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COMMISSION REGULATION (EC) No 214/2001

of 12 January 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

(OJ L 37, 7.2.2001, p. 100)

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		Official Journal		
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►M1	Commission Regulation (EC) No 1534/2002 of 28 August 2002	L 231	35	29.8.2002
►M2	Commission Regulation (EC) No 1931/2002 of 29 October 2002	L 295	7	30.10.2002
►M3	Commission Regulation (EC) No 2239/2002 of 16 December 2002	L 341	12	17.12.2002
►M4	Commission Regulation (EC) No 2131/2003 of 4 December 2003	L 320	3	5.12.2003
►M5	Commission Regulation (EC) No 1319/2004 of 16 July 2004	L 245	11	17.7.2004
►M6	Commission Regulation (EC) No 1339/2004 of 22 July 2004	L 249	4	23.7.2004
►M7	Commission Regulation (EC) No 1675/2004 of 24 September 2004	L 300	12	25.9.2004
►M8	Commission Regulation (EC) No 1838/2004 of 22 October 2004	L 322	3	23.10.2004

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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,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ([1]), as amended by Regulation (EC) No 1040/2000 ([2]), and in particular Article 10 thereof,

Whereas:

(1) Regulation (EC) No 1255/1999 replaced Council Regulation (EEC) No 804/68 ([3]) and also, *inter alia*, Council Regulation (EEC) No 777/87 ([4]) dealing with the buying-in arrangements for butter and skimmed-milk powder. In view of those new arrangements and in the light of the experience gained, the detailed rules governing intervention on the market in skimmed-milk powder should be amended. In the interests of clarity, therefore, the recasting of the specific regulations which previously governed the various aspects of intervention, namely Commission Regulations (EEC) No 2213/76 of 10 September 1976 on the sale of skimmed-milk powder from public storage ([5]), as last amended by Regulation (EC) No 2080/96 ([6]), (EEC) No 1362/87 of 18 May 1987 laying down detailed rules for the application of Regulation (EEC) No 777/87 with respect to the buying-in and the granting of aid for the private storage of skimmed-milk powder ([7]), as last amended by Regulation (EC) No 569/96 ([8]), (EEC) No 1158/91 of 3 May 1991 on the buying-in by tender of skimmed-milk powder to intervention agencies ([9]), as last amended by Regulation (EC) No 124/1999 ([10]), and (EC) No 322/96 of 22 February 1996 laying down detailed rules of application for the public storage of skimmed-milk powder ([11]), as last amended by Regulation (EC) No 419/98 ([12]), should be undertaken and their provisions should be brought together in a single regulation.

(2) The intervention agencies may only buy in skimmed-milk powder which meets the requirements laid down in Article 7(1) of Regulation (EC) No 1255/1999 as well as the conditions of quality and presentation, which need to be defined. The methods of analysis and detailed rules governing quality control should also be specified and, if the situation so requires, provision should be made for checks of the radioactivity in skimmed-milk powder, the maximum levels of which need to be established, where appropriate, by Community legislation.

(3) To ensure that the intervention arrangements function smoothly, it is necessary to specify the conditions for the approval of manufacturing undertakings and verification of compliance therewith. To ensure that the arrangements are effective, provision should be made for action to be taken if these conditions are not

([1]) OJ L 160, 26.6.1999, p. 48.
([2]) OJ L 118, 19.5.2000, p. 1.
([3]) OJ L 148, 28.6.1968, p. 13.
([4]) OJ L 78, 20.3.1987, p. 10.
([5]) OJ L 249, 11.9.1976, p. 6.
([6]) OJ L 279, 31.10.1996, p. 15.
([7]) OJ L 129, 19.5.1987, p. 9.
([8]) OJ L 80, 30.3.1996, p. 48.
([9]) OJ L 112, 4.5.1991, p. 65.
([10]) OJ L 16, 21.1.1999, p. 19.
([11]) OJ L 45, 23.2.1996, p. 5.
([12]) OJ L 52, 21.2.1998, p. 20.

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complied with. Since skimmed-milk powder may be bought in by an intervention agency belonging to a Member State other than that on whose territory it was produced, the intervention agency which does the buying-in should be able to verify that the conditions relating to quality and presentation are complied with in such cases.

(4) Failure to comply with such requirements should not burden the Community budget; non-compliant skimmed-milk powder should therefore be taken back by the operator, who should be made to bear the storage costs incurred.

(5) The minimum quantity offered for sale should be specified. Offers should be accompanied by a security, in order to guarantee that the offer will be maintained and that the skimmed-milk powder will be delivered within the time limits to be laid down.

(6) Under Article 7 of Regulation (EC) No 1255/1999, intervention agencies may buy in only skimmed-milk powder which has a minimum protein content. Furthermore, the buying-in price may vary according to the protein content. The method for calculating the buying-in price should be defined.

(7) Member States' obligations should be specified with a view to the proper management of stocks in storage, by stipulating a maximum distance for the place of storage and the costs to be borne when that distance is exceeded, and requiring, in particular, that stocks be accessible, that batches be identified and that skimmed-milk powder in storage be insured against risks. In order to ensure a uniform frequency and level of checks, it is necessary to specify the nature and number of inspections of storage premises to be performed by the national authorities. Since intervention agencies are bound by existing contracts for the current storage period, provision should be made whereby the new requirements to be met by storage depots regarding entry into and removal from storage will apply only to quantities of skimmed-milk powder bought into intervention from 1 September 2000.

