Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Dairy Tariff-Rate Import Quota Licensing

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would supersede Import Regulation 1, Revision 7, which governs the administration of the import licensing system for certain dairy products which are subject to 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.

DATES: Comments should be received on or before March 18, 1996 to be assured of consideration. Comments on the change in information collection should be received on or before March 18, 1996 to be assured of consideration.

ADDRESSES: Comments should be sent to Richard Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, Room 5531–S, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Agricultural Box 1021, Washington, DC 20250–1021. All comments received will be available for public inspection in room 5541–S at the above address.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, Group Leader, Import Programs Group, Import Policies and Programs Division, room 5531–S, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250, or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed 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 proposed 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 intends to amend the current information collection approved by the Office of Management and Budget (OMB) under OMB control number 0551–0001, expiring June 30, 1997.

Since this proposed rule provides for a substantial revision of the existing Import Regulation, the currently approved information collection needs to be amended to support the proposed rule. Specifically, for the 1997 quota year and each quota year thereafter, the amended ''certification'' form FAS–922 (Rev. 1–96) must be submitted to the Department by applicants requesting historical, nonhistorical rank-order lottery, and/or designated importer licenses within the application period specified in the proposed rule. This form requests applicants to certify that they are either importers, designated importers, manufacturers, or exporters of certain dairy products and that they meet the eligibility requirements of the proposed rule. In addition, importers and exporters must submit the supporting documentation required by § 6.23 and § 6.24 of the proposed rule as proof of eligibility for an import license. The proposed amendments to the form consist of technical changes in the text which reflect technical changes in the proposed rule.

In addition, for the 1997 quota year and each quota year thereafter, applicants for nonhistorical licenses must submit amended application form FAS–922A (Rev. 1–96). This form requires applicants to identify requests for nonhistorical rank-order licenses to import cheese by cheese types and supplying country, and/or to import noncheese dairy articles by the type of noncheese article. The currently approved application form is being amended to limit its applicability to requests for nonhistorical licenses, and to require applicants to rank order their preferences for licenses to import cheese in descending order of preference, as is currently done for certain noncheese dairy articles.

The estimated total annual burden in the OMB inventory for the currently approved information collection is 425 hours for the 1996 quota year. For the 1997 quota year and each quota year thereafter, the estimated total annual burden is being reduced by 50 hours to 375 hours. The estimated reduction is based largely on the elimination of a separate ''certification'' form for historical licenses, elimination of the requirement that applicants for historical licenses must submit an application form, and strengthened eligibility requirements and increased disciplines in the proposed rule.

The estimated public reporting burden for the amended information collection for 1997 quota year and each quota year thereafter is set forth in the table below.

Form No. *	FAS–922, FAS–922A
Estimated No. of respondents	500
Estimated responses per respondent	1
Estimated hours per response	.75
Estimated total annual burden in hours	375

*922 and 922A are one form.

Copies of this information collection can be obtained from Pamela Hopkins, the Agency Information Collection Coordinator, at (202) 720–6713.

The Department requests comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of the collection of information. Comments should be submitted in accordance with the Dates and Addresses sections above. All comments will be summarized and included in the request for OMB approval, and will also become a matter of public record.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778. The provisions of this proposed 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 proposed rule would not have retroactive effect.

Background

This proposed rule would govern the administration of the import licensing system for certain dairy products which are subject to in-quota tariff rates proclaimed in the Harmonized Tariff Schedule of the United States (HTS).

Prior to the conclusion of the Uruguay Round negotiations, the regime governing the importation of certain articles of cheese and other dairy products into the United States was a system of absolute quotas imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended. Prior versions of the Import Regulation, including Revision 7, as amended, established licensing systems pursuant to which the privilege of importing the subject articles was allocated among importers.

During the course of the Uruguay Round negotiations, the GATT Contracting Parties agreed that all systems of absolute quotas for the importation of agricultural products would be eliminated and would be converted, through a process known as tariffication, to tariff-based systems. For articles that had previously been subject to absolute quotas, countries were permitted to implement systems of tariff-rate quotas. A tariff-rate quota is a system whereby the importation of an article is subject to a two-tiered tariff. A specified volume—commonly referred to as the ''in-quota amount''—is subject to the applicable low ''in-quota'' rate of duty; all imports beyond that amount are subject to the applicable higher, ''over-quota'' rate of duty.

This proposed rule, which would be Revision 8 of the Import Regulation, would implement a tariff-rate quota licensing system for the importation of certain articles of cheese and other dairy products. It is also intended to incorporate a number of administrative improvements. The Import Regulation has not been substantially updated since Revision 7 took effect in 1979.

In order to ensure public participation in the rulemaking process at an early stage, and prior to the conclusion of the Uruguay Round, the Department published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on June 2, 1994 (59 *Fed. Reg.* 28495), soliciting public comment with respect to various ways in which the Import Regulation might be improved to provide greater economic and administrative efficiencies. The Department also held a public hearing on March 10, 1995, during which public witnesses had the opportunity to present their views and proposals for revision of the Import Regulation. Further comments have also been received from the public in response to the Interim Rule published on January 6, 1995 (60 *Fed. Reg.* 1989–1996 amending Revision 7).

Comments were received in response to the ANPR from 42 entities: four of them were trade associations; two, foreign exporting entities; two, representatives of foreign governments; and the remainder, importers or their legal counsel, most of them participants in the existing import licensing program. Their comments focussed most heavily on the allocation of in-quota quantities of cheese, although several commentors had extensive comments on dairy articles other than cheese. Most were directed at the problems with the existing license system. Generally the solutions proposed to address them were adjustments to the licensing system of varying scope. Many commentors proposed that a revision of the rule deal with the lack of continuity and inadequate availability of license to small businesses and recent entrants. Their proposals ranged from creating set-asides for permanent new licenses for certain categories of business or preventing companies which hold more than a specified amount of license from obtaining any more, to reduction or non-issuance of historical licenses which are not fully utilized or, subsequent to license globalization, not utilized in the country for which they were originally issued. A number proposed eliminating the provision for exporting countries to designate importers for license. A number of comments encouraged the tightening of eligibility and performance requirements (particularly in regard to sales-in-transit) to eliminate license-holders who broker licenses, while others expressed the fear that such action would work against small businesses. One commentor indicated all in-quota quantities which were increased by more than 500 metric tons in the Uruguay Round should be licensed. On the other hand, five entities proposed eliminating import licensing, four of them suggesting they should be replaced with some form of required exporting country control, while one suggested raising the duty in lieu of licenses.

At the March 10, 1995 public hearing, ten entities gave testimony and seven submitted rebuttal briefs subsequent to the hearing. The substance of the testimony and of the rebuttal briefs paralleled the responses submitted to the ANPR. Much of it dealt with the specifics of reforming the existing licensing system. An additional entity proposed eliminating the licensing system entirely.

Comments received by the Department in response to the ANPR, at the public hearing, and in response to the Interim Rule which was published on January 6 have generally supported the following recommendations for revision of the Import Regulation: (1) Formulation of clearer and more uniform eligibility requirements; (2) the establishment of clearer and more uniform criteria for license use and minimal levels of utilization for all license types; (3) an increase in the availability and conditions of license to new entrants; and (4) refined provisions governing suspension or revocation of licenses.

In developing this proposed rule and in response to the comments received from the public, the Department considered three alternatives for revision of the Import Regulation. The system of auctioning importing licenses was not considered because the Statement of Administrative Action accompanying the Uruguay Round Agreements Act stated that imports of dairy products subject to TRQs would not be administered through such a system. The three alternatives that were considered are as follows:

(A) *First-Come, First-Served.* This alternative would eliminate licensing for all dairy product imports except those quantities of cheese products which have been subject to designation by exporting countries and those which will be subject to designation as a result of the Uruguay Round Bilateral Memoranda of Understanding that implement the Agreement. Imports would occur at the in-quota duty rate until the in-quota quantities were filled, at which point the over-quota duty rate would be charged any further imports

for the rest of the quota period. This could be done on an annual or quarterly basis. Six entities supported some variation of this type of import system, four on condition it was accompanied by required exporting country controls. Commentors felt such a system would be less of an interference with the market and specific trade relationships than the existing system. While most of the other commentors who focussed on modifying the license system did not address or specifically oppose a first-come, first-served system, their comments frequently referenced the need for licenses in order to ensure the continuity necessary for them to invest in the marketing and distribution of imported product. Two commentors specifically stated that not licensing the in-quota quantities of the TRQs allocated to Mexico under the North American Free-Trade Agreement was a mistake for that reason.

