

Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/1999 as regards measures for the disposal of cream, butter and concentrated butter on the Community market (repealed)

CHAPTER II

SALE OF INTERVENTION BUTTER AT REDUCED PRICES AND GRANT OF AID FOR BUTTER, CONCENTRATED BUTTER AND CREAM FOR USE IN THE MANUFACTURE OF PASTRY PRODUCTS, ICE-CREAM AND OTHER FOODSTUFFS

SECTION 1

DEFINITIONS

Article 4

- 1 For the purposes of this Chapter, the following definitions shall apply:
 - a 'final products' means products falling within one of the CN codes listed in Annex I, broken down by formula A and B as defined in that Annex;
 - b 'intermediate products' means:
 - (i) products other than those falling within CN codes 0401 to 0406 and other than mixtures referred to in Annex II,
 - (ii) products falling within CN code ex 0405 10 30 with a butterfat content of 82 % or more, manufactured exclusively from concentrated butter referred to in Article 5 or Article 7, with or without the addition of cream, at an establishment approved for that purpose in accordance with Article 13, on condition that tracers referred to in Article 8(1) have been added to those intermediate products;
 - c 'manufacturing batch' means a quantity of intermediate or final products manufactured from intervention butter, butter or concentrated butter or cream identified in relation to all or part of a tender referred to in Article 20;
 - d 'tonne of butter equivalent' means one tonne of butter with a milkfat content of 82 %, 0,82 tonnes of concentrated butter or 2,34 tonnes of cream.
- 2 For the purposes of this Chapter, except as regards Articles 10, 13, 14 and 15 and Section 8, the Belgo-Luxembourg Economic Union shall be regarded as a single Member State.

SECTION 2

ELIGIBILITY FOR AID

Article 5

- 1 Only the following may qualify for aid:
 - a butter produced directly and exclusively from pasteurised cream which meets the requirements laid down in Article 6(3) of Regulation (EC) No 1255/1999 and the

- requirements of the national quality class set out in Annex V to Commission Regulation (EC) No 2771/1999⁽¹⁾ in the Member State of manufacture and whose packaging is marked accordingly;
- b concentrated butter, fractionated or not, entirely obtained from cream, butter and/or milkfat falling within CN code ex 0405 90 10;
 - c cream within the meaning of Article 6(6) of Regulation (EC) No 1255/1999, falling within CN codes ex 0401 30 39 or ex 0401 30 99, with a fat content of 35 % or more and directly and exclusively used in the final products referred to in formula B in Annex I to this Regulation;
 - d the intermediate products referred to in Article 4(1)(b)(ii).

Butter, concentrated butter, cream and the intermediate products referred to in the first subparagraph shall meet the requirements of Directive 92/46/EEC, in particular as regards preparation in an approved establishment and compliance with the health marking requirements specified in Section A of Chapter IV of Annex C to that Directive.

2 In order for concentrated butter referred to in point (b) of the first subparagraph of paragraph 1 to qualify for aid, the concentrated butter and, where applicable, the milkfat used in its manufacture must have been produced in an establishment approved in accordance with Article 13 and must meet the requirements set out in Annex III. The milkfat must have been produced not more than six months before its use in the manufacture of concentrated butter under this Regulation.

SECTION 3

REQUIREMENTS RELATING TO THE USE AND INCORPORATION OF INTERVENTION BUTTER, BUTTER, CONCENTRATED BUTTER AND CREAM

Article 6

1 The intervention butter, butter or concentrated butter shall be incorporated, exclusively and notwithstanding any intermediate products as referred to in Article 10, into final products in one of the following ways:

- a after adding the tracers referred to in Article 8(1):
 - (i) after processing the intervention butter into concentrated butter, in accordance with Article 7;
 - or
 - (ii) without further processing;
- b by using, at the establishment where incorporation into the final products is effected, a minimum of five tonnes per month or 45 tonnes per 12-month period of butter-equivalent or the same quantities in intermediate products:
 - (i) after processing the intervention butter into concentrated butter, in accordance with Article 7;
 - or
 - (ii) without further processing.

The cream shall be incorporated, directly and exclusively into final products referred to in Annex I, formula B, in one of the ways referred to in the first subparagraph of this paragraph.

2 Further processing of final products shall be permitted only if the products obtained fall within one of the CN codes referred to in Annex I.

Article 7

Where the intervention butter is to be processed into concentrated butter, fractionated or not, all the butter awarded to the tenderer shall be processed into concentrated butter meeting the requirements set out in Annex III and shall produce at least 100 kilograms of concentrated butter per 122,5 kilograms of intervention butter used.

Article 8

1 Where the incorporation procedure used is that provided for in Article 6(1)(a), the following shall be added, to the exclusion of any other products, in such a way that they are evenly distributed, according to the minimum quantities prescribed:

- a if the intervention butter, butter or concentrated butter is to be incorporated into products corresponding to formula A in Annex I (hereinafter called formula A), the tracers listed in Annex IV;
- b if the intervention butter, butter or concentrated butter is to be incorporated into products corresponding to formula B in Annex I (hereinafter called formula B), the tracers listed in Annex V;
- c in the case of cream, the tracers listed in Annex VI.

In the case of concentrated butter, the tracers referred to in points (a) and (b) of the first subparagraph shall be added during or immediately after manufacture, in the same establishment.