(8) Under Article 7(2) of Regulation (EC) No 1255/1999, the buying-in of skimmed-milk powder may be suspended as soon as the quantities offered for intervention in the period from 1 March to 31 August each year exceed 109 000 tonnes. When that occurs, buying-in may be performed under a standing invitation to tender, the detailed rules for which need to be laid down. The components of the tender, particularly the minimum quantity, the time limits for submission and the maximum buying-in price should be defined. To ensure compliance with the requirements as to the quality and presentation of the skimmed-milk powder at the time of the tender and after entry into storage, tenderers should be required to submit a written undertaking to that effect, together with their tender. A security should also accompany a tender, in order to guarantee that the tender will be maintained after the closing date for submission of tenders and that the skimmed-milk powder will be delivered within certain deadlines to be laid down. Furthermore, the method used for calculating the buying-in price by reference to the protein content of the skimmed-milk powder bought in should be defined.

(9) Proper management of intervention stock requires the skimmed-milk powder to be resold as soon as outlets become available. To ensure equal access to skimmed-milk powder for sale, all interested parties should be able to buy. In order not to destabilise the market, the selling price should be fixed having regard to the market situation. Conditions for sale, entailing the lodging of a performance bond, should be laid down, particularly as regards the taking-over of the skimmed-milk powder and the time limits for payment. In order to monitor the situation of stocks, Member States should inform the Commission of the quantities of skimmed-milk powder sold.

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(10) Article 7(3) of Regulation (EC) No 1255/1999 provides for aid to be granted for the private storage of skimmed-milk powder. To ensure that the arrangements can be monitored properly, provision should be made for a contract and a set of specifications regarding storage conditions. For the same reason, detailed rules should also be laid down regarding documentation, accounting and the frequency of checks and inspection procedures, particularly in respect of the requirements laid down in Article 7(3). To facilitate checks on the presence of products stored under private storage contracts, there should be provision for them to be removed from storage in lots unless the Member State authorises removal of a smaller quantity.

(11) 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:

CHAPTER I

SCOPE

Article 1

This Regulation lays down the detailed rules for intervention on the market in skimmed-milk powder as provided for in Article 7 of Regulation (EC) No 1255/1999, as regards:

(a) buying-in at the intervention price;

(b) buying-in under a standing invitation to tender;

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(c) the sale of skimmed-milk powder from public storage in a standing invitation to tender;

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(d) the grant of private storage aid.

CHAPTER II

PUBLIC STORAGE

Section 1

Conditions for buying-in

Article 2

1. The intervention agencies shall buy in only skimmed-milk powder which complies with the first and second subparagraphs of Article 7(1) of Regulation (EC) No 1255/1999 and paragraphs 2 to 7 of this Article and which is offered for intervention in the period from 1 March to 31 August.

2. The competent authorities shall check the quality of skimmed-milk powder using the analytical methods set out in Annex I on the basis of samples taken in accordance with the rules set out in Annex III. The checks must establish that the skimmed-milk powder does not contain other products, in particular buttermilk or whey, as defined in Annex I.

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.

3. Radioactivity levels in the skimmed-milk powder may not exceed the maximum levels permitted, where applicable, under Community rules.

The level of radioactive contamination of the product shall be monitored if the situation so requires and during the period necessary only. Where necessary, the duration and scope of checks shall be determined in

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accordance with the procedure laid down in Article 42 of Regulation (EC) No 1255/1999.

4. The skimmed-milk powder must have been manufactured during the 30 days preceding the day on which the intervention agency received the offer to sell. If the skimmed-milk powder is stored in silos, it must have been manufactured during the four weeks preceding the week during which the offer was received.

5. The minimum quantity offered for sale shall be 20 tonnes. Member States may require skimmed-milk powder to be offered by the complete tonne only.

6. The skimmed-milk powder shall be put up in bags of a net weight of 25 kg meeting the requirements laid down in Annex II and showing the following particulars, where appropriate in code:

(a) the approval number identifying the factory and the Member State of manufacture;

(b) the date or, where appropriate, the week of manufacture;

(c) the number of the manufacturing batch;

(d) the description ‘spray skimmed-milk powder’.

7. The skimmed-milk powder shall be delivered on pallets suitable for long-term storage:

If delivery is on expendable pallets, the buying-in price of the skimmed-milk powder shall cover purchase of the pallet.

If delivery is on EUR palettes or palettes of a comparable quality, they shall be returned to the seller or exchanged against equivalent palettes not later than on removal from storage.

Article 3

1. Undertakings as referred to in Article 7(1) of Regulation (EC) No 1255/1999 shall be approved only if they:

(a) are approved in accordance with Article 10 of Council Directive 92/46/EEC [1], and have the appropriate technical equipment;

(b) undertake to keep permanent records in the form determined by the competent agency of each Member State, listing the origin of the raw materials, the quantities of skimmed-milk powder, buttermilk and whey obtained and the market preparation, identification and exit date of each batch of skimmed-milk powder, buttermilk and whey;

(c) agree to submit their production of skimmed-milk powder liable to be offered for intervention to a specific official inspection;

(d) undertake to inform the body responsible for inspection, at least two working days in advance, of their intention to manufacture skimmed-milk powder for public intervention; however, the Member State may set a shorter time limit.