(B) *Rank-Order Lottery.* This alternative would provide for a rank-order lottery for all licenses to be issued for all quantities not designated, like that which already exists for certain dairy products other than cheese. Quantities currently designated (including any new Uruguay Round quantities) would continue to be so. While the concept of a rank-order lottery to replace the existing random lottery was suggested by comments received in response to the ANPR, extending such an approach beyond the existing lottery quantities was not suggested in any comments or testimony. Generally comments regarding the use of a lottery to allocate license were negative, because of the lack of continuity and insufficient license quantities such a system engenders. These comments were directed at the existing random lottery and for the quantities which are currently subject to it, rather than a rank-order lottery which would cover roughly two-thirds of the in-quota amounts. A comment received in response to the interim rule published on January 6, which implemented a rank-order lottery for dairy products other than cheese, suggested that it would lead to entities receiving licenses which were too small and of insufficient product coverage to permit market development or longer term trading relationships, while the entity which originally suggested the concept supported it as more fair than a completely random approach.

(C) *Mixed License System.* This alternative would retain a modified mixed licensing system, but make a number of significant changes which will redefine eligibility in terms of higher performance standards and streamline and improve administration of the system in response to comments and recommendations received from the public, including current license holders. Most of the comments received favored some form of modifying the licensing system which would provide certainty of license receipt to existing businesses and new entrants who are regularly engaged in the importation or use of dairy products.

The Department believes the third alternative would be the most effective approach for revising the Import Regulation, and this proposed rule has been developed accordingly. Neither of the other alternatives would provide a longer or more certain planning horizon for entities in the importing business as desired by most of the commentors. Among the primary factors which make the third alternative preferable to the other two are: compared to a first-come, first-served system, it would provide greater certainty to importing businesses that they will be able to import at the in-quota duty throughout the year, would be less distortive of competition between designated importers and all others, and would better maintain the traditional importing pattern, wherein more than half of the imports enter in the second half of the calendar year; it does not have the disadvantage of the lottery system of severely disrupting the business of the larger existing entities and potentially mismatching licenses with the needs of a particular entity.

An economic impact analysis, which discusses the effects of the three alternatives in greater detail, has been prepared and can be obtained from Richard Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, room 5531–S, Foreign Agricultural Service, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Agricultural Box 1021, Washington, DC 20250–1021. While this proposed rule is based on the third alternative, the Department invites comments from the public on all three alternatives, as well as on the provisions of the proposed rule itself.

The proposed rule is designed to address a number of specific industry concerns which have been expressed during the ANPR, public hearing, and Interim Rule stages of the Department's review of the dairy import licensing system. These include the difficulty for new businesses to establish themselves in the dairy import business; the ease with which licenses can be obtained by persons not regularly in the business of importing, which in turn diminishes what is available to newcomers or existing businesses; the apparent lack of due process in the license suspension and revocation procedures; the limited provisions for action subsequent to a determination that a licensee has violated a provision of the rule; the manner in which transfers of license between persons take place subsequent to a sale of the entire dairy products business related to the licenses; the inability of the industry to avail themselves to immediate delivery of Customs procedures; and certain other technical aspects of the rule.

The Department invites comments on the eligibility and performance requirements in the proposal. We would be interested in the costs and unintended market consequences to importers of these new requirements as follows: (1) The higher volume and/or more frequent shipment requirements than exist under the current rule; (2) the higher volume of manufacturing required for applicants who seek eligibility on the basis of being a manufacturer; (3) the requirement for direct shipments to qualify for eligibility; (4) the limitation on the proportion of license activity which may be made on the basis of purchases in transit; (5) the requirement that licensees whose eligibility is based on manufacturing, use the bulk of what they import in their own facility; and (6) the provision for permanently reducing historical licenses of those who surrender license in three consecutive or three years out of five.

This proposed rule retains the current practice of not permitting the sale of individual licenses and introduces a limitation on the use of sales-in-transit. The Department invites comment on this approach. Should the Department make it more difficult for persons not regularly in the business of importing dairy products to obtain or keep a license, effectively restricting a secondary market? How could this be best accomplished and enforced? What are the benefits and costs of doing so? With regard to sales-in-transit, what are their commercial advantages and what are the costs and benefits of a limitation on their use? Or should the Department encourage the development of a secondary market? Should it allow the sale of individual licenses on an annual basis, and if so how? What would the costs and benefits be?

In furtherance of the Administration's initiative on regulatory reform, the proposed rule has also been substantially rewritten to be clearer and more concise. Unnecessary definitions have been eliminated and the rule has been substantially shortened, made more internally consistent, and more compatible with other provisions of law.

The public is invited to provide its comments on all of these proposed changes and to suggest further improvements.

Definitions

In the proposed Revision 8, many definitions from Revision 7 are deleted and others are added, modified, or amended to deal with changes in the operational parts of the rule or to update them. The definition of ''cheese and cheese products'' is amended to conform with classifications in the HTS, and a definition of ''dairy products'' is added. A definition of ''sale-in-transit'' is added in order to clarify eligibility criteria which will take effect for the 1997 quota year (specifically: (1) Eligibility qualifying entries may not be based on sales-in-transit and (2) no more than 25 percent of a licensee's total licensed entries in the quota year preceding that for which application is being made may be based on sales-in-transit). One comment proposed that the definition of ''date of entry'' and ''enter'' be amended to conform to U.S. Customs Service regulations. The definition of ''date of entry'' is eliminated and the term ''enter'' or ''entry'' is so defined since this proposed rule permits the U.S. Customs Service rules regarding entry for TRQ's to govern the entry of articles subject to this regulation. While the term ''entrepreneurial use'' is no longer found in the definition section, the eligibility requirements of § 6.23 and the provisions of § 6.27, ''Limitations on license use'', replace and expand the concept. A definition of ''process'' or ''processing'' is added to clarify the eligibility requirements and limitations on use of a license. Other definitions, not discussed here, are also deleted, added or modified.

License Requirement and Exceptions

The change to a TRQ from an absolute quota requires that a license be obtained only to enter articles at the applicable duty for in-quota quantities under the TRQ. Over-quota duty treatment effectively replaces the former prohibition of imports for articles in excess of the absolute quota. Amounts entering without a license receive the applicable over-quota duty treatment. Thus the section on prohibitions and restrictions on imports in Revision 7 would be renamed in the proposed Revision 8 and include exceptions to the requirement for a license under certain prescribed conditions. Two entities suggested that the level of imports allowed under this exception be raised. The provision for this exception as found in Revision 7, as amended by the Interim Rule dated January 6, 1995 is not changed substantively in this proposed rule since it conforms to the exclusions in General Note 15 of the HTS, including the limit on entry for personal use of not more than five kilograms (changing the limit of ''not over $25'' in Revision 7). In response to a question in the comments, the term ''importer'' as used in this section continues to mean individuals who import the article whether or not they are persons in the business of importing, and ex-quota import permits will continue to be issued in a timely manner.

Changes in the Licensing Structure

Changes in the licensing structure are proposed to streamline the administration of the program, provide more uniform eligibility and performance requirements, and facilitate license use. There would be three license types under Revision 8 as proposed: (1) Appendix 1 historical licenses; (2) Appendix 2 nonhistorical rank-order lottery licenses; and (3) Appendix 3 designated licenses. The following table indicates how the licenses currently issued under Revision 7 would be issued under Revision 8. The proposed Appendices to Revision 8 are based on license type rather than the implementation date of the quota or tariff-rate quota.

LICENSE CHANGES: REVISION 7 COMPARED TO REVISION 8

REV. 7 App. 1	REV. 7 App. 2	REV. 7 App. 3	REV. 8 App. 1	REV. 8 App. 2	REV. 8 App. 3
Historical license—pre-Tokyo Round.	Historical license-Tokyo Round.	.....	Historical license.		
Non-Historical license—pre-Tokyo Round.					
	Supplementary designated license—Tokyo Round.	Supplementary designated license—Uruguay Round.	.....	.....	Designated license-Tokyo Round and Uruguay Round.
	Supplementary lottery license—Tokyo Round.	Supplementary lottery license—Uruguay Round.	.....	Non-Historical rank-order lottery license..	

In summary, the basic changes are as follows:

(1) Appendix 1 (Revision 8) historical licenses would include all license amounts issued as historical and nonhistorical licenses under Revision 7, subject to any reduction requirements. Licensees who currently have more than one historical license for the same article from the same country, or one or more historical and a nonhistorical license, would have those license amounts combined into a single historical license, provided they remain eligible for such license.