2 Where, for example because of uneven distribution or the incorporation of insufficient quantities, the content of each of the tracers referred to in Annexes IV and V and in point 1 of Annex VI is found to be more than 5 % but less than 30 % below the minimum quantities prescribed, then 1,5 % of the processing security referred to in Article 28 shall be forfeited or the aid shall be reduced by 1,5 % for each percentage point below the prescribed minimum quantities. If the content of each of those tracers is found to be equal or more than 30 % below the minimum quantities prescribed, then, in the case of intervention butter, the processing security referred to in Article 28 shall be forfeited and, in the case of products referred to in Article 5(1), the aid shall not be paid.

The first subparagraph shall not apply in the case of organoleptic tracers if the products referred to in points I(a) and II(a) of Annex IV, points I(a) and II(a) of Annex V and point 1(a) of Annex VI are added in such quantities that their flavour, colour or aroma can be perceived up to the stage of incorporation into final products or, where applicable, into intermediate products as referred to in Article 10.

For the granting of aid, where the content of the tracer triglyceride of enanthic acid referred to in points I(b) and II(b) of Annex IV and point 1(b) of Annex VI exceeds the quantities prescribed by more than 20 %, no aid shall be paid for the total quantity of this tracer. The content and quantity of the tracer shall be calculated on the basis of the arithmetic mean of the values found in the samples taken.

3 The competent body designated by the Member State shall ensure that the requirements as to composition and characteristics, in particular the degree of purity, of the products listed in Annexes IV, V and VI, have been complied with in accordance with Commission Regulation (EC) No 213/2001⁽²⁾.

Article 9

1 Where the butter is manufactured in one establishment and then the tracers are added or the butter, with or without the addition of tracers, is incorporated at an intermediate stage into products other than final products in a different establishment, the butter shall be packaged prior to such operations in accordance with Article 5(1)(a). Where all these operations are carried out in the same establishment, prior packaging of the butter shall not be required.

2 If the manufacture of concentrated butter as referred to in Article 5(1)(b), with or without the addition of tracers, or the processing of intervention butter into concentrated butter in accordance with Article 7, or the addition of tracers to butter or cream, as the case may be, takes place in an establishment other than that where it is incorporated into final products or, where applicable, into intermediate products as referred to in Article 10, then the concentrated butter, intervention butter, butter or cream shall be put up in sealed packages, weighing not less than 10 kilograms net for concentrated butter or butter, without prejudice to any subpackaging, and not less than 25 kilograms net for cream.

Concentrated butter and cream may also be transported in tankers or containers. Before incorporation into final products, the concentrated butter may be repackaged in sealed packages as provided for in this Article at an establishment approved for that purpose in accordance with Article 13.

3 Packages referred to in paragraph 2 shall bear in clearly visible and legible characters a reference to this Regulation and the intended use (formula A or formula B), and a reference to the number of the tendering procedure (a code may be used), to be indicated on the original packaging, so that the competent body can verify compliance with the deadline for incorporation, and:

- a for concentrated butter, one or more of the entries listed in Annex VII(1)(a), with the words 'to which tracers have been added' if the concentrated butter contains tracers;
- b for intervention butter and butter to which tracers have been added, one or more of the entries listed in Annex VII(1)(b);
- c for cream to which tracers have been added, one or more of the entries listed in Annex VII(1)(c).

4 Milkfat produced beforehand in an establishment approved in accordance with Article 13 and intended for use in the manufacture of concentrated butter as referred to in point (b) of the first subparagraph of Article 5(1) shall be put up in sealed packaging weighing not less than 10 kilograms net bearing, in clearly visible and legible letters:

- a a reference to the number of the establishment and the date of production, so that the competent body can verify compliance with the six-month time limit referred to in Article 5(2) and the requirements set out in Annex III;
- b one or more of the entries listed in Annex VII(1)(d).

Provided that its origin can be identified, milkfat may also be stored and transported in tankers or containers.

Article 10

1 Intervention butter, butter and concentrated butter, with or without added tracers, may be incorporated at an intermediate stage into products other than final products and in an establishment other than that of final processing.

In such cases, the processing establishment and the intermediate products must be approved in accordance with Article 13.

Approval shall be granted on the basis of an application specifying in particular the composition and butterfat content of the products manufactured and showing that incorporation into such intermediate products is justified for the manufacture of the final products.

2 Where the intermediate products obtained are held by a resale establishment, that establishment shall undertake, under the terms of the contract of sale for those products:

- a to keep accounts showing, for each delivery, the name(s) and address(es) of the establishment(s) of final processing or, failing this, the first consignees in the Member State and, where applicable, the first consignees in other Member States, together with the corresponding quantities sold;
- b to ensure that the conditions of Articles 11 and 39 are met.

3 Without prejudice to any subpackaging, intermediate products shall be put up in sealed packages weighing not less than 10 kilograms net or shall be transported in tankers or containers. However, products of low density such as foamed products may be put up in sealed packaging weighing not less than five kilograms net without prejudice to any subpackaging.

Packages shall bear, in addition to the intended use (formula A or formula B) and, where applicable, the words 'to which tracers have been added', one or more of the entries listed in Annex VII(2) and, in the case of products referred to in Article 4(1)(b)(ii), reference to the number of the tendering procedure (a code may be used) so that the competent body can verify compliance with the deadline for incorporation.

Article 11

The products referred to in Article 5 and the intervention butter sold in accordance with Section 6 shall be processed and incorporated into final products in the Community within a period of four months following the month of the closing date for the submission of tenders in response to the individual invitation to tender, fixed in Article 16(3).

