

Commission Regulation (EU) No 1272/2009 of 11 December 2009
laying down common detailed rules for the implementation of
Council Regulation (EC) No 1234/2007 as regards buying-in and
selling of agricultural products under public intervention (repealed)

TITLE II

PROCEDURE OF BUYING-IN

Article 6

Type of procedure for buying-in

1 Buying-in of products listed in Article 10(1)(a),(b),(d),(e) and (f) of Regulation (EC) No 1234/2007 shall be carried out either through buying-in at a fixed price or via a tendering procedure in accordance with Articles 12, 13 and 18 of that Regulation.

2 Offers or tenders for common wheat, butter and skimmed milk powder may be submitted in accordance with the provisions of this Title during the intervention periods fixed in Article 11 of Regulation (EC) No 1234/2007.

CHAPTER I

General rules

Section I

Common conditions for buying-in

Article 7

Eligibility of products

1 In order to be eligible for public intervention, in addition to the requirements laid down in Regulation (EC) No 1234/2007, the products shall be of sound, fair and of marketable quality.

In particular, they shall fulfil the requirements laid down in this Regulation:

- for cereals: in Annex I, Parts I, II and III,
- for rice: in Annex II, Parts I and III,
- for beef: in Annex III, Parts I, III, V and VI,
- for butter: in Article 28 and Annex IV, Parts I and IV,
- for skimmed milk powder: in Article 28 and Annex V, Parts I, IV and V.

2 In order to establish the eligibility of products, tests shall be carried out in accordance with the methods laid down in:

- for cereals: in Annex I, Parts IV to VIII and Part XII,
- for rice: in Annex II, Part VI,

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- for beef: in Annex III, Part III,
- for butter: in Annex IV, Part IV,
- for skimmed milk powder: in Annex V, Part IV.

Article 8

Minimum quantities of products offered

- 1 The minimum quantity offered or tendered for buying-in shall be:
 - a for common wheat, barley, maize and sorghum: 80 tonnes;
 - b for durum wheat: 10 tonnes;
 - c for rice: 20 tonnes;
 - d for beef: 10 tonnes;
 - e for butter: 20 tonnes;
 - f for skimmed milk powder: 20 tonnes.
- 2 For buying-in products at a fixed price, a Member State may require minimum quantities greater than those laid down in paragraph 1 if justified by the conditions and practices of the wholesale trade or environmental rules in force in the Member State.

Article 9

Security

When submitting an offer or a tender for buying-in, the following security shall be lodged in favour of the intervention agency to which the offer or tender is submitted, in accordance with Regulation (EC) No 2220/85:

- (a) for cereals: EUR 20/tonne;
- (b) for paddy rice: EUR 30/tonne;
- (c) for beef: EUR 300/tonne;
- (d) for butter: EUR 50/tonne;
- (e) for skimmed milk powder: EUR 50/tonne.

Article 10

Conditions for submission and admissibility of offers and tenders

- 1 To be admissible by the intervention agency the offer or tender shall be submitted in the official language or one of the official languages of the Member State in which the offer or tender is submitted, and shall include:
 - a a form made available by the Member States providing, at least, the following information:
 - (i) the offerer's or tenderer's name, address and VAT registration number in the Member State where the offerer or tenderer carries out his main activity or, failing this, his farm registration number;

- (ii) the product offered with, for cereals and rice, its relevant CN code and, for rice, an indication of the type and variety;
 - (iii) except for beef, the place where the product is held at the time of the offer or tender;
 - (iv) for cereals and rice, the approved storage place of an intervention centre for which the offer or tender is made, at the lowest cost taking into account Article 29; this storage place shall not be the storage place where the product is held at the time of the offer or tender;
 - (v) the year of harvest and the area or areas of production in the Community for cereals and rice;
 - (vi) the date of production for butter and skimmed milk powder;
 - (vii) the quantity offered or tendered within the limits laid down in Article 8;
 - (viii) for cereals and rice the main characteristics of the product offered;
 - (ix) for butter and skimmed milk powder, the name and the approval number of the undertakings.
- b the following annexed documents:
- (i) proof that the security referred to in Article 9 has been lodged by the offerer or tenderer;
 - (ii) for cereals and rice a declaration by the offerer or tenderer that the quantity offered is actually present in the place of storage specified in point (a)(iii) of this paragraph;
 - (iii) for cereals and rice a declaration by the offerer or tenderer that the products are of Community origin and that the offer or tender refers to a homogeneous lot which, for rice, must comprise paddy rice of the same variety; and
 - (iv) for cereals and rice, a declaration specifying whether any post-harvest treatment has been carried out or not, the name of the product used, that it has been applied in conformity with the conditions of use, and that the product is authorised under Council Directive 91/414/EEC⁽¹⁾.

