



DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

RIN 0551-AB04

[Docket ID FAS-2026-0001]

Dairy Tariff-Rate Quota Import Licensing Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulation that provides for the issuance of annual licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. FAS proposes changes to make the regulation more user friendly through updated language and clarification of some provisions. Among other changes, the proposed rule would replace the section on license transfers, strengthen the suspension and revocation provisions, and move forward the surrender date to permit earlier reallocation of surrendered quantities.

DATES: Comments are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for sending comments.

E-mail: dairy-ils@usda.gov. Include [docket number FAS-2026-0001] in the subject line of the message.

Mail: Dairy Import Programs, Multilateral Affairs, Trade Policy and Geographic Affairs, Foreign Agricultural Service, United States Department of Agriculture; 1400 Independence Avenue SW STOP 1070; Washington, D.C. 20250.

Hand Delivery / Courier: Dairy Import Programs, Multilateral Affairs, Trade Policy and

Geographic Affairs, Foreign Agricultural Service, United States Department of Agriculture; 1400 Independence Avenue SW STOP 1070; Washington, D.C. 20250.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this proposed rule. Comments will be available for inspection online at www.regulations.gov and at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Riley, International Trade Specialist, Import Programs, Trade Policy and Geographic Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, (202) 720-1703; Elizabeth.riley@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The proposed rule has been determined to be not significant under E.O. 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. The Regulatory Flexibility Act is not applicable to this rule because FAS 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. Although the RFA does not apply, FAS has determined that this proposed rule will not have a significant economic impact on small businesses participating in the program. **Executive**

Order 12988

This proposed rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The proposed rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this proposed rule, all administrative remedies must be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FAS has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under Executive Order 13175.

National Environmental Policy Act

FAS has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Unfunded Mandates Reform Act (Pub. L. 104-4)

Public Law 104-4 requires consultation with state and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on state, local, or tribal governments. Accordingly, these programs are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Executive Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule does not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Government Paperwork Elimination Act

The United States Department of Agriculture (USDA) is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Paperwork Reduction Act

In accordance with provisions of the Paperwork Reduction Act of 1995, the information collection for the Dairy TRQ Import Licensing program is approved by OMB under OMB control number 0551-0001, expiring January 31, 2027.

Background

The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, through the Under Secretary for Trade and Foreign Agricultural Affairs, administers the Dairy Tariff-Rate Quota Import Licensing regulation, codified at 7 CFR 6.20 et seq., that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in certain notes in Chapter 4 of the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person, as defined in the regulation, to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation. Licenses are issued on a calendar year basis, and each license authorizes the licensee to import a specified quantity and type of dairy article from a specified country of origin.

Under TRQs, a low tariff rate, commonly referred to as the in-quota rate, applies to imports up to a specified quantity. A higher tariff rate, commonly referred to as the over-quota rate, applies to any imports in excess of that amount. No license is required to import products at the over-quota tariff rate.

USDA issues three types of annual licenses: historical, nonhistorical (lottery), and designated. For all three license types, the current regulation provides that persons must apply each year between September 1 and October 15 to receive a license for the

following quota year. Historical and designated licensees may apply for lottery licenses, subject to certain limitations, if they are not affiliated or associated with another company holding a license for that same item from the same country of origin.

Licensees may fail to qualify for a license for a specific item from a specific country in the following year if they do not meet certain requirements, including but not limited to the following: licensees must (i) apply for the license each year, (ii) pay an annual fee, and (iii) have imported at least 85 percent of the final license amount from the previous year. To avoid ineligibility due to the 85 percent rule, licensees may surrender up to 100 percent of the license, but must import 85 percent of any quantity not surrendered. Section 6.25(b) of the regulation provides that any historical licensee who has surrendered more than 50 percent of the license amount for the same item from the same country during at least three of the most recent five years will be issued a license thereafter in an amount equal to the average amount imported under that license for those five quota years.

Summary of Proposed Changes to Rule

The following is a summary of the proposed substantive changes to the current regulation:

Changes throughout the subpart

This rule proposes several changes throughout the subpart to update terminology and make the regulations more user friendly. These changes include directly addressing applicants and licensees using the term “you” rather than a “person” or “a licensee.” In addition, the rule would update all references to the former DAIRIES system to refer instead to its replacement, the Agriculture Trade License Administration System (ATLAS).

