manufacture and quantities of products obtained from one of the operations referred to in Article 9 (2), with particulars of the composition of the product and the percentages of its constituents ;

(c) date of sale of the products referred to in (b) and the name and address of the consignee ;

(d) losses, samples, returns and exchanges of skimmed-milk powder and of the products referred to in Article 9 (2) ;

(e) stocks of skimmed-milk powder at the beginning and at the end of each day.

Article 13

1. The competent authority of the Member State concerned shall be responsible for checking that denaturing or direct incorporation has been properly carried out. To this end it shall both verify accounts and provide for on-the-spot supervision. However, in the case of direct incorporation, this may be done by making frequent unannounced inspection visits.

2. The undertaking which effects the denaturing or direct incorporation shall communicate to the authority referred to in paragraph 1, in writing, in good time before denaturing or direct incorporation :

(a) its name and address ;

(b) the quantity of skimmed-milk powder to be denatured or directly incorporated, indicating the formula(e) chosen in accordance with sections 1 or 2 of the Annex to Regulation (EEC) No 368/77 ;

(c) the place where denaturing or direct incorporation is to be carried out ;

(d) the time planned for denaturing or direct incorporation.

The competent authority may request additional information.

3. A request for supervision of denaturing carried out in accordance with the first indent of Article 9 (2) shall be accepted only if the quantity of skimmed-milk powder concerned is not less than five tonnes per day of supervision. However, where application of this provision meets with difficulties in a Member State, it may be waived in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68.

4. In the case of denaturing by direct incorporation in accordance with the second indent of Article 9 (2), the costs of the supervision of this operation shall be borne by the undertaking concerned. These costs shall be fixed at a flat rate of those units of account per tonne of skimmed-milk powder and, in the case of permanent on-the-spot supervision, shall not be less than 30 units of account per day of supervision.

5. The sacks, packagings and containers used for the transport and storage of the skimmed-milk powder denatured or incorporated in accordance with Article 9 (2) shall bear the number of this Regulation and shall indicate the denaturing or incorporation formula used (formula I A to I G and II A to II K) and, in the case of direct incorporation, the percentage of skimmed-milk powder contained in the finished product.

6. Member States shall take the control measures necessary to ensure that, at the time of denaturing or direct incorporation, the skimmed-milk powder in respect of which special aid is to be granted has not previously received aid pursuant to the provisions of Regulation (EEC) No 990/72 and has not been sold under Regulation (EEC) No 368/77 of (EEC) No 443/77.

7. After checking that denaturing has been effected in accordance with this Regulation, the agency responsible for supervision of denaturing shall issue to the person concerned a denaturing certificate specifying the quantities of skimmed-milk powder that have been denatured and the date or dates of such denaturing.

TITLE III

Payment of special aid and general provisions

Article 14

Payment of the special aid shall be made on presentation of the certificate referred to in Article 13 (7) within at most one month from the date of receipt of the said certificate by the agency authorized to grant aid.

Article 15

1. Save in cases of *force majeure,* the security for tender and denaturing referred to in Article 5 shall be released only in respect of that quantity of skimmed-milk powder in respect of which :

(a) the tender was not accepted ; or

(b) the tenderer did not withdraw his tender before the decision fixing the amount of aid, and in respect of which a denaturing certificate as referred to in Article 13 (7) has been issued.

Article 16

1. In cases of *force majeure,* the provisions of Article 11 (1) of Regulation (EEC) No 1687/76 shall apply *mutatis mutandis.*

2. In cases of *force majeure* not covered by the above provisions, the intervention agency shall take such action as it considers necessary having regard to the circumstances invoked.

3. The Member States shall notify the Commission every quarter of the cases in which they have applied this Article, specifying the circumstances invoked, the quantities concerned and the action taken.

Article 17

With respect to skimmed-milk powder denatured in accordance with Article 9 (2) :

— consigned to another Member State, or

— exported to a non-member country,

a coefficient of 0·25 shall be applied to the monetary compensatory amounts fixed pursuant to Regulation (EEC) No 974/71 in respect of products falling within and any of the following subheadings of heading No 23.07 of the Common Customs Tariff : B I a) 3, a) 4, b) 3, c) 3, B II.

Article 18

Member States shall adopt the control measures necessary to ensure compliance with the provisions of this Regulation.

Article 19

In Article 4 (1) of Regulation (EEC) No 210/69, the following is added to (a) and (b) of subparagraph A II :

'showing separately the quantities of skimmed-milk powder benefiting from the special aid provided for in Regulation (EEC) No 1844/77, and specifying whether the quantities have been denatured according to the first or second indent of Article 9 (2) of the said Regulation.'

Article 20

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

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

Done at Brussels, 10 August 1977.

For the Commission

Finn GUNDELACH

Vice-President