

Rules and Regulations

Federal Register

Vol. 75, No. 235

Wednesday, December 8, 2010

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

RIN 0551-AA70

Dairy Import Licensing Program

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the historical license reduction provisions of the Dairy Tariff-Rate Import Quota Licensing Program 7 CFR part 6, by suspending the provisions with respect to the reduction of historical licenses based on surrenders of unused quantities until 2016.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Ron Lord, Branch Chief, Sugar and Dairy Branch, Import and Trade Support Programs Division, Foreign Agricultural Service, Stop 1021, 1400 Independence Avenue, SW., Washington, DC 20250-1021; telephone (202) 720-6939; or e-mail at: ronald.lord@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The final rule has been determined to be not significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This final rule will not have a significant economic impact on small businesses participating in the program.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988. The

provisions of this final rule would not have a preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The final rule would not have a retroactive effect. Before any judicial action may be brought forward regarding this final rule, all administrative remedies must be exhausted.

National Environmental Policy Act

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

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

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

Executive Order 12630

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

Government Paperwork Elimination Act

Foreign Agricultural Service (FAS) is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

FAS administers the Dairy Tariff-Rate Import Quota Licensing Program, 7 CFR 6.20-6.37, that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQ), as established in the Harmonized Tariff

Schedule of the United States. These dairy products may only be imported into the United States at the in-quota rate, by or for the account of a person or firm to whom such licenses have been issued, and only in accordance with the terms and conditions of the program. Section 6.25(b)(1)(i) provides that if a licensee surrenders more than 50 percent of a historical license at least 3 out of the 5 prior years, that license will be permanently reduced to the average amount entered during those 5 years. Any amounts permanently reduced are transferred to the non-historical quota, which is allocated by a lottery. In 2008, the Secretary amended the regulation, suspending section 6.25(b)(1)(i) for 2 years until January 1, 2011. Subsequent market developments have caused the Department to again reconsider the license reduction provisions of the Dairy Import Licensing Program.

Summary of public comments: The Secretary published a proposed rule in the **Federal Register** (75 FR 62692-23), October 13, 2010, providing that the provisions of 7 CFR 6.25, with respect to the reduction of historical licenses, based on unused amounts would be suspended for an additional 5 years until 2016. The Department requested that public comments be submitted by November 12, 2010. Comments were submitted by 29 importing companies, 3 associations, a counsel to the Cheese Importers Association of America and several of its member companies, a customs broker, a manufacturer of dairy products, and a Congressman all in favor of the proposed 5-year suspension of the dairy import license reduction provision.

The factors cited in favor of a further 5-year suspension included the declining availability of cheese from the European Union (EU), a weaker U.S. dollar, and the general economic weakness in the United States. Some companies with historical licenses stated that the U.S. food market benefits from reliable and longer-term supply-chain relationships which may be more easily maintained by companies which have historical licenses.

Many of the companies emphasized that a 5-year suspension of the historical license reduction provision would allow additional time for license holders to adjust to economy-wide factors outside their control, including changes in the

EU's supply and demand situation for dairy products, as well as to changes in the U.S. market.

Conclusion: The quota-fill rates for Swiss, Gruyere, and low-fat type cheeses have continued to remain low even after transfer to the lottery system in recent years. Market conditions are always subject to fluctuation and change, and it is incumbent upon all license holders to adjust to these changing conditions. To allow additional time to adjust to changes in EU supply and demand, due to its long-term dairy policy changes, the Department will again temporarily suspend the historical license reduction provisions for a period of 5 years, commencing January 1, 2011. Historical license reductions will again be implemented beginning 2016, as set forth in the proposed rule. In 2016, historical license reductions will be based on import data from years 2011 through 2015.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, and Imports.

■ For the reasons set out in the preamble, 7 CFR part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

Subpart—Dairy Tariff-Rate Import Quota Licensing

■ 1. The authority citation for part 6 subpart—Dairy Tariff-Rate Import Quota Licensing, continues to read as follows:

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

■ 2. Section 6.25 (b) is revised to read as follows:

§ 6.25 Allocation of Licenses.

* * * * *

(b) *Historical licenses for the 2011 and subsequent quota years (Appendix 1).*

(1) A person issued a historical license for the 2010 quota year will be issued a historical license in the same amount for the same article from the same country for the 2011 quota year and for each subsequent quota year except that:

(i) Beginning with the 2016 quota year, a person who has surrendered more than 50 percent of such historical license in at least three of the prior 5 quota years will thereafter be issued a

license in an amount equal to the average annual quantity entered during those 5 quota years.

(ii) [Reserved]

* * * * *

Issued at Washington, DC, the 30th day of November 2010.

Robert Riemenschneider,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2010–30714 Filed 12–7–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 802

[Docket # GIPSA–2010–FGIS–0012]

RIN 0580–AB19

Official Performance and Procedural Requirements for Grain Weighing Equipment and Related Grain Handling Systems

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Direct final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) Federal Grain Inspection Service (FGIS) is amending the regulations issued under the United States Grain Standards Act (USGSA), as amended, to incorporate by reference the applicable requirements of the 2008 edition of the National Institute of Standards and Technology (NIST) Handbook 44, “Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,” (NIST Handbook 44, issued October 2007).

DATES: This rule is effective March 8, 2011 without further action, unless adverse comments or written notice of intent to submit adverse comments are received by January 7, 2011. If adverse comments are received, GIPSA will publish a timely withdrawal of the rule in the **Federal Register**. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of March 8, 2011.

ADDRESSES: We invite you to submit comments on this direct final rule by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Mail:** Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., room 1643–S, Washington, DC 20260–3642.

- E-mail comments to comments.gipsa@usda.gov.

- **Fax:** (202) 690–2173.

Instructions: All comments will become a matter of public record and should be identified as “NIST Handbook 44 IBF Comments,” making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection at <http://www.regulations.gov> and in the above office during regular business hours (7 CFR 1.27(b)). Please contact the GIPSA Management Support Staff at (202) 720–7486 to make an appointment to read the comments received.

FOR FURTHER INFORMATION CONTACT:

Robert S. Lijewski, Director, Field Management Division by E-mail at robert.s.lijewski@usda.gov, or by telephone at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of the USGSA (7 U.S.C. 71–87k), grain exported from the U.S. must be officially inspected and weighed. Sections 802 and 802.1 of the USGSA regulations (7 CFR 802.0–802.1) set forth certain procedures, specifications, tolerances, and other technical requirements for grain weighing equipment and related grain handling systems used in performing Class X and Class Y official weighing services. GIPSA management has reviewed these regulations and determined that they still serve their intended purpose, are consistent with GIPSA’s statutory authority and policy, and should remain in effect. In order to update the USGSA regulations, however, GIPSA is incorporating by reference the 2008 edition of NIST Handbook 44 into the USGSA regulations (7 CFR 802.0(a)). Those provisions in NIST Handbook 44 that obviously do not pertain to GIPSA services are not being incorporated and are listed in section 802.0(b) of the USGSA regulations (7 CFR 802.0(b)).

Direct Final Action

GIPSA is revising § 802.0(a) of the USGSA regulations (7 CFR 802.0(a)) by incorporating by reference the following sections only of the 2008 edition of NIST Handbook 44:

Section 1.10	General Code
Section 2.20	Scales
Section 2.22	Automatic Bulk Weighing Systems
Section 2.23	Weights

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to public interest to give preliminary notice prior to putting this