DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule supersedes Import Regulation 1, Revision 7, which governs the administration of the import licensing system for certain dairy products which are eligible for in-quota tariff rates established in the Harmonized Tariff Schedule of the United States resulting from the entry into force of certain provisions in the Uruguay Round Agreement.

EFFECTIVE DATE: This final rule is effective October 9, 1996.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1021, or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. It has been determined to be economically significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Office of the Secretary is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Paperwork Reduction Act

In accordance with provisions of the Paperwork Reduction Act of 1995, the Department amended the information collection approved by the Office of Management and Budget (OMB) under OMB control number 0551–0001. Since this final rule provides for a substantial revision of the existing Import Regulation, the current information collection was amended to support the final rule. The information collection consists of an application for dairy import licenses, a certification that the applicant meets the eligibility requirements of § 6.23 and documentation which supports that certification as required under § 6.24. The total burden is estimated to be 375 hours. Copies of this information collection can be obtained from Pamela Hopkins, the Agency Information Collection Coordinator, at (202) 720–6173.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778. The provisions of this final rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The final rule would not have retroactive effect.

Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 5 U.S.C. 801–808)

Further, a determination has been made that a delay in the implementation of this rule would be contrary to the public interest such that the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 5 U.S.C. §§ 801–808) is not applicable to this rule. If the effective date for this rule were delayed 60 days, the reform of the dairy licensing system would be delayed by an entire year since the rule must be in place prior to the application period for the next year's licenses.

Background

This final rule revises Import Regulation 1, Revision 7, which governs the administration of the import licensing system for certain dairy products which are eligible for in-quota tariff rates proclaimed in the Harmonized Tariff Schedule of the United States (HTS). In order to encourage public participation in the rulemaking process, the Department published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on June 2, 1994 (59 FR 28495) with a public comment period which ended on August 2, 1994, and held a public hearing on March 10, 1995. The Department solicited further comments from the public in response to the interim rules published in the Federal Register on January 6, 1995 (60 FR 1989), May 2, 1995 (60 FR 21425), and September 13, 1995 (60 FR 47453) which made certain modifications to the existing rule (Revision 7) and implemented Uruguay Round Agreement commitments for the 1995 and 1996 quota years. Comments received in response to the ANPR and the Interim Rules as well as written testimony and briefs submitted to the Department with respect to the public hearing were addressed in the proposed rule which was published in the Federal Register on January 18, 1996 (61 FR 1233).

The proposed rule substantially revised the existing rule to incorporate Uruguay Round Agreement commitments relating to increased market access for dairy articles; effected changes to the Harmonized Tariff Schedule of the United States pursuant to Presidential Proclamation 6763 of December 23, 1994; and reformed the regulatory process to update, strengthen, and simplify the requirements of the regulation. USDA encouraged interested persons to submit their comments, views, and suggestions on the proposed rule during a 60-day comment period which closed on March 18, 1996.

USDA received comments from 52 entities: two trade associations; seven representatives of foreign governments; seven Congressional representatives; three foreign exporting entities; and the remainder, importers or their legal counsel, nearly all of them participants in the existing import licensing program. In general, the comments focused on: strengthened eligibility requirements (§ 6.23), particularly the proposed increase in the license utilization requirement; the uniform application of provisions with respect to noncompliance with this requirement and the restriction on sales-in-transit; a broad range of issues related to allocation of licenses for in-quota quantities of dairy products; and transfer of license eligibility (§ 6.28).

Discussion of Major Comments

In General

A number of comments received argued that the proposed rule contained requirements that were ''retroactive'' and, therefore, could not legally be applied. The argument advanced was that USDA would be establishing eligibility for license, at least in part, on the past performance of the importers (e.g., the importers' utilization of its

license in the past), and new performance requirements could not legally be based on past transactions.

USDA disagrees. The consequences of these provisions occur only in the future. Further, the import licensing system has always been based, at least in part, on importer's past performance. The fundamental basis for historical license is that those eligible for such licenses are persons who, at some time in the past, were actively engaged in the business of importing cheese. There is nothing ''retroactive'' about such an eligibility rule and, equally, nothing retroactive about the eligibility rules or performance requirements proposed.

Definitions (§ 6.21)

In the proposed rule, USDA made a number of changes to the definitions in the existing regulation to conform to changes proposed in the operational provisions of the rule. The final rule incorporates most of these proposed changes with several additional modifications suggested in comments received from the public. USDA replaced the term ''quota article'' with the term ''article'' to be consistent with the terminology in the Harmonized Tariff System; added a definition of ''EC 15'' to reflect the recent accession of Finland, Sweden and Austria into the European Union; revised the definition of ''postmark'' to make it clear that all U.S. Postal Service deliveries including ''same day'' service, express service and priority mail are included; and deleted the term ''sales-in-transit'' which became unnecessary when the rules on limiting use of this practice were deleted from § 6.23 in the final rule.

USDA decided not to adopt several recommendations made in the comments. Some commentors suggested that USDA develop special definitions for the terms ''authorized agent,'' ''any country,'' and ''force majeure.'' USDA sees no need for special definitions for these terms since the regulation uses the terms as they would ordinarily and customarily be understood. Special definitions are appropriate only where a term does not have a commonly understood meaning. One commentor also suggested that USDA define the term ''Basic Annual Allocation'' (''BAA''); however, because BAA will cease to have any function in the regulatory scheme after the allocation of 1997 historical licenses, USDA determined that there is no purpose in developing such a definition.

Eligibility (§ 6.23)

USDA had proposed certain eligibility criteria to ensure that import licenses would be issued only to bona fide import/distribution or manufacturing concerns that would use the dairy articles imported in their own business operations. USDA received numerous comments on this section of the proposed rule.

In general, most comments received from the dairy industry supported USDA's proposal to strengthen eligibility requirements. One commentor, however, suggested that eligibility requirements be made gradually more stringent rather than all at once. Two commentors expressed concerns that small businesses might have difficulty in meeting these more stringent requirements and recommended that USDA make no changes in this area or even make the eligibility requirements less stringent. Several comments approved USDA's attempt to impose uniform eligibility standards for all license types; two comments suggested that USDA go even further and establish identical eligibility criteria for both cheese and non-cheese dairy products.

The comments received also contained a variety of other comments expressing widely divergent views on the eligibility provisions of the proposed regulation. For example, some comments favored issuing licenses only to importers and excluding exporters altogether, while others argued that exporters should be eligible to apply for cheese licenses as well as non-cheese licenses. One commentor wanted USDA to exclude historical license holders altogether from eligibility for nonhistorical licenses and to make nonhistorical licenses renewable in some unspecified way.

Most commentors expressed misgivings about USDA's proposal to increase the license utilization requirement from the previous 85 percent to the proposed 90 percent. They were especially concerned that this more stringent eligibility criterion would apply to applicants for historical licenses because failure to utilize 90 percent of a license amount in a single year would effectively result in permanent ineligibility to apply for that historical license. Commentors contended that they could lose eligibility not through their own fault, but because of economic conditions beyond their control such as fluctuating exchange rates, unavailability of supply or foreign government policy. These comments appear to have some empirical support: USDA took note of the increasingly complex international market situation, and of the fact that average quota utilization rates had declined from approximately 93 percent during the 1990–94 period to 87 percent during 1995.

On a similar issue, several commentors argued that the proposal to require 95 percent utilization for conversion of a Revision 8 nonhistorical butter license to a historical license was too stringent and that the level should be reduced to be in line with utilization requirements applicable to other dairy products. Several commentors objected to the provision in the proposed rule that would prohibit persons who hold such converted historical butter licenses from also applying for nonhistorical butter licenses.