2. To ensure compliance with this Regulation, the competent authorities shall carry out unannounced on-the-spot inspections, on the basis of the intervention skimmed-milk powder production schedule of the undertakings concerned.

They shall carry out at least:

(a) one inspection per period of 28 days of manufacture for intervention, with at least one inspection every six months, to examine the records referred to in paragraph 1(b);

(b) one inspection every six months, to verify compliance with the other approval requirements referred to in paragraph 1.

[1] OJ L 268, 14.9.1992, p. 1.

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3. Approval shall be withdrawn if the prior requirements laid down in paragraph 1(a) are no longer satisfied. Approval may be reinstated after no less than six months, at the request of the undertaking concerned, following an in-depth inspection.

Where an undertaking is found not to have complied with one of its undertakings as referred to in paragraph 1(b), (c) and (d), except in cases of *force majeure*, approval shall be suspended for a period of between 1 and 12 months, depending on the seriousness of the irregularity.

A Member State shall not impose the said suspension where it finds that the irregularity was not committed deliberately or as a result of serious negligence and that it is of minimal importance in terms of the effectiveness of the checks provided for in paragraph 2.

4. A report shall be drawn up on the inspections carried out under paragraphs 2 and 3 specifying:

(a) the date of the check;

(b) its duration;

(c) the operations carried out.

The report shall be signed by the inspector responsible and notified to the undertaking.

5. Member States shall inform the Commission of the measures taken with regard to the inspections provided for in paragraphs 2 and 3 within one month of their adoption.

Article 4

1. Where skimmed-milk powder is offered for intervention in a Member State other than that in which it was manufactured, buying-in shall be subject to presentation, no later than 45 days after the day on which the offer was received, of a certificate supplied by the competent agency of the Member State of manufacture.

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 directly and exclusively from skimmed milk, within the meaning of Article 7(5) of Regulation (EC) No 1255/1999, in an approved undertaking in the Community.

2. Where the Member State of manufacture has performed the checks referred to in Article 2(2), the certificate shall also contain the results of those checks and confirm that the product concerned is skimmed-milk powder within the meaning of Article 7(1) of Regulation (EC) No 1255/1999. In that case, the bags referred to in Article 2(6) shall be sealed with a numbered label issued by the competent authority of the Member State of manufacture. The number shall be entered on the certificate referred to in paragraph 1.

Section 2

Procedure for buying-in at the intervention price

Article 5

1. Offers shall give:

(a) the name and address of the seller;

(b) the quantity offered;

(c) the place where the skimmed-milk powder is held.

2. The intervention agency shall register the date on which the offer is received, the corresponding quantities and dates of manufacture and the place at which the skimmed-milk powder is stored.

Where buying-in at the intervention price is suspended in accordance with the first subparagraph of Article 7(2) of Regulation (EC) No

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1255/1999, reception and registration of offers shall be interrupted from the day following that on which the suspension decision is taken.

3. Offers shall be valid only if:

(a) they relate to a quantity of skimmed-milk powder meeting the requirements of Article 2(5);

(b) they are accompanied by a written undertaking by the seller to comply with Articles 2(4) and 9;

(c) proof is furnished that the seller has lodged a security of EUR 2 per 100 kg in the Member State in which the offer is submitted, no later than the day on which the offer is received.

4. The undertaking provided for in paragraph 3(b), if sent initially to the intervention agency, shall be valid by tacit renewal for subsequent offers until explicitly cancelled by the seller or the intervention agency, provided that:

(a) the original offer stipulates that the seller intends to avail himself of this provision;

(b) subsequent offers refer to this provision (by a reference to 'Article 5 (4)') and to the date of the original offer.

Article 6

Maintenance of the offer and delivery of the skimmed-milk powder to the depot designated by the intervention agency within the time limit laid down in Article 7(2) shall constitute primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 ([1]).

Article 7

1. After checking the offer, and within five working days following the day of receipt, the intervention agency shall issue a dated and numbered delivery order showing:

(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.

2. The skimmed-milk powder shall be delivered within 28 days of the day of receipt of the offer to sell. Delivery may be in several consignments.

3. The security referred to in point (c) of Article 5(3) shall be released as soon as the quantity indicated in the offer has been delivered.

However, where the checks referred to in Article 2(2) show that the skimmed-milk powder does not conform to the requirements laid down in that Article, the security shall nevertheless be released for the quantities not yet delivered.

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 offer enters the storage depot designated by the intervention agency, but no earlier than the day after the delivery order is issued.

5. Except in cases of *force majeure*, where the seller fails to deliver within the time limit laid down, not only shall the security provided for in point (c) of Article 5(3) be forfeit in proportion to the quantities not delivered, but buying-in shall also be cancelled in respect of the remaining quantities.

([1]) OJ L 205, 3.8.1985, p. 5.