Throughout this subpart, references to various appendices that formerly were published in the CFR, but are now published only in the Federal Register as appendices to a Notice, would be removed to avoid confusion. In addition, the amended subpart would use the simpler term “non-cheese product” instead of “article other than cheese or

cheese product.”

Overview of Section-by-Section Changes

Section 6.20, Introduction, would be streamlined and updated to clarify the authority and purpose of the program.

Section 6.21, Definitions, would be updated to include several modifications. The term “article” would be changed to “dairy article” and simplified to include all dairy products subject to a dairy import license under specific HS codes. The term “dairy product” would be clarified to include dairy products not subject to dairy import licensing requirements. Additional proposed changes include adding a definition for “Days” to mean calendar days, except where specified in the subpart. The definition of “EC” would be updated to “EU 27” to reference the countries listed in the HTS. FAS proposes a clear definition of force majeure. FAS proposes adding a definition for “Non-cheese article” to clarify the term as it is referenced elsewhere in the subpart. FAS also proposes changing “Process or processing” to “processed” and “Tariff-rate quota amount or TRQ amount” to “Tariff-rate quota or TRQ” to simplify and clarify those definitions.

Section 6.22, Requirement for a license, would be modified to address more specifically who may obtain a license.

In Section 6.23, Eligibility to apply for a license, FAS proposes to modify subparagraph (a) to include requirements for “suitable business facilities” and maintaining up-to-date contact details in ATLAS.

Section 6.23(c) would be modified to clarify what is meant by “affiliated” applicants.

Section 6.24, Application for a license, would be reorganized for clarity and modified to include, among other requirements for an application, an address for physical business facilities, a tax identification number, and a certification that the applicant is not affiliated with another applicant that is applying for a nonhistorical license for the same dairy article from the same country.

Section 6.25, Allocation of licenses, would be updated to clarify the language for the allocation of historical, non-historical, and designated licenses, and to remove references to past suspensions of the historical license reduction provision that are no longer in effect. In order to maximize the utilization of designated quotas, the rule would add a provision allowing for the reallocation of designated quantities in the event that a country fails to notify USDA of its designated companies for the following quota year by an October 31 deadline. In addition, (d) was deleted to remove confusion about the applicable deadlines for countries to designate companies.

To permit reallocations earlier in the quota year, FAS proposes amending Section 6.26, Surrender and reallocation, to reflect a new deadline for surrender of unused quantities and a new timeframe for applications for reallocation. As modified, the final date to surrender license quantities would be September 1, rather than October 1, and the window to apply for reallocated quantities would be modified to August 1 through August 15, rather than September 1 through September 15. These changes would allow additional time for licensees to utilize quantities received through reallocation.

In addition to updating the language in Section 6.27, Limitations on use of license, the proposed rule would remove the requirement that eligible manufacturers and processors process at least 75 percent of licensed imports in their own facilities.

The proposed rule would replace current section 6.28, Transfer of license, with a new provision governing how USDA will address changes to the name or business entity of the license holder when the ownership of the business has not changed. The new Section 6.28 would not allow for the transfer of any licenses in the event a business or division of a business is sold, merged, or otherwise conveyed to another person. A license permits the licensee to import under the tariff-rate quota (TRQ). The basis for historical licenses is that those eligible for such licenses are entities that were in the business of importing dairy articles before the TRQ was established. In the case of a non- historical or designated license holder, the license was issued to that specific individual or entity.

Once a license holder ceases to operate as a historical, non-historical, or designated importer, the entity ceases to qualify for a dairy license, and USDA may reallocate the quantities covered by the license. This change is intended to result in greater utilization of the dairy import TRQ and to enable a greater number of participants to utilize the TRQs. In particular, by no longer providing for the transfer of historical licenses, the revised regulation would allow quantities previously available only to historical license holders to become available to other applicants.

Section 6.30 would be modified to clarify that licensees must provide license records to USDA officials upon request during the 5-year period following the end of a quota year.

The proposed rule would change the name of Section 6.31, Debarment and Suspension, to “Debarment, suspension, and revocation.” The revised Section 6.31 retains the existing reference to the USDA Suspension and Debarment Regulations at 2 CFR 417 and adds a citation to the Governmentwide Nonprocurement Suspension and Debarment Regulations at 2 CFR 180, as the dairy TRQ import licenses are “covered transactions” under the suspension and debarment regulations. In addition, revised Section 6.31 would specify the circumstances under which the Licensing Authority may suspend or revoke a license for violations of or failure to comply with the regulations set forth in this subpart. These changes will enable FAS to ensure compliance with the regulations and protect the integrity of the license program.

