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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 6

#### Dairy Tariff-Rate Import Quota Licensing

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Determination on historical license reductions.

**SUMMARY:** The Department of Agriculture has determined that provisions of the Dairy Tariff-Rate Import Quota Licensing Regulation with respect to the issuance of reduced historical import licenses based on license surrenders of more than 50 percent will be suspended, in light of market conditions, and shall not apply for a period of five years.

**DATES:** Effective March 20, 1998, 7 CFR 6.25(b)(1)(i) and (b)(1)(ii) are suspended.

**FOR FURTHER INFORMATION CONTACT:** Diana Wanamaker, Group Leader, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1029, Washington, DC 20250-1029 or telephone (202) 720-2916.

#### SUPPLEMENTARY INFORMATION:

Determination: The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, 7 CFR 2.43, has determined pursuant to 7 CFR 6.25(b)(2), to suspend the historical license reduction provisions of 7 CFR 6.25(b)(1)(i) and 6.25(b)(1)(ii) for a five-year period, in light of U.S. import market conditions for cheese. At the end of the five-year suspension, beginning in quota year 2004, if more than 50 percent of a historical license is surrendered in each of the three prior quota years (i.e., 2001-2003), that license will be issued in an amount equal to the average amount entered in those years. Beginning in quota year 2006, if more

than 50 percent of a historical license is surrendered in at least three of the five prior quota years (i.e., 2001-2005), that license will be issued in an amount equal to the average amount entered in those years. FAS has determined that a principal underlying cause of changing U.S. import market conditions is the European Union's (the EU's) progressive implementation of its Uruguay Round export subsidy reduction commitment which, in quota year 1997, began to have a direct impact on trade flows of EU cheese to the U.S. market resulting in reduced U.S. imports and increased historical license surrenders. FAS has further determined that a five-year suspension of the historical license reduction requirement, until the Uruguay Round export subsidy reductions are completed in the year 2000, is warranted under § 6.25(b)(2) to allow time for historical licensees to adjust to changing U.S. import market conditions.

#### Background

The Dairy Tariff-Rate Import Quota Licensing Regulation at 7 CFR 6.25(b)(2) provides that prior to 1999, the Secretary of Agriculture may determine that the requirements in §§ 6.25(b)(1)(i) and 6.25(b)(1)(ii) to reduce permanently the quantity of historical license based on license surrenders of more than 50 percent in three consecutive quota years or three out of five quota years, "shall not apply in light of market conditions." The Department requested public comments in a notice of proposed rulemaking published on October 15, 1997 (62 FR 53580-81 and 62 FR 55184), on possible options for the implementation of the historical license reduction requirement, including possible rescission, suspension, or delay of this requirement, and requested comments on current dairy import market conditions that should be considered with respect to implementation of § 6.25(b)(2). Public comments were submitted by 37 entities during the comment period from October 15, 1997, to November 28, 1997.

**Historical License Surrenders and Market Conditions:** In 1997, surrenders of historical licenses for cheese, in which the quantity surrendered exceeded 50 percent of a license amount, reached 12,302 metric tons; compared to 1,980 metric tons in 1996, and 5,163 metric tons in 1995.

Surrenders of historical licenses for EU cheese accounted for over 60 percent of 1997 historical license surrenders of 12,302 metric tons. In previous years, historical license surrenders were based, in part, on supply shortages and currency situations. However, the 1997 increase in historical license surrenders can be attributed principally to the EU's implementation of its Uruguay Round commitment to reduce the quantity of cheese exported under subsidy.

Under Uruguay Round export subsidy disciplines, the EU's export subsidy ceiling for cheese is scheduled to decrease each fiscal year (FY) from 426,500 tons in FY 1995 (July-June) to 321,300 tons in FY 2000. The EU administers its export subsidy reduction program by setting monthly export subsidy allocations equal to prorated amounts of the annual export subsidy ceiling, and issuing export licenses for subsidized cheese shipments by destination