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Article 8

1. The intervention agency shall pay for the skimmed-milk powder taken over between the 120th and the 140th day following the date of taking-over, provided that it is found to comply with the requirements laid down in Article 2.

2. Where the protein content of the non-fat dry matter, determined using the method described in Annex I, is 35,6 % or more, the buying-in price shall be equal to the intervention price applicable on the day on which the skimmed-milk powder was manufactured.

Where that protein content is 31,4 % or more but less than 35,6 %, the buying-in price shall be equal to the intervention price less an amount calculated as follows:

intervention price × ((0,356 – protein content) × 1,75).

Article 9

In making the offer the seller shall undertake, should the inspection show that the skimmed milk powder does not comply with the requirements laid down in Article 2:

(a) to take back the goods in question;

(b) before taking back the goods, to pay the storage costs for the quantities concerned from the date they are taken over to the date of their removal from storage.

The storage costs due shall be determined on the basis of flat-rate amounts for entry, removal and storage costs, set pursuant to Article 6 of Council Regulation (EEC) No 1883/78 ([1]).

Section 3

Entry into and removal from storage

Article 10

1. The stores referred to in the fourth subparagraph of Article 7(1) of Regulation (EC) No 1255/1999 shall:

(a) be dry, well maintained and free of vermin;

(b) be free of extraneous odours;

(c) permit good ventilation;

(d) have a capacity of at least 1 000 tonnes and removal facilities able to accommodate the removal each day of at least 3 % of the quantity stored in the depot, at a minimum rate of 100 tonnes per day. For the purposes of this requirement, only the quantities of skimmed-milk powder bought in from 1 September 2000 shall be taken into account.

The risks of storing the skimmed-milk powder shall be covered by insurance in the form of either a contractual obligation on storers or a comprehensive coverage of the liability borne by the intervention agency. The Member State may also act as its own insurer.

2. The intervention agencies shall require that the skimmed-milk powder be placed and kept in storage on pallets and in easily identifiable and readily accessible lots.

3. The competent authority responsible for inspection shall check on the presence of the products in the depot as provided for in Article 4 of Commission Regulation (EC) No 2148/96 ([2]).

([1]) OJ L 216, 5.8.1978, p. 1.
([2]) OJ L 288, 9.11.1996, p. 6.

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Article 11

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

However, it may choose another depot situated within the distance referred to in paragraph 2. It may choose a depot situated beyond that distance, taking account of storage and transport costs. In that case the intervention agency shall notify the Commission of its choice forthwith.

2. The maximum distance referred to in the third subparagraph of Article 7(1) of Regulation (EC) No 1255/1999 shall be 350 km. Beyond that distance, the additional transport costs borne by the intervention agency shall be EUR 0,05 per tonne and per kilometre.

However, where the intervention agency buying in the skimmed-milk powder offered for sale is in a Member State other than that in whose territory it is stored, no account shall be taken of the distance between the storage depot of the seller and the border of the Member State of the purchasing intervention agency when calculating the maximum distance referred to in the first subparagraph.

Article 12

1. At the time of removal from storage, the intervention agency shall make the skimmed-milk powder available on pallets at the depot's loading bay, loaded onto the means of transport but not stowed.

Where the skimmed-milk powder is made available on EUR pallets or pallets of comparable quality, the buyer shall return equivalent pallets to the intervention agency on removal from storage.

2. The stowage costs and any depalletising costs shall be borne by the buyer of the skimmed milk powder. These costs shall be fixed by the Member State on a flat-rate basis and notified on request to interested parties. The Commission shall be informed thereof within one month following adoption of this Regulation and prior to any changes subsequently made.

Section 4

Special rules applicable to buying-in by tendering procedure

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 7(2) of Regulation (EC) No 1255/1999 and in accordance with the procedure under Article 42 thereof, Articles 2, 3, 4, 10, 11 and 12 of this Regulation shall apply unless otherwise provided in this section.

Article 14

1. Notices of invitation to tender shall be published in the *Official Journal of the European Communities*.

2. The period for the submission of tenders for each round shall expire at 12 noon (Brussels time), on the second and fourth Tuesdays of the month, except for the second Tuesday in August. If the Tuesday is a public holiday, the closing date shall be the last preceding working day at noon (Brussels time).

Article 15

1. Interested parties shall participate in the tendering procedure announced by the intervention agency of a Member State, either by submitting a written tender against a receipt or by any means of telecommunication with proof of receipt.

2. Tenders must give:

(a) the name and address of the tenderer;

(b) the quantity offered;

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(c) the proposed price per 100 kg of skimmed-milk powder, not including national taxes, delivered on pallets to the loading bay of the storage depot, in euro to no more than two decimal places;

(d) the place at which the skimmed-milk powder is stored.

3. Tenders shall be valid only if:

(a) they relate to skimmed-milk powder manufactured during the 21 days or, where applicable, three weeks preceding the closing date for submission of tenders as referred to in Article 14(2). Where the interval between two invitations to tender is longer than 21 days, the skimmed-milk powder may have been manufactured during that period;

(b) they relate to a quantity of skimmed-milk powder complying with Article 2(5);

(c) they are accompanied by a written undertaking from the tenderer to comply with point (a) of this paragraph and with Article 9;

(d) proof is furnished that the tenderer has lodged a security of EUR 2 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.