2 Notwithstanding, paragraph 1(a)(iv) of this Article, an offerer or tenderer can request on the form referred to in paragraph 1(a) thereof that the product is taken over at the storage place where it is held at the time the offer or tender is submitted provided that the storage place fulfils the requirements laid down in Article 3 and, in respect of cereals and rice, has been approved in accordance with Article 2(3).

3 Where the time limit for the submission of offers or tenders is a public holiday, the offers or tenders shall be submitted at the latest in the last working day preceding the public holiday.

4 Offers or tenders 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.

5 Offers or tenders shall not be withdrawn or amended after their submission.

6 The intervention agency shall register the admissible offers or tenders the day on which the offer or tender was received and the quantities concerned.

7 The rights and obligations resulting from the acceptance of the offer or tender shall not be transferable.

Article 11

Verification of offers or tenders by the intervention agency

1 The intervention agencies shall check that the offers or tenders are admissible, on the basis of the elements required, as set out in Article 10(1).

If the offer or tender is not admissible, the operator concerned shall be informed by the intervention agency within three working days. For offers, if the operator does not receive such information, the offer is considered as being admissible.

2 The documents referred to in Article 10(1)(b)(ii), (iii) and (iv) can be checked for compliance after the intervention agency has verified that the offers or tenders are admissible, if necessary with the assistance of the intervention agency competent for the storage place indicated by the offerer or tenderer, in accordance with Article 32(3).

Section II

Specific conditions for buying-in at fixed price

Article 12

Procedure for buying-in of products at fixed price

1 Buying-in of common wheat, butter and skimmed milk powder at fixed price as referred to in Article 18(1) of Regulation (EC) No 1234/2007 shall be carried out in accordance with the provisions of Section I and this Section.

2 Offers can be submitted to the intervention agency from the beginning of the periods laid down in Article 11 of Regulation (EC) No 1234/2007.

Article 13

Notifications to the Commission

1 The intervention agencies shall notify the Commission of the quantities of common wheat, butter and skimmed milk powder which, during the preceding week, have been the subject of an offer and of the related information.

2 The notifications shall be sent:

- a for butter and skimmed milk powder: not later than 14.00 (Brussels time) each Monday;
- b for common wheat: not later than 12.00 (Brussels time) each Wednesday, as part of the notification referred to in Article 56(1).

3 When for common wheat, butter and skimmed milk powder, the quantities offered approach the limits fixed in Articles 13(1)(a), (c) or (d) or 18(1)(a) of Regulation (EC)

No 1234/2007, the Commission shall inform the Member States as of which date they shall notify the Commission of the quantities as referred to in paragraph 1 of this Article each working day before 14.00 (Brussels time) for the quantities of common wheat, butter and skimmed milk powder offered for intervention during the preceding working day.

4 The notifications shall not contain the data referred to in Article 10(1)(a)(i) and 10(1)(a)(ix).

5 The notifications shall be made in accordance with Article 58.

Article 14

Measures for respecting the intervention ceilings

1 In order to comply with the limits referred to in Article 13(1)(a), (c) and (d) and Article 18(1)(a) of Regulation (EC) No 1234/2007, the Commission shall decide, without the assistance of the Committee referred to in Article 195(1) of that 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 an allocation coefficient applicable to the total quantity in the offers received and notified to the Commission on that day from each offerer;
- c where appropriate, to reject pending offers submitted to the intervention agencies of the Member States.