Other comments with respect to butter licenses varied widely. Two commentors argued that there should be no historical licenses for butter. Another proposed that USDA issue historical licenses for butter in amounts 200 percent of the license amounts utilized during the 1997 and 1998 quota years, although that commentor failed to indicate how such license increases could be achieved given the limited quantities available for allocation under the tariff-rate quota.

Several comments were directed to the proposed rule's provisions governing applicant eligibility based on its status as a manufacturer. One comment argued that the rules were cumbersome and that USDA would find them hard to enforce. Two commentors recommended that USDA eliminate the requirement that a manufacturer be listed in the USDA publication of *Dairy Plants Surveyed and Approved for USDA Grading Service* (''Dairy Plants''). Two comments agreed with the use of ''Dairy Plants'' listings as a criterion for eligibility, but argued that USDA should limit eligibility to plants listed in Section I of that publication, and exclude ''packagers'' listed in Section II. Two comments suggested that the 75 percent processing requirement be moved from § 6.27(b) of the proposed rule to section § 6.23 and become a requirement for establishing eligibility, but did not explain how applicants could certify as to future behavior.

Ten comments were received on the proposed rule's provisions with respect to export monopolies. Essentially, the proposed rule relieved licensees of certain utilization requirements if the licensee must purchase its dairy articles from an export monopoly. Three comments argued that the provision discriminated against certain countries and that there was no evidence that export monopolies disadvantaged license holders. On the other hand, several comments favored the provision, stating that it recognized legitimate concerns about the economic power that

export monopolies could exercise in the marketplace. Two comments suggested that the Office of the Trade Representative, rather than USDA, make the export monopoly determination.

Nearly all comments received discussed the proposed rule's treatment of ''sales-in-transit.'' Most comments asked that USDA either remove, or provide exemptions from, the limitations on sales-in-transit. The comments stressed the commercial advantages of using sales-in-transit where an importer's requirements are less than a single container load; for importing higher-valued table cheeses; and for facilitating just-on-time deliveries. The comments also questioned whether the restrictions in the regulations would be effective in addressing suspected license misuse.

Several comments addressed the provisions of the proposed rule with respect to ''associated'' or ''affiliated'' persons. These provisions are intended to continue USDA's longstanding policy of ensuring wider distribution of licenses and of preventing groups of related persons from controlling unduly large proportions of the lottery licenses for specific dairy articles (nonhistorical and supplementary licenses under Revision 7). Because the proposed rule contemplated the conversion of certain (Revision 7) nonhistorical licenses to historical licenses, USDA had increased concern about concentration of lottery licenses and so proposed to further tighten the rules with respect to associated or affiliated persons. The comments received expressed uncertainty about the meaning of the ''economic benefits'' test included in the proposed rule and sought further clarification.

A number of comments were also received with respect to designated licenses. Several commentors complained that foreign governments were not meeting notification deadlines for importers. Two commentors opposed the provisions in the proposed rule that prohibit importers with designated licenses from also receiving nonhistorical licenses for the same article. Two foreign governments asked that the proposed rule be revised to permit them to redesignate importers during a quota year, a practice that is currently prohibited except where licenses are surrendered or revoked. Other comments suggested that USDA totally eliminate designated licenses; limit designation to entities not owned or controlled by foreign governments; replace designated licenses with certificates of quota eligibility that could be allocated by the exporting country; or permit designation with respect to non-cheese products.

Based on comments received, USDA has incorporated the following modifications in the final rule:

(1) Importer Eligibility—USDA has made three changes to the proposed rule. First, USDA will consider entries based on sales-in-transit or warehouse withdrawal in determining applicant eligibility. The limitations in the proposed rule on the use of sales-in-transit have been eliminated. Second, in cases where an importer seeks to qualify on the basis of at least eight entries of dairy products, the final rule clarifies that such entries must be made from ''separate'' shipments. Third, for non-cheese dairy product eligibility based on at least eight entries, the final rule reduces the minimum weight for each entry from ''not less than 2,000 kilograms'' to ''not less than 450 kilograms'' consistent with the way in which the rule treats entries of cheese.

(2) Manufacturer Eligibility—The final rule includes an eligibility criterion in addition to those proposed in § 6.23(b)(1)(i)(C). Under the final rule, an entity will also be eligible to apply for a license as a manufacturer if it owns or operates a plant listed as a ''processor'' of cheese in Section I of the most current issue of the USDA publication *Dairy Plants Surveyed and Approved for USDA Grading Service.*

(3) Certain Butter—The proposed rule provided that a person issued a nonhistorical license during the 1996 and 1997 quota years would be eligible to apply for an historical license thereafter if it satisfied certain criteria, including having utilized at least 95 percent of its license amount during the previous year. Persons receiving historical licenses under this provision could not also be issued nonhistorical licenses.

The final rule makes three changes. First, the quota years upon which eligibility will be determined have been changed from 1996 and 1997 to 1997 and 1998. This is because the nonhistorical licenses issued for 1996 are smaller than those that will be issued under the final rule for 1997 and 1998. Second, the proposed 95 percent utilization requirement has been reduced in the final rule to 90 percent. Third, the final rule incorporates an exception to the prohibition on historical license holders also receiving a nonhistorical license. Under the final rule, if all applicants that do not hold a converted historical license for butter have been issued a nonhistorical license and there is still such butter license available, a holder of a converted historical butter license may be eligible to receive a nonhistorical license for some or all of that remaining butter.

(4) Exceptions—Section 6.23(c) of the proposed rule established certain exceptions, i.e., circumstances under which an applicant would not be determined eligible to receive a license to import. The final rule makes four changes to the proposed rule in this respect.

First, the proposed rule would have excluded from license eligibility a person who failed to enter at least 90 percent of the amount of an article permitted under a license during the previous quota year. The final rule reduces the threshold from ''at least 90 percent'' to ''at least 85 percent.'' This is the same threshold that had been applicable under the existing rule.

Second, the proposed rule contained an exception to an exception, i.e., it provided that the 90 percent utilization rule (now changed to 85 percent in the final rule) would not apply where the licensee was dealing with an export monopoly. Under the proposed rule, USDA would have published a list of countries that operated or permitted export monopolies and provided an exception where countries on that list were specified on an import license. USDA has determined, however, that this is not a sufficiently flexible approach to this problem, particularly since, in the future, countries that have an export monopoly may discontinue this practice, or countries currently without an export monopoly could create one. Therefore, although the final rule maintains the export monopoly exception, the provision regarding publication of a list of countries has been deleted. Instead, a licensee may petition USDA to apply the exception and will be required to provide information regarding the alleged export monopoly. An ''export monopoly'' means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States.

Third, the proposed rule would have excluded from license eligibility a person who during the previous quota year had entered more than 25 percent of its license amount through sales-in-transit or warehouse withdrawal. The final rule eliminates this provision and permits unrestricted use of sales-in-transit or warehouse withdrawal without affecting license eligibility.

Fourth, the proposed rule provided that certain persons would be ineligible for a nonhistorical license if they were either affiliated with or associated with persons who had applied for such a license. The final rule identifies two

additional classes of persons who will be deemed ineligible for nonhistorical licenses: children of an applicant for a nonhistorical license (who will be considered ''affiliates''); and persons who manage or are managed by applicants (who will be deemed to be ''associated'' with such applicants).

USDA did not make any changes to the ''economics benefits'' test incorporated in the proposed rule. USDA's intent, in establishing this test, is that it apply to regular, joint business relationships where one licensee consistently purchases primarily for the other's use, where one licensee manages the other's portfolio, or where imports of the two licensees are regularly commingled for sale to third parties.

