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**COMMISSION REGULATION (EEC) No 189/77**

**of 28 January 1977**

**laying down detailed rules for the application of the system of minimum stocks in the sugar sector**

(OJ L 25, 29.1.1977, p. 27)

Amended by:

	Official Journal		
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► <b><u>M1</u></b> Commission Regulation (EEC) No 1920/81 of 10 July 1981	L 189	23	11.7.1981
► <b><u>M2</u></b> Commission Regulation (EC) No 260/96 of 12 February 1996	L 34	16	13.2.1996
► <b><u>M3</u></b> Commission Regulation (EC) No 986/97 of 30 May 1997	L 141	65	31.5.1997



**COMMISSION REGULATION (EEC) No 189/77**  
**of 28 January 1977**

**laying down detailed rules for the application of the system of  
 minimum stocks in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar<sup>(1)</sup>, as last amended by Regulation (EEC) No 3138/76<sup>(2)</sup>, and in particular Article 34 thereof,

Having regard to Council Regulation (EEC) No 1488/76 of 22 June 1976 laying down provisions for the introduction of a system of minimum stocks in the sugar sector<sup>(3)</sup>, and in particular Article 7 thereof,

Whereas Article 18 of Regulation (EEC) No 3330/74 provides for the introduction of a system of minimum stocks in the sugar sector; whereas Regulation (EEC) No 1488/76 lays down the general provisions relating thereto;

Whereas, when determining the quantities to be covered by minimum stocks, it is appropriate to use the definition of production contained in Article 1 of Commission Regulation (EEC) No 700/73 of 12 March 1973 laying down certain detailed rules for the application of the quota system in the sugar sector<sup>(4)</sup>, as amended by Regulation (EEC) No 1573/76<sup>(5)</sup>;

Whereas there is often a significant lapse of time between the production of sugar and its marketing; whereas, in consequence, those concerned generally have to resort to the financing of their stocks before they are sold in order to cover their production costs and, in particular the cost of beet purchases; whereas this practice should not be prevented in the case of sugar which constitutes the minimum stock;

Whereas the undertaking required by Article 3 (a) of Regulation (EEC) No 1488/76 must be set out in writing; whereas no such undertaking should last longer than 12 months;

Whereas Article 3 (b) thereof provides that manufacturers of raw sugar or certain syrups may be released from the obligation to maintain their minimum stock on return for the reimbursement of the profit included in the intervention price for the costs involved in maintaining the minimum stock; whereas, in the case of sugar taken from the minimum stock, Article 6 (a) thereof provides for the collection of that part of the amount which represents the profit referred to in the said Article 3 (b); whereas, in order to determine that profit, a flat-rate amount must be fixed for each sugar marketing year;

Whereas the calculation of the said profit is different for the refiners of preferential sugar and the processors respectively referred to in Articles 1 (b) and 3 (a) of the said Regulation; whereas certain special provisions are therefore necessary;

Whereas it may happen that minimum stocks are, at one and the same time, the subject of different obligations; whereas, therefore when these obligations are not met, there must be a method of apportionment in order to calculate the amount to be collected;

Whereas, in case of *force majeure*, the sugar concerned may not be available for the minimum stock; whereas in such cases Member States

<sup>(1)</sup> OJ No L 359, 31. 12. 1974, p. 1.

<sup>(2)</sup> OJ No L 354, 24. 12. 1976, p. 1.

<sup>(3)</sup> OJ No L 167, 26. 6. 1976, p. 11.

<sup>(4)</sup> OJ No L 67, 14. 3. 1973, p. 12.

<sup>(5)</sup> OJ No L 172, 1. 7. 1976, p. 52.

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ought not to collect that part of the amount referred to in Article 6 (b) of the said Regulation;

Whereas to enable the state of the Community's sugar supply to be kept under constant observation, Member States must inform the Commission of all cases which result in a reduction in minimum stocks;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Minimum stocks:

— shall be held at all times throughout each month concerned,

**▼M1**

— shall not include sugar which has been carried forward in accordance with Article 27 of Regulation (EEC) No 1785/81.

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2. Sugar production for the purpose of Article 1 (a) of Regulation (EEC) No 1488/76 and the minimum stocks referred to in paragraph 1, shall be established in accordance with Article 1 of ►**M3** Commission Regulation (EEC) No 1443/82 (1). ◀

*Article 2***▼M1**

1. Without prejudice to Articles 2 and 3 of Regulation (EEC) No 1789/81, the minimum stock may be the property only of the manufacturer or refiner in question and must be unencumbered by any commitments which might impede the aims of Article 12 of Regulation (EEC) No 1785/81.

Provided that the person concerned retains the right to dispose of the quantity of sugar in question, a commitment contracted by the manufacturer or refiner for the purpose of financing a minimum stock shall not be considered as impeding the obligations of this paragraph.

2. Where a manufacturer of beet sugar undertakes to fulfil the minimum stock obligation pursuant to Article 2 of Regulation (EEC) No 1789/81, he shall send to the competent authority of the Member State concerned, to reach it at the latest 30 days before the transfer of the storage obligation becomes effective, a copy of the contractual undertaking signed by the two contracting parties indicating the part of the obligation being transferred and the duration of the transfer.