The Commission shall decide within 2 working days following the notification referred to in Article 13(1) and within 5 working days following the notification referred to in Article 13(3).

2 For common wheat, butter and skimmed milk powder, an offerer to whom an allocation coefficient as referred to in paragraph 1, point (b) applies may withdraw his offer within 5 working days from the date of entry into force of the regulation fixing the allocation coefficient.

Section III

Specific conditions for buying-in via a tendering procedure

Article 15

Procedure for buying-in of products via a tendering procedure

Buying-in of products referred to in Article 18(2) of Regulation (EC) No 1234/2007 shall be carried out in accordance with the provisions of Section I and of this Section.

Article 16

Tendering procedure

1 A tendering procedure for buying-in of products may be opened in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, by way of Regulation, hereinafter referred to as 'Regulation opening the tendering procedure'.

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2 The Commission shall open without the assistance of the Committee referred to in Article 195(1) of Regulation (EC) No 1234/2007:

- a the tendering procedure for buying-in of common wheat for amounts in excess of the maximum quantity offered of 3 million tonnes;
- b the tendering procedure for buying-in beef by category and Member State, or region thereof, on the basis of the two most recent weekly market prices recorded, in accordance with Articles 12(1)(c) and 18(3)(b) of Regulation (EC) No 1234/2007.

3 The Regulation opening the tendering procedure shall, in particular, contain the following information:

- a the products covered with their relevant CN codes, for cereals and rice, with an indication for rice of the type and variety;
- b the period covered (tendering period) and, if necessary the different sub-periods during which the tenders can be submitted.

4 In accordance with the second subparagraph of Article 18(2) of Regulation (EC) No 1234/2007, a restricted tendering procedure may be opened in special circumstances in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007. In such a case, the Regulation shall refer to the specific Member State or region of a Member State covered by the tendering procedure.

5 With regard to rice, the tendering procedure may be restricted to one or more types of rice as defined in Part I, I.2 of Annex III of Regulation (EC) No 1234/2007 ('round grain rice', 'medium grain rice', 'long grain rice A' or 'long grain rice B').

6 For the purposes of Articles 12(1)(c) and 18(3)(b) of Regulation (EC) No 1234/2007, the following rules shall apply:

- (a) the average market price by eligible category in a Member State or in a region thereof shall take account of the prices for qualities U, R and O, expressed in quality R3 using the coefficients set out in Part II of Annex III to this Regulation in the Member State or intervention region concerned;
- (b) the average market prices shall be recorded in accordance with the conditions and in respect of the qualities laid down in Commission Regulation (EC) No 1249/2008⁽²⁾;
- (c) the average market price by eligible category in a Member State or a region thereof shall be the average of the market prices for all the qualities referred to in point (b), weighted by the proportion each represents of total slaughterings in that Member State or region.

The United Kingdom shall consist of two intervention regions as follows:

- region I: Great Britain,
- region II: Northern Ireland.

7 For the purposes of paragraphs 2 and 6 of this Article, the competent authority of the Member State shall notify to the Commission the average market prices in accordance with Article 17 of Regulation (EC) No 1249/2008 and Article 58 of this Regulation.

Article 17

Submission and admissibility of tenders

1 In addition to the general conditions laid down in Article 10, a tender shall be admissible if it indicates a proposed price in euro per unit of measurement rounded to no more than two decimal places, exclusive of VAT.

In the case of cereals and rice the price proposed per tonne for the products shall be a price corresponding to the minimum quality for cereals or to the standard quality for rice, delivered to the storage place indicated by the tenderer, not unloaded.

In the case of butter and skimmed milk powder, the proposed price shall be the price per 100 kg of products delivered to the loading bay of the storage place to be designated by the intervention agency in accordance with Articles 25 and 30(1).

In the case of beef, tenders shall state the price quoted in accordance with Article 16(5) (a) and the second subparagraph of Article 19(2), expressed per 100 kg of products of quality R3.

2 Without prejudice to Article 20(1) of this Regulation, the price tendered shall at most be equal for cereals, rice, beef and skimmed milk powder to the reference price set out in Article 8 of Regulation (EC) No 1234/2007 or, for butter to 90 % of the reference price as referred to in Article 18(3) of that Regulation.