4. The undertaking provided for in point (c) of paragraph 3, if forwarded initially to the intervention agency, shall be valid by tacit renewal for subsequent tenders until explicitly cancelled by the tenderer or the intervention agency, provided that:

(a) the original tender stipulates that the tenderer intends to avail himself of this provision,

(b) subsequent tenders refer to this provision (by reference to 'Article 15(4)') and to the date of the original tender.

5. Tenders may not be withdrawn after the closing date referred to in Article 14(2) for the submission of tenders relating to the invitation to tender concerned.

Article 16

Maintenance of the tender after the closing date for submission of tenders and delivery of the skimmed-milk powder to the depot designated by the intervention agency within the time limit laid down in Article 19(3) shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85.

Article 17

1. Member States shall inform the Commission of the quantities and prices offered by tenderers, no later than 9.00 a.m. (Brussels time) on the day after the closing date referred to in Article 14(2).

2. In the light of the tenders received for each invitation to tender, the Commission shall fix a maximum buying-in price, by reference to the intervention prices applicable, in accordance with the procedure laid down in Article 42 of Regulation (EC) No 1255/1999.

3. The Commission may decide to make no award under the round.

Article 18

1. Tenders shall be refused if the price proposed is higher than the maximum price referred to in Article 17(2) fixed for the invitation to tender concerned.

2. Rights and obligations arising under invitations to tender shall not be transferable.

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Article 19

1. The intervention agency shall inform tenderers immediately of the outcome of their participation in the invitation to tender.

Where tenders have been unsuccessful, the security referred to in point (d) of Article 15(3) shall be released immediately.

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.

3. Successful tenderers shall deliver the skimmed-milk powder not later than 28 days after the closing date for the submission of tenders. Delivery may be made in several consignments.

4. The security shall be released as soon as the successful tenderer has delivered the quantity indicated on the delivery order within the time limit laid down.

5. Except in cases of *force majeure*, where the successful tenderer fails to deliver within the time limit laid down, not only shall the security provided for in point (d) of Article 15(3) be forfeit in proportion to the quantities not delivered, but buying-in shall also be cancelled in respect of the remaining quantities.

Article 20

1. The intervention agency shall pay the successful tenderer the price indicated in paragraph 2 of this Article, 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).

2. Where the protein content of the non-fat dry matter, determined using the method described in Annex I, is 35,6 % or more, the buying-in price shall be equal to the price indicated in the tender.

Where that protein content is 31,4 % or more but less than 35,6 %, the buying-in price shall be equal to the price indicated in the tender less an amount calculated as follows:

$$\text{price tendered} \times ((0{,}356 - \text{protein content}) \times 1{,}75).$$

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

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Section 5

Sale by invitation to tender of skimmed-milk powder from public storage

Article 21

1. Skimmed-milk powder which entered storage before ►M8 1 September 2004 ◄ shall be sold by means of a standing invitation to tender organised by each intervention agency.

2. Intervention agencies shall issue a notice of standing invitation to tender, indicating in particular the closing date and place for the submission of tenders. They shall also indicate, for the skimmed-milk powder they hold:

(a) the locations of the warehouses where the powder to be sold is in store;

(b) the quantity held for sale in each warehouse.

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A standing invitation to tender shall be published in the *Official Journal of the European Union* at least eight days before the first closing date for the submission of tenders.

3. Intervention agencies shall keep an up-to-date list of the information referred to in paragraph 2, which they shall make available to interested parties on request. They shall also publish regular updates of the list in an appropriate form, to be indicated in the notice of standing invitation to tender.

4. Intervention agencies shall make the necessary arrangements to enable interested parties:

(a) to examine samples of the skimmed-milk powder put up for sale at their own expense before submitting a tender;

(b) to verify the results of the analyses referred to in Article 2(2).

Article 22

1. During the period of validity of the standing invitation to tender, the intervention agencies shall issue individual invitations to tender.

2. The closing date for submission of tenders for each individual tendering round shall be 12 noon (Brussels time) on the second and fourth Tuesday of the month, except for the second Tuesday of August and the fourth Tuesday of December. If the Tuesday is a public holiday, the closing date shall be the last preceding working day at 12 noon (Brussels time).

Article 23

1. Tenders for each individual tendering round shall be submitted in writing either by delivery by hand to the intervention agency against proof of receipt, or by any other written means of telecommunication against proof of receipt.

Tenders shall be submitted to the intervention agency holding the skimmed-milk powder for which an offer is made.

2. Tenders shall contain:

(a) the name and address of the tenderer;

(b) the quantity desired;

(c) the price in euro tendered per 100 kilograms of skimmed-milk powder, not including national taxes and charges, ex-warehouse;

(d) if appropriate, the warehouse where the skimmed-milk powder is and if desired a substitute warehouse.

3. A tender shall not be valid unless:

(a) it relates to at least 10 tonnes, except where the quantity available in a warehouse is less than 10 tonnes;

(b) it is accompanied by the tenderer's written undertaking to comply with the provisions of this Regulation;

(c) proof is provided that the tenderer has lodged a tendering security of EUR 50 per tonne, in the Member State where the tender is submitted, for the individual tendering round in question before the closing date for submission of the tenders referred to in Article 22 (2).