Section 6.33, “License fee,” would be modified to include the current payment method of pay.gov.

Section 6.34, Adjustment of appendices, would add a new subparagraph to explain the TRQ allotment and Appendices 1-4, which are published as notices in the Federal Register.

Section 6.35(b), “Correction of errors,” would be modified to move the deadline for reporting errors from August 31 to March 31 of the calendar year following the year

in which the error was alleged to have occurred.

Section 6.36, “Miscellaneous,” would be modified to clarify that a document is filed on a day when it is received by 11:59 pm, Eastern Time, and to note that all official correspondence, except where otherwise noted in the subpart, will be via email.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Application requirements, Dairy cheese, Imports, Procedural rules, Tariff-rate Quota, Reporting and recordkeeping requirements.

Accordingly, for reasons described in the preamble, 7 CFR part 6 is proposed to be amended as follows:

PART 6—IMPORT QUOTAS AND FEES

Subpart B—Dairy Tariff-Rate Quota Import Licensing

1. The authority citation for Subpart B—Dairy Tariff-Rate Quota Import Licensing is revised to read as follows:

Authority: 19 U.S.C. § 3513; 19 U.S.C. § 3601; additional U.S. notes 6, 7, 8, 12, 14, 16-23 and 25 to Chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. § 1202); 31 U.S.C. § 9701, Proc. 6763, 3 CFR, 1994 Comp., p. 147; Proc. 7235, 64 FR 55611 (October 13, 1999).

2. Sections 6.20 through 6.36 are revised to read as follows:

§ 6.20 Introduction.

a) The Department of Agriculture will apply the regulations in this subpart to administer an import licensing system for certain dairy articles that are subject to in-quota tariff rates proclaimed in the Harmonized Tariff Schedule of the United States (HTS) (19 U.S.C. § 1202).

b) The dairy articles subject to this licensing system are listed in additional U.S. notes 6, 7, 8, 12, 14, 16-23 and 25 to Chapter 4 of the HTS. The Department annually publishes the list of dairy articles subject to licensing under this subpart in Appendices 1, 2, 3 and 4

in the Federal Register.

c) Licenses permit the holder to import specified quantities of the subject dairy article into the United States at the applicable in-quota rate of duty. If an importer does not have a license for a dairy article subject to licensing, such importer will generally be required to pay the applicable over-quota rate of duty.

§ 6.21 Definitions.

In this subpart:

ATLAS means the Agricultural Trade License Administration System, a web-based user interface system that persons must utilize to apply for and manage licenses, or any successor system designated by the Department.

CBP means the United States Customs and Border Protection, U.S. Department of Homeland Security.

Cheese or cheese articles means articles subject to a dairy import license as described in additional U.S. notes 16-23 and 25 to Chapter 4 of the HTS.

Commercial entry means 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.

Country means country of origin as determined in accordance with CBP rules and regulations, except that “EU 27” and “Other countries or areas” will each be treated as a country.

Dairy article means a product subject to a dairy import license as described in additional U.S. notes 6-8,12, 14, 16-23 and 25 to Chapter 4 of the Harmonized Tariff Schedule.

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

Days means calendar days. If any deadline date in this subpart falls on a Saturday,

Sunday, or a Federal holiday, then the deadline will be the next business day.

Department means the United States Department of Agriculture.

EU 27 means, collectively, those countries listed in additional U.S. note 2 to Chapter 4 of the HTS.

Enter or Entry means the entry for consumption, or withdrawal from warehouse for consumption, of merchandise imported into the United States in accordance with CBP regulations and procedures.

Force majeure means severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, act of civil or military authority, non-availability of transportation facilities, or any other cause beyond the control of the licensee that renders the ability to make entry on a license impossible.

Harmonized Tariff Schedule or HTS means the Harmonized Tariff Schedule of the United States.

Licensee means a person to whom a license has been issued under this subpart.

Licensing Authority means the officer or employee of the Department who has been duly designated as the Licensing Authority responsible for managing the Dairy Tariff-Rate Quota Import Licensing System.

Non-cheese articles means articles subject to a dairy import license as described in additional U.S. notes 6-8, 12, and 14 to Chapter 4 of the HTS.