Applications for License (§ 6.24)

The final rule changes the application period for the 1997 quota year to October 10 through October 31. Beginning in the 1998 quota year, the application period will be September 1 through October 15 of each quota year. In response to several comments, the final rule has been revised to simplify certain documentation requirements. An applicant seeking to establish eligibility as an importer will be required to submit Customs Forms 7501, but will not be required to submit commercial invoices or bills of sale showing the applicant as the owner and the original consignee for the number and level of entries required under § 6.23. USDA has determined that the requirement to submit commercial invoices or bills of sale is no longer necessary because the provision prohibiting consideration of sale-in-transit entries as a basis for eligibility has been eliminated. In addition, where the applicant is applying on the basis of at least eight separate shipments, the applicant will be required to submit (1) the required Customs or Census forms and commercial invoices where specified for eight shipments, (2) a certification that the remaining required documents are on file at its premises, and (3) in the case where the shipments are imports, a list of the entry numbers, dates of entry and volumes on those documents; or, in the case where the shipments are exports, a list of the dates of export and volumes on those documents.

One comment suggested that Customs Forms 7505 and 3416 be accepted in lieu of a Customs Form 7501. However, Form 7505 is no longer used and all entries require a Form 7501, which provides more information than Form 3461. Requiring Form 7501 for all imports will be simpler and will ease both the application process and program administration.

Allocation of Licenses (§ 6.25)

USDA received a broad range of comments concerning the allocation of both existing licenses and licenses for the Uruguay Round quantities. Most commentors agreed that there should be higher minimum license sizes than provided in the existing rule and a rank-order lottery for allocating nonhistorical licenses for cheese. USDA has taken into account the comments received and has modified the proposed rule as follows:

(1) Historical licenses—Approximately half of the comments discussed § 6.25(b) which deals with allocation of historical licenses in 1998 and subsequent years, and revises the existing rule so that a license that is being consistently underutilized will be permanently reduced. The proposed rule would have required that a licensee who surrendered a portion of a license in three consecutive years, or in at least three of five consecutive years, would thereafter be issued a license in an amount equal to the average annual quantity entered during that period. The final rule makes several changes.

First, USDA will permanently reduce the amount of a historical license only if a licensee surrenders more than 50 percent of a license over three consecutive years or three out of five years. Second, this rule will apply only to surrenders beginning with the 1996 quota year. Third, the final rule provides the Secretary of Agriculture with discretion not to implement this provision in 1999, when it would first take effect, if he deems it inappropriate in light of market conditions.

Under the previous rule, there was no consequence for surrendering license amounts. Commentors opposed to the provisions that would permanently reduce the amount of an historical license allege that the provision would violate the licensee's property rights. However, licensees do not acquire property rights in historical licenses; a license is an annual allocation of permission to import under the tariff-rate quota, and can be modified for public policy reasons. In light of the small amounts of license available to new entrants or others who wish to increase imports of a given article, USDA determined that it was sound public policy to reallocate license amounts that were consistently not being used. The provision in the final rule should increase the amount available in the nonhistorical pool while giving historical license holders a fair opportunity to demonstrate that they are using their licenses. The amount by which an historical license is permanently reduced will be transferred to Appendix 2—nonhistorical licenses. Some commentors were concerned that downturns in foreign supplies available for export to the United States or proposed limitation on sales-in-transit would lead to extensive reductions in historical licenses. However, the final rule, which changes the trigger level for reduction to surrenders exceeding 50 percent of a license, should assuage these concerns.

(2) Nonhistorical licenses—Two commentors submitted virtually identical proposals suggesting that eligible applicants who have no historical license for a particular dairy article from a particular country, or have an historical license which is smaller than the minimum license size for a particular article, should be given priority in the lottery. Another commentor opposed this proposal. USDA has determined that this proposal would result in only marginal improvement, if any, for small license holders. While, in theory, a new entrant or small license holder might be more likely to receive the license of its choice if some historical license holders were eliminated from bidding for that license during the first round, the actual probability could just as easily decrease. No historical license holder would be entirely eliminated from the first round, because none of the licensees hold historical licenses larger than the lottery minimum for every one of the items in the lottery. Thus holders of one or several historical licenses larger than the lottery minimum can simply indicate their preference for other cheese types which they might otherwise not have chosen.

One commentor suggested USDA immediately increase the size of the lottery license pool by taking from current historical licensees 50 percent of their license volume. The Department finds no justification for arbitrarily taking away 50 percent of an historical license under current circumstances. Under the final rule, the pool of nonhistorical lottery licenses will instead be gradually increased because of the impact of higher eligibility and utilization standards on historical licensees.

Certain commentors objected in principle to a rank-order lottery system. One preferred continuing the random lottery system, arguing that it gave importers a better chance to receive greater amounts of license. Another commentor criticized the use of any lottery system as impeding long-term commercial relationships and hindering market development for specialized dairy products. The final rule maintains

the rank-order lottery system because, although it does not guarantee continuity of license, it should increase an applicant's odds of receiving a license for the same article in consecutive years.

A commentor asked whether it will be possible to get a license which is smaller than the minimum cited in the rule. Sections 6.25(c)(1)(i)(E) and 6.25(c)(1)(ii)(E) of the final rule provide for such situations.

(3) Designated licenses—The comments submitted on license allocation were the same as those submitted with respect to eligibility for a designated license under § 6.23.

Surrender and Reallocation (§ 6.26)

The final rule provides that the final date for surrendering licenses will be October 1 and the application date for reallocation will be not later than September 15. The proposed rule would have advanced these dates one month. Five commentors expressed concerns that the proposed dates were too early given the new requirements of Revision 8. In addition, the final rule modifies § 6.26(d)(4) to allow a licensee who has surrendered part of a license to be issued a reallocated amount for the same article from the same country if all other licensees applying for a reallocated quantity of that article have been allocated a license. One commentor proposed that a provision should be made for new applications from new eligible applicants immediately following the first round of reallocations. The tight time frame for license reallocation, just two and a half months before the end of the quota year, does not permit another application period to establish eligibility.

Limitations on Use of License (§ 6.27)

Numerous comments criticized as vague the provision in the proposed rule that prohibited use of a license for the benefit of another person. That provision, § 6.27(a), has been rewritten in the final rule to be more specific, and states that a licensee shall not obtain or use a license for speculation, brokering, or offering for sale, or permit any other person to use the license for profit.

Several commentors questioned the need for the requirement that manufacturer licensees use a minimum of 75 percent of their licensed imports in their own processing operations in the United States. This requirement applies to persons who apply on the basis of being manufacturers under § 6.23(b)(1)(i)(C), § 6.23(b)(1)(ii)(C), or § 6.23(b) (3), (4), or (5). The provision for manufacturer eligibility was introduced in Revision 7, and was intended to give manufacturers who had no history of imports the opportunity to have direct access to imported dairy products for use in manufacturing. If a manufacturer also wishes to participate in the cheese distribution business in a manner which does not first subject imports under license to processing as defined in § 6.21, then it can apply for a license on the basis of imports or exports in the preceding year in accordance with the criteria established in § 6.23.

Transfer of License (§ 6.28)

Six comments recommended that USDA make the provisions of the proposed rule governing the acquisition and transfer of eligibility more flexible. Two comments included specific proposals. Based on comments received, USDA made several technical changes in the final rule.