SECTION 4

APPROVAL

Article 12

The manufacture of milkfat and concentrated butter as referred to in point (b) of the first subparagraph of Article 5(1), the processing of intervention butter into concentrated butter as referred to in Article 7, the addition of tracers as referred to in Article 8, the repackaging of concentrated butter as referred to in the second subparagraph of Article 9(2), the incorporation into intermediate products as referred to in Article 10 and, where the incorporation procedure used is that provided for in Article 6(1)(b), the incorporation of intervention butter, butter, concentrated butter, intermediate products and cream into final products shall all be carried out in establishments approved in accordance with Article 13.

Article 13

- 1 Establishments may not be approved unless:
 - a they possess suitable technical plant;
 - b where applicable, they have been approved under Article 10 of Directive 92/46/EEC;

- c they are capable of processing or incorporating at least five tonnes of butter per month, or 45 tonnes per 12-month period, or the equivalent in concentrated butter or cream, or, where applicable, intermediate products;
- d they give a written undertaking to process or incorporate the quantities referred to in point (c);
- e they have premises on which any stocks of non-butter fat can be stored separately and identified as such;
- f they undertake to keep permanent records and supporting documents showing the quantities, composition and supplier of the fats used and the quantities, composition and butterfat content of the products obtained, and, except for establishments marketing final products at the retail stage, the date on which the products leave the establishment and the names and addresses of their holders, supported by references to delivery orders and invoices;
- g in the case of the manufacture of milkfat for use in the manufacture of concentrated butter, they undertake to keep records as specified by the competent body of each Member State, showing the quantities of butter and cream used and their supplier, the quantities of milkfat obtained and the identification and date of production and removal of each batch, identified in relation to their manufacturing programme as referred to in point (h);
- h they undertake to forward their manufacturing programme for each tender as provided for in Articles 20 to 23 and their manufacturing programme for milkfat for use in the manufacture of concentrated butter as referred to in point (b) of the first subparagraph of Article 5(1) to the body responsible for the checks referred to in Section 8, in accordance with the procedures laid down by each Member State;
- i they undertake to forward to the competent body the data concerning them as referred to in the models set out in Annexes VIII to XII, in accordance with detailed rules to be laid down by each Member State.

Where the competent body decides, as a result of the inspections referred to in Section 8, to carry out intensive checks at least once a month, Member States may accept manufacturing programmes as referred to in point (h) of the first subparagraph which do not bear a reference to the tender.

2 Establishments which process different products benefiting from aid or price reductions under different Community schemes shall also undertake:

- a to keep separately the records referred to in point (f) of the first subparagraph of paragraph 1;
- b to process those products successively.

At the request of the establishment concerned, Member States may waive the obligation provided for in point (b) of the first subparagraph if the establishment possesses premises ensuring proper separation and identification of any stocks of the butter in question.

Article 14

Separate approvals bearing a serial number shall be issued by the Member States on whose territories each of the following are performed:

- (a) the manufacture of concentrated butter as referred to in point (b) of the first subparagraph of Article 5(1) or the manufacture of milkfat, as the case may be;
- (b) the addition of tracers to intervention butter, butter or cream;

- (c) incorporation into intermediate products;
- (d) where the incorporation procedure used is that provided for in Article 6(1)(b), incorporation into final products;
- (e) the processing of intervention butter into concentrated butter, in accordance with Article 7;
- (f) the repackaging of concentrated butter in accordance with the second subparagraph of Article 9(2).

Article 15

1 Approval shall be withdrawn if the conditions laid down in points (a), (b), (c) and (e) of the first subparagraph of Article 13(1) are no longer satisfied.

At the request of the establishment concerned, approval may be restored after a period of six months, following a detailed inspection which concludes that the conditions are satisfied.

2 If an establishment is found not to have complied with one of its undertakings referred to in points (d), (f), (g) and (h) of the first subparagraph of Article 13(1) or any other obligation arising from this Regulation, then, except in cases of *force majeure*, approval shall be suspended for a period of one to twelve months, depending on the seriousness of the irregularity. At the end of that period, approval may be restored only where the establishment enters into a new undertaking in accordance with points (d), (f), (g) and (h) of the first subparagraph of Article 13(1).

Member States may decide not to impose suspension as referred to in the first subparagraph if it is established that the irregularity was not committed deliberately or through serious negligence and that its consequences are marginal.

SECTION 5

TENDERING PROCEDURES

Article 16

1 Notice of 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.

2 During the period of validity of the standing invitation to tender, intervention agencies shall issue individual invitations to tender indicating in particular the address for the submission of tenders and the closing date.

3 The time limit for the submission of tenders in response to the individual invitations to tender shall be 11.00 (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 Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.

4 On the closing day referred to in paragraph 3, the Member States shall send the Commission a summary table indicating the quantities and amounts offered by tenderers in compliance with this Section.

If no offers have been submitted, Member States communicate this to the Commission within the same time limit. However, for sales of butter from intervention this

communication is only required if butter is available for sale in the Member State concerned.

Article 17

The intervention agency shall specify in the individual notice of invitation to tender provided for in Article 16(2), for the intervention butter stocks it holds:

- (a) the location of the cold stores where the butter intended for sale is held;
- (b) the quantity of intervention butter for sale in each store.