Person means an individual, firm, corporation, partnership, association, trust, estate, or other legal entity.

Processed means any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

Quota year means the 12-month period beginning on January 1 of a given year.

Tariff-rate quota or *TRQ* means a quota that permits a specified quantity of imported merchandise to be entered at a reduced rate of duty during the quota period.

United States means the customs territory of the United States, which is limited to the 50

states, the District of Columbia, and Puerto Rico.

You means a person who is an applicant or licensee under this subpart.

§ 6.22 Requirement for a license.

If you seek to enter a dairy article as a commercial entry at the preferential in-quota tariff rate you must obtain a license in accordance with this subpart.

§ 6.23 Eligibility to apply for a license.

a) *Generally.* To be eligible for any license, you must have suitable U.S. business facilities, to include an office in the United States, with appropriate record-keeping and inventory systems, and a U.S.-based agent for service of process. You also must continuously maintain a valid email address in ATLAS for use in communicating with the Licensing Authority.

b) *Eligibility.*

(1) Historical licenses. If the Licensing Authority issued you a historical license for a dairy article for the current quota year, you will be eligible to apply for a historical license for the next quota year for the same dairy article from the same country in the same amount if, during the 12-month period ending August 31 prior to the quota year for which the license is being sought, you were either:

(i) Where the dairy article is cheese or cheese article,

(A) The owner of and importer of record for at least three separate commercial entries of cheese or cheese products under heading 0406 or products entered under subheading 1901.90.34 or 1901.90.36 of the HTS 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 under heading 0406 or products entered under subheading 1901.90.34 or 1901.90.36 of the HTS, 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 your own plant in the United States; or

ii) Where the dairy article is a non-cheese article,

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;

or

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 your 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) Nonhistorical licenses for cheese or cheese articles. You will be eligible to annually apply for a nonhistorical license for cheese or cheese articles if you meet the requirements of paragraph (b)(1)(i) of this section.

(3) Nonhistorical licenses for non-cheese articles. You will be eligible to apply annually for a nonhistorical license for non-cheese articles if you meet the requirements of paragraph (b)(1)(ii) of this section.

(4) Designated license. You will be eligible to apply annually for a designated license if you meet the requirements of paragraph (b)(1)(i) of this section and the government of a country designates you for such license under § 6.25(d).

b) Exceptions.

(1) If you have a license in the current quota year and fail in the current quota year to enter at least 85 percent of the amount of the dairy article permitted under the license, you will not be eligible to receive a license for the same dairy article from the same country for the next quota year. For purposes of this paragraph, the

amount of a dairy article permitted under the license will exclude any amounts surrendered under § 6.26(a), but will include any additional allocations received under § 6.26(b).

(2) Paragraph (c)(1) of this section will not apply where you demonstrate to the satisfaction of the Licensing Authority that the failure to enter the requisite 85 percent resulted from:

- i) breach by a carrier of its contract of carriage,
- ii) breach by a supplier of its contract to supply the dairy article, or
- iii) force majeure.

(3) Paragraph (c)(1) of this section will not apply in the case of historical or nonhistorical license holders where you demonstrate to the satisfaction of the Licensing Authority that the country specified on the license maintains or permits an export monopoly to control the dairy article concerned and you petition the Licensing Authority to waive this requirement before October 15 of the quota year preceding the quota year for which you are applying for a new license. To petition the Licensing Authority, you must submit evidence that the country maintains or permits an export monopoly, defined for purposes of this paragraph as a privilege granted by the government to one or more persons consisting of the exclusive right to carry on the exportation of any dairy article from a country to the United States.

(4) The Licensing Authority will not issue you a nonhistorical license for a dairy article from a country for the upcoming quota year if you are affiliated with another applicant that is applying for a nonhistorical license for the same dairy 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.

(5) For purposes of this subpart, applicants will be deemed affiliates of each other if an applicant would economically benefit, directly or indirectly, by the other applicant's use of the license to be issued to the other applicant, either one controls or has the power to control the other, or a third person controls or has the power to control both. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, employment of one applicant by the other, and common use of employees.

(6) If you receive a designated license for a dairy article, the Licensing Authority will not issue you a nonhistorical license for the same dairy article from the same country for the same quota year.

§ 6.24 Application for a license.