(2) Appendix 2 (Revision 8) nonhistorical rank-order lottery licenses would include all license amounts issued as supplementary lottery licenses under Revision 7, any Uruguay Round increments not designated by exporting countries and any amounts obtained through reductions or revocations of historical license. License amounts resulting from such reductions or revocations would be permanently shifted to Appendix 2 from Appendix 1.

(3) Appendix 3 (Revision 8) designated licenses would include all license amounts for which importers will be designated by the government of the exporting country. Governments who designate importers would be required to designate separately for quantities resulting from the Tokyo Round and from the Uruguay Round. Cumulative license amounts for an article may be shifted between Appendix 2 and Appendix 3 to reflect changes in exporting countries' decisions regarding the designation of importers. Changes in the Appendices, as well as changes from additional Uruguay Round increments taking effect, would be announced cumulatively in the Federal Register.

Eligibility

The proposed section on establishing eligibility (§ 6.23) has been revised to try to ensure that the licenses will be awarded to bona-fide import/distribution or manufacturing operations who will use the imports under license in such distribution and manufacturing facilities. The Department received numerous comments on the scarcity of available license for new and growing businesses. Raising the eligibility requirements, and increasing the economic risk an applicant must take to become eligible, is intended to be a disincentive to persons applying for license primarily for their value and not for distributing or processing the imported product. The result should be a decrease in the number of applicants for the reduced number of larger licenses that result from the new allocation provisions in this proposed rule. In general, the changes to eligibility reflect comments which endorsed raising eligibility requirements and tightening manufacturers' eligibility. The new eligibility requirements would be implemented for the 1997 quota year.

The proposed revisions for establishing eligibility by license type are as follows:

(1) For historical licenses—Appendix 1—(where eligibility was originally established at the time that quotas were imposed under Section 22), eligibility for 1997 license would be based on: (1) Receipt of 1996 historical license under Revision 7; (2) meeting the same performance threshold as applicants for nonhistorical rank-order lottery licenses under Revision 8; and (3) meeting the utilization requirements of the proposed rule. Eligibility in 1997 for existing (Revision 7) nonhistorical licenses converted to historical licenses, would also be based on 1996 receipt of such licenses, subject to the utilization requirements of this proposed regulation. In quota years subsequent to 1997, historical licenses would continue to be allocated at the 1997 level, subject to a 90 percent utilization requirement and a reduction provision based on the frequency of license surrenders. This revision would no longer provide for temporary reductions of historical licenses, which means that other historical licensees would no longer benefit from reallocation of such reductions of other historical licenses. A licensee would not be eligible for a historical license if the utilization requirements are not met and that license amount would be moved to Appendix 2 (nonhistorical rank-order lottery licenses).

Requiring that applicants for historical license annually meet the same threshold as all other licensees to reestablish their eligibility is one of several major changes from the current rule which are intended to create greater equity in the granting of license and to reduce the ability of persons to acquire licenses solely for the purpose of brokering them. Over time it should also serve to increase the quantities available for Appendix 2 nonhistorical rank-order licenses.

Two comments proposed that a certain portion of the Uruguay Round increment for butter be granted to persons holding historical licenses for butter. Since historical licenses for butter date as far back as 1953 and are not necessarily a good indicator of current interest in marketing butter, this rule provides instead that butter licenses issued as nonhistorical rank-order lottery licenses in the 1996 and 1997 quota years be converted to historical licenses in the subsequent quota year if they are utilized at 95 percent or more. This is the only instance where new historical licenses would be created, in an attempt to provide the continuity required to encourage the importation and marketing of specialty product rather than commodity butter. Persons issued such converted historical licenses in the 1997 or 1998 quota year would not be eligible for nonhistorical rank-order licenses for butter in those quota years or any year thereafter so long as they are issued a historical butter license converted in this manner. This is an exception to the general rule that historical licensees may also apply for nonhistorical license. It would be imposed because these licenses will be significantly larger than the existing historical butter licenses and receipt of such a new historical butter license would be an exception to the treatment provided for other Uruguay Round dairy product increases. In 1998 and thereafter, licenses for Uruguay Round increments for butter would remain in the rank-order lottery.

Several other comments were received with regard to eligibility for historical license, the implementation of which would not be not feasible for administrative reasons and because of the limited availability of tariff-rate quota amounts. One comment questioned the basis for historical license amounts, proposed that the basis be reviewed, and that any resultant amounts which might be taken from the historical licenses be divided between manufacturers and distributors. Another suggested that small businesses, in operation for five years, be placed on a priority list for selection as historical licensees. Two stated that no new licenses should be given to historical licensees, and another, that unused historical licenses should be converted to supplementary licenses with importers determined by exporting countries.

(2) For nonhistorical rank-order lottery licenses—Appendix 2—for cheese or cheese products, eligibility would be established for the 1997 and subsequent quota years for persons who apply as importers by having entered at least 57 metric tons of cheese, or, for those who apply as manufacturers by being listed as a processor in Section II of ''Dairy Plants Surveyed and Approved for USDA Grading Services'' and having processed at least 450 metric tons of cheese during the September 1 through August 31 period preceding the year for which application for license is made. An alternative importer eligibility threshold is proposed which would allow small businesses or those seeking licenses smaller than some of the minimum sizes established in this regulation to qualify for license: the threshold weight is significantly lower, but it requires multiple shipments spread throughout the year. Eligibility must be established for each quota year. For non-cheese dairy products, qualifying shipments may include dairy products other than cheese and exporters will also be permitted to apply.

The changes from the existing eligibility criteria, which were largely based on comments received, are: (1) The level of imports (or in the case of non-cheese articles, also exports) required; (2) the elimination beginning with the 1997 quota year of entries based on sales-in-transit (including from warehouse) and warehouse withdrawals as acceptable transactions for eligibility; and (3) the requirement that manufacturers seeking eligibility for cheese license must process cheese. All of these are aimed at narrowing eligibility to those persons who directly purchase cheese to either market and distribute it or to use it in their own processing operations.

(3) The third category of license proposed is that designated by the government of the exporting country—Appendix 3. These licenses are similar to the supplementary preferred importer licenses under Revision 7. The quantities to be designated consist of the portion of Tokyo-Round increments eligible for designation in 1996 as well as Uruguay Round market access increases for which governments have notified the Licensing Authority of their intent to designate. To be eligible to

receive designated licenses an applicant would have to meet the same requirements as an applicant for nonhistorical rank-order licenses, much as an applicant for designated license under Revision 7 must meet the nonhistorical eligibility requirements.

The designation provisions of this proposed rule are in part a carryover from Revision 7 and in part the implementation of the bilateral memoranda of understanding which resulted from the Uruguay Round Agreements. Of the ten entities that commented on designation, four suggested eliminating the concept; one recommended that it be limited to entities not owned by foreign governmental bodies; several did not approve of designation for the new quantities resulting from the Uruguay Round; two considered designation a second best option if export country certification was not an option; it was also suggested that designation by exporting countries be extended to include non-cheese products.

Other comments regarding eligibility requirements were as follows: there was concern that performance levels not be increased to levels detrimental to persons handling small volumes, or be set at levels higher than the amount of license some persons receive. The proposed alternative threshold should accomodate most of those situations. Four comments suggested that in lieu of import licenses, exporting countries should control trade via export certificates, an idea which goes beyond what was agreed in the Uruguay Round.

A number of additional suggestions were not incorporated for administrative reasons or can be handled through other provisions. Some of these were: firms should be given seniority status for licenses based on date of incorporation; eligibility should be based on periodic audits rather than imports or manufacturing; and past performance should show more than one customer. One comment suggested requiring submission of customs invoices with applications. The Department believes that the proposed requirement that eligibility qualifying entries be direct imports (not in-transit or warehouse purchases or warehouse withdrawals) as of the 1997 quota year responds to that concern. Opinions varied on: basing eligibility on sales; limiting the size of a given licensee's licenses for imports from a single country; and requiring experience in the cheese business to be able to apply for a license.

