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COMMISSION REGULATION (EC) No 580/2004
of 26 March 2004
establishing a tender procedure concerning export refunds for certain milk products

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COMMISSION REGULATION (EC) No 580/2004

of 26 March 2004

establishing a tender procedure concerning export refunds for certain milk products

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 26(3) and Article 31(3)(b) and (14) thereof,

Whereas:

(1) According to Article 31(1) of Regulation (EC) No 1255/1999 the difference between the prices in world trade and in the Community may be covered for certain milk products by export refunds to the extent necessary to enable those products to be exported within the limits resulting from agreements concluded in accordance with Article 300 of the Treaty.

(2) This Regulation should cover export refunds for skimmed milk powder and butter covered by certain product codes listed in section 9 of Annex I to Commission Regulation (EEC) No 3846/87 of 17 December 1987 establishing an agricultural product nomenclature for export refunds ([2]). For the purpose of this Regulation the products in question should be in a bulk pack. In addition, it is necessary to limit the scope of footnote 13 to section 9 in relation to skimmed milk powder by setting a maximum limit for non-lactic additions to ensure that offers are made for a standard product.

(3) In order to achieve an efficient administration of Community funds, to take better account of changing export possibilities for the products concerned and to increase transparency and the opportunity for operators to participate in the export scheme, refunds for those products should be fixed by a tender procedure, as was already provided for in Article 17(2) of Council Regulation (EEC) No 804/68 ([3]).

(4) The destinations for which refunds may be fixed are indicated in Commission Regulation (EC) No 1523/2003 of 28 August 2003 fixing the export refund on milk and milk products ([4]).

(5) To ensure equal treatment for all interested parties, all Commission decisions relating to the tender should be published in the *Official Journal of the European Union*.

(6) In order to reduce the administrative burden on operators and national administrations the tendering procedure should be incorporated in the export licence application procedure and the tender security should also constitute the licence security. Tenders should contain the data needed to assess them, and communications between Member States and the Commission should be provided for. In view of the sensitivity of the data concerned, tenders should not be examined in public.

(7) A tendering security should ensure that the accepted quantities are exported pursuant to the licence issued under the invitation to tender. The security should accordingly be forfeited where quantities are not exported. Therefore provisions should be

([1]) OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).
([2]) OJ L 366, 24.12.1987, p. 1. Regulation as last amended by Regulation (EC) No 118/2003 (OJ L 20, 24.1.2003, p. 3).
([3]) OJ L 148, 28.6.1968, p. 13. Regulation repealed by Regulation (EC) No 1255/1999.
([4]) OJ L 217, 29.8.2003, p. 51.

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adopted for the lodging, the release and the forfeiting of the tendering security in addition to Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products ([1]).

(8) A maximum export refund should be fixed. However, situations may arise on the market in which economic or other aspects urge that none of the tenders received be accepted.

(9) Detailed rules should be laid down to ensure that tenderers are notified of the outcome of the invitation to tender and that the necessary licences are issued for the export of the quantities allocated.

(10) By way of derogation from Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ([2]), the rights deriving from licences should be confined to the successful tenderers to avoid speculation.

(11) Commission Regulation (EC) No 174/1999 of 26 January 1999 laying down special detailed rules for the application of Council Regulation (EEC) No 804/68 as regards export licences and export refunds in the case of milk and milk products ([3]), applies to all export licences and export refunds in the dairy sector. To the extent necessary derogations from this Regulation should be provided. They should concern the refund amount applicable, the provision relating to applications lodged on Thursdays and the product code of the nomenclature for refunds indicated in licences. In addition, as licences issued in the context of the tender are for specific products, the provisions in relation to the use of a licence for another product should not be applicable. To ensure all licences have the same validity period the closing date for the submission of tenders should be taken as the commencement date.

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

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation provides for a tender procedure for fixing export refunds on the following milk products, listed in section 9 of Annex I to Regulation (EEC) No 3846/87, of Community origin:

(a) skimmed milk powder in bags of at least 25 kilograms net weight and containing no more than 0,5 % by weight of added non-lactic matter falling under product code ex 0402 10 19 9000;

(b) natural butter in blocks of at least 20 kilograms net weight falling under product codes ex 0405 10 19 9500 and ex 0405 10 19 9700;

(c) butteroil in containers of at least 190 kilograms net weight falling under product code ex 0405 90 10 9000.