(a) You must apply for a license using the electronic forms designated by the Licensing Authority in ATLAS. The Licensing Authority will not accept incomplete applications. You must complete all parts of the application form, including providing the following information:

- (1) a physical address for your business facilities,
- (2) a federal tax ID for doing business in the United States,
- (3) an agent in the United States for service of process, and
- (4) an email address to be used for correspondence regarding licensing activities and reports.

(b) If you are applying for a nonhistorical license, you must submit as part of your application a signed certification that you are not affiliated with another applicant that is applying for a nonhistorical license for the same dairy article from the same country for which you are also applying.

(c) You must submit your application no earlier than September 1 and no later than October 31 of the year preceding that for which the license application is made.

(d) To establish eligibility on the basis of imports, as part of your application, you must provide identification of entries sufficient to establish you were 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 a license is being sought. For qualifying licensed entries, verification will be processed through ATLAS and cross-checked with entries in the CBP system. For both licensed and unlicensed qualifying entries, you may submit an electronic copy of the applicable signed CBP Form 7501 to the Licensing Authority.

(e) To establish eligibility on the basis of exports, 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 a license is being sought, you must provide as part of your application:

(1) an electronic copy of Form 7525-V, Shipper's Export Declaration (SED) or Electronic Export Information (EEI), and

(2) electronic copies of the commercial invoice, bill of lading, or bill of sale.

(f) If you are applying for more than one nonhistorical license, you must rank order these requests by the applicable additional U.S. note number. You must rank cheese and cheese articles separately from non-cheese articles.

§ 6.25 Allocation of licenses.

(a) *Licensing Authority.* The Licensing Authority will issue historical, nonhistorical and designated licenses.

(b) *Historical licenses.* If you were issued a historical license for the current quota year, the Licensing Authority will issue you a historical license in the same amount for the same dairy article from the same country for the next quota year, assuming you meet the applicable eligibility and application requirements, except that, if you surrendered more than 50 percent of such historical license in at least three of the prior five quota years preceding the quota year for which you are applying, you will thereafter be issued a historical license in an amount equal to the average annual quantity entered during those five quota years.

(c) *Nonhistorical licenses.* 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 will be:

(i) In the case of a cheese or cheese article:

(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 applicant;

(ii) In the case of a non-cheese article:

(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;

(D) 57,000 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 sizes established in paragraphs (c)(1)(ii)(A) through (D) of this section, if requested by the applicant.

(2) Taking into account the order of preference submitted by each applicant pursuant to § 6.24(f), the Licensing Authority will allocate nonhistorical licenses

for a dairy 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 dairy article available for nonhistorical licenses has been allocated. If the in-quota quantity for a dairy article reserved for nonhistorical licenses is not fully allocated, an applicant that receives a nonhistorical license for the dairy article will be removed from the pool for subsequent draws until every applicant has been allocated at least one nonhistorical license. 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 nonhistorical licenses awarded for that dairy article.

(a) Designated licenses.

(1) With respect to a dairy article for which the government of an applicable country may designate importers to receive licenses, the government of the applicable country, not later than October 31 prior to the beginning of a quota year, may submit directly by email to the Licensing Authority:

- (i) The names, addresses and emails of the importers that it is designating to receive licenses; and
- (ii) The amount, in kilograms, of such dairy 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.

In the event no submission is received by the October 31 deadline, USDA will reallocate that country's quantity to the non-historical appendix for that quota year.

(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 applicable eligibility and application requirements set forth in this subpart. 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 the reason set forth in § 6.23(c)(1).

§ 6.26 Surrender and reallocation.

(a) If you determine that you will not enter the entire amount of a dairy article permitted under a license issued to you under this subpart before the end of the relevant quota year, you must surrender your right to enter the amount that you do not intend to enter.

Surrender must be made to the Licensing Authority no later than September 1. Any surrender will be final and will be only for that quota year, except for historical licenses as provided in § 6.25(b). The amount of the license not surrendered will 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) If you are qualified for or were issued a cheese or cheese article license for the quota year, you may apply for a license or additional amounts to an existing license, as applicable, for a portion of the amount of any cheese or cheese article quota being reallocated. If you are qualified for or were issued a non-cheese article license for the

quota year, you may apply for a license or additional amounts to an existing license, as applicable, for a portion of the amount of any non-cheese article quota being reallocated.