Article 18

1 Intervention agencies shall make available to prospective tenderers on request an up-to-date list of the cold stores where the butter put up for tender is stored and the corresponding quantities, as provided for in Article 17(b). Intervention agencies shall also publish updated lists at regular intervals, in an appropriate form to be specified in the notices of invitation to tender.

2 When transmitting the information referred to in Article 16(4), intervention agencies shall notify the Commission of the quantities of butter available for sale.

Article 19

Intervention agencies shall take the necessary steps to enable prospective tenderers to examine samples of the butter for sale, at their own expense, before tendering.

Article 20

Tenders shall be submitted in writing either by registered post or delivery by hand to the intervention agency against proof of receipt, or by any other written means of telecommunication.

Article 21

1 Tenders shall be valid only if:

- a they relate to a single product (intervention butter, cream or butter or concentrated butter), with a uniform fat content in the case of butter (82 % or more, or 80 % or more but less than 82 %) intended for the same use (formula A or formula B) and subject to the same incorporation procedure in accordance with Article 6;
- b they relate to a quantity of at least 5 tonnes of butter, 12 tonnes of cream or 4 tonnes of concentrated butter or, if the quantity available in a store is less, to that quantity;
- c they are accompanied by a written undertaking from the tenderer to incorporate the intervention butter, butter or concentrated butter or cream, or cause it to be incorporated, into final products in accordance with Article 6;
- d without prejudice to Article 28(5), tenderers include a declaration to the effect that they agree to forgo any claim as to the quality and characteristics of any intervention butter awarded to them;
- e proof is furnished before expiry of the period set for the submission of tenders that the tenderer has lodged a tendering security as referred to in Article 27(1) for the relevant individual tendering procedure.

2 The undertakings and declarations referred to in points (c) and (d) of paragraph 1 forwarded initially to the intervention agency shall be tacitly renewed for subsequent tenders until that arrangement is expressly terminated by the tenderer or the intervention agency finds that the undertakings have not been complied with, on condition that:

- a the original tender stipulates that the tenderer intends to avail itself of the provisions of this paragraph;
- b subsequent tenders refer to this paragraph and to the date of the original tender.

3 No tender may be withdrawn after expiry of the time limit specified in Article 16(3) for the specific invitation to tender concerned.

Article 22

1 Tenders relating to the sale of intervention butter shall be submitted to the intervention agency holding the butter.

2 Tenders shall contain:

- a the name and address of the tenderer;
- b the quantity applied for;
- c the intended use of the butter (formula A or formula B), the incorporation procedure chosen in accordance with Article 6(1) and, where applicable, the manufacture of intermediate products referred to in Article 4(1)(b)(ii);
- d the price offered per 100 kilograms of butter, exclusive of internal taxes, ex cold store, expressed in euro;
- e where appropriate, the Member State on whose territory the butter is to be incorporated into final products or processed into concentrated butter, tracers are to be added to the butter or intermediate products are to be manufactured;
- f where appropriate, the cold store in which the butter is held and, optionally, an alternative store;
- g where appropriate, an indication of the kind of butter referred to in Article 4(6)(e) of Regulation (EC) No 2771/1999 (sweet or other) for which the offer is being submitted.

Article 23

1 Tenders relating to the grant of aid shall be submitted:

- a where the incorporation procedure used is that provided for in Article 6(1)(a), to the intervention agency of the Member State in whose territory tracers are to be added;
- b where the incorporation procedure used is that provided for in Article 6(1)(b), to the intervention agency of the Member State in whose territory the first of the following operations is to be carried out:
 - (i) manufacture of concentrated butter,
 - (ii) incorporation of butter into intermediate products,
 - (iii) incorporation of butter or cream into final products.

2 Tenders shall contain:

- a the name and address of the tenderer;
- b the quantity of cream, butter or concentrated butter, where appropriate including tracers, for which aid is requested and, in the case of butter, the minimum fat content;
- c the intended use (formula A or formula B), the incorporation procedure chosen in accordance with Article 6(1) and, where applicable, the manufacture of intermediate products referred to in Article 4(1)(b)(ii);
- d the proposed amount of aid per 100 kilograms of cream, butter or concentrated butter, expressed in euro, taking account, where applicable, of the weight of the tracers referred to in Annexes IV, V and VI.

Article 24

- 1 Successful tenderers shall:
- a carry out or cause to be carried out on their behalf and at their expense the operations relating to the manufacture of concentrated butter as referred to in point (b) of the first subparagraph of Article 5(1), the processing of intervention butter into concentrated butter in accordance with Article 7, and the addition of tracers, and shall comply with the undertaking referred to in Article 21(1)(c);
 - b keep accounts:
 - (i) showing, for each delivery of intervention butter, butter, concentrated butter, cream or intermediate products, the names and addresses of the purchasers and the corresponding quantities, specifying their intended use (formula A or formula B);
 - (ii) specifying either the time limit for incorporation referred to in Article 11 or the number of the tendering procedure, which may be in code;
 - c keep separate accounts for each aid scheme, if they process products benefiting from aid or price reductions under different Community schemes;
 - d include clauses in each contract for the sale of intervention butter, butter, concentrated butter, cream or intermediate products requiring the purchaser:
 - (i) in the case of the manufacture of intermediate products, to comply with the requirements set out in Article 4(1)(b)(ii) and the conditions laid down in Article 10;
 - (ii) to comply, where appropriate, with the undertaking referred to in Article 21(1)(c);
 - (iii) to incorporate the products into final products within the period laid down in Article 11, specifying the intended use (formula A or formula B);
 - (iv) where applicable, to keep accounts as referred to in point (b);
 - (v) to comply with Article 13;
 - (vi) to keep records as referred to in Article 13(1)(f) and (g) where products containing tracers are incorporated into final products or in the case of final users referred to in Article 42 to keep documents showing all quantities of butter fats purchased;
 - (vii) to forward to the competent body the data concerning them as referred to in the models set out in Annexes VIII to XII, in accordance with detailed rules to be laid down by the Member State of the purchaser;
 - (viii) where applicable, to provide the competent authority with the manufacturing programme.