Specifically, the final rule provides that after the Licensing Authority receives written notice of intent to sell or convey, it will respond within 20 days. The Licensing Authority may require additional information in order to make a determination. The parties to the sale or conveyance must demonstrate that the sale or conveyance complies with the requirements of paragraph § 6.28(a). In addition, § 6.28(c) and (d) have been combined and redrafted for greater clarity. Section 6.28(c) provides that USDA will, (1) for purposes of establishing historical eligibility, deem the person to whom the business was sold or conveyed to be the person to whom transferred historical licenses were issued in the preceding year and (2) will credit entries made by the person who sells or conveys the business to the person to whom the business is sold or conveyed. The person to whom the business is sold or conveyed must meet the required utilization levels to remain eligible in the following year, but will not be held responsible for pre-sale violations committed by the person who sold or conveyed the business.

Two comments suggested revising § 6.28 to permit the transfer of some but not all of the licenses held by a person when it sells one of the dairy product import businesses it operates. The recommendation is that USDA permit such a transfer if the business sold had maintained separate facilities at a separate location from those of the rest of the seller's businesses for at least three years prior to the proposed sale. USDA is studying this proposal but will not incorporate the recommendation into the final rule at this time. USDA could consider this proposed change as an amendment to the final rule at some future date.

Use of Licenses (§ 6.29)

The final rule also contains a provision that had been inadvertently left out of the proposed rule. Section 6.29(c)(3) was added and provides that if an article was placed in a warehouse by a foreign supplier and then sold to a licensee, the licensee must present, at time at time of entry, Customs Form 7501 endorsed by the foreign supplier and the commercial invoice.

Two comments proposed replacing the through-bill-of-lading requirement with a certificate of origin requirement to allow importers the flexibility to source products in the most efficient manner. USDA is currently reviewing this proposal to determine what impact it might have with respect enforcing the country of origin allocations of the tariff-rate quotas.

Record Maintenance and Inspection (§ 6.30)

One comment argued that a three-year rather than a five-year record keeping requirement would be more manageable for a small business. The final rule maintains the proposed five-year requirement which is standard under other Department regulations. Another commentor proposed that recordkeeping be limited only to entries of articles under license. The final rule requires that the records with respect to all transactions covered by this regulation be retained for five years subsequent to the end of the quota year in which the purchase, sale, or transaction occurred. This has been deemed necessary for the enforcement of this regulation. Failure to maintain documentation would be a violation of the regulation subject to suspension or debarment under § 6.31.

Debarment and suspension (§ 6.31)

On January 4, 1996, the Department of Agriculture published a final rule, 61 FR 250, governing nonprocurement debarment and suspension, which became effective on February 5, 1996, subsequent to the publication of the Dairy Tariff-Rate Import Quota proposed rule. The Department's new nonprocurement debarment and suspension regulations now apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs and, for the first time, covers dairy import quota licensing.

The USDA nonprocurement debarment and suspension regulation accords with Executive Order 12549

which requires that, to the extent permitted by law, all Executive departments and agencies participate in a government-wide system for nonprocurement debarment and suspension. A person who is debarred or suspended is excluded from all Federal programs and activities. Debarment or suspension of a person participating in the dairy import licensing system will have a government-wide effect.

Therefore, § 6.31 ''Suspension or revocation of a license,'' and § 6.32 ''Administrative appeals'' are deleted from the proposed rule and a new § 6.31 ''Debarment and suspension'' has been inserted into the final rule. The new § 6.31 simply refers to the Department's nonprocurement debarment and suspension regulations at 7 CFR part 3017.

Globalization of Licenses (§ 6.32)

Section 6.33 ''Globalization of Licenses'' of the proposed rule has been revised and renumbered as § 6.32. The final rule, in response to comments, makes September 1 the final date for requesting a globalization rather than August 1 as was proposed. One commentor proposed that all licenses be fully globalized, eliminating the Licensing Authority's discretion to globalize only a portion thereof. Two commentors recommended automatic or semi-automatic globalization if a supplying country has a poor record of filling a TRQ or does not fill a specific percent of its total TRQ allocation by a specific date. Another commentor, however, argued that USDA should not globalize any licenses until after the license surrender and reallocation process has been completed. This would delay consideration of globalization until late October. The final rule does not reflect these comments. Most would be inconsistent with U.S. obligations to consult with and/or seek the consent of foreign governments regarding requests for globalization, while the suggestion to globalize in October would not provide importers sufficient time to seek alternative sources.

License Fee (§ 6.33)

Section 6.34 ''License fee'' of the proposed rule has been revised and renumbered as § 6.33. One commentor was confused about why § 6.31(a)(1) of the proposed rule provided that a license could be suspended or revoked for failure to pay a license fee in accordance with § 6.34, when § 6.34 itself contained an identical provision. USDA agrees that this was unnecessary and confusing and so § 6.31 has been totally revised, as discussed earlier. There is no longer any reference to the failure to pay a license fee. Failure to pay a license fee is dealt with in the new § 6.33 which provides that if a license fee is not paid by the final payment date, the license will be put on hold and a warning letter will be issued. If payment is not postmarked or received within 21 days of the date of the warning letter, the license will be revoked.

In general, commentors recognized the necessity and fairness of the fee. Individual commentors argued variously that the fee: was too high; should be based on the amount of licenses received; should be eliminated; or should be split into two separate payments, one for the processing applications and another upon receipt of the license. These issues were previously addressed in the background section of the proposed rule. The fee is required by an Office of Management and Budget Directive and must be based on the cost of services rendered, not on the size of the license. One comment also requested that the method of calculating the fee, which was included in Revision 7, be reinserted in the rule and that the date of the annual Federal Register Notice be moved back to July 31 as proposed. The method of calculation of the fee will appear in the Federal Register as in the past. The date will remain August 31 as its relationship to the application period remains the same as under Revision 7.

Adjustment of Appendices (§ 6.34)

Section 6.35 of the proposed rule—''Adjustment of Appendices'' has been revised and renumbered as § 6.34. In response to comments, Appendices 1, 2, and 3 have been combined into a single table for easier retrieval of information on TRQ allocations. This table will list the in-quota TRQ quantities in parallel columns by license type (Appendices 1, 2, and 3) for each dairy article by Additional U.S. Note number. The table will also show allocations by countries of origin, where applicable.

A further comment proposed that § 6.34(a) be modified to permit any reductions in or revocations of historical licenses for any reason in the 1997 and 1998 quota years be reallocated among other historical licenses (for that article and supplying country) which are less than 19,000 kilograms in size, rather than moving those amounts to Appendix 2 for the lottery. There will be no reductions of historical licenses in those years. Any revoked licenses will be transferred to Appendix 2 for nonhistorical licenses which may be applied for by any license holder.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Final Rule

Accordingly, 7 CFR part 6 subpart—Tariff Rate Quotas §§ 6.20–6.33 and Appendix 1, Appendix 2, and Appendix 3 thereto, are revised to read as follows:

Subpart—Dairy Tariff-Rate Import Quota Licensing

Sec.

Subpart—Dairy Tariff-Rate Import Quota Licensing

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

§ 6.20 Introduction.

(a) Presidential Proclamation 6763 of December 23, 1994, modified the Harmonized Tariff Schedule of the United States affecting the import regime for certain articles of dairy products. The Proclamation terminated quantitative restrictions that had been imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624); proclaimed tariff-rate quotas for such articles pursuant to Pub. L. 103–465; and specified which of such articles may be entered only by or for the account of a person to whom a license has been issued by the Secretary of Agriculture.