(d) If you wish to apply for any amounts surrendered, you must submit to the Licensing Authority no earlier than August 1 and not later than August 15 using the electronic forms designated by the Licensing Authority in ATLAS an application in accordance with section 6.24. The application must further specify:

- (1) Your company name.
- (2) The dairy article and country requested, the applicable HTS additional U.S. note number and, if you are requesting more than one dairy article, a rank-order by additional U.S. note number; and
- (3) If applicable, the number of the license issued to you for that quota year permitting entry of the same dairy article from the same country you are requesting.

The Licensing Authority will not accept incomplete applications. You must complete all parts of the application form.

(e) 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 dairy 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 dairy articles on the basis of the rank-order lottery system described in § 6.25(c);

(3) If there is any amount of a dairy article from a country left after minimum size licenses have been issued, the Licensing Authority may allocate the remainder in any manner it determines, including on a first-come, first-served basis; and

(4) No amount will be reallocated to a licensee who has surrendered a portion of its license for the same dairy article from the same country during that quota year and has applied for a reallocation for that same dairy article from the same country until all other applicants applying for a reallocated quantity of that TRQ have been allocated their requested amounts.

(f) If the government of an exporting country with a right to designate importers chooses to designate eligible importers to receive amounts surrendered by designated license holders for that country, the Licensing Authority will issue the designated licenses for the reallocated amounts 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 August 1. Such notification must contain the names, addresses, and email addresses of the importers that it is designating and the share of the quantity of such dairy articles for which each importer(s) is being designated. In such case the requirements of paragraph (c) of this section will not apply.

§ 6.27 Limitations on use of license.

You must not obtain or use a license for speculation or brokering. You must not sell a license issued to you by the Licensing Authority or permit any other person to use such license.

§ 6.28 Change in business entity.

If you change your business name or entity type (e.g., from a limited liability corporation (LLC) to a corporation), but the ownership of the business has not changed, you must

provide the Licensing Authority with supporting documents for the new business entity within 10 business days of the change in order for the Licensing Authority to update this information in ATLAS. Entries made under licenses by the original entity will be considered as having been made by the new business entity to whom the Licensing Authority issued the license for purposes of determining the new business entity's eligibility for the next quota year in accordance with § 6.23.

§ 6.29 Use of licenses.

(a) The country of origin of a dairy article entered under a license must be the country specified on the license, as determined by CBP.

(b) A dairy 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 dairy article entered or withdrawn from warehouse for consumption was purchased by the licensee through a direct sale from a foreign supplier, the licensee must present the following documents or their authorized electronic equivalent, when available, 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 dairy article, the date of purchase and the country of origin; or
- (3) Where the dairy article was entered into warehouse by the foreign supplier, CBP Form 7501 endorsed by the foreign supplier and the commercial invoice or bill of sale, from the seller to the buyer.

(d) If the dairy article entered was purchased by the licensee via sale-in-transit, the licensee must present the following documents or their authorized electronic equivalent, when available, 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 dairy article entered was purchased by the licensee in warehouse, the licensee must present the following documents or their authorized electronic equivalent, when available, at the time of entry:

- (1) CBP 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 dairy articles.

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

§ 6.30 Record maintenance and inspection.

You must retain all records relating to purchases, sales, and transactions governed by this subpart, including all records necessary to establish your eligibility, for five years following the end of the quota year in which such purchases, sales, or transactions occurred. During that period, you must, upon reasonable notice and during ordinary hours of business, grant officials of the Department full and complete access to your premises to inspect, audit, or copy such records. During that period, you must, upon request, promptly provide to officials of the Department copies of such records that have been requested by them.

§ 6.31 Debarment, suspension, and revocation.

(a) The debarment and suspension regulations in 2 CFR part 180 and 2 CFR part 417 apply to this subpart.

(b) The Licensing Authority may suspend or revoke a license for a quota year and may not issue a license to a person for up to three subsequent quota years for any violation of or failure to comply with any provision of these regulations, including, but not limited to, the following:

- (1) Failure to pay a license fee in accordance with § 6.33;
- (2) Submission of false or misleading information in connection with an application, the use of a license, or a request for information under this subpart;
- (3) Failure to observe the limitations on and proper use of the license as set out in this subpart;
- (4) Failure to maintain appropriate records or provide requested records during the required period of time in accordance with § 6.30; and
- (5) The person is owned, controlled, employed, or managed by a person whose license has been suspended or revoked.