4. Tenders may not be withdrawn after the closing date provided for in Article 22(2).

Article 24

For the purposes of the tendering security provided for in Article 23(3) (c), the primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85 shall be that tenders are maintained after the closing date referred to in Article 22(2) and that the price is paid within the deadline laid down in Article 24f(2).

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Section 6

Implementation of the tendering procedure

Article 24a

1. On the closing date referred to in Article 22(2), the Member States shall inform the Commission of the quantities and prices offered by tenderers and the quantity of skimmed-milk powder offered for sale.

Member States shall forward this information identifying each operator by means of a coded number whose meaning is unknown to the Commission. They shall indicate whether the same tenderer has submitted multiple tenders.

Where no tenders have been submitted, Member States shall inform the Commission of this fact by the same date.

2. The Commission shall fix a minimum selling price for the skimmed-milk powder on the basis of the tenders received under each individual tendering round and in accordance with the procedure laid down in Article 42 of Regulation (EC) No 1255/1999. This price may vary according to the date of entry into storage and location of the quantities of skimmed-milk powder offered for sale.

It may be decided to make no award under the round.

The decision on each individual tendering round shall be published in the *Official Journal of the European Union*.

Article 24b

Tenders shall be rejected if the price offered is lower than the minimum price.

Article 24c

1. The intervention agency shall make the award in accordance with the rules laid down in paragraphs 2 to 5.

2. The skimmed-milk powder shall be allocated on the basis of its date of entry into storage, starting with the oldest product of the total quantity available in the warehouse(s) designated by the tenderer.

3. The successful tenderer shall be the tenderer offering the highest price. If the full quantity available is not allocated, the remainder shall be awarded to the other tenderers on the basis of the prices tendered, starting with the highest price.

4. Where acceptance of a tender would result in contracts being awarded in excess of the quantity of skimmed-milk powder available in a particular warehouse, only the quantity available shall be awarded to the tenderer in question.

However, the intervention agency may designate other warehouses to make up the quantity set out in the tender, provided the tenderer agrees.

5. Where the acceptance of two or more tenders offering the same price for skimmed-milk powder in a particular warehouse would lead to contracts being awarded in excess of the quantity available, the award shall be made by allocation of the quantity available in proportion to the quantities tendered for.

However, should such a division lead to the award of quantities of less than five tonnes, awards shall be made by drawing lots.

6. 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 code number referred to in Article 24a(1).

Article 24d

Rights and obligations arising in connection with the invitation to tender shall not be transferable.

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Article 24e

1. Tenderers shall be notified without delay by the intervention agency of the result of their participation in an individual tendering round.

Where tenders have been unsuccessful, the securities provided for in Article 23(3)(c) shall be released immediately.

2. Within the period specified in Article 24f(2) successful tenderers shall, before the removal of the skimmed-milk powder, pay the intervention agency the amount corresponding to their tender, for each quantity that they wish to withdraw.

Article 24f

1. Once the amount referred to in Article 24e(2) has been paid the intervention agency shall issue a removal order indicating:

(a) the quantity in respect of which the corresponding amount has been paid;

(b) the warehouse in which the skimmed-milk powder is in store;

(c) the final date for removal of the skimmed-milk powder.

2. Successful tenderers shall remove the skimmed-milk powder awarded to them within 30 days of the closing date referred to in Article 22(2). Removal may be effected by instalments of not less than five tonnes each. However, where the quantity remaining in a warehouse is less than five tonnes, that smaller quantity may be delivered.

Except in cases of *force majeure*, if the skimmed-milk powder has not been removed by the closing date referred to in the first subparagraph, the cost of storage shall be borne by successful tenderers from the day following that date. Moreover, storage shall be at their own risk.

3. The security lodged in accordance with Article 23(3)(c) shall be released immediately in respect of quantities removed within the period provided for in the first subparagraph of paragraph 2 of this Article.

In the event of *force majeure* as referred to in the second subparagraph of paragraph 2, the intervention agency shall take such action as it considers necessary having regard to the circumstances invoked.;

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CHAPTER III

PRIVATE STORAGE

Section 1

Contract and storage conditions

Article 25

For the purposes of this chapter:

(a) ‘storage lot’ means a quantity weighing at least 10 tonnes and of homogeneous composition and quality, originating in a single factory, taken into storage in a single depot on a single day;

(b) ‘day of commencement of contractual storage’ means the day following that of entry into store;

(c) ‘last day of contractual storage’ means the day before that of removal from storage.

Article 26

Where the Commission decides to grant aid for the private storage of skimmed-milk powder in accordance with Article 7(3) of Regulation (EC) No 1255/1999, private storage contracts shall be concluded between the intervention agency of the Member State on whose

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territory the skimmed-milk powder is stored and natural or legal persons, hereinafter called ‘contractors’.