Article 18

Notification of the tenders to the Commission

1 All admissible tenders shall be notified to the Commission by the intervention agencies, within the time limits set in the Regulation opening the tendering procedure, containing the related information.

2 The notifications shall not contain the data referred to in Article 10(1)(a)(i) and 10(1)(a)(ix).

3 The intervention agencies shall notify nil returns to the Commission within the time limits referred to in paragraph 1.

4 The notifications shall be made in accordance with Article 58.

Article 19

Decisions on the basis of tenders

1 On the basis of the tenders notified as provided for in Article 18, the Commission shall, in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, fix a maximum buying-in price or decide not to fix a maximum buying-in price.

2 In the case of beef:

- a the maximum buying-in price relating to quality R3 shall be fixed per category;

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- b a different buying-in price may be set per Member State or region thereof to reflect the average market prices recorded, in application of Article 12(1)(c) of Regulation (EC) No 1234/2007.

Where qualities other than quality R3 are taken over, the price to be paid to successful tenderers shall be adjusted by applying the coefficient for the quality bought in as set out in Part II of Annex III.

- 3 Decisions on public intervention referred to in paragraphs 1 and 2 shall be published in the *Official Journal of the European Union*.

Article 20

Individual decisions on tenders

- 1 Where a maximum buying-in price has been fixed pursuant to Article 19(1), the intervention agencies shall accept tenders which are equal to or lower than the maximum amount. All the other tenders shall be rejected.

- 2 Where no maximum buying-in price has been fixed all tenders shall be rejected.

The intervention agencies shall not accept tenders that have not been notified as provided for in Article 18.

- 3 The intervention agencies shall take the decisions referred to in paragraphs 1 and 2 of this Article after the publication of the Commission's decision on public intervention referred to in Article 19(3) and shall notify tenderers of the outcome of their participation within a deadline of three working days after the entry into force.

Article 21

Specific criteria in the beef sector

- 1 For beef, tenders shall not be considered if the price offered is higher than the average market price recorded by category in each Member State or region thereof, converted into quality R3 using the coefficients set out in Part II of Annex III, plus EUR 10 per 100 kg carcase weight.

- 2 Without prejudice to paragraph 1, tenders shall be rejected if the price offered is higher than the maximum buying-in price as referred to in the first subparagraph of Article 19(2) for the tendering sub-period concerned.

- 3 Where the buying-in price awarded to tenderers is higher than the average market price as referred to in paragraph 1, the price awarded shall be adjusted by multiplying it by the coefficient obtained by applying formula A in Part VII of Annex III. However, that coefficient may not:

- a be greater than 1;
- b result in a reduction in the price awarded that is greater than the difference between that price and the average market price.

Should the Member State possess reliable data and have suitable means of verification, it may decide to calculate the coefficient for each tenderer using *formula B* in Part VII of Annex III.

Article 22

Limitation of buying-in for beef

Where the intervention agencies are offered beef in quantities greater than they are able to take over forthwith, they may limit the buying-in to the quantities they can take over in their territory or in one of their intervention regions as defined in the second subparagraph of Article 16(5).

Member States shall ensure equal access for all parties concerned in the event of such limitation.

CHAPTER II

Primary requirements and release or forfeiture of the security

Article 23

Primary requirements

The following shall constitute primary requirements within the meaning of Article 20 of Regulation (EEC) No 2220/85:

- (a) maintenance of the offer or tender;
- (b) delivery of the products to the storage place designated by the intervention agencies within the time limit laid down in the delivery order in accordance with Article 25;
- (c) compliance with the requirements referred to in Article 7;
- (d) for cereals and rice, the presence of the products in the storage place indicated at the time the offer or tender was submitted.

Article 24

Release and forfeiture of the security

1 The security referred to in Article 9 shall be released as soon as the offerer or tenderer has delivered the quantity indicated on the delivery order under Article 25 within the time limit laid down therein and conformity with the requirements referred to in Article 7 has been established.