The obligation provided for in point (d) of the first subparagraph shall be deemed to be fulfilled if each sales contract contains a reference to compliance with that point.

- 2 Successful tenderers who manufacture the final products shall keep records as referred to in Article 13(1)(f) and (g) and forward their manufacturing programmes in accordance with Article 13(1)(h).

Article 25

1 A minimum selling price shall be fixed for intervention butter and maximum aid shall be fixed for cream, butter and concentrated butter in the light of the tenders received in response to each individual invitation to tender and in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999. The price or aid thus fixed may vary according to:

- a the intended use (formula A or formula B);
- b the fat content of the butter;
- c the incorporation procedure to be used in accordance with Article 6(1) of this Regulation.

The minimum selling price may vary according to the location of the quantities of butter offered for sale.

Where the intervention butter is purchased, or aid is applied for with a view to the manufacture of intermediate products referred to in Article 4(1)(b)(ii), the minimum selling price paid for the intervention butter and the maximum amount of aid granted for those intermediate products shall correspond respectively to the minimum selling price and the maximum amount of aid fixed as referred to in Article 26 for butter with a fat content of 82 % or more to which tracers have been added.

2 A decision may be taken in accordance with the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999 that no award shall be made in respect of an invitation to tender.

Article 26

1 Tenders shall be rejected if the price offered for the intervention butter is lower than the minimum price or if the amount of aid proposed exceeds the maximum amount of aid fixed, due regard being had to the intended use, the fat content of the butter or concentrated butter in question and the incorporation procedure.

2 Without prejudice to paragraph 1, successful tenderers shall be those offering the highest price.

The competent intervention agency shall sell intervention butter on the basis of the date on which it entered storage, starting with the oldest butter among the total available quantity or among the available quantity of sweet or other butter, and, where applicable, in the cold store(s) named by the operator.

3 If the quantity available in the store in question is not exhausted, contracts for the remaining quantity shall be awarded to the other tenderers according to the prices offered, starting with the highest price. Where the remaining quantity is one tonne or less, that quantity shall be offered to the successful tenderers on the same terms as quantities already awarded to them.

Where acceptance of a tender would lead to a contract being awarded for more butter than is available at the cold store in question, a contract shall be awarded to the tenderer concerned only for the quantity available. The intervention agency may designate other cold stores from which the quantity specified in the tender is to be made up. However, the tenderer may refuse such designation if the tender indicates a cold store in accordance with Article 22(2)(f).

Where, in respect of a single cold store, acceptance of two or more tenders offering the same prices for the same intended uses for the butter and the same method of

incorporation would lead to contracts being awarded in excess of the quantity available, awards shall be made by dividing 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.

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

Article 27

1 The tenderer shall lodge a tendering security for the relevant individual tendering procedure before expiry of the period set for the submission of tenders.

2 The tendering security shall be lodged in the Member State in which the tender is submitted.

However, in the context of the sale of intervention butter, if the tender states, in accordance with Article 22(2)(e), that incorporation of the butter into final products or, where applicable, manufacture of concentrated butter or addition of tracers to butter, or manufacture of intermediate products, will take place in a Member State other than the Member State in which the tender has been submitted, the security may be lodged with the competent authority designated by the other Member State, which shall issue to the tenderer the proof referred to in Article 21(1)(e). In such cases, the intervention agency concerned shall inform the competent authority of the other Member State of the circumstances entailing release or forfeiture of the security.

3 The tendering security shall be EUR 100 per tonne.

4 The tendering security shall be released immediately if the tender is not accepted.

5 The primary requirements within the meaning of Article 20(2) of Regulation (EEC) No 2220/85, compliance with which shall be ensured by the lodging of the tendering security, shall be maintenance of the tender after the closing date for the submission of tenders and, as the case may be:

- a for intervention butter, the lodging of a processing security as referred to in Article 28 of this Regulation and payment of the amount referred to in Article 31(2);
- b for the products referred to in Article 5 of this Regulation:
 - (i) compliance with the requirements referred to in that Article;
 - (ii) where the incorporation procedure used is that provided for in Article 6(1)(a), the lodging of a processing security as referred to in Article 28 or, where the second subparagraph of Article 34 applies, incorporation into final products;
 - (iii) where the incorporation procedure used is that provided for in Article 6(1)(b), incorporation into final products.

Article 28

1 At the same time as the minimum selling price(s) or maximum amount(s) of aid is/are fixed and under the procedure referred to in Article 42(2) of Regulation (EC) No 1255/1999, the amount(s) of the processing security shall be fixed per 100 kilograms by reference either to the difference between the intervention price of butter and the minimum prices fixed or to the amounts of aid.