([1]) OJ L 205, 3.8.1985, p. 5. Regulation as last amended by Regulation (EC) No 1932/1999 (OJ L 240, 10.9.1999, p. 11).
([2]) OJ L 152, 24.6.2000, p. 1. Regulation as last amended by Regulation (EC) No 322/2004 (OJ L 58, 26.2.2004, p. 3).
([3]) OJ L 20, 27.1.1999, p. 8. Regulation as last amended by Regulation (EC) No 1948/2003 (OJ L 287, 5.11.2003, p. 13).

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Article 2

Tendering procedure

1. The standing invitation to tender shall be opened in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999 guaranteeing equality of access for all persons established in the Community.

2. The standing invitation to tender shall contain the following:

(a) the tendering periods;

(b) opening and closing time between which tenders may be submitted;

(c) the minimum quantity each tender must provide for;

(d) the amount of the tendering security; and

(e) the address of the competent authorities of the Member States to which tenders shall be submitted.

3. Member States shall inform operators by the means which they consider the most appropriate as regards the application of the tendering procedure.

Article 3

Submission of tenders

1. Written tenders shall be submitted to the competent authority of a Member State in conjunction with and using the application form for an export licence as provided for in Regulation (EC) No 1291/2000. They shall be submitted by one of the following means:

(a) delivered by hand against acknowledgement of receipt; or

(b) addressed to that authority either by registered letter or telegram; or

(c) addressed to that authority by telex, fax or electronic mail where the authority accepts such forms of communication.

2. Tenders may not be withdrawn.

3. A tender shall be valid if the following conditions are complied with:

(a) it indicates:

(i) in section 20 a reference to this Regulation and the expiry date for the submission of tenders;

(ii) in section 4 the name, address, e-mail address and telephone number of the tenderer. However the omission of the e-mail and telephone number shall not render the tender invalid;

(iii) in section 16 the product code preceded by ‘ex’ as mentioned in Article 1, in section 15 the product description indicated in Article 1 and in sections 17 and 18 the quantity of the product to be exported;

(iv) in section 20 the export refund per 100 kilograms expressed in euro and cents,

(v) the intended destination;

(b) it respects the minimum quantity laid down in the standing invitation to tender;

(c) it does not include any conditions other than those mentioned in this paragraph;

(d) the tenderer has lodged the tendering security before the end of the period during which tenders may be submitted and has provided proof thereof within the same time period.

By way of derogation from Article 9 of Regulation (EC) No 174/1999 the tender security shall constitute the export licence security.

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4. Persons authorised to receive tenders shall not disclose any particulars relating thereto to any unauthorised persons.

Article 4

Examination of tenders and submission to the Commission

1. Tenders shall be examined by the competent authority of the Member States. They shall not be examined in public. Persons authorised to be present at the examination of the tenders shall be under an obligation not to disclose any particulars relating thereto to any unauthorised person.

2. ►**M1** All valid tenders shall be communicated to the Commission by the Member States in the form specified in the Annex, without mentioning the tenderers by name, within three hours of the end of each tendering period. ◄

Where no tenders are submitted, Member States shall notify the Commission thereof within the same time period.

3. In the case of an invalid tender the competent authority of the Member State shall inform the tenderer thereof.

4. Member States shall, not later than the third working day of the week following the publication of the decision referred to in Article 5, communicate to the Commission the name and address of each tenderer corresponding to the number indicated in column 2, points 1, 2, 3 and 4 of the Annex.

Article 5

Decision on refunds

On the basis of the tenders notified in accordance with Article 4(2), the Commission shall decide, in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999, for each tendering period to fix a maximum refund according to Article 31(4) and (5) of that Regulation or to grant no refunds.

The decision on refunds shall be published in the *Official Journal of the European Union*.

Article 6

Accepting tenders

1. Where a maximum export refund is fixed, the competent authority of the Member States shall accept tenders which are equal to or lower than the maximum refund and reject all others. Where no refund is fixed all tenders shall be rejected.

2. The competent authority of the Member States shall adopt the decisions referred to in paragraph 1 when the decision on refunds has been published.

Article 7

Rights and obligations of successful tenderers

1. The successful tenderers shall have:

(a) the right to receive an export licence in respect of the quantity and export refund, in accordance with the decision as referred to in Article 6(1);

(b) the obligation to export the tendered quantity in accordance with Article 31(b) and Article 32(1)(b)(i) of Regulation (EC) No 1291/2000.

2. By way of derogation from Article 9(1) of Regulation (EC) No 1291/2000, the right referred to in point 1 shall not be transferable.