2 Where the products do not conform with the requirements referred to in Article 7, the products shall not be accepted and the security shall be forfeit in respect of the quantities not accepted.

3 Except in cases of force majeure, where the offerer or tenderer fails to deliver the products within the time limit laid down in the delivery order, the security shall be forfeit in proportion to the quantities not delivered and buying-in shall be cancelled in respect of the quantities not yet delivered.

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4 Where offers or tenders are not admissible or have not been accepted, the securities shall be released.

5 For cereals and rice, if the intervention agency has not received satisfactory evidence that the quantities offered or tendered were present in the storage place, as provided for in Article 10(1)(b)(ii), the security shall be forfeited.

For the purposes of the first subparagraph, the intervention agency shall carry out checks on the quantities present in the places of storage by applying *mutatis mutandis* the rules and conditions laid down in Regulation (EC) No 884/2006 as regards checks on the physical presence of products stored under public storage operations, and more specifically those provided for under Part B(III) of Annex I to that Regulation. These checks shall be carried out on at least 5 % of the tenders and 5 % of the quantities offered, on the basis of a risk analysis.

6 In the case of cereals and rice, if the quantity actually delivered and accepted is less than the quantity awarded, the security shall be released in full where the difference is not more than 5 %.

7 In the case of beef, if the quantity actually delivered and accepted is less than the quantity awarded, the security shall:

- a be released in full where the difference is not more than 5 % or 175 kg;
- b except in cases of *force majeure*, be forfeited:
 - (i) in part, corresponding to the quantities not delivered or not accepted where the difference is not more than 15 %;
 - (ii) in full in other cases, pursuant to Article 29 of Regulation (EEC) No 2220/85.

8 The security shall be released in case of application of Article 14(2).

CHAPTER III

Common rules for deliveries

Section I

Deliveries

Article 25

Deliveries and delivery orders

After having checked the admissibility of the offer as referred to in Article 11(1) and after having notified in accordance with Article 20(3), the intervention agency shall issue a delivery order, without prejudice to the measures adopted in accordance with Articles 14(1) and 19(1). The delivery order shall be dated and numbered and shall show:

- (a) the quantity to be delivered;
- (b) the final date for delivery of the products;
- (c) the storage place to which the products shall be delivered;

(d) the price at which the offer or tender is accepted.

Delivery orders shall not be issued for quantities not notified to the Commission as provided for in Articles 13(1) and 18(1).

Article 26

Specific provisions for the delivery of cereals and rice

1 If cereals or rice cannot be delivered to the storage place of the intervention centre indicated by the offerer or tenderer, referred to in Article 10(1)(a)(iv), the intervention agency shall designate another storage place of the same intervention centre or a storage place of another approved intervention centre, to which delivery must take place, at the lowest cost.

2 Delivery to the storage place shall occur not later than the end of the third month following the date of issue of the delivery order referred to in Article 25 and in any case not later than 30 June for cereals and 31 August for rice.

However in cases referred to in Article 35(2), the delivery shall take place not later than 31 August for cereals and 31 October for rice.

3 The quantity delivered shall be weighed in the presence of the offerer or tenderer and a representative of the intervention agency who is independent vis-à-vis the offerer or tenderer.

However, the representative of the intervention agency may also be the storekeeper. In that case, the intervention agency itself shall, within 30 days from the date of conditional takeover referred to in Article 31(1), conduct an inspection involving at least a volumetric check; any difference between the quantity determined by weighing and the quantity estimated in accordance with the volumetric method may not exceed 5 %.

Where the tolerance is not exceeded, the storekeeper shall bear all costs relating to any difference observed, at a later weight check, from the weight entered in the accounts on when the cereals or rice were taken over.

Where the tolerance is exceeded, the cereals or rice shall be weighed forthwith. The costs of weighing shall be borne by the storekeeper, where the weight determined is less than that recorded, or by the Member State, where it is more.

Article 27

Specific provisions for the delivery of beef

1 The costs of unloading shall be borne by the successful tenderer.

2 Successful tenderers shall deliver the products not later than 17 days after the first working day following publication of the regulation fixing the maximum buying-in price.