Article 27

Private storage contracts may be concluded only for skimmed-milk powder, as referred to in the first subparagraph of Article 7(3) of Regulation (EC) No 1255/1999, which:

(a) contains not more than 11 % fat and 5 % water and has a protein content of the non-fat dry matter of at least 31,4 %;

(b) has been manufactured during the 28 days or four weeks preceding the day of commencement of contractual storage in an undertaking approved in accordance with points (a) and (b) of Article 3(1) and which agrees to submit its production of skimmed-milk powder liable to be covered by a storage contract to a specific official inspection;

(c) has a radioactivity level not exceeding the maximum levels referred to in Article 2(3);

(d) is stored in bags with a net content of 25 kg or in ‘big bags’ weighing no more than 1 500 kg, bearing the following information, where appropriate in code:

(i) the approval number identifying the factory and the Member State of manufacture,

(ii) the date or week of manufacture,

(iii) the number of the manufacturing batch,

(iv) the net weight;

(e) has not been placed under the arrangements referred to in Article 5 (1) of Council Regulation (EEC) No 565/80 ([1]); subsequent placing under those arrangements shall be regarded as ending the contractual storage period.

Article 28

1. Storage contracts shall be concluded in writing for one or more storage lots and shall include, in particular, provisions concerning:

(a) the quantity of skimmed-milk powder to which the contract applies;

(b) the amount of aid;

(c) the dates relating to the execution of the contract, without prejudice to a Commission decision pursuant to the second sentence of the third subparagraph of Article 7(3) of Regulation (EC) No 1255/1999 and in accordance with the procedure under Article 42 thereof;

(d) the identity of the storage depots.

2. The checks, particularly those referred to in Article 33, shall be the subject of specifications drawn up by the intervention agency of the Member State of storage. The storage contract shall refer to these specifications.

Article 29

1. The periods of entry into and removal from storage shall be fixed at the time of the decision to grant private storage aid for skimmed-milk powder.

2. Removal from storage shall be in whole storage lots. However, in the circumstances referred to in point (a) of Article 33(2), only a sealed quantity may be removed from storage.

([1]) OJ L 62, 7.3.1980, p. 5.

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Article 30

1. Applications to conclude contracts with the intervention agency may relate only to lots of skimmed-milk powder which have been fully taken into storage.

Applications must reach the intervention agency within no more than 30 days of the date of entry into storage. Intervention agencies shall register the date of receipt.

If an application reaches the intervention agency within 10 working days following the deadline, a storage contract may still be concluded but the aid shall be reduced by 30 %.

2. Storage contracts shall be concluded within no more than 30 days of the date of registration of the application.

Article 31

Where the skimmed-milk powder is stored in a Member State other than the Member State of manufacture, a storage contract as referred to in Article 30 may be concluded only on condition that a certificate supplied by the competent agency of the Member State of manufacture is presented within 50 days of the date on which the skimmed-milk powder entered storage.

This certificate shall indicate the approval number identifying the factory and the Member State of manufacture, the date or week of manufacture and the number of the manufacturing batch, and shall confirm that the product concerned is skimmed-milk powder as referred to in the first subparagraph of Article 7(3) of Regulation (EC) No 1255/1999.

In the case referred to in the first paragraph of this Article, storage contracts shall be concluded within no more than 60 days of the date of registration of the application.

Section 2

Checks

Article 32

1. The Member State shall ensure that all the conditions conferring entitlement to payment of the aid are fulfilled.

2. The contractor or, at the request of the Member State or with its authorisation, the person responsible for the storage depot, shall make available to the competent authority responsible for inspection any documentation permitting verification of the following particulars of products placed in private storage:

(a) the approval number identifying the factory and the Member State of manufacture;

(b) the date of manufacture;

(c) the date of entry into storage;

(d) the manufacturing batch number;

(e) presence in the depot and the address of the depot;

(f) the date of removal from storage.

3. The contractor or, where applicable, the person responsible for the storage depot shall keep stock records available at the depot for each contract, covering:

(a) the storage lot number of the products placed in private storage;

(b) the dates of entry into and removal from storage;

(c) the quantity of skimmed-milk powder, indicated per storage lot;

(d) the location of the products in the depot.

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4. Products stored shall be easily identifiable and easily accessible. They shall be identified individually by contract.

Article 33

1. On entry into storage the competent authority shall conduct checks within the period beginning on the date of entry into the store and ending 28 days after the date of registration of the application for conclusion of the contract.

To ensure that the products stored are eligible for aid, the checks shall be made on a representative sample of at least 5 % of the quantities placed in storage to ensure that the storage lots in their entirety physically conform to the application for conclusion of a contract as regards the weight, identification and nature of the products.

2. The competent authority shall:

(a) either seal the products by contract, storage lot or smaller quantity at the time of the check provided for in paragraph 1;

(b) or make an unannounced check, by random sampling, to ensure that the products are present in the depot. The random sample concerned shall be representative and shall correspond to at least 10 % of the total quantity under contract for a private storage aid measure.

3. At the end of the contractual storage period, the competent authority shall check, by random sampling, to verify weight and identification. However, where the skimmed-milk powder is still in storage after expiry of the maximum contractual storage period, this check may be made when the product is removed from storage.

For the purposes of the check, the contractor shall inform the competent authority, indicating the storage lots concerned, at least five working days before:

(a) the end of the maximum contractual storage period of 180 days;

or

(b) the start of the removal operations, where these take place during or after the 180 day period.