(b) Effective January 1, 1995, the prior regime of absolute quotas for certain dairy products was replaced by a system of tariff-rate quotas. The articles subject to licensing under the new tariff-rate quotas are listed in Appendices 1, 2, and 3 of this subpart. Licenses will be issued pursuant to the provisions of this

subpart for the 1997 and subsequent quota years. These licenses will permit the holder to import specified quantities of the subject articles into the United States at the applicable in-quota rate of duty. If an importer has no license for an article subject to a tariff-rate quota, such importer will, with certain exceptions, be required to pay the applicable over-quota rate of duty.

(c) The Secretary of Agriculture has determined that this subpart will, to the fullest extent practicable, result in fair and equitable allocation of the right to import articles subject to such tariff-rate quotas. The subpart will also maximize utilization of the tariff-rate quotas for such articles, taking due account of any special factors which may have affected or maybe affecting the trade in the articles concerned.

§ 6.21 Definitions.

As used in this subpart and the Appendices thereto, the following terms mean:

''Article''—One of the products listed in Appendices 1, 2, or 3 which are the same as those described in Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 of the Harmonized Tariff Schedule.

''Customs''—The United States Customs Service.

''Country''—Country of origin as determined in accordance with Customs rules and regulations, except that ''EC 12'', ''EC 15'', and ''Other countries'' shall each be treated as a country.

''Cheese or cheese products''—Articles in headings 0406, 1901.90.34, and 1901.90.36 of the Harmonized Tariff Schedule.

''Commercial entry''—Any entry except those made by or for the account of the United States Government or for a foreign government, for the personal use of the importer or for sampling, taking orders, research, or the testing of equipment.

''Dairy products''—Articles in headings 0401 through 0406, margarine cheese listed under headings 1901.90.34 and 1901.90.36, ice cream listed under heading 2105, and casein listed under heading 3501 of the Harmonized Tariff Schedule.

''Department''—The United States Department of Agriculture.

''EC 12''—Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

''EC 15''—Austria, Belgium, Denmark, the Federal Republic of Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

''Enter'' or ''Entry''—To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with Customs regulations and procedures.

''Harmonized Tariff Schedule'' or ''HTS''—The Harmonized Tariff Schedule of the United States.

''Licensee''—A person to whom a license has been issued under this subpart.

''Licensing Authority''—The Dairy Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture.

''Other countries''—Countries not listed by name as having separate tariff-rate quota allocations for an article in the Additional U.S. Notes to Chapter 4 of the Harmonized Tariff Schedule.

''Person''—An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

''Postmark''—The postage cancellation mark or date applied by the United States Postal Service. This does not include the date on metered postage affixed by the applicant, or on mail delivered by private entities.

''Process'' or ''Processing''—Any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

''Quota year''—The 12-month period beginning on January 1 of a given year.

''Tariff-rate quota amount'' or ''TRQ amount''—The amount of an article subject to the applicable in-quota rate of duty established under a tariff-rate quota.

''United States''—The customs territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

§ 6.22 Requirement for a license.

(a) General rule. A person who seeks to enter, or cause to be entered, an article shall obtain a license, in accordance with this subpart, except as provided in paragraph (b).

(b) Exceptions. Licenses are not required if:

(1) The article is imported by or for the account of any agency of the U.S. Government;

(2) The article is imported for the personal use of the importer, provided that the net weight does not exceed five kilograms in any one shipment;

(3) The article imported will not enter the commerce of the United States and is imported as a sample for taking orders, for exhibition, for display or sampling at a trade fair, for research, for testing of equipment; or for use by embassies of foreign governments. Written approval of the Licensing Authority shall be obtained prior to entry, and the importer of record (or a broker or agent acting on its behalf) shall provide to the Licensing Authority, prior to the release of such articles, the appropriate Customs documentation identifying the article, quantity to be imported, its location, intended use, an entry number and the importer of record. The Licensing Authority may also require as a condition of import that the article be destroyed or re-exported after such use; or

(4) Such person pays the applicable over-quota rate of duty.

§ 6.23 Eligibility to apply for a license.

(a) *In general.* To apply for any license, a person shall have:

(1) a business office, and be doing business, in the United States, and

(2) an agent in the United States for service of process.

(b) *Eligibility for the 1997 and subsequent quota years.*

(1) *Historical licenses (Appendix 1).* Any person issued a historical or nonhistorical license for the 1996 quota year for an article may apply for a historical license (Appendix 1) for the same article from the same country for the 1997 and subsequent quota years, if such person was, during the 12-month period ending August 31 prior to the quota year, either:

(i) where the article is cheese or cheese product,

(A) the owner of and importer of record for at least three separate commercial entries of cheese or cheese products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight,

(B) the owner of and importer of record for at least eight separate commercial entries of cheese or cheese products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period; or

(C) the owner or operator of a plant listed in Section II or listed in Section I as a processor of cheese of the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had processed or packaged at least 450,000 kilograms of cheese or cheese products in its own plant in the United States; or

(ii) where the article is not cheese or cheese product,

(A) the owner of and importer of record for at least three separate commercial entries of dairy products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) the owner of and importer of record for at least eight separate commercial entries of dairy products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period;

(C) the owner or operator of a plant listed in the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had manufactured, processed or packaged at least 450,000 kilograms of dairy products in its own plant in the United States; or

(D) the exporter of dairy products in the quantities and number of shipments required under (A) or (B) above.

(2) *Certain butter.* A person issued a nonhistorical license for butter for the 1997 or 1998 quota year may annually apply for a historical license (Appendix 1) for the same quantity of butter for the subsequent quota year and each year thereafter, provided that such person has used at least 90 percent of the original license issued for the previous quota year and meets the requirements of paragraph (b)(1)(ii). However, if a person is issued a historical license pursuant to this paragraph, that person may not be issued a nonhistorical license for butter for any quota year in which that historical license is issued to that person, unless applicants who do not hold such a license have all been issued such a nonhistorical license.

(3) *Nonhistorical licenses for cheese or cheese products (Appendix 2).* A person may annually apply for a nonhistorical license for cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(i) of this section.

(4) *Nonhistorical licenses for articles other than cheese or cheese products (Appendix 2).* A person may annually apply for a nonhistorical license for articles other than cheese or cheese products (Appendix 2) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(ii).

(5) *Designated license (Appendix 3).* A person may annually apply for a designated license (Appendix 3) for the 1997 quota year and for each quota year thereafter, provided that such person meets the requirements of paragraph (b)(1)(i), of this section and provided further that the government of the country has designated such person for such license. The designating country shall submit its selection of designated importers in writing directly to the Licensing Authority not later than October 31 prior to the beginning of the quota year.

(c) *Exceptions.*

(1) A licensee that fails in a quota year to enter at least 85 percent of the amount of an article permitted under a license, shall not be eligible to receive a license for the same article from the same country for the next quota year. For the purpose of this paragraph, the amount of an article permitted under the license will exclude any amounts surrendered pursuant to § 6.26(a), but will include any additional allocations received pursuant to § 6.26(b).

(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or *force majeure*.

(3) Paragraph (c)(1) of this section may not apply in the case of historical or nonhistorical licenses, where the licensee demonstrates to the satisfaction of the Licensing Authority that the country specified on the license maintains or permits an export monopoly to control the dairy articles concerned and the licensee petitions the Licensing Authority to waive this requirement. The licensee shall submit evidence that the country maintains an export monopoly as defined in this paragraph. For the purposes of this paragraph ''export monopoly'' means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States.

(4) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a non-historical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a historical butter license of 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed affiliated with another applicant if:

(i) the applicant is the spouse, brother, sister, parent, child or grandchild of such other applicant;

(ii) the applicant is the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant;

(iii) the applicant is owned or controlled by the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant.

(iv) both applicants are 5 percent or more owned or directly or indirectly controlled, by the same person;

(v) the applicant, or a person who owns or controls the applicant, benefits from a trust that controls such other applicant.