However, depending on the quantities awarded, the intervention agency may extend that period by one week. Deliveries may be divided into more than one consignment.

3 Specific requirements for the delivery of beef are laid down in Annex III, Part III.

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Article 28

Specific provisions for the delivery of butter and skimmed milk powder

1 Butter shall be packed and delivered in blocks of at least 25 kilograms net meeting the requirements laid down in Part IV of Annex IV. Butter shall be packed in new, strong material in such a way as to ensure it is protected throughout transportation, entry into storage, storage and removal from storage. The packing shall show at least the following particulars, where appropriate in code:

- a the approval number identifying the factory and the Member State of production;
- b the date of production;
- c the date of entry into storage;
- d the production batch number and the package number; the package number may be replaced by a pallet number marked on the pallet;
- e the words 'sweet cream' if the aqueous phase of the butter has the corresponding pH.

Member States may waive the obligation to show the date of entry into storage on the packaging, provided that the store manager undertakes to keep a register in which the particulars referred to in the first subparagraph are recorded on the date of entry into storage.

2 The skimmed milk powder shall be put up in bags of a net weight of 25 kilograms net meeting the requirements laid down in Parts II and III of Annex V, and showing the following particulars, where appropriate in code:

- a the approval number identifying the factory and the Member State of manufacture;
- b the date or, where appropriate, the week of manufacture;
- c the number of the manufacturing batch;
- d the description 'spray skimmed-milk powder'.

3 The successful offerer or tenderer shall deliver the butter or skimmed milk powder to the loading bay of the storage place within 28 days following the date of issue of the delivery order. Delivery may be in several consignments.

The skimmed milk powder and butter shall be delivered on pallets of a quality suitable for long-term storage, to be exchanged against equivalent pallets.

Any cost incurred in unloading the butter or skimmed milk powder at the loading bay of the storage place shall be borne by the successful offerer or tenderer.

Section II

Transport costs

Article 29

Transport costs for cereals and rice

1 The cost of transporting the cereals or rice to the storage place indicated by the offerer or tenderer as being at the lowest cost, in accordance with Article 10(1)(a)(iv), shall be borne by the offerer or tenderer, where the distance involved is equal to or less than 100 km. Once this

distance has been exceeded, the transport costs over 100 km shall be borne by the intervention agency.

2 If the storage place indicated by the offerer or tenderer is changed by the intervention agency, in accordance with Article 26(1), the additional transport costs, subject to a threshold of 20 km, shall be borne by the intervention agency. However, the transport costs over 100 km shall still be borne totally by the intervention agency. This paragraph shall not apply in case of application of Article 31(2).

3 The costs to be borne by the intervention agency referred to in paragraphs 1 and 2 shall be reimbursed by the Commission, on a non-flat-rate basis, in accordance with Article 4(1)(c) of Regulation (EC) No 884/2006.

4 The transport costs inherent in the replacement of products referred to in Article 35(2) shall be borne solely by the offerer or tenderer.

Article 30

Transport costs for butter and skimmed milk powder

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

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

The intervention agency may choose a storage place 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 which buys-in the butter or skimmed milk powder is in a Member State other than the one in whose territory the offered butter or 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 offerer or tenderer and the border of the Member State of the purchasing competent body.

3 Beyond the maximum distance referred to in paragraph 1, the additional transport costs shall be borne by the intervention agency at a rate per tonne and per kilometre of EUR 0,05 for skimmed milk powder and EUR 0,065 for butter. The additional costs shall be borne by the intervention agency only if the temperature of the butter does not exceed 6 °C on arrival at the cold store.

CHAPTER IV

Takeover, initial controls and sampling

Article 31

Conditional takeover

1 The date of conditional takeover shall be:

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- a for cereals, rice, butter and skimmed milk powder on the day on which the whole quantity entered the storage place designated but not earlier than the day following that on which the delivery order was issued;
- b for each consignment of beef as referred to in Article 27, on the day of entrance at the weighing point of the intervention storage place's cutting plant.