(c) The Licensing Authority will determine whether to suspend or revoke a license under paragraph (b) and, except in cases of willfulness or when public health, interest, or safety requires otherwise, will give written notice of such determination to the licensee. The

notice will give a plain and concise explanation of the factual basis and grounds for the determination, specify the length of suspension or revocation and a date on which such suspension or revocation will become effective. If such opportunity has not already been provided, the notice will provide the licensee an opportunity to demonstrate or achieve compliance with all lawful requirements.

(d) Any action taken by the Licensing Authority to suspend or revoke a license is without prejudice to the rights of the U.S. Government to pursue any other available legal recourse, civil, criminal, or administrative.

§ 6.32 Globalization of licenses.

If the Licensing Authority determines that entries of a dairy article from a country are likely to fall short of that country's total allocated amount under the relevant TRQ, 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 by licensees 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 license quantities from the government of the exporting country consistent with the relevant international commitments of the United States. No globalization requests will be considered prior to April 1 of each year.

§ 6.33 License fee.

(a) A fee will be assessed each quota year for each license based on the Department's costs of administering the licensing system. To the extent practicable, the fee will be announced annually 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 no later than March 15 of the year for which the license is issued. The fee for any license issued after March

15 of any quota year is due and must be paid in full no later than 10 days from the date of issuance of the license. Fee payments are payable to the Treasurer of the United States and must be made via the pay.gov link provided in the ATLAS system.

(c) If you do not pay the license fees for all licenses issued to you in full by the applicable due dates, a hold will be placed on the use of all licenses issued to you and no dairy article will be permitted entry under those licenses. The Licensing Authority will send you a warning by email advising that if payment is not made in accordance with subparagraph (b) above and received within 10 days from the date of the email, all licenses issued to you will be revoked. Where the license at issue is a historical license, this will result, pursuant to § 6.23(b), in the person's permanent loss of eligibility for such historical license.

§ 6.34 Adjustment of appendices.

(a) The Department will annually publish the list of dairy articles and the portion of each TRQ allotted to historical, nonhistorical, and designated licenses in the Federal Register in Appendix 1 (historical licenses), Appendix 2 (nonhistorical licenses), Appendix 3 (designated licenses per Tokyo Round concessions), and Appendix 4 (designated licenses per Uruguay Round concessions). Whenever quantities of a historical license are permanently surrendered, revoked by the Licensing Authority, or not issued to an applicant pursuant to the provisions of § 6.23, such quantity will be transferred to the quantity available to nonhistorical licenses for that dairy article.

(b) The cumulative annual transfers to nonhistorical licenses made in accordance with paragraph (b) of this section will be published in the Federal Register each year. If a transfer results in the addition of a new dairy article, or a dairy article from a country not previously listed in Appendix 2, the Licensing Authority will afford all eligible applicants for the current quota year the opportunity to apply for a nonhistorical license for such dairy article during the reallocation period.

§ 6.35 Correction of errors and explanation of denial.

(a) If you demonstrate, to the satisfaction of the Licensing Authority, that errors were made by officers or employees of the United States Government in implementing this subpart, the Licensing Authority will review and rectify the errors to the extent feasible and permitted under this subpart.

(b) You must provide sufficient documentation regarding the error to the Licensing Authority by email as soon as practicable after you become aware of the error but no later than by March 31 of the calendar year following the calendar year in which the error was alleged to have been committed.

(c) If the error resulted in the loss of a historical license by a license holder, the Licensing Authority will transfer the amount of such license from the amounts available to the nonhistorical licenses back to the amounts available to historical licenses in order to provide for the issuance of such license in the calendar year following the calendar year for which the license was revoked.

(d) At the request of the applicant, the Licensing Authority will provide a written explanation for the denial of a license application within 45 days of receiving the request.

§ 6.36 Miscellaneous.

(a) If any deadline date in this subpart falls on a Saturday, Sunday, or a Federal holiday, then the deadline will be the next business day. A document is filed on a day when it is received by 11:59 p.m., Eastern Time.

(b) All official correspondence with the Licensing Authority, except as provided otherwise in this subpart, must be by email. Digital scanned versions (*e.g.* PDF, JPEG, TIF, etc.) of hardcopy documents submitted by email are acceptable electronic communications.

Daniel B. Whitley,

Administrator,

Foreign Agricultural Service.