(5) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a nonhistorical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a historical butter license for 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed associated with another applicant if:

(i) the applicant is an employee of, or is controlled by an employee of, such other applicant;

(ii) the applicant manages or is managed by such other applicant, or economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(6) The Licensing Authority will not issue a nonhistorical license for an article from a country, for which the applicant receives a designated license.

§ 6.24 Application for a license.

(a) Application for license shall be made on forms provided by the Licensing Authority and shall be duly notarized and mailed in accordance with § 6.35(b). All parts of the application shall be completed. For the 1997 quota year, applications should be postmarked no earlier than October 10 and no later than October 31. For the 1998 and subsequent quota years, the application shall be postmarked no earlier than September 1 and no later than October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete or unpostmarked applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include Customs Form 7501 showing the applicant as the importer of record of entries required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(2) Where the applicant seeks to establish eligibility on the basis of exports, applications shall include:

(i) Census Form 7525 or a copy of the electronic submission of such form, and

(ii) The commercial invoice or bill of sale for the quantities and number of export shipments required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(c) However, if the applicant is applying on the basis of more than eight shipments, the application shall include:

(1) the required documentary evidence for eight shipments;

(2) a signed certification that the remaining required documents are on file at the applicant's premises; and

(3)(i) if the application is made on the basis of imports, a listing of the entry numbers, dates of entry and volumes on those remaining documents; or

(ii) if the application is made on the basis of exports, a listing of the dates of export and volumes on those documents.

(d) An applicant requesting more than one nonhistorical license must rank order these requests by the applicable Additional U.S. Note number. Cheese and cheese products must be ranked separately from dairy articles which are not cheese or cheese products.

§ 6.25 Allocation of licenses.

(a) *Historical licenses for the 1997 quota year (Appendix 1).*

(1) A person issued a historical license for the 1996 quota year will be issued a historical license for the 1997 quota year in an amount equal to the Basic Annual Allocation level used by the Licensing Authority for the 1996 quota year provided that such person meets the requirements of § 6.23(b)(1) and § 6.23(c).

(2) A person issued a nonhistorical license for the 1996 quota year will be issued a historical license for the 1997 quota year for the same quantity as the license for the 1996 quota year, provided that such person meets the requirements of § 6.23.

(3) If a person was issued more than one historical license, or one or more historical licenses and a nonhistorical license, for the same article from the same country for the 1996 quota year, such person will be issued a single historical license for the 1997 quota year, the amount of which shall be determined in accordance with paragraphs, (a) (1) and (2) of this section.

(b) *Historical licenses for the 1998 and subsequent quota years (Appendix 1).*

(1) A person issued a historical license for the 1997 quota year will be issued a historical license in the same amount for the same article from the same country for the 1998 quota year and for each subsequent quota year except that:

(i) beginning with the 1999 quota year, a person who has surrendered more than 50 percent of such historical license in each of the prior three quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those three quota years; and

(ii) beginning with the quota year 2001, a person who has surrendered more than 50 percent of such historical license in at least three of the prior five quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those five quota years.

(2) However, prior to the beginning of the 1999 quota year, the Secretary of Agriculture may determine that the exceptions in paragraphs (b)(1) (i) and (ii) of this section shall not apply in light of market conditions.

(c) *Nonhistorical licenses (Appendix 2).* The Licensing Authority will allocate nonhistorical licenses on the basis of a rank-order lottery system, which will operate as follows:

(1) The minimum license size shall be:

(i) Where the article is cheese or cheese product:

(A) the total amount available for nonhistorical license where such amount is less than 9,500 kilograms;

(B) 9,500 kilograms where the total amount available for nonhistorical license is between 9,500 kilograms and 500,000 kilograms, inclusive;

(C) 19,000 kilograms where the total amount available for nonhistorical license is between 500,001 kilograms and 1,000,000 kilograms, inclusive;

(D) 38,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms; or

(E) an amount less than the minimum license size established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee;

(ii) Where the article is not cheese or cheese product:

(A) the total amount available for nonhistorical license where such amount is less than 19,000 kilograms;

(B) 19,000 kilograms where the total amount available for nonhistorical license is between 19,000 kilograms and 550,000 kilograms, inclusive;

(C) 38,000 kilograms where the total amount available for nonhistorical license is between 550,001 kilograms and 1,000,000 kilograms, inclusive; and

(D) 57,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms;

(E) an amount less than the minimum license sizes established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee.

(2) Taking into account the order of preference expressed by each applicant, as required by § 6.24(c), the Licensing Authority will allocate licenses for an article from a country by a series of random draws. A license of minimum size will be issued to each applicant in the order established by such draws until the total amount of such article in Appendix 2 has been allocated. An applicant that receives a license for an article will be removed from the pool for subsequent draws until every applicant has been allocated at least one license, provided that the licenses for which they applied are not already fully allocated. Any amount remaining after the random draws which is less than the applicable minimum license size may, at the discretion of the Licensing Authority, be prorated equally among the licenses awarded for that article.

(d) *Designated licenses (Appendix 3).*

(1) With respect to an article listed in Appendix 3, the government of the applicable country may, not later than October 31 prior to the beginning of a quota year, submit directly and in writing to the Licensing Authority:

(i) the names and addresses of the importers that it is designating to receive licenses; and

(ii) the amount, in percentage terms, of such article for which each such importer is being designated. Where quantities for designation result from both Tokyo Round concessions and Uruguay Round concessions, the designations should be made in terms of each.

(2) To the extent practicable, the Licensing Authority will issue designated licenses to those importers, and in those amounts, indicated by the government of the applicable country, provided that the importer designated meets the eligibility requirements set forth in § 6.23. Consistent with the international obligations of the United States, the Licensing Authority may

disregard a designation if the Licensing Authority determines that the person designated is not eligible for any of the reasons set forth in § 6.23(c) (1) or (2).

(3) If a government of a country which negotiated in the Uruguay Round for the right to designate importers has not done so, but determines to designate importers for the next quota year, it shall indicate its intention to do so directly and in writing to the Licensing Authority not later than July 1 prior to the beginning of such next quota year. Furthermore, if a government that has designated importers for a quota year determines that it will not continue to designate importers for the next quota year, it shall so indicate directly and in writing to the Licensing Authority, not later than July 1 prior to such next quota year.

§ 6.26 Surrender and reallocation.

(a) If a licensee determines that it will not enter the entire amount of an article permitted under its license, such licensee shall surrender its license right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority in writing, mailed in accordance with § 6.35(b) and postmarked no later than October 1. Any surrender shall be final and shall be only for that quota year, except as provided in § 6.25(b). The amount of the license not surrendered shall be subject to the license use requirements of § 6.23(c)(1).

(b) For each quota year, the Licensing Authority will, to the extent practicable, reallocate any amounts surrendered.

(c) Any person who has been issued a license for a quota year may apply to receive additional license, or addition to an existing license for a portion of the amount being reallocated. The application shall be submitted to the Licensing Authority by mail postmarked no earlier than September 1 and not later than September 15, in accordance with § 6.35(b), and shall specify:

(1) The name and control number of the applicant;

(2) The article and country being requested, the applicable Additional U.S. Note number and, if more than one article is requested, a rank-order by Additional U.S. Note number; and

(3) If applicable, the number of the license issued to the applicant for that quota year permitting entry of the same article from the same country.