Conditions Under Which Eligibility May Not be Established: Insufficient Utilization; Affiliation and Association

Under previous revisions of this rule one of the conditions for continued eligibility was the fulfillment of a license utilization level. The requirement varied by license type. In this rule a utilization requirement is made a condition to establish eligibility annually. Further, it is made uniform across all license types and the level is raised from 85 to 90 percent, *to take effect in the 1996 quota year for establishing eligibility for the 1997 quota year.*

As proposed in this rule, to establish eligibility for a license for the 1997 and subsequent quota years, a licensee must have utilized 90 percent of the license amount not surrendered by September 1 for the same article from the same country. The license amount not surrendered *would include* any additional amounts issued to a licensee as a result of any reallocations beginning in the 1996 quota year. If 90 percent utilization is not achieved, then that license for an article from a country would not be issued to that licensee in the following year. As a consequence of the proposed eligibility requirement for historical licenses that such a license must have been issued to that licensee in the previous year, a person who is not issued a historical license because of insufficient use in the previous quota year would not be eligible for that historical license in any subsequent quota year. A nonhistorical rank-order lottery license or designated license would not be issued to the license-holder for the quota year subsequent to that in which the utilization level was not met.

The proposed rule would provide more specific criteria under which the utilization requirement may be waived than does Revision 7. Only breach of suppliers' or carriers' contracts, or force majeure situations would be considered. Further, an exemption is proposed for historical and nonhistorical licenses where the country on the license permits an export monopoly to control exports. This would replace the provision in Revision 7 which gives the Licensing Authority the ability to globalize a person's license or waive the utilization requirement if that person can demonstrate discrimination by a country. It is intended to provide an administratively simpler means to achieve a level playing field for importers and exporters.

This proposed rule would introduce a further eligibility requirement: a ceiling on the licensed volume which may be entered based on sales-in-transit (including purchases from warehouse in the United States). It is the Departments's view that the ability of licensees to purchase all of their product in transit or from warehouse encourages the practice of license brokerage. If a licensee's licensed volume entered based on such indirect purchases in a quota year exceeds 25 percent of total licensed licensed volume entered, then such licensee would not be eligible for *any* licenses in the following year. The information necessary to make such determinations would be obtained at the time each entry is made under the requirements of § 6.29. The conditions for waiving this eligibility requirement would be the same as those for failure to use 90 percent of the license amount or license amount not surrendered, as stated above. Further, the documentation required with respect to sales-in-transit (including from warehouse in the United States), is delineated in § 6.29 in greater detail than in Revision 7 to require evidence that the licensee has title to the product at the time of entry.

Nine commentors had views on action regarding sales-in-transit. Four indicated that some limitation could or should be placed on them. The suggestions ranged from allowing 80 percent of entries to only 25 percent of entries to be based on sales-in-transit. One comment called for banning sales-in-transit unless the licensee who made a purchase in transit is the end-user. An additional two comments indicated they were a necessary practice and should be retained. The Department proposes that the more stringent limitation is the best way to ensure that licensees import licensed dairy products for their own entrepreneurial use. Suggestions that sales-in-transit by subsidiaries or agents of the exporter not be counted in any limitation were not incorporated in this proposal because of the difficulty of administering such an exemption and the potential for evading the sale-in-transit limitation.

Four comments suggested that if licensees frequently underutilize their license (in varying degrees), they should be subject to a penalty or forfeit the licenses or some portion thereof. The Department does not have statutory authority to assess a monetary penalty, but would provide in this proposal, for a gradual reduction of a historical license for which there is a surrender (1) in three consecutive years, or (2) in three years out of five. In the first case the historical license would be reduced to the average amount of an article entered in the three years in which the surrender took place; in the second, to

the average amount of the article entered during the five years.

The Licensing Authority would not issue nonhistorical licenses for the same article from the same country to applicants who are affiliated or associated. The proposed provisions covering affiliation and association have been shortened but cover substantially the same interrelationships among companies as those of Revision 7. Employees of a company are explicitly defined as being associated with it, limiting the types of licenses they may receive, although not completely barring them from eligibility as one commentor suggested. The reference to remote contingent exemptions is deleted but would be considered upon presentation to the Licensing Authority, and options to purchase stock would no longer be considered as determining affiliation because administratively it is impossible to enforce. Despite a comment to raise the level of co-ownership with respect to affiliation to a range of between 15 to 25 percent, it is the Department's view that 5 percent is appropriate given the limited license amounts available.

Applications for License

Section 6.24 is modified to include a revised application period from September 1 through October 15, beginning in quota year 1997. It should be noted that the postmark no longer has a bearing on a person's position in the lottery. The first day of the application period is intended only to prevent receipt of applications prior to the time the Licensing Authority can handle them. Given the technology available to process the applications, it is no longer necessary to have a three-month application period. Further, the proposed rule specifically states that applications must be complete in order to be accepted by that date.

Allocation of Licenses

A broad range of comments was received on allocating existing licenses and licenses for the Uruguay Round quantities. Four comments stated that auctioning should not be used. Opinions varied on whether to: eliminate designated and supplementary licenses; distinguish between industrial and table cheese; prevent license use for industrial cheese; or permit licensees to hold more than one supplementary license. Ten entities commented on the lack of continuity as a major problem with the lottery licenses—the only ones available to new entrants on a regular basis, short of a purchase of the complete assets attendant to the business of a company which holds license for the articles covered by this rule.

In the proposed changes to the allocation procedures of Revision 7, the Department has taken into account the wide array of comments received regarding the allocation of the annual in-quota quantities under the TRQ. The proposed allocation rules are:

(1) Historical Licenses—For an existing historical license, the license amount in 1997 would be the Basic Annual Allocation used by the Licensing Authority in 1996, subject to the eligibility requirements of the proposed rule. In subsequent quota years the license amount would not exceed the amount issued for 1996. For an existing nonhistorical license (Revision 7), the license amount for the 1997 quota year would be the same amount issued in 1996, subject to the eligibility requirements of the proposed rule. The license amounts from historical licenses that are not used at least 90 percent or whose use does not meet the other requirements of the proposed rule would be issued under the rank-order lottery (Appendix 2) as of the 1997 quota year. If a licensee held more than one historical license, or one or more historical licenses and one nonhistorical license for the same article from the same country in 1996 and would be eligible for those same licenses in 1997, the licensee would be issued a single historical license at a combined level determined through the above procedures.

(2) Nonhistorical rank-order lottery licenses—The significant number of comments proposing more continuity in license allocation and comments supporting the greater fairness of a rank-order lottery system, introduced in the Interim Rule of January 6, 1995 for certain non-cheese articles, led the Department to propose extending it to those quantities of cheese not held in historical or designated licenses (notwithstanding an opposing comment that it would introduce greater volatility and trade in low-price merchandise). The rank-order lottery would consist of a series of random draws on the basis of licensee-expressed rankings. Once a licensee has received a nonhistorical license, it would not be issued another until all other applicants have received one nonhistorical license of their choice, provided their choices have not already been completely issued. Under the proposed Revision 8, licenses would be allocated on the basis of minimum shares with proration of any excess, if such occurs. Therefore, no license maximum would be required for nonhistorical rank-order lottery licenses. The proposed rule would not change the size of the existing historical and designated licenses, but would increase the minimum size of most nonhistorical rank-order lottery licenses from that of the equivalent supplementary licenses, to make them more economically viable, and for ease of administration. The minimum size of licenses would in most cases be more than double the size under Revision 7. This would result in a decrease from the approximately 680 licenses which were awarded in 1994 under the lottery provisions of Revision 7 to approximately 291 licenses for the same quantity of cheese. Some Uruguay Round TRQ amounts will be added to this quantity from the countries who do not designate, as would the amounts which are available for global access. The rank-order lottery, while not a guarantee of continuity of license, should increase the odds of receiving a license for the same article in consecutive years. A detriment, as pointed out in a comment to the interim rule, is that a licensee would not receive as great a variety of licenses. With respect to license size, four comments suggested that they be made larger, three comments stated they should not be changed, and one comment proposed that the minimum size of non-cheese licenses be increased to at least 100 metric tons. Since the TRQ amounts are fixed, the system must balance the size of license with the large number of requests for license. The minimum license levels in this proposed regulation are deemed reasonable in this context.

Under Revision 7, a historical licensee is generally ineligible for nonhistorical license of the same article from the same country, but is eligible for supplementary lottery license. The Department has proposed making the new nonhistorical rank-order lottery licenses available to all eligible licensees, subject to the limitations of the rules of attribution in § 6.23(c) (3)–(5). The rank-order provision would prevent any one licensee from randomly getting significantly more nonhistorical licenses than another.