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Article 8

Export licences

1. By way of derogation from Regulation (EC) No 174/1999

(a) the amount of the refund referred to in Article 1 of that Regulation shall be the amount resulting from the tender;

(b) Article 5(2) and (3) of that Regulation shall not apply;

(c) section 16 of licences referred to in Article 5(1) of that Regulation shall show the 12-digit product code of the nomenclature for refunds preceded by 'ex';

(d) the period of validity of the export licence referred to in Article 6 of that Regulation shall be from the closing date for the submission of tenders until the end of the fourth month following that date.

2. By way of derogation from Article 10 of Regulation (EC) No 174/1999 an export licence shall be issued to the successful tenderer immediately after the acceptance of tenders in accordance with Article 6 in respect of the quantity awarded to him.

3. In addition to the indication in section 22 of the licence provided for in Article 12(1) of Regulation (EC) No 174/1999, the licence shall indicate in that section a reference to this Regulation, the expiry date of the period for the submission of tenders and the amount of refund applicable. Section 21 of the licence shall not apply.

Article 9

Releasing and forfeiting of the tendering security

1. The tendering security shall be released if:

(a) the tender is invalid or rejected;

(b) the obligation referred to in Article 7(1)(b) has been fulfilled.

2. Where the obligation referred to in Article 7(1)(b) is not fulfilled the tendering security shall be forfeited in accordance with Article 12 of Regulation (EC) No 174/1999, except in cases of *force majeure*.

Article 10

Entry into force

This Regulation shall enter into force on the first day of the month 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.

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ANNEX

1. SKIMMED MILK POWDER

Member State:

Award of refund on skimmed milk powder under product code ex 0402 10 19 9000 for export to certain third countries (Regulation (EC) No 580/2004)

Tender number: 1/R/2004 Closing date of the tendering period:

(1)	(2)	(3)	(4)	(5)
Bid No	Tenderer No (1)	Quantity (tonnes)	Destination	Export refund rate (EUR/100 kg) (in ascending order)

(1) Each tenderer shall be attributed a number for each tender period.
The only fax number in Brussels to be used by Member States for communicating bids to the Commission is that of DG AGRI D.1: (32-2) 295 33 10.
The e-mail address to be used by Member States for communicating bids to the Commission is that of DG AGRI D.1: AGRI-D1-MILK@cec.eu.int

2. 80 % BUTTER

Member State:

Award of refund on 80 % butter under product code ex 0405 10 19 9500 for export to certain third countries (Regulation (EC) No 580/2004)

Tender number: 1/R/2004 Closing date of the tendering period:

(1)	(2)	(3)	(4)	(5)
Bid No	Tenderer No (1)	Quantity (tonnes)	Destination	Export refund rate (EUR/100 kg) (in ascending order)

(1) Each tenderer shall be attributed a number for each tender period.
The only fax number in Brussels to be used by Member States for communicating bids to the Commission is that of DG AGRI D.1: (32-2) 295 33 10.
The e-mail address to be used by Member States for communicating bids to the Commission is that of DG AGRI D.1: AGRI-D1-MILK@cec.eu.int

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3. 82 % BUTTER

Member State:

Award of refund on 82 % butter under product code ex 0405 10 19 9700 for export to certain third countries (Regulation (EC) No 580/2004)

Tender number: 1/R/2004 Closing date of the tendering period:

(1)	(2)	(3)	(4)	(5)
Bid No	Tenderer No (1)	Quantity (tonnes)	Destination	Export refund rate (EUR/100 kg) (in ascending order)

(1) Each tenderer shall be attributed a number for each tender period.
The only fax number in Brussels to be used by Member States for communicating bids to the Commission is that of DG AGRI D.1: (32-2) 295 33 10.
The e-mail address to be used by Member States for communicating bids to the Commission is that of DG AGRI D.1: AGRI-D1-MILK@cec.eu.int

4. BUTTEROIL

Member State:

Award of refund on butteroil under product code ex 0405 90 10 9000 for export to certain third countries (Regulation (EC) No 580/2004)

Tender number: 1/R/2004 Closing date of the tendering period:

(1)	(2)	(3)	(4)	(5)
Bid No	Tenderer No (1)	Quantity (tonnes)	Destination	Export refund rate (EUR/100 kg) (in ascending order)

(1) Each tenderer shall be attributed a number for each tender period.
The only fax number in Brussels to be used by Member States for communicating bids to the Commission is that of DG AGRI D.1: (32-2) 295 33 10.
The e-mail address to be used by Member States for communicating bids to the Commission is that of DG AGRI D.1: AGRI-D1-MILK@cec.eu.int