(d) The Licensing Authority will reallocate surrendered amounts among applicants as follows:

(1) The minimum license size, or addition to an existing license, will be the total amount of the article from a country surrendered, or 10,000 kilograms, whichever is less;

(2) Minimum size licenses, or additions to an existing license, will be allocated among applicants requesting articles on the basis of the rank-order lottery system described in § 6.25(c);

(3) If there is any amount of an article from a country left after minimum size licenses have been issued, the Licensing Authority may allocate the remainder in any manner it determines equitable among applicants who have requested that article; and

(4) No amount will be reallocated to a licensee who has surrendered a portion of its license for the same article from the same country during that quota year unless all other licensees applying for a reallocated quantity have been allocated a license;

(e) However, if the government of an exporting country chooses to designate eligible importers for surrendered amounts under Appendix 3, the Licensing Authority shall issue the licenses in accordance with § 6.25(d)(2), provided that the government of the exporting country notifies the Licensing Authority of its designations no later than September 1. Such notification shall contain the names and addresses of the importers that it is designating and the amount in percentage terms of such article for which each importer is being designated. In such case the requirements of paragraph (c) of this section shall not apply.

(f) Except for paragraph (a), the provisions of § 6.26 for surrendered and reallocated tariff-rate quota shares do not apply for the 1996 quota year. Reissued tariff-rate quota shares for licenses surrendered during 1996 will be made pursuant to the provisions in effect for the 1996 quota year (§ 6.26(f)(2) as contained in 7 CFR subtitle A, revised as of January 1, 1996).

§ 6.27 Limitations on use of license.

(a) A licensee shall not obtain or use a license for speculation, brokering, or offering for sale, or permit any other person to use the license for profit.

(b) A licensee who is eligible as a manufacturer or processor, pursuant to § 6.23, shall process at least 75 percent of its licensed imports in such person's own facilities and maintain the records necessary to so substantiate.

§ 6.28 Transfer of license.

(a) If a licensee sells or conveys its business involving articles covered by this subpart to another person, including the complete transfer of the attendant assets, the Licensing Authority will transfer to such other person the historical, nonhistorical or designated license issued for that quota year. Such sale or conveyance must be unconditional, except that it may be in escrow with the sole condition for return of escrow being that the Licensing Authority determines that such sale does not meet the requirements of this paragraph.

(b) The parties seeking transfer of license shall give written notice to the Licensing Authority of the intended sale or conveyance described in paragraph (a) by mail as required in § 6.35(b). The notice must be received by the Licensing Authority at least 20 working days prior to the intended consummation of the sale or conveyance. Such written notice shall include copies of the documents of sale or conveyance. The Licensing Authority will review the documents for compliance with the requirements of paragraph (a) of this section and advise the parties in writing of its findings by the end of the 20-day period. The parties shall have the burden of demonstrating to the satisfaction of the Licensing Authority that the contemplated sale or conveyance complies with the requirements of paragraph (a) of this section. Within 15 days of the consummation of the sale or conveyance, the parties shall mail copies of the final documents to the Licensing Authority, in accordance with § 6.35(b). The Licensing Authority will not transfer the licenses unless the documents are submitted in accordance with this paragraph.

(c) The eligibility for a license of a person to whom a business is sold or conveyed will be determined for the next quota year in accordance with § 6.23. For the purposes of § 6.23(b)(1) the person to whom a business is sold or conveyed shall be deemed to be the person to whom the historical licenses were issued during the quota year in which the sale or conveyance occurred. Further, for the purposes of § 6.23 (b) and (c), the entries made under such licenses by the original licensee during the year in which the sale of conveyance is made, shall be considered as having been made by the person to whom the business was sold or conveyed.

§ 6.29 Use of licenses.

(a) An article entered under a license shall be an article produced in the country specified on the license.

(b) An article entered or withdrawn from warehouse for consumption under a license must be entered in the name of the licensee as the importer of record by the licensee or its agent, and must be owned by the licensee at the time of such entry.

(c) If the article entered or withdrawn from warehouse for consumption was purchased by the licensee through a direct sale from a foreign supplier, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading from the country; and

(2) A commercial invoice or bill of sale from the seller, showing the quantity and value of the product, the date of purchase and the country; or

(3) Where the article was entered into warehouse by the foreign supplier, Customs Form 7501 endorsed by the foreign supplier and the commercial invoice.

(d) If the article entered was purchased by the licensee via sale-in-transit, the licensee shall present, at the time of entry:

(1) A true and correct copy of a through bill of lading endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(e) If the article entered was purchased by the licensee in warehouse, the licensee shall present, at the time of entry:

(1) Customs Form 7501 endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(f) The Licensing Authority may waive the requirements of paragraphs (c), (d) or (e), if it determines that because of strikes, lockouts or other unusual circumstances, compliance with those requirements would unduly interfere with the entry of such articles.

(g) Nothing in this subpart shall prevent the use of immediate delivery in accordance with the provisions of Customs regulations relating to tariff-rate quotas.

§ 6.30 Record maintenance and inspection.

A licensee shall retain all records relating to its purchases, sales and transactions governed by this subpart, including all records necessary to establish the licensee's eligibility, for five years subsequent to the end of the quota year in which such purchases, sales or transactions occurred. During that period, the licensee shall, upon reasonable notice and during ordinary hours of business, grant officials of the U.S. Department of Agriculture full and complete access to the licensee's premises to inspect, audit or copy such records.

§ 6.31 Debarment and suspension.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), Subparts A through E, applies to this subpart.

§ 6.32 Globalization of licenses.

If the Licensing Authority determines that entries of an article from a country are likely to fall short of that country's allocated amount as indicated in Appendices 1, 2, and 3, the Licensing Authority may permit, with the approval of the Office of the United States Trade Representative, the applicable licensees to enter the remaining balance or a portion thereof from any country during that quota year. Requests for consideration of such adjustments must be submitted to the Licensing Authority no later than September 1. The Licensing Authority will obtain prior consent for such an adjustment of licenses from the government of the exporting country for quantities in accordance with the Uruguay Round commitment of the United States.

§ 6.33 License fee.

(a) A fee will be assessed each quota year for each license to defray the Department's costs of administering the licensing system. To the extent practicable, the fee will be announced by the Licensing Authority in a notice published in the Federal Register no later than August 31 of the year preceding the quota year for which the fee is assessed.

(b) The license fee for each license issued is due and payable in full by mail, postmarked no later than May 1 of the year for which the license is issued, in accordance with § 6.35(b). The fee for any license issued after May 1 of any quota year is due and payable in full by mail, postmarked no later than 30 days from the date of issuance of the license, in accordance with § 6.35(b). Fee payments shall be made by certified check or money order payable to the Treasurer of the United States.

(c) If the license fee is not paid by the final payment date, a hold will be placed on the use of the license and no articles will be permitted entry under that license. The Licensing Authority shall send a warning letter by certified mail, return receipt requested, advising the licensee that if payment is not mailed in accordance with § 6.35(b) or received within 21 days from the date of the letter, that the license will be revoked. Where the license at issue is a historical license, this will result, pursuant to § 6.23(b), in the person's loss of historical eligibility for such license.

(d) Licensees may elect not to accept certain licenses issued to them; however, the Licensing Authority must be so notified by mail, postmarked no later than the May 1, in accordance with § 6.35(b).

§ 6.34 Adjustment of Appendices.

(a) Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.

(b) The cumulative annual transfers to Appendix 2 made in accordance with paragraph (a) will be published in the Federal Register. If a transfer results in the addition of a new article, or an article from a country not previously listed in Appendix 2, the Licensing Authority shall afford all eligible applicants for that quota year the opportunity to apply for a license for such article.

§ 6.35 Miscellaneous.

(a) If any deadline date in this subpart falls on a Saturday, Sunday or a Federal holiday, then the deadline shall be the next business day.