A significant number of suggestions for providing renewability or increasing continuity in the receipt of nonhistorical licenses had to be rejected because of the limited quantities available for allocation. For lottery license allocation, one comment suggested that if 85 percent of an entire license is used (as opposed to 85 percent of the license retained at the end of the year) the licensee should receive that same license the next year. Another suggested that licenses be made available to companies on a rotating

basis over a period of years and two comments proposed licenses be made available for longer than one year. While the latter proposals might extend a business' planning horizon, it is doubtful that a business would make or increase investments on the basis of licenses it knows may be unavailable after 2, 3, 4, or 5 years—whatever multiple year term might be provided. Two comments suggested a license exchange so that licensees could swap licenses. Administrative difficulties make this unfeasible.

With respect specifically to the new Uruguay Round cheese quantities, two comments suggested that 50 percent of the non-designated licenses be granted to importers of non-quota cheese. However, virtually all of the cheese is likely to be designated. In many cases the non-quota cheese importers are the same companies as the license holders and the size of their license portfolio ranges from small to large. Thus, such a proposal is not likely to give substantial advantage to smaller businesses who find it difficult to increase the size and continuity of their licenses. Another comment stated that Uruguay Round quantities not yet designated by a country should be issued through a lottery. This recommendation is contained in the proposed rule. The following specific recommendations were also submitted: three comments proposed the Uruguay Round increments in cheese should be equally split among license types; one felt that the licenses should be issued equally to manufacturers and importer distributors; and one stated that 50 percent of the licenses should be issued to businesses created after 1979. Other more complex formulas were also submitted for allocating licenses.

(3) Designated licenses—Revision 8 would incorporate Uruguay Round commitments on designated importers, provide a deadline for designation by foreign governments, submission of the specific information required by the Licensing Authority, and a deadline for notification of the Licensing Authority by an exporting country if it intends to begin or cease designating importers in the following quota year.

Surrender and Reallocation

Revision 8 would move the surrender date from October 1 to September 1 beginning with the 1996 quota year, on the basis of several comments. This would also entail moving the period forward for requesting additional amounts from September 1–September 15 to August 1–August 15. Three comments suggested that requests for additional license and the surrender of license be made one month earlier so as to allow for earlier reallocation and better conditions for the shipment of product in time for the end of the year. Two entities commented that the current time frame was more appropriate as a September 1 date was too early for decisions on non-use. We are particularly interested in further comments on this provision in light of the increase in the utilization level required to reestablish eligibility in the following year, and the potential for loss of historical license if that level is not met.

Surrendered licenses would be reallocated in a manner similar to the method used for initial allocation of nonhistorical licenses (i.e., a rank-order lottery). However, the minimum license level would be smaller.

One comment suggested that those who use 95 percent of their combined license and reallocated quantities be given priority the following year for reallocated amounts. The administrative complexity of this proposal would slow down the reallocation process, defeating at least in part the earlier surrender-reallocation period proposed.

Limitations on the Use of Licenses

Historically, an important goal of the licensing system has been to grant licenses to those businesses which will employ them for their own entrepreneurial use. It is not the goal of the system to award licenses to license brokers who obtain licenses for the use by a third party. This proposed rule reiterates the requirement that a licensee must use its licenses in its own dairy importing or manufacturing business. This is further reflected in the proposed limitation on sales-in-transit to remain eligible for license in § 6.23 and in the proposed requirement that licensees who are eligible on the basis of manufacturer status use a minimum of 75 percent of the licensed imports in their own processing operations in the United States. This requirement should better implement the original intent of the provision introduced in Revision 7, to give manufacturers who have no importing history the opportunity to have direct access to imported inputs. Manufacturers would be expected to be able to document that they have used 75 percent of their licensed imports in their own plant. Another comment suggesting that importers must sell to more than two unaffiliated or unassociated companies unless the importer of record uses more than 50 percent of such imports in its own processing facility, was viewed as a restriction whose intent could be circumvented and has therefore not been incorporated into the proposed rule.

Transfer of License

Several changes have been proposed for the provisions affecting transfer of license upon sale or conveyence of a business involving articles covered by this regulation. Licenses would be transferred by the Licensing Authority to the person who has acquired a business involving articles covered by this regulation, including complete transfer of attendant assets, for the remainder of the quota year. In subsequent quota years the person who has acquired the business could reestablish eligibility for the historical licenses as provided in § 6.23 and also apply for nonhistorical and designated license. The entries made under the licenses by the original licensee during the year in which the sale or conveyence is made would be considered as having been made by the person acquiring the business for the purpose of establishing eligibility. In line with comments received, all licenses would be permitted to be transferred to the person acquiring the business in an asset purchase approved by the Licensing Authority (as is now the case for those changes in ownership resulting from a stock transfer). As a result, the person acquiring the business could, under this revision, hold any duplicate nonhistorical rank-order lottery licenses for the remainder of the quota year for which they are issued. The person acquiring the business and any affiliates would be eligible for only one such nonhistorical rank-order lottery license in subsequent years. If the existing provision remained in effect, nonhistorical amounts which could not be transferred through an asset purchase would be held by the Licensing Authority until the reallocation of surrendered amounts made in the fall of any given quota year.

With respect to the requirement that the ''total assets'' related to the business be transferred in order for the Licensing Authority to transfer the licenses, one comment stated that it is onerous and proposed the test be ''substantially all of the assets.'' In the Department's view, the one-time burden is reasonable in view of the benefits of the transfer to both parties of the transaction. In addition, one comment suggested that a company be able to sell a particular portion of its import business, and that licenses be transferred on the basis of such a sale. The complexity of attempting to define and audit the requirement of a partial transfer makes the suggestion unfeasible.

In response to long-standing industry requests and a comment received, the proposed rule provides for the Licensing Authority to review, prior to its execution, a proposed contract for an asset purchase for compliance with the requirement for conveying assets attendant to the importing business. The prior submission of the documents of conveyence would be made mandatory. The submission would have to be received by the Licensing Authority at least 20 *working days* before the conveyence takes place. Any alteration found in the documents ultimately submitted would require a further determination. Also proposed is a provision permitting an escrow clause in the contract, but such escrow could only be returned if the Licensing Authority determined that it will not transfer the licenses to the buyer. Experience has caused the Department to propose a new requirement for timely reporting and submission of the actual documents conveying the assets of a company, with non-compliance leading to suspension or revocation of license.

Use of Licenses

This section has been simplified and made more uniform for the various types of entry. The intent of the proposed document requirements is to ensure that at the time of entry the licensee is the owner and importer of record of the licensed product, as is already required under Revision 7.

One entity proposed replacing the through-bill-of-lading requirement with a certificate of origin requirement so that the license could be used to import cheese produced in a specific country from another part of the world. This would increase the difficulty of enforcing the country of origin requirements of the tariff-rate quotas.

In response to industry requests which pre-dated the ANPR, and in conformance with Customs rules on tariff-rate quotas, the proposed rule would provide for the use of immediate delivery for articles covered by it.

Records and Inspection

Proposed Revision 8 would extend the two-year period for retaining records for a quota year to five years after the end of a quota year. Five years is standard for other Department regulations. It would also require that all documentation related to transactions which establish a licensee's eligibility be maintained for that period. It would further clarify that documents must be made available to all officials of the Department. Failure to provide information would be a violation subject to suspension and revocation under § 6.31.

Suspension and Revocation of License Eligibility

These proposed provisions have been entirely rewritten. They would provide greater clarity regarding grounds for suspension or revocation; give the Licensing Authority greater discretion as to the severity of the action to be taken (by allowing partial or complete suspension or revocation of the licenses held by a person); ensure that a decision to revoke the ability to apply for license extends to the individual who has violated the Import Regulation (or other government rule) as well as to the named licensee; and provide for suspension and the opportunity for a hearing prior to revocation—as proposed in a recommendation received. It has been the Department's policy in recent years to provide the opportunity for a hearing before revocation administratively, even though Revision 7 only provides for an appeal hearing after revocation. One comment proposed monetary fines for certain infractions of the rule. The Department has no authority for such action. Another stated that the licenses of a person violating the Import Regulation or any Customs rules should be returned to the lottery, and two others stated that a person be made ineligible for licenses only upon conviction of wrongdoing. Persons found to be violating the Import Regulation or Customs rules and regulations applicable to the Import Regulation would be subject to § 6.31 proceedings.

The proposed rule provides for a single administrative appeal of determinations by the Licensing Authority to the Director of the Import Policies and Programs Division, Foreign Agricultural Service, or his or her designee. The Department believes that the two levels provided in Revision 7 are duplicative and potentially burdensome for the licensee. The rule would also require that the licensee exhaust its administrative remedies before pursuing any other remedy.