2 The intervention agency may decide that the takeover of cereals, rice, butter or skimmed milk powder may take place in the storage place where the products are held at the time the offer or tender is submitted, provided that the storage place fulfils the requirements laid down in Article 3 and, in respect of cereals and rice, that it has been approved in accordance with Article 2(3). In that case, conditional takeover takes place on the day following the issue of the delivery order.

3 The products shall be taken over by the intervention agency or its representative, who has to be a person who is independent from the offerer or tenderer.

Article 32

Control measures

1 Without prejudice to the checks required by this Regulation for the takeover of products, the checks of the intervention stocks shall be carried out under the conditions set out in Article 2 of Regulation (EC) No 884/2006.

2 For cereals, where the checks provided are to be carried out on the basis of the risk analysis referred to in Part I third subparagraph of Annex I to this Regulation, the Member States shall be liable for the financial consequences of any failure to comply with the maximum admissible contaminant level in accordance with the rules set out in Article 2 of Regulation (EC) No 884/2006.

However, in the case of ochratoxin A and aflatoxin, if the Member State concerned is able to prove to the Commission's satisfaction that the standards were met on entry, that normal storage conditions were observed and that the storekeeper's other commitments were respected, the financial liability shall be borne by the Community budget.

3 For cereals and rice, where the storage place indicated in accordance with Article 10(1)(a)(iii) is in a Member State other than that where the offer or tender is submitted, and the intervention agency that received the offer or tender decides to make an on-site check to verify the effective presence of the products, this agency shall send a request for a check and a copy of the offer or tender to the intervention agency responsible for that storage place. The on-site check shall be carried out within the period set by the intervention agency that received the offer or tender.

4 Provisions relating to checks laid down in the Annexes to this Regulation may be amended in accordance with the procedure referred to in Article 195(2) of Regulation (EC) No 1234/2007, notably if the market situation is seriously disrupted by contaminants or where the control of the level of the radioactive contamination of products requires specific monitoring.

5 The tenderer or offerer shall bear the costs relating to the tests carried out for cereals, in accordance with the methodology referred to in Annex I, Part XII, as follows:

- (i) determination of the tannin content of sorghum;
- (ii) the amylasic activity (Hagberg) test;

- (iii) determination of the protein content of durum wheat and common wheat;
- (iv) the Zeleny test;
- (v) the machinability test;
- (vi) analyses of contaminants.

6 In cases of dispute concerning the results, the tenderer or offerer shall bear the costs relating to the necessary relevant tests carried out again, only if he is the losing party.

Article 33

Specific provisions for the takeover in storage place of the storekeeper for cereals and rice

1 If the takeover of cereals or rice takes place at the storage place where the products are held at the time the offer or tender is submitted, the quantity taken over shall be established on the basis of the stock records, which shall fulfil professional standards which allow to guarantee compliance with Community legislation, in particular Annex II to Regulation (EC) No 884/2006, and provided that:

- a the stock records show:
 - (i) the weight recorded on weighing carried out within a period of no more than 10 months before the takeover;
 - (ii) the physical quality characteristics at the time of weighing and, in particular, the moisture content;
 - (iii) trans-silages if any, and treatments carried out;
- b the storekeeper declares that the lot offered corresponds in all respects to the details contained in the stock records;
- c the quality characteristics established at the time of weighing are the same as those of the representative sample made up from the samples taken by the intervention agency or its representative at a rate of one for every 60 tonnes.

2 If paragraph 1 applies, the weight to be recorded, in accordance with article 5 of Regulation (EC) No 884/2006, shall be that entered in the stock records, adjusted, where appropriate, to take account of any difference between the moisture content and/or the percentage of miscellaneous impurities (*Schwarzbesatz*) recorded at the moment of weighing and those determined on the basis of the representative sample. A difference between the percentages of miscellaneous impurities may only be taken into account to reduce the weight entered in the stock records.

Within 45 days of takeover the intervention agency shall make a further volumetric check. The difference between the quantity determined by weighing and the quantity estimated in accordance with the volumetric method may not exceed 5 %.

Where the tolerance is not exceeded, the storekeeper shall bear all costs relating to any difference observed, at a later weight check, from the weight entered in the accounts on takeover.