2 The purpose of the processing security shall be to ensure performance of the primary requirements within the meaning of Article 20(2) of Regulation (EEC) No 2220/85 concerning either:

- a in the case of intervention butter:
 - (i) compliance with the requirements of Article 7 of this Regulation for the processing of butter into concentrated butter and the addition of tracers, where applicable, or the addition of tracers to the butter,
 - (ii) the incorporation of the butter or concentrated butter, to which tracers have or have not been added, into final products; or
- b in the case of the products referred to in Article 5 of this Regulation and where the incorporation procedure used is that provided for in Article 6(1)(a), incorporation into final products.

The processing security shall be lodged in the Member State where the tender is submitted, in the case of aid, and in the Member State in which processing is to be commenced or carried out in the case of intervention butter.

3 The proof required for the purposes of releasing the processing security shall be produced for the competent agency designated by the Member State within 12 months of the expiry of the period laid down in Article 11.

4 Except in cases of *force majeure*, where the time limit for incorporation into final products fixed in Article 11 is exceeded by less than 60 days, EUR 6 per tonne of butter equivalent shall be forfeited from the processing security each day.

At the end of that 59-day period, the remaining amount shall be reduced by 15 % and hereafter by 2 % for each additional day.

5 Where the primary requirements referred to in paragraph 2(a) of this Article are not complied with within the time limits laid down in Article 11 because the intervention butter is found to be unfit for consumption, any processing securities shall nevertheless be released, with the agreement of the Commission, once appropriate action has been taken under the supervision of the authorities of the Member State concerned.

Article 29

1 For imperative and duly substantiated commercial reasons, a change in the intended use or incorporation method for the entire quantity of the tender referred to in Article 20 shall be authorised by the intervention agency, under its supervision and in compliance with this Regulation.

Where the incorporation procedure used is that provided for in Article 6(1)(a), such authorisation must be obtained before tracers are added.

Where the minimum selling price or the maximum level of aid referred to in Article 25(1), as the case may be, are identical for formula A and formula B, at the tenderer's request a change in the intended use between the two formulas for the entire quantity of the tender referred to in Article 20 may be authorised by the competent authority, under its supervision and in compliance with this Regulation.

2 If, for duly substantiated commercial reasons, the primary requirements referred to in Article 28(2)(a)(ii) or (b) are not complied with for products to be incorporated using the procedure provided for in Article 6(1)(a), the competent agency may authorise the tenderer, at the latter's request within the period laid down in Article 11, to rework those products under

its supervision and in compliance with this Regulation, in the same establishment approved for adding tracers, provided there is no change from the intended use or the incorporation procedure mentioned in the tender.

In such cases, 15 % of the processing security referred to in Article 28 shall be forfeited or the aid shall be reduced by 15 %.

Article 30

In the event of failure to comply with a subordinate requirement, 15 % of the processing security referred to in Article 28 shall be forfeited or the aid shall be reduced by 15 %.

SECTION 6

SALE OF INTERVENTION BUTTER UNDER THE TENDERING PROCEDURE

Article 31

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

2 Before removing the butter and within the period specified in Article 32(2), successful tenderers shall pay the intervention agency an amount corresponding to their tender for the quantity which they intend to remove from store and shall lodge a processing security as referred to in Article 28.

3 Except in cases of *force majeure*, if the successful tenderer has not complied with paragraph 2 of this Article within the specified period the tendering security referred to in Article 27(1) shall be forfeited and the sale of the quantities involved shall be cancelled.

Article 32

1 When the amount referred to in Article 31(2) has been paid and a processing security as referred to in Article 28 has been lodged, the intervention agency shall issue a removal warrant indicating:

- a the quantity for which the conditions referred to in Article 31(2) have been satisfied and the tender to which it relates identified by a serial number;
- b the cold store where the butter is stored;
- c the final date for removal of the butter;
- d the final date for incorporation into final products;
- e the incorporation procedure selected in accordance with Article 6(1);
- f the intended use (formula A or formula B).

2 Successful tenderers shall remove the butter awarded to them within 45 days of the closing date for the submission of tenders. Removal may take place in instalments.

If the payment referred to in Article 31(2) has been made and the processing security referred to in Article 28 has been lodged but the butter has not been removed within the period specified in the first subparagraph of this paragraph, the successful tenderer shall bear the cost and risk of storing the butter with effect from the day following the date referred to in paragraph 1(c) of this Article.

3 The butter shall be handed over by the intervention agency in packages bearing a clear and legible indication of this Regulation, the intended use (formula A or formula B) and the incorporation procedure selected in accordance with Article 6(1).

The butter shall remain in its original packaging until the start of the incorporation procedure in accordance with Article 6(1).

SECTION 7

GRANTING OF AID UNDER THE TENDERING PROCEDURE

Article 33

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

2 The notification to successful tenderers provided for in paragraph 1 shall include the following information in particular:

- a the amount of aid awarded for the quantity of butter, concentrated butter or cream concerned and the tender to which it relates, identified by a serial number;
- b where applicable, the amount of the processing security referred to in Article 28;
- c the final date for incorporation into final products;
- d the incorporation procedure selected in accordance with Article 6(1) and the intended use (formula A or formula B).