Such duration shall not exceed a period of 12 calendar months; it shall commence on the first day of a month. The manufacturer to whom the storage obligation is transferred shall inform the competent authority before the end of each month, in respect of the following month, the monthly quantity to which the transferred obligation applies.

Paragraph 1 shall apply to the manufacturer referred to in the first subparagraph to the extent of the quantities in respect of which the storage obligation has been transferred.

**▼B***Article 3*

1. The seller shall ensure that the undertaking by the processor, referred to in Article 3 (a) of Regulation (EEC) No 1488/76, shall reach the competent authority of the Member State concerned in writing not later than the time of the transfer of ownership of the sugar.

(1) OJ No L 158, 9. 6. 1982, p. 17.

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Such undertaking shall indicate the quantity of sugar which it covers and the period, which may not exceed 12 calendar months, during which it applies.

2. Where the processor is situated in another Member State, the two Member States shall agree on the control measures to be taken under Article 8 (1).

*Article 4*

1. A request for release from the obligation to hold minimum stocks, referred to in Article 3 (b) of Regulation (EEC) No 1488/76, may be only be made in respect of a period of 12 calendar months.

2. The profit to be reimbursed by the manufacturer, referred to in the said Article 3 (b), shall be calculated as follows:

The quantity produced within the limit of the maximum quota during the 12 calendar months immediately preceding the month of the request referred to in paragraph 1, shall be multiplied by a coefficient and the result shall then be multiplied by the flat-rate amount referred to in Article 6.

The coefficient shall be the ratio between the quantity of sugar covered by the request for the release from the obligation referred to in paragraph 1 and the quantity to be held as a minimum stock.

*Article 5*

1. The quantity of sugar considered as having been marketed for the purposes of Article 6 of Regulation (EEC) No 1488/76 shall be equal to the difference between the quantity which the person concerned is obliged to hold as a minimum stock and the quantity he actually holds for this purpose at the time of calculation.

2. Where a person is obliged to hold minimum stock by virtue of the simultaneous application of at least two of the following provisions of Regulation (EEC) No 1488/76, Article 1 (a), 1 (b), and 3 (a), then, when calculating the charge to be levied, the quantity marketed shall be apportioned in the same ratio as that existing between the quantities to be held by the person concerned under his minimum stock obligations.

**▼M3**

3. The charge to be levied pursuant to Article 6 of Regulation (EEC) No 1789/81 shall be equal to the sum of the results of the following two calculations:

- the quantity produced within the limit of the maximum quota for the 12 calendar months immediately preceding the month of the marketing shall be multiplied by a coefficient and the result then multiplied by the flat-rate amount referred to in Article 6. The coefficient shall be the ratio between the marketed quantity and the quantity to be retained as the minimum stock;
- the quantity marketed from the minimum stock shall be multiplied by the amount referred to in the second subparagraph of Article 6 of Regulation (EEC) No 1789/81, less the flat-rate amount referred to in Article 6 of this Regulation.

4. Where a refiner of cane sugar as referred to in Article 1 (b) of Regulation (EEC) No 1789/81 or a processor as referred to in Article 3 (a) thereof fails to fulfill his obligations, the amount of the charge to be levied pursuant to Article 6 of that Regulation shall be equal to the sum of the results of the following two calculations:

- the marketed quantity multiplied by 10 times the flat-rate amount referred to in Article 6 of this Regulation,
- the marketed quantity multiplied by the amount referred to in the second subparagraph of Article 6 of Regulation (EEC) No 1789/81, less the flat-rate amount referred to in Article 6 of this Regulation.

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5. The amounts referred to in this Article shall only be collected once in any period of 12 calendar months, in respect of a given marketed quantity.

**▼M3***Article 6*

The flat-rate amount referred to in Articles 4 and 5 shall be equal to ECU 0,193 per 100 kilograms of sugar expressed as white sugar.

That amount shall be adjusted if the amount referred to in the second subparagraph of Article 6 of Regulation (EEC) No 1789/81 is adjusted.

For the purposes of Article 4, the flat-rate amount shall be that valid on the day of the request, and for the purposes of Article 5, the flat-rate amount shall be that valid on the day of marketing.

**▼B***Article 7*

Where a person having an obligation to hold minimum stocks invokes *force majeure* to justify a failure to respect that obligation, the Member State recognizing such a case shall, only in respect of the month when the case of *force majeure* arose and of each subsequent month and part of a month and in respect of the missing quantity, levy one-twelfth of the amount resulting from the calculation referred to in either the first indent of Article 5 (3) or, where appropriate, the first indent of Article 5 (4). Where the person concerned is in the situation referred to in Article 5 (2) the rules of calculation therein provided shall apply *mutatis mutandis*.

*Article 8*

1. Member States shall take all measures necessary to ensure compliance with the system of minimum stocks.

2. Member States shall inform the Commission without delay of all cases in which the amounts referred to in Articles 4, 5 and 7 are to be collected, the quantities and the periods concerned, and the circumstances constituting each case of *force majeure*.

*Article 9*

This Regulation shall enter into force on 1 February 1977.

Nevertheless it shall apply to the obligations to hold in respect of minimum stocks:

- sugar produced in the French departments of Guadeloupe and Martinique, with effect from 1 June 1977;
- preferential sugar, with effect from 1 July 1977.

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