COMMISSION REGULATION (EC) No 1319/2004

of 16 July 2004

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,

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], and in particular Article 10 thereof,

Whereas:

(1) Pursuant to Article 7(4) of Regulation (EC) No 1255/1999 skimmed-milk powder bought in by the intervention agency is to be disposed of at a minimum price and under conditions to be determined so as to avoid disturbing the balance on the market and to ensure purchasers equal treatment and access to the skimmed-milk powder to be sold.

(2) Commission Regulation (EC) No 214/2001 [2] laid down intervention measures for the disposal of skimmed-milk powder, including its sale at a fixed price.

(3) To ensure the proper management of intervention stocks, the skimmed-milk powder must be resold as soon as outlets become available. To this end, the system of sale of skimmed-milk powder from intervention stocks at a fixed price should be replaced by a system of sale by invitation to tender which allows the selling price to be fixed in accordance with market conditions.

(4) Experience has shown that the Member States must notify the Commission more rapidly if it is to be in a position to follow the evolution in the quantities of skimmed-milk powder offered for public intervention and, where appropriate, to suspend intervention buying-in once the quantities offered reach the level fixed by Article 7(2) of Regulation (EC) No 1255/1999.

(5) Regulation (EC) No 214/2001 should therefore be amended.

(6) 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

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

1. Article 1(c) is replaced by the following:

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

2. Chapter II is amended as follows:

(a) Section 5 is replaced by the following:

'SECTION 5

SALE BY INVITATION TO TENDER OF SKIMMED-MILK POWDER FROM PUBLIC STORAGE

Article 21

1. Skimmed-milk powder which entered storage before 1 July 2002 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.

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.

[1] OJ L 160, 26.6.1999, p. 48. Regulation last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

[2] OJ L 37, 7.2.2001, p. 100. Regulation last amended by Regulation (EC) No 2131/2003 (OJ L 320, 5.12.2003, p. 3).

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).';

(b) The following Section 6 is added:

'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.

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.';

3. Article 36 is replaced by the following:

'*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.'

Article 2

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

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

Done at Brussels, 16 July 2004.

For the Commission
Franz FISCHLER
Member of the Commission