Article 34

Aid shall be paid to successful tenderers only on condition that proof has been provided, within 12 months of the final date laid down in Article 11:

- (a) in the case of butter:
 - (i) that it has been manufactured in accordance with the requirements laid down in Article 5(1);
 - (ii) that it has been incorporated into final products within the period laid down in Article 11 or, where the incorporation procedure used is that provided for in Article 6(1)(a), that tracers have been added in accordance with Article 8(1) and the processing security referred to in Article 28 has been lodged;
- (b) in the case of concentrated butter:
 - (i) that it has been manufactured in accordance with the requirements set out in Article 5;
 - (ii) that it has been incorporated into final products within the period laid down in Article 11 or, where the incorporation procedure used is that provided for in Article 6(1)(a), that tracers have been added in accordance with Article 8(1) and the processing security referred to in Article 28 has been lodged;
- (c) in the case of cream:
 - (i) that it has been manufactured in accordance with the requirements laid down in Article 5(1);
 - (ii) that it has been incorporated in the final products within the period laid down in Article 11 or, where the incorporation procedure used is that provided for in Article 6(1)(a), that tracers have been added in accordance with

Article 8(1) and the processing security referred to in Article 28 has been lodged.

However, the processing security referred to in Article 28 need not be lodged if the aid is claimed following completion of the checks provided for in Section 8 and if proof is supplied of incorporation into final products within the period laid down in Article 11.

Article 35

1 Except in cases of *force majeure*, the aid shall be paid within 60 days of presentation to the intervention agency of the proof referred to in the first paragraph of Article 34, in proportion to the quantities for which such proof has been supplied.

However, Member States may restrict payment of the aid to one application per month and per tendering procedure.

2 Except in cases of *force majeure*, where the period laid down in Article 11 is exceeded by less than 60 days, where the incorporation procedure used is that provided for in Article 6(1) (b), EUR 6 per tonne of butter equivalent per day shall be deducted from the aid.

At the end of this 59-day period, the remaining amount of the aid shall be reduced by 15 %, and thereafter by 2 % for each additional day.

3 Where the successful tenderer has invoked *force majeure* to obtain payment of the aid, or where an administrative inquiry concerning entitlement to the aid has been initiated, payment shall not be made until entitlement to the aid has been established.

SECTION 8

CHECKS

Article 36

Member States shall undertake, in particular, the checks referred to in this Section, the cost of which they shall bear.

Article 37

1 During the manufacture of concentrated butter as referred to in point (b) of the first subparagraph of Article 5(1), whether or not tracers are added, and during the manufacture of milkfat as referred to in Article 5(2), or during the processing of intervention butter into concentrated butter in accordance with Article 7, or during the addition of tracers to cream, intervention butter or butter, or during repackaging as referred to in the second subparagraph of Article 9(2), the competent agency shall carry out unannounced on-the-spot checks on the basis of the establishment's manufacturing programme referred to in Article 13(1)(h) in such a way that each tender referred to in Article 20 is checked at least once and, in the case of milkfat intended for use in the manufacture of concentrated butter, at least once a month.

For quality control purposes, Member States may, after obtaining the Commission's consent, establish under their supervision a system of self-checking for certain approved establishments.

2 Checks shall entail physical sampling of the products obtained and examination of the butterfats used, where appropriate by physical sampling, and shall relate in particular to the conditions of manufacture and the quantity and composition of the product obtained depending

on the butter or cream used and to the absence of non-milk fat in the products obtained or, where appropriate, in the butter fats used.

3 Checks shall be supplemented from time to time, at a frequency depending on the quantities processed but at least every six months, by a thorough and random inspection of the records referred to in Article 13(1)(f) and (g) and, where appropriate, the accounts referred to in Article 24(1)(b) and by verification of compliance with the conditions for approval of the establishment.

Article 38

1 Unannounced on-the-spot checks on the incorporation of concentrated butter, intervention butter or butter into intermediate products in the establishments concerned shall be made on the basis of the manufacturing programme referred to in Article 13(1)(h) at a frequency depending on the quantities used, but at least once a month.

Inspections shall relate in particular to the conditions in which the intermediate products are manufactured and compliance with the requirements regarding butterfat content as declared in accordance with the third subparagraph of Article 10(1), by means of:

- a scrutiny of the records provided for in Article 13(1)(f) to verify the composition as declared of the intermediate products manufactured;
- b examination of the butterfats used, where appropriate by physical sampling, verification of the absence of non-milk fat in the butterfats used and physical sampling of intermediate products to check their composition as indicated in those records;
- c checks on the input of butterfat and the output of intermediate products manufactured.

2 The checks referred to in paragraph 1 shall be supplemented by checks to ascertain whether the conditions for the approval of the establishment have been complied with and, where applicable, checks on the accounts referred to in Article 24(1)(b), and by detailed inspection of those records carried out:

- a by random sampling, where the incorporation procedure used is that provided for in Article 6(1)(a);
- b for each batch of intermediate products manufactured, where the incorporation procedure used is that provided for in Article 6(1)(b).

Article 39

1 Unannounced on-the-spot checks shall be made on the use of intervention butter, butter, concentrated butter, cream or intermediate products in final products in the establishments concerned:

- a to examine the butterfats used, where appropriate with physical sampling, to verify the absence of non-milk fats and if necessary physical sampling of the final products to verify their composition;
- b to verify compliance with the use to which the product is to be put as stated in the tender, on the basis of the manufacturing recipes and either the records referred to in Article 13(1)(f) or the accounts referred to in Article 24(1)(b):
 - (i) by random sampling, where the incorporation procedure used is that provided for in Article 6(1)(a),
 - (ii) for each batch of final products manufactured, where the incorporation procedure used is that provided for in Article 6(1)(b).