Where the tolerance is exceeded, the cereals or rice shall be weighed forthwith. The costs of weighing shall be borne by the storekeeper, where the weight determined is less than that recorded, or by the European Agricultural Guarantee Fund, where it is

more, account being taken of the tolerances provided for in paragraph 1 of Annex XI of Regulation (EC) No 884/2006.

Article 34

The takeover record

1 The takeover record shall be issued by the intervention agency after the checks and analyses have established that the requirements laid down in Article 7 have been fulfilled, at the latest 60 days following the final date for the delivery of the products referred to in Article 25(b). It shall indicate:

- a the date on which the quantity and minimum characteristics were checked;
- b the weight delivered and for rice the variety;
- c the number of samples taken to make up the representative sample for cereals and rice;
- d the characteristics of the products as resulting from the analyses;
- e the entity responsible for the analyses and the results;
- f the date of conditional takeover as referred to in Article 31(1);
- g if applicable, for cereals and rice, the quantities that have not been taken over. In this case, the offerer or tenderer shall be notified accordingly.

2 The record shall be dated and sent to the offerer or tenderer and to the storekeeper.

However, this record may be registered in the accounting system of the intervention agency and sent by electronic means.

Article 35

Obligations of the offerer or tenderer

1 Where the checks show that the products do not meet the requirements set out in Article 7, the offerer or tenderer shall:

- a take back at his expense the products concerned,
- b pay the associated costs from the date of entry of the products into the storage place until the date of their removal from storage.

The costs to be paid by the offerer or tenderer shall be determined on the basis of standard amounts for entry, removal and storage costs in accordance with Article 4(1) of Regulation (EC) No 884/2006.

2 In cases where the analyses and controls do not allow the cereals or rice offered to be accepted for intervention, the offerer or tenderer may replace the quantity that does not meet the requirements. In that case, the intervention agency may change the date for delivery, without prejudice to the final date for delivery laid down in Article 26(2).

Article 36

Specific condition for beef — boning requirement

The intervention agency shall have all the beef bought-in boned in accordance with Part IV of Annex III.

CHAPTER V

Intervention price, buying-in price and payments

Article 37

Buying-in price for beef

The buying-in price for beef shall be the price free at the entrance weighing point of the storage place's cutting plant.

Article 38

Intervention prices and buying-in price for cereals and rice

1 For the purposes of Articles 13(3), 18(1) and 18(2) of Regulation (EC) No 1234/2007 as regards the cereals sector the intervention price to be taken into consideration for fixing the buying-in fixed price shall be the reference price set out in Article 8(1)(a) of that Regulation.

2 For cereals and rice, the price to be paid is as follows:

- a to the offerer, in case of buying-in at fixed price, it shall be the price referred to in paragraph 1;
- b to successful tenderer, in case of tendering procedure, it shall be the price calculated by the intervention agency on the basis of the tendered price.

In both cases the price shall be adjusted to take into account the quality of the products, in accordance with Parts IX, X and XI of Annex I, as regards cereals and in Parts II and III of Annex II as regards rice.

3 For cereals and rice, if the intervention agency, in accordance with Article 31(2), takes over and stores the products at the storage place at which they are located at the time the offer or tender is submitted, a reduction shall be made to the buying-in price to be paid. This reduction shall consist of:

- a the transport costs between the actual place of takeover designated by the intervention agency and the storage place referred to in Article 10(1)(a)(iv) where the products should have been delivered at the lowest cost; and
- b the removal costs from the intervention storage place.

The costs referred to in points (a) and (b) of the first subparagraph shall be assessed on the basis of the rates actually recorded in the Member State concerned.

Article 39

Payments

1 Payments for the quantities taken over in accordance with Article 34 shall be made no later than the 65th day following the date of conditional takeover referred to in Article 31.

2 Only the quantity actually delivered and accepted shall be paid for. However, if the quantity actually delivered and accepted is greater than the quantity awarded, only the quantity awarded shall be paid for.

Status: This is the original version (as it was originally adopted).

- (1) OJ L 230, 19.8.1991, p. 1.
- (2) OJ L 337, 16.12.2008, p. 3.