Globalization of Licenses

The section on country of origin adjustments found in Revision 7 would be renamed to reflect the action which the Licensing Authority actually takes when it determines that entries of an article from a country will fall short of that country's allocated amount as indicated in Appendices 1, 2 and 3, i.e., to globalize the remaining balance (or an appropriate portion thereof) of licenses for an article from a country. It would also continue the provision in the current interim rule which implements the U.S. Uruguay Round commitment to obtain the consent of the exporting country's government prior to globalization of the TRQ amounts granted in Uruguay Round. While this section does not specifically state that importers may request globalization and that when they do they must supply information which would show to the best of their ability the reasons why a supplying country will not be able to fill its quota allocation, this provision would be implemented by the Licensing Authority as it has been in the past. Further, such requests must be submitted no later than August 1.

This section does not reflect the comments received on this issue which would be administratively difficult to implement or where the existing provisions are not considered deficient by the Department. Several comments recommended some form of automatic or semi-automatic country-of-origin adjustment if a supplying country had a poor record of filling a TRQ in several consecutive years, and another proposed that evaporated and sweetened/condensed milk be excluded from this provision. One comment proposed that the provision permitting the Licensing Authority to make a license-specific country-of-origin adjustment (or waive the 85 percent utilization requirement) upon determination that an exporting country has discriminated as to price or availability be strengthened. The comment further recommended provisions describing statutory export monopolies who export primarily industrial type cheeses as anti-competitive, and, based on such a description, revoking the exporting country's ability to designate importers for license. The Department has instead provided in § 6.23 an exemption to the 90 percent utilization requirement for licenses where the product is purchased from an export monopoly.

License Fee

Proposed Revision 8 would require that license fee payments be made by certified check or money order to minimize the Department's burden in handling returned checks, and would continue the provision for automatic suspension of licenses for non-payment of the fee by May 15. It further states that revocation procedures would begin immediately upon suspension. It is the Department's intent to enforce this vigorously. There would be no grace period beyond the May 15 postmark date, and late payment would continue

to lead to suspension and revocation procedures.

Two comments were submitted stating that the fee was too high, one suggested it be based on the amount of licenses received, another said it should be eliminated. The fee is required by an OMB Directive and must be based on the cost of services rendered, not on the size of the license. Another comment proposed splitting the fee into two payments (a fee for processing the license and a fee for the license) in order to discourage frivolous applications. This would double the Department's processing, handling, and monitoring of payments and in the Department's view would not be a sufficient disincentive to reduce applications significantly.

Adjustment of Appendices

This section has been added to clarify that historical licenses which are not issued to a licensee who has not met the eligibility provisions of § 6.23 or whose license has been revoked or permanently surrendered would be moved to Appendix 2 for nonhistorical rank-order licenses. The Licensing Authority would provide the opportunity to apply for such licenses if the transfer to Appendix 2 added an article or an article from a country not previously listed under that Appendix.

Miscellaneous

A provision has been added that all submissions required by mail in this regulation would have to be made by registered or certified mail with a postmarked receipt, and proper postage affixed. This is intended to assure timely delivery and provide a means to verify that the postmark deadline is met.

Appendices

Several comments addressed the types of cheeses under TRQ and the contents of TRQ articles. Some welcomed the consolidation of licenses for Italian-type and Edam and Gouda cheeses and recommended further consolidation. Another comment suggested the mix of cheese be adjusted to minimize the impact on domestic producers. One comment proposed changing the tariff-rate quotas for evaporated and sweetened/condensed milk to make them equal. These formulations are part of the Uruguay Round Agreement and cannot be changed through regulatory action. They would require legislative authority and in some cases renegotiation of the Agreement.

Two comments recommended extending licensing to other non-cheese dairy products, particularly those where the TRQ increased by more than 500 metric tons. The Department will be monitoring imports to determine if further licensing is needed.

List of Subjects in 7 CFR Part 6

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

Proposed Rule

Accordingly, for the reasons described in the preamble, 7 CFR Part 6 Subpart—Tariff Rate Quotas §§ 6.20–6.34 and Appendix 1, Appendix 2 and Appendix 3 thereto, is revised to read as follows:

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.

§ 6.20 Introduction.

(a) Presidential Proclamation 6763 of December 23, 1994 (3 CFR, 1994 Comp., p. 147), 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 Public Law 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. The provisions of this subpart are effective on [effective date of the final rule]. Licenses are issued pursuant to its provisions for the 1997 and subsequent quota years. These licenses 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 is required, with certain exceptions, to pay the applicable over-quota rate of duty.

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

§ 6.21 Definitions.

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

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.

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

Customs—The United States Customs Service.

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.

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 ''same day or next day'' mail delivered by the U.S. Postal Service (also known as Express Mail), 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 article—One of the products listed in Appendices 1, 2, or 3 of this subpart 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.

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

Sale-in-transit—Any sale prior to entry that is not a direct sale, including from a warehouse in the United States. A direct sale means a sale by the exporter in a foreign country of an article to the licensee or person seeking license.

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 fifty 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) of this section.

(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 5 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 totalling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight, excluding entries made on the basis of a sale-in-transit to the applicant and warehouse withdrawals;

(B) The owner of and importer of record for at least eight separate commercial entries of cheese or cheese products totalling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, excluding entries made on the basis of a sale-in-transit to the applicant and warehouse withdrawals, 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 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 totalling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight, excluding entries made on the basis of a sale-in-transit to the applicant and warehouse withdrawals;

(B) The owner of and importer of record for at least eight separate commercial entries of dairy products totalling not less than 19,000 kilograms net weight, each of the eight entries not less than 2,000 kilograms net weight, excluding entries made on the basis of a sale-in-transit to the applicant and warehouse withdrawals, 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 paragraphs (b)(1)(ii) (A) or (B) of this section.

(2) *Certain butter.* A person issued a nonhistorical license for butter for the 1996 or 1997 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 95 percent of the license issued for the previous quota year and meets the requirements of paragraph (b)(1)(ii) of this section. However, if a person is issued a historical license pursuant to this paragraph, that person may not apply for a nonhistorical license for butter for any quota year in which that historical license is issued to that person.

(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) of this section.

(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 90 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). This paragraph will not apply, however:

(i) 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; or

(ii) To historical and nonhistorical licenses where the country specified on the license maintains or permits an export monopoly to control the product concerned. For the purpose of this paragraph, ''export monopoly'' means a privilege vested in one or more persons consisting in the exclusive right to carry on the exportation of an article of dairy products from a country to the United States. The Licensing Authority may publish a notice in the Federal Register indicating which countries export an article or articles through such a monopoly, and revise it as necessary.

(2) A licensee who enters more than 25 percent of the total amount entered under its licenses on the basis of sales-in-transit, shall not be eligible to receive any license in the following year. This paragraph will not apply, however, where the licensee demonstrates to the satisfaction of the Licensing Authority that it exceeded that level as a result of 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) 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, or grandchild of such other applicant;

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

(iv) Both applicants are 5 percent or more owned or controlled, directly or indirectly, 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.

(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 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 economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(5) 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 § 6.36(b). All parts of the application shall be completed. Beginning with the 1997 quota year 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:

(i) Customs Form 7501 showing the applicant as the importer of record, and

(ii) The commercial invoice or bill of sale showing the applicant as the owner and the original consignee for the number and level 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 exports required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(c) 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 (1) and (2) above.

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

(1) Beginning with the 1998 quota year, a person who has surrendered a portion 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

(2) Beginning with the quota year 2000, a person who has surrendered a portion 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.

(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)(ii) (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 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 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 § 6.36(b) and postmarked not later than September 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) and (2).

(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 not later than August 15, in accordance with § 6.36(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;

(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.

§ 6.27 Limitations on use of license.

(a) A licensee shall not use its license to import articles for the benefit of another person, nor shall it permit any other person to use such license.

(b) A person 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 conveyence 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 conveyence described in paragraph (a) of this section by mail as required in § 6.36(b). The notice must be received by the Licensing Authority at least 20 working days prior to the intended consummation of the sale or conveyence. Such written notice shall include copies of the documents of sale or conveyence. The Licensing Authority will review the documents for compliance with the requirement of paragraph (a) of this section and advise the parties of its findings. The parties shall have the burden of demonstrating the sale or conveyence, and complete transfer of assets to the satisfaction of the Licensing Authority. Within 15 days of the consummation of the sale or conveyence, the parties shall mail copies of the final documents to the Licensing Authority, in accordance with § 6.36(b). The Licensing Authority will not transfer the licenses unless the documents are submitted in accordance with this paragraph.

(c) For the purposes of § 6.23 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 conveyence occurred. In all other respects, that person's eligibility to apply for a license for any subsequent quota year will be determined in accordance with § 6.23.

