Commission Regulation (EC) No 149/2009 of 20 February 2009 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

COMMISSION REGULATION (EC) No 149/2009

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)[(1)], and in particular Article 43, in conjunction with Article 4 thereof,

Whereas:

(1) Article 10(1)(f) of Regulation (EC) No 1234/2007 provides for public intervention of skimmed milk powder.

(2) Commission Regulation (EC) No 214/2001[(2)] has laid down the detailed rules concerning the public intervention of skimmed milk powder.

(3) In view of new arrangements and in the light of the experience gained, it is appropriate to amend and, where necessary, simplify the detailed rules governing intervention on the market in skimmed milk powder.

(4) Article 10(1)(f) of Regulation (EC) No 1234/2007 sets a new standard of 34 %, by weight of the fat free dry matter, for protein in skimmed milk powder, therefore the definition of the eligible product should be amended.

(5) Article 13(1)(d) in conjunction with Article 18(2)(e) of Regulation (EC) No 1234/2007 limit public intervention of skimmed milk powder at fixed price to a quantity offered of 109 000 tonnes for the period 1 March to 31 August.

(6) In order to comply with the limit of 109 000 tonnes it is appropriate to provide for a reflexion period during which, before a decision is taken on the offers, special measures can be taken applying in particular to pending offers. Those measures may consist of closure of intervention, application of an allocation percentage and rejection of pending offers. They require swift action and the Commission should be enabled to take all necessary measures without delay. In view of the public holidays in April 2009, derogation should be made as regards the dates for submitting the offers in order to ensure compliance with the limit of 109 000 tonnes to be purchased at fixed price.

(7) The level of the security shall ensure that the offers presented are not withdrawn, therefore a security of EUR 5 per 100 kg shall apply to all the tenders in the framework of this Regulation.

(8) Private storage of skimmed milk powder has been abolished by Council Regulation (EC) No 1152/2007[3], the references to this scheme should be deleted.

(9) Small residual quantities, left in storehouses, should be avoided and quantities up to 5 000 kg should be offered to awarded tenderers.

(10) Regulation (EC) No 214/2001 should be amended accordingly.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. Article 1 is replaced by the following:

Article 1

This Regulation lays down the detailed rules for intervention on the market in skimmed milk powder as provided for in Article 10(1)(f) of Council Regulation (EC) No 1234/2007[4], as regards:

(a) buying-in at fixed price as referred in Article 13(1)(d) in conjunction with Article 18(1)(c) of Regulation (EC) No 1234/2007;

(b) buying-in under a standing invitation to tender as referred in Article 13(3) of Regulation (EC) No 1234/2007;

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

2. Article 2 is amended as follows:

(a) paragraph 1 is amended as follows:

1. The intervention agency shall buy in only skimmed milk powder which complies with Article 10(1)(f) of Regulation (EC) No 1234/2007 and paragraphs 2 to 7 of this Article and which is offered for intervention in the period from 1 March to 31 August.;

(b) paragraph 2 is replaced by the following:

2. The competent authorities shall check the quality of skimmed milk powder using the analytical methods set out in Annex I to this Regulation on the basis of samples taken in accordance with the rules set out in Annex III to this Regulation. The checks must establish that, except authorised raw materials used for protein adjustment as referred to in Annex I(4)(b) to Council Directive 2001/114/EC[5] the skimmed milk powder does not contain other products, in particular buttermilk or whey, as defined in Annex I to this Regulation.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 149/2009. (See end of Document for details)*

Protein adjustment, if applicable, shall occur in liquid phase.

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. in Article 4(1), the second subparagraph is replaced by the following:

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 from skimmed milk in an approved undertaking in the Community and protein adjustment, if applicable, occurred in liquid phase, as laid down in Article 10(1)(f) of Regulation (EC) No 1234/2007.

4. the title of Section 2 is amended as follows:
Section 2Procedure for buying-in at fixed price

5. Article 5 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) The second subparagraph is deleted;

(ii) a new subparagraph is added:

Offers submitted on a Saturday, Sunday or public holiday shall be deemed to be received by the intervention agency on the first working day following the day on which they were submitted.

Offers submitted in the period from 6 to 13 April 2009 shall be deemed to be received by the intervention agency on 14 April 2009.