The Member State may accept a shorter time limit than five working days.

4. A report shall be drawn up on the checks carried out under paragraphs 1, 2 and 3, specifying:

(a) the date of the check;

(b) its duration;

(c) the operations carried out.

The report shall be signed by the inspector responsible and countersigned by the contractor or, as the case may be, the person responsible for the storage depot, and shall be included in the payment dossier.

5. In the event of irregularities affecting at least 5 % of the quantities of products checked, the check shall be extended to a larger sample to be determined by the competent authority.

The Member States shall notify such cases to the Commission within four weeks.

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Section 3

Storage aid

Article 34

1. Private storage aid as provided for in Article 7(3) of Regulation (EC) No 1255/1999 may be granted only where the contractual storage period is between 60 and 180 days.

Where the contractor fails to comply with the time limit referred to in Article 33(3) of this Regulation, the aid shall be reduced by 15 % and shall be paid only in respect of the period for which the contractor supplies satisfactory proof to the competent authority that the skimmed-milk powder has remained in contractual storage.

2. Without prejudice to Article 35 of this Regulation, the Commission shall set the amount of aid in accordance with the second subparagraph of Article 7(3) of Regulation (EC) No 1255/1999.

3. The aid shall be paid on application by the contractor, at the end of the contractual storage period, within 120 days of receipt of the application, provided that the checks referred to in Article 33(3) have been carried out and that the conditions for entitlement to the aid have been met.

However, if an administrative enquiry into entitlement to the aid is under way, payment shall not be made until entitlement has been recognised.

Article 35

If the market situation so requires, the amount of the aid, the periods of entry into and removal from storage and the maximum length of storage may be altered during the year in respect of contracts yet to be concluded.

CHAPTER IV

NOTIFICATION

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Article 36

1. Not later than 15.00 (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:

(a) an offer to sell in accordance with Article 5,

(b) a private storage contract in accordance with Article 28.

2. Once it is observed that the offers referred to in Article 5 have reached 80 000 tonnes, the information referred to in paragraph 1(a) of this Article shall be communicated each day before 15.00 (Brussels time) for the quantities of skimmed-milk powder offered the preceding day.

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CHAPTER V

FINAL PROVISIONS

Article 37

Regulations (EEC) No 2213/76, (EEC) No 1362/87, (EEC) No 1158/91 and (EC) No 322/96 are hereby repealed.

References to the repealed regulations shall be construed as references to this Regulation.

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Article 38

This Regulation shall enter into force on the seventh day following that of 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.

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ANNEX I

COMPOSITIONAL REQUIREMENTS, QUALITY CHARACTERISTICS AND ANALYTICAL METHODS

Parameters	Content and quality characteristics	Reference method
Protein content	Minimum 31,4 % of the non-fat dry matter	(1)
Fat content	Maximum 1.00 %	(1)
Water content	Maximum 3,5 %	(1)
Titratable 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. equal to or less than 4 μg of phenol per gram of constituted 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) See Commission Regulation (EC) No 213/2001 of 9 January 2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards methods for the analysis and quality evaluation of milk and milk products and amending Regulations (EC) No 2771/1999 and (EC) No 2799/1999 (see page 1 of this Official Journal).

(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 satisfy the requirements laid down in Part D of Chapter III of Annex A to Directive 92/46/EEC.

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ANNEX II

PACKAGING

1. The skimmed-milk powder shall be packed in new, clean, dry and intact bags with a net weight of 25 kg.

2. The bags shall have at least three layers, which together correspond to at least 420 J/m^2 TEA average.

   The second layer shall be covered with a layer of polyethylene of at least 15 g/m^2.

   Inside the paper layers, a polyethylene bag at least 0,08 mm thick shall be fused to the bottom.

3. Bags shall conform to standard EN 770.

4. When filling, the powder should be well pressed down. Loose powder must on no account be allowed to penetrate between the various layers.

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ANNEX III

SAMPLING AND ANALYSIS OF SKIMMED-MILK POWDER OFFERED FOR INTERVENTION

1. Samples shall be taken in accordance with the procedure laid down in International Standard ISO 707. However, Member States may use another method of sampling provided that it complies with the principles of the abovementioned standard.

2. Number of packages to be selected for sampling checks:

   (a) offers containing up to 800 25-kg bags: at least eight,

   (b) offers containing more than 800 25-kg bags: at least eight, plus one for each additional 800 bags or fraction thereof.

3. Weight of sample: samples of at least 200 g are to be taken from each package.

4. Grouping of samples: no more than nine samples are to be combined in a global sample.

5. Analysis of samples: each global sample is to undergo an analysis to verify all the quality characteristics laid down in Annex I.

6. Where samples show defects:

   (a) where a composite sample shows a defect with regard to one parameter, the quantity from which the sample came is rejected;

   (b) where a composite sample shows a defect with regard to more than one parameter, the quantity from which the sample came is rejected and samples are taken from the remaining quantities from the same plant; the analysis of those samples shall be decisive. In that case:

      — the number of samples laid down in point 2 is doubled,

      — where a composite sample shows a defect with regard to one or more parameteres, the quantity from which the sample came is rejected.