The checks referred to in points (a) and (b) of the first subparagraph shall be carried out at a frequency based on the quantities used but at least once per trimester where

the incorporation procedure used is that provided for in Article 6(1)(a) if five tonnes or more of butter equivalent are incorporated in the establishment per month and at a frequency of at least once per month where the incorporation procedure used is that provided for in Article 6(1)(b).

Establishments using five tonnes or more of butter equivalent per month in accordance with the incorporation procedure provided for in Article 6(1)(a) shall forward their manufacturing programme for each tender in accordance with the procedures laid down by the Member State.

2 Where the incorporation procedure used is that provided for in Article 6(1)(b), the checks referred to in paragraph 1 of this Article shall be supplemented periodically by checks to ascertain compliance with:

- a the conditions for the approval of the establishment provided for in Article 13;
- b the undertaking given under Article 21(1)(c).

The application of the incorporation procedure provided for in Article 6(1)(b) may be suspended if the establishment has not complied with its undertaking under Article 21(1)(c). Once suspended, the application of the incorporation procedure may be resumed only at the request of the establishment concerned, accompanied by a written undertaking by the tenderer in accordance with Article 21(1)(c).

Article 40

1 Where the incorporation procedure used is that provided for in Article 6(1)(b), the check referred to in Articles 38(2)(b) and 39(1)(b)(ii) shall be made per manufacturing batch.

2 Where the incorporation procedure used is that provided for in Article 6(1)(a), the check referred to in Articles 38(1), 38(2)(a) and 39(1)(b)(i) shall be made by identifying the quantities used in relation to tenders referred to in Article 20.

Article 41

1 Where the incorporation procedure used is that provided for in Article 6(1)(a), the checks referred to in Article 39(1) shall be deemed to have been performed if the successful tenderers or, where applicable, the vendors submit a declaration by the final users or, where applicable, the final retailers, applicable to all sales, in which the latter:

- a confirm their undertaking of incorporation into final products, as referred to in Article 24(1)(d)(iii) and set out in the sales contract;
- b state that they are aware of the penalties, laid down now or in the future by the Member State, which they may incur if any checks which the public authorities may perform reveal that they have not fulfilled the undertaking referred to in point (a).

2 Where the undertaking referred to in paragraph 1(a) is not complied with, if the aid has already been paid and the security released, a sum equal to the amount of the processing security referred to in Article 28 shall be paid to the intervention agency for the quantities concerned.

Article 42

Article 41 shall apply only if the final users or, where applicable, the final retailers undertake in writing to purchase over a 12-month period not more than 12 tonnes of butter equivalent, including, where relevant, not more than 14 tonnes of cream or the same quantity of butter or concentrated butter in intermediate products.

Checks shall be carried out in order to ensure that the maximum quantity per 12 months is respected.

Article 41 shall no longer apply to final users or final retailers who have not complied with the undertaking referred to in the first paragraph of this Article. However, if the competent authority deems it justified, it may approve a further undertaking by a final user or retailer who has so requested in writing, setting out the reasons for their non-compliance with the previous undertaking. Such approval may take effect only after a period of 12 months following the request. In the meantime, the checks provided for in Article 39(1) shall be carried out.

Article 43

Member States shall regularly check compliance with the obligations provided for in Article 13(1)(i) and Article 24(1)(d)(vii) by verifying the data forwarded.

Article 44

Checks carried out under this Section shall be the subject of an inspection report specifying the date of the check, its duration, and the operations carried out.

Article 45

1 Commission Regulation (EEC) No 3002/92⁽³⁾ shall apply *mutatis mutandis* to the products referred to in this Chapter, save as otherwise provided for herein.

The control measures provided for in Article 2 of Regulation (EEC) No 3002/92 shall also apply to the products referred to in Article 5 of this Regulation from the beginning of the tracing operations referred to in Article 8 of this Regulation or, in the case of concentrated butter to which no tracers have been added, from the date of manufacture or, in the case of butter to which no tracers have been added, incorporated into intermediate products, from the date of incorporation and until incorporation into the final products.

The special entries to be made in boxes 104 and 106 of the T5 control copy shall be as set out in Annex XIII.

2 Where tracers are added to butter or cream, or butter or cream are incorporated into final products or, where applicable, into intermediate products, in a Member State other than the country of manufacture, such butter or cream shall be accompanied by a certificate issued by the competent authority of the Member State stating that the terms of Article 5 have been complied with.

SECTION 9

REPORTING REQUIREMENTS

Article 46

The Member States shall communicate to the Commission:

- (1) before 1 March, 1 June, 1 September and 1 December, for the previous quarter of the calendar year:
 - (a) the data referred to in the models set out in Annexes VIII to XI;
 - (b) the prices paid for subsidised products expressed as a weighted average with an indication of the extremes, as declared by final users in accordance with

- the rules laid down by the Member State or established by sampling by the Member State;
- (c) cases where it has been found that the terms of Article 5 have not been complied with;
- (2) before 1 March each year, for the previous year:
- (a) the data referred to in the model set out in Annex XII;
 - (b) the number of changes of intended use authorised under Article 29 and the quantities and uses concerned;
 - (c) the cases where Article 41(2) is applied.

Member States shall take the necessary steps to ensure compliance with the obligations referred to in Article 13(1)(i) and Article 24(1)(d)(vii).

- (1) OJ L 333, 24.12.1999, p. 11.
- (2) OJ L 37, 7.2.2001, p. 1.
- (3) OJ L 301, 17.10.1992, p. 17.