(b) in paragraph 3, point (c) is replaced by the following:

(c) proof is furnished that the seller has lodged a security of EUR 5 per 100 kg in the Member State in which the offer is submitted, no later than the day on which the offer is received.;

(c) a new paragraph is added:

5. Offers may not be withdrawn after they have been received by the intervention agency.

6. Article 6 is replaced by the following:

Article 6

Maintenance of the offer, delivery of the skimmed milk powder to the warehouse designated by the intervention agency within the time limit laid down in Article 7(2) of this Regulation and compliance with the requirements of Article 2 of this Regulation shall constitute primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85[(6)].

7. Article 7 is amended by the following:

(a) paragraph 1 is replaced by the following:

1. After checking the offer, and on the fifth working day following the day of receipt of the offer to sell, the intervention agency shall issue a delivery order provided that the Commission does not adopt special measures in accordance with Article 9a(3).

The delivery order shall be dated and numbered and shall show:

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.

Delivery orders shall not be issued for quantities that had not been notified in accordance with Article 9a(1).;

(b) paragraphs 3 and 4 are replaced by the following:

3. The security provided for in Article 5(3)(c) shall be released as soon as the seller has delivered the quantity indicated on the delivery order within the time limit laid down therein and conformity with the requirements of Article 2 has been established.

Where the skimmed milk powder does not conform to the requirements laid down in Article 2, the skimmed milk powder shall be rejected and the security shall be forfeited in respect of the quantities rejected.

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

8. in Article 8, paragraph 2 is deleted;

9. the following Article 9a is added in Section 2:

Article 9a

1 Not later than 14.00 (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 an offer to sell in accordance with Article 5.

2 Once it is observed that the offers referred to in Article 5, in a certain year, approach 80 000 tonnes, the Commission shall inform the Member States as of which date they shall communicate the information referred to in paragraph 1 each working day before 14.00 (Brussels time) for the quantities of skimmed milk powder offered the preceding working day.

3 In order to comply with the limit referred to in Article 13(1)(d) of Regulation (EC) No 1234/2007 the Commission shall decide, without assistance of the Committee referred to in Article 195(1) of the same Regulation:

a to close intervention buying-in at fixed price;

b where acceptance of the full quantity offered on a certain day would lead to the maximum quantity being exceeded, to set a single percentage by which the total quantity of the offers received on that day from each seller are reduced;

c where appropriate, to reject offers for which no delivery order has been issued.

By way of derogation from Article 5(5) of this Regulation, a seller which is subject to a reduced acceptance of his offer as referred in point (b) of this paragraph may decide to withdraw his offer within five working days from the publication of the regulation fixing the reduction percentage.;

10. Article 11 is replaced by the following:

Article 11

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

However, the intervention agency may choose another warehouse situated within a maximum distance of 350 km provided that the choice of that warehouse does not result in additional storage costs.

The intervention agency may choose a warehouse situated beyond that distance if the resulting expenditure, including storage and transport costs, is lower. In that case the intervention agency shall notify the Commission of its choice forthwith.

2 Where the intervention agency buying-in the skimmed milk powder is in a Member State other than the one in whose territory the offered skimmed milk powder is stored, no account shall be taken, in calculating the maximum distance referred to in paragraph 1 of the distance between the store of the vendor and the border of the Member State of the purchasing intervention agency.

3 Beyond the maximum distance referred to in paragraph 1, the additional transport costs borne by the intervention agency shall be EUR 0,05 per tonne and per kilometre.;

11. Article 13 is replaced by the following:

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 13(3) of Regulation (EC) No 1234/2007 in conjunction with 18(2)(e) of the said Regulation and in accordance with the procedure referred to in Article 195(2) thereof, Articles 2, 3, 4, 10, 11 and 12 of this Regulation shall apply unless otherwise provided in this Section.

12. Article 14(2) is replaced by the following:

2. The time limit for the submission of tenders in response to the individual invitations to tender shall be 11.00 (Brussels time) on the third Tuesday of the month except for the fourth Tuesday of August. If Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.

13. in Article 15, paragraph 3 is amended as follows:

(a) point (a) is replaced by the following:

(a) they relate to skimmed milk powder manufactured during the 31 days or, where applicable, four weeks preceding the closing date for submission of tenders as referred to in Article 14(2).;

(b) point (d) is replaced by the following:

(d) proof is furnished that the tenderer has lodged a security of EUR 5 per 100 kg for the invitation to tender concerned, in the Member