(b) All submissions required by mail in this subpart shall be by registered or certified mail, return receipt requested, with a postmarked receipt, with the proper postage affixed and properly addressed to the Dairy Import Licensing Group, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue S.W., Washington D.C. 20250–1021.

§ 6.36 Supersedure of Import Regulation 1, Revision 7.

This subpart will supersede the provisions of Import Regulation 1, Revision 7 heretofore in effect (§§ 6.20 through 6.33 and appendices 1 through 3 as contained in 7 CFR subtitle A revised as of January 1, 1996). With respect to any violation of the provisions of that regulation by a licensee prior to the effective date hereof, the provisions of that regulation will be deemed to continue in full force; however, the debarment and suspension of § 6.31 of this subpart shall apply with respect to any violation of that regulation.

APPENDICES 1, 2, AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING

[Articles subject to Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Each Quota Year]

Article by additional U.S. note number and country of origin	Appendix 1 (historical)	Appendix 2 (nonhistorical)	Appendix 3—Designated	
			(Tokyo Round)	(Uruguay Round)
Non-Cheese Articles	1997 Tariff Rate Quota In-Quota Quantity (kilograms)			
Butter (Note 6)	320,689	4,856,311	.....	.....
EC	96,161	.....	.....	.....
New Zealand	150,593	.....	.....	.....
Other Countries	73,935	.....	.....	.....
Any Country	.....	4,856,311	.....	.....
Dried Skim Milk (Note 7)	819,641	2,041,359	.....	.....
Australia	600,076	.....	.....	.....
Canada	219,565	.....	.....	.....
Any Country	.....	2,041,359	.....	.....
Dried Whole Milk (Note 8)	3,175	1,548,125	.....	.....
New Zealand	3,175	.....	.....	.....
Any Country	.....	1,548,125	.....	.....
Dried Buttermilk/Whey (Note 12)	224,981	.....	.....	.....
Canada	161,161	.....	.....	.....
New Zealand	63,820	.....	.....	.....
Butter Substitutes containing over 45 percent of butterfat and/or butteroil (Note 14)	.....	5,420,500	.....	.....
Any Country	.....	5,420,500	.....	.....
Total: Non-Cheese Articles	1,368,486	13,866,295	.....	.....
Cheese Articles				
Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat and articles within the scope of other import quotas provided for in this subchapter) (Note 16)	25,896,207	5,574,524	9,661,128	5,198,000
Argentina	7,690	.....	92,310	.....
Australia	535,628	5,542	758,830	875,000
Canada	1,122,831	18,169	.....	.....
Costa Rica	.....	.....	.....	1,550,000
Czech Republic	.....	.....	.....	200,000
EC;	17,194,649	5,137,783	1,132,568	1,173,000
of which:				
Austria	369,747	.....	280,253	273,000
Finland	778,593	36,310	485,097	.....
Portugal	129,309	.....	223,691	.....
Sweden	915,473	.....	143,527	.....
Israel	79,696	.....	593,304	.....
Iceland	294,000	.....	29,000	.....
New Zealand	4,779,186	36,286	6,506,528	.....
Norway	150,000	.....	.....	.....
Poland	936,224	.....	.....	300,000
Slovak Republic	.....	.....	.....	600,000
Switzerland	659,983	11,429	548,588	250,000
Uruguay	.....	.....	.....	250,000
Other Countries	136,320	65,315	.....	.....
Any Country	.....	300,000	.....	.....
Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, Blue-mold cheese (Note 17)	2,366,029	154,972	.....	200,000
Argentina	2,000	.....	.....	.....
EC	2,364,028	114,972	.....	150,000
Chile	.....	40,000	.....	.....
Czech Republic	.....	.....	.....	50,000
Other Countries	1	.....	.....	.....
Cheddar Cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18)	4,096,752	297,104	519,033	3,725,000
Australia	965,795	18,704	215,501	625,000
Chile	.....	110,000	.....	.....
Czech Republic	.....	.....	.....	50,000
EC	263,000	.....	.....	500,000
New Zealand	2,728,068	68,400	303,532	2,550,000
Other Countries	139,889	.....	.....	.....
Any Country	.....	100,000	.....	.....
American-type cheese, including Colby, washed curd and granular cheese (but not including Cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19)	3,001,796	63,757	357,003	50,000
Australia	867,129	13,869	119,002	.....

APPENDICES 1, 2, AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING—Continued

[Articles subject to Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Each Quota Year]

Article by additional U.S. note number and country of origin	Appendix 1 (historical)	Appendix 2 (nonhistorical)	Appendix 3—Designated	
			(Tokyo Round)	(Uruguay Round)
EC	240,392	13,608	.....	50,000
New Zealand	1,725,719	36,280	238,001	.....
Other Countries	168,556	.....	.....	.....
Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese (Note 20)	5,593,856	12,546	.....	710,000
Argentina	125,000	.....	.....	110,000
Czech Republic	.....	.....	.....	100,000
EC;	5,283,546	5,454	.....	500,000
of which:				
Austria	.....	.....	.....	200,000
Sweden	41,000	.....	.....	.....
Norway	159,908	7,092	.....	.....
Other Countries	25,402	.....	.....	.....
Italian-type cheeses, made from cow's milk, (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti and Sbrinz and Goya, not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (Note 21)	6,701,591	818,956	795,517	4,965,000
Argentina	4,095,986	29,497	367,517	1,890,000
EC	2,592,541	789,459	.....	350,000
Hungary	.....	.....	.....	400,000
Poland	.....	.....	.....	1,325,000
Romania	.....	.....	.....	250,000
Uruguay	.....	.....	428,000	750,000
Other Countries	13,064	.....	.....	.....
Swiss or Emmenthaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses (Note 22)	6,050,188	601,126	823,519	190,000
EC;	4,555,608	596,386	393,006	190,000
of which:				
Austria	760,070	18,924	141,006	40,000
Finland	743,176	4,824	252,000	.....
Switzerland	1,414,747	4,740	430,513	.....
Other Countries	79,833	.....	.....	.....
Cheese and substitutes for cheese, containing 0.5 percent or less by weight of butterfat (except articles within the scope of other tariff-rate import quotas provided for in this subchapter), and margarine cheese (Note 23)	4,117,992	181,600	1,175,316	.....
EC;	3,943,084	181,600	.....	.....
of which:				
Sweden	124,684	.....	125,316	.....
Israel	.....	.....	50,000	.....
New Zealand	.....	.....	1,000,000	.....
Poland	174,907	.....	.....	.....
Other Countries	1	.....	.....	.....
Swiss or Emmenthaler cheese with eye formation (Note 25)	19,480,205	2,817,126	9,557,945	1,660,000
Argentina	9,115	.....	70,885	.....
Australia	209,698	.....	290,302	.....
Canada	.....	.....	70,000	.....
Czech Republic	.....	.....	.....	400,000
Hungary	.....	.....	.....	400,000
EC;	13,896,912	2,579,916	4,003,172	760,000
of which:				
Austria	4,940,643	59,111	1,280,246	110,000
Finland	5,454,349	22,725	2,722,926	.....
Sweden	.....	.....	.....	300,000
Iceland	149,999	.....	150,001	.....
Israel	27,000	.....	.....	.....
Norway	3,481,310	174,000	3,227,690	.....
Switzerland	1,620,895	63,210	1,745,895	100,000
Other Countries	85,276	.....	.....	.....
Total: Cheese Articles	77,304,616	10,521,711	22,889,461	16,698,000

Signed at Washington, D.C. on October 2, 1996.

Dan Glickman,

Secretary of Agriculture.

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