(d) For the purposes of this subpart, the entries made under such licenses by the original licensee during the year in which the sale or conveyence 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 the 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.

(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) of this section, 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 Suspension or revocation of a license.

(a) The Licensing Authority may determine to suspend or revoke a license for a quota year, or not to issue a license to a person for no more than three subsequent quota years, for any of the following reasons:

(1) Failure to pay a license fee in accordance with § 6.33;

(2) Submission of false or misleading information in connection with an application or with the use of a license;

(3) Indictment or conviction for a felony which indicates moral turpitude, lack of business integrity or business honesty;

(4) Violation of a provision of this subpart; or

(5) Ownership, control or management by, or employment of, a person whose license has been suspended or revoked or who has been debarred or suspended from contracting with the government or from participating in U.S. Government programs.

(b) The Licensing Authority shall determine whether to suspend or revoke a license and shall give written notice of such determination to the licensee. Where the Licensing Authority determines that adequate grounds exist, the notice shall state that the license has been suspended, shall give a plain and concise explanation of the factual basis and grounds for the determination, shall

specify the length of revocation proposed and a date on which such revocation will become effective if there is no appeal, and shall advise the licensee of its right to appeal the determination, including its right to a hearing.

(c) 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.

(d) A licensee whose license is suspended or revoked is required to exhaust its administrative remedies before pursuing any other remedy.

§ 6.32 Administrative appeals.

(a) *General.* This section provides for administrative appeal of a determination by the Licensing Authority to suspend or revoke a license. The decision on such appeal shall be made by the Director, Import Policies and Programs Division, Foreign Agricultural Service (''Director''), or his or her designee.

(b) *Filing of appeal.* The licensee may appeal the Licensing Authority's determination by filing a written notice of appeal, signed by the licensee or the licensee's agent, with the Director. The appeal may be filed by mail, postmarked no later than 30 calendar days after the date of the Licensing Authority's determination, in accordance with § 6.36(b), or filed directly in the office of the Director. If the licensee files the notice of appeal directly with the office of the Director, two copies must be submitted. Both copies will be date-stamped by the office of the Director and one copy will be returned to the licensee. The licensee may make a written submission of its position at the time it files its appeal. If the licensee does not timely appeal, any suspension or revocation proposed will take effect in accordance with the Licensing Authority's determination. If the licensee seeks a hearing, it shall so request in its notice of appeal. The licensee may request that the hearing be scheduled within 30 days of the postmark date of its notice of appeal.

(c) *Appeal process and hearing.* (1) Ordinarily, hearings will be held only at the request of the licensee. If no hearing is requested, the Director will make his or her determination on the basis of written submission and any other available information. The hearing shall be held at the place and time determined by the Director, except that it shall be held within 30 days of the postmark date of the notice of appeal if the licensee so requests.

(2) Hearings will be conducted by the Director in a manner as informal as practicable, consistent with the principles of fundamental fairness.

(3) The licensee may be represented by counsel.

(4) The licensee shall have full opportunity to present any relevant evidence, documentary or testimonial, and to make argument in support of its position. The Director may permit other individuals to present evidence at the hearing, and the licensee shall have an opportunity to question those witnesses.

(5) If requested, the Director shall make available to the licensee all documentation considered by the Director in reaching its determination.

(6) A verbatim transcript of the hearing may be made at the direction of the Director, or at the request of the licensee. If the licensee requests a transcript be made, it shall be responsible for arranging for a professional reporter and shall pay all attendant expenses.

(d) *Determination on appeal.* The Director shall make the determination on appeal, and may affirm, reverse, modify or remand the Licensing Authority's determination. The Director shall notify the licensee in writing of the determination on appeal and of the basis therefore. The determination on appeal exhausts the licensee's administrative remedies.

§ 6.33 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 August 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.

§ 6.34 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 to be assessed.

(b) The license fee for each license is due and payable in full by mail, postmarked no later than May 15 of the year for which the license is issued, in accordance with § 6.36(b). The fee for any license issued after May 15 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 § 6.36(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, the Licensing Authority will suspend that license and begin revocation procedures. If, after granting opportunity for an administrative appeal, the Licensing Authority determines that a person has not paid its fee as required by this paragraph and there is no indication that non-payment was for reasons beyond that person's control, the Licensing Authority will revoke the license for the remainder of the quota year and will not issue to such person a license for the same article from the same country for the next quota year. Where the license at issue is a historical license, this will result, pursuant to § 6.23(c), in the person's loss of historical eligibility for such license.

(d) Prior to the final payment date, 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 15 payment deadline, in accordance with § 6.36(b).

§ 6.35 Adjustment of Appendices.

(a) Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23 or subsequent to the permanent surrender to or revocation of such license 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) of this section will be published in a Notice in the Federal Register. If such 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.

§ 6.36 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, AG Box 1021, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington D.C. 20250–1021.

§ 6.37 Supersedure of Import Regulation 1, Revision 7.

This subpart supersedes the provisions of Import Regulation 1, Revision 7. With respect to any violation of the provisions of that regulation by a licensee prior to [the effective date of the final rule] the provisions of that Regulation will be deemed to continue in full force. Any determination of the Licensing Authority to suspend or revoke a license for a violation of a provision of that Regulation shall be in accordance with § 6.31 of this subpart. Any administrative appeal shall be conducted in accordance with § 6.32 of this subpart.

APPENDIX 1—ARTICLES SUBJECT TO THE HISTORICAL PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR.[1]

Article by additional U.S. note number	1997 Historical tariff-rate in-quota quantity (kilograms)
NON-CHEESE ARTICLES	
BUTTER (Note 6)	320,689
EU	96,161
NEW ZEALAND	150,593
OTHER COUNTRIES	73,935
DRIED SKIM MILK (Note 7)	819,641
AUSTRALIA	600,076
CANADA	219,565
DRIED WHOLE MILK (Note 8)	3,175
NEW ZEALAND	3,175
DRIED BUTTERMILK AND WHEY (Note 12)	224,981
CANADA	161,161
NEW ZEALAND	63,820
TOTAL: NON-CHEESE ARTICLES	1,368,486
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)	26,016,085
ARGENTINA	7,690
AUSTRALIA	541,170
AUSTRIA	369,747
CANADA	1,141,000
SWITZERLAND	652,841
EU	15,032,240
FINLAND	814,903
ISRAEL	79,696
ICELAND	294,000
NORWAY	150,000
NEW ZEALAND	4,815,472
POLAND	936,224
PORTUGAL	129,309
SWEDEN	915,473
OTHER COUNTRIES	136,320
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
ARGENTINA	2,000
EU	2,364,028
OTHER COUNTRIES	1
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE:	
(Note 18)	4,183,856
AUSTRALIA	984,499
EU	263,000
NEW ZEALAND	2,796,468
OTHER COUNTRIES	139,889
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)	3,065,553
AUSTRALIA	880,998
EU	254,000
NEW ZEALAND	1,761,999

APPENDIX 1—ARTICLES SUBJECT TO THE HISTORICAL PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR.[1]—Continued

Article by additional U.S. note number	1997 Historical tariff-rate in-quota quantity (kilograms)
OTHER COUNTRIES	168,556
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE:	
(Note 20)	5,606,402
ARGENTINA	125,000
EU	5,248,000
SWEDEN	41,000
NORWAY	167,000
OTHER COUNTRIES	25,402
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MAKE 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)	6,733,376
ARGENTINA	4,125,483
EU	2,594,829
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)	6,120,089
AUSTRIA	778,994
SWITZERLAND	1,421,787
EU	3,091,475
FINLAND	748,000
OTHER COUNTRIES	79,833
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OF LESS BY WEIGHT OF BUTTERFAT, PROVIDED FOR IN (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE:	
(Note 23)	4,181,944
EU	3,882,352
POLAND	174,907
SWEDEN	124,684
OTHER COUNTRIES	1
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION:	
(Note 25)	20,258,803
ARGENTINA	9,115
AUSTRIA	5,004,491
AUSTRALIA	209,698
SWITZERLAND	1,747,315
EU	3,736,262
FINLAND	5,477,074
ISRAEL	27,000
ICELAND	149,999
NORWAY	3,812,573
OTHER COUNTRIES	85,276
TOTAL: CHEESE ARTICLES	78,532,137

[1] This appendix combines articles for which historical and nonhistorical licenses were issued under Appendix 1 and Appendix 2 of Import Regulation 1, Revision 7 and for which USDA issued annual import licenses identified by the numeric identification prefix 1, 2, or 3.

APPENDIX 2—ARTICLES SUBJECT TO THE NONHISTORICAL PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR [1]

Article by Additional U.S. Note number	1997 Nonhistorical tariff-rate in-quota quantity (kilograms)
NON-CHEESE ARTICLES	
BUTTER (Note 6)	[2] 4,856,311
DRIED SKIM MILK (Note 7)	2,041,359
DRIED WHOLE MILK (Note 8)	1,548,125
BUTTER SUBSTITUTES CONTAINING OVER 45% OF BUTTERFAT AND BUTTEROIL (Note 14)	4,520,500
TOTAL: NON-CHEESE ARTICLES	12,966,295

APPENDIX 2—ARTICLES SUBJECT TO THE NONHISTORICAL PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR [1]—Continued

Article by Additional U.S. Note number	1997 Nonhistorical tariff-rate in-quota quantity (kilograms)
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)	5,436,075
EU	5,070,760
OTHER COUNTRIES	65,315
ANY	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)	154,972
EU	114,972
CHILE	40,000
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE:	
(Note 18)	210,000
CHILE	110,000
ANY	100,000
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK, (ROMANO MAKE 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)	1,037,171
EU	787,171
ROMANIA	250,000
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)	533,525
EU	533,525
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OF LESS BY WEIGHT OF BUTTERFAT, PROVIDED FOR IN (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE:	
(Note 23)	117,648
EU	117,648
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION:	
(Note 25)	2,263,738
EU	2,263,783
TOTAL: CHEESE ARTICLES	9,753,129

[1] This appendix includes (1) articles for which supplementary lottery licenses were issued under Appendix 2 of Import Regulation 1, Revision 7 in 1995, and (2) increased quantities of certain articles as provided for in the Uruguay Round Trade Agreements Act (Public Law 103–465). The articles and quantities included in this appendix for certain cheese may be modified as provided in § 6.25(d)(3).

[2] Butter licenses issued as nonhistorical licenses for quota years 1996 and 1997 will be converted to historical licenses in the following quota year as provided in § 6.23(a)(2).

APPENDIX 3.—ARTICLES SUBJECT TO THE DESIGNATED IMPORTER PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR [1]

Article by additional U.S. note number	1997 Designated tariff-rate in-quota quantity (kilograms)
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 TARIFF-RATE QUOTAS PROVIDED FOR IN THIS SUBCHAPTER:	
(Note 16)	14,877,699
ARGENTINA	92,310
AUSTRALIA	1,633,830
AUSTRIA	553,253
SWITZERLAND	817,159
EU	900,000
FINLAND	485,097
ISRAEL	593,304
ICELAND	29,000
NEW ZEALAND	6,506,528

APPENDIX 3.—ARTICLES SUBJECT TO THE DESIGNATED IMPORTER PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR [1]—Continued

Article by additional U.S. note number	1997 Designated tariff-rate in-quota quantity (kilograms)
POLAND	300,000
PORTUGAL	223,691
SWEDEN	143,527
COSTA RICA	1,550,000
CZECH REPUBLIC	200,000
SLOVAK REPUBLIC	600,000
URUGUAY	250,000
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)	200,000
EU	150,000
CZECH REPUBLIC	50,000
CHEDDAR CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, CHEDDAR CHEESE:	
(Note 18)	4,244,033
AUSTRALIA	840,501
EU	500,000
NEW ZEALAND	2,853,532
CZECH REPUBLIC	50,000
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)	407,003
AUSTRALIA	119,002
EU	50,000
NEW ZEALAND	238,001
EDAM AND GOUDA CHEESE, AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, EDAM AND GOUDA CHEESE:	
(Note 20)	710,000
ARGENTINA	110,000
AUSTRIA	200,000
EU	300,000
CZECH REPUBLIC	100,000
ITALIAN-TYPE CHEESES, MADE FROM COW'S MILK (ROMANO MADE FROM COW'S MILK, REGGIANO, PARMESAN, PROVOLONE, PROVOLETTI AND SBRINZ AND GOYA), AND CHEESE AND SUBSTITUTES FOR CHEESE CONTAINING, OR PROCESSED FROM, SUCH ITALIAN-TYPE CHEESES, WHETHER OR NOT IN ORIGINAL LOAVES:	
(Note 21)	5,285,517
ARGENTINA	2,257,517
EU	350,000
URUGUAY	1,178,000
HUNGARY	400,000
POLAND	1,325,000
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)	1,011,219
AUSTRIA	181,006
EU	150,000
SWITZERLAND	428,213
FINLAND	252,000
CHEESE AND SUBSTITUTES FOR CHEESE, CONTAINING 0.5 PERCENT OR LESS BY WEIGHT OF BUTTERFAT, PROVIDED FOR IN (EXCEPT ARTICLES WITHIN THE SCOPE OF OTHER IMPORT QUOTAS PROVIDED FOR IN THIS SUBCHAPTER), AND MARGARINE CHEESE:	
(Note 23)	1,175,316
SWEDEN	125,316
ISRAEL	50,000
NEW ZEALAND	1,000,000
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION:	
(Note 25)	10,992,735
ARGENTINA	70,885
AUSTRIA	1,345,509
AUSTRALIA	290,302
CANADA	70,000
SWITZERLAND	1,782,685
EU	350,000
FINLAND	2,722,926
ICELAND	150,001
NORWAY	3,070,427
CZECH REPUBLIC	400,000

APPENDIX 3.—ARTICLES SUBJECT TO THE DESIGNATED IMPORTER PROVISIONS OF IMPORT REGULATION 1, REVISION 8, AND RESPECTIVE ANNUAL TARIFF-RATE IN-QUOTA QUANTITIES FOR EACH QUOTA YEAR [1]—Continued

Article by additional U.S. note number	1997 Designated tariff-rate in-quota quantity (kilograms)
HUNGARY	400,000
SWEDEN	300,000
TOTAL: CHEESE ARTICLES	38,903,522

[1] This Appendix includes articles for which countries of origin designate importers. The articles and quantities included in this appendix for certain cheese may be modified as provided in § 6.25(d)(3).

Signed at Washington, DC on January 2, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96–329 Filed 1–17–96; 8:45 am]

BILLING CODE 3410–10–P

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220–AB19

Availability of Information to Public

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations establishing fees to be assessed in connection with the search for records and provision of documents by the Board. The revision will eliminate the exemption from charge for the first 100 pages of reproduction and the first two hours of search time for requesters of documents who are not included within the specific categories provided in the regulations.

DATES: Comments shall be submitted on or before March 18, 1996.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 200.4(g)(2)(v) of the Board's regulations provides for fees to be assessed in connection with the production of documents for ''All other requesters'', i.e. those requesters who do not fall within other categories provided for in the regulation. Those other categories include requests by commercial users, by educational and non-commercial scientific institutions, by representatives of the news media, and by subjects of records in Privacy Act Systems of Records. Currently § 200.4(g)(2)(v) provides that the Board does not charge ''other requesters'' for the first 100 pages of reproduction and the first two hours of search time.

The Board is authorized to charge for such costs or reproduction and search time by section 12(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(d)) which provides, in pertinent part, that:

> * * * the Board may furnish such information to any person or organization upon payment by such person or organization to the Board of the cost incurred by the Board by reason thereof; and the amounts so paid to the Board shall be credited to the railroad unemployment insurance administration fund established pursuant to section 11(a) of this Act.

This provision is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act (45 U.S.C. 231f(b)(3)).

The Board has been receiving an increasing number of genealogical requests (almost 700 for the first six months of 1995 compared with about 450 for the same period in 1994) with a current estimated cost per request of $16.00. The Board has determined that it is more equitable that the costs for provision of this information be borne by the individuals who need the information, rather than the railroad industry as a whole. Accordingly, the Board proposes to eliminate the exemption from charge for the first 100 pages of reproduction and the first two hours of search time for requesters covered by § 200.4(g)(2)(v).

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by revising paragraph (g)(2)(v) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(g) * * *

* * * * *

(2) * * *

* * * * *

(v) All other requesters. For requesters who do not fall within the purview of paragraphs (g)(2) (i), (ii), (iii), or (iv) of this section, the RRB will charge the full direct cost of searching for and reproducing records that are responsive to the request. The RRB will not charge for such costs to be assessed if the total is less than $10.00. If the total is $10.00 or more, the RRB may waive the charge or reduce it if it determines that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

Dated: January 3, 1996.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–433 Filed 1–17–96; 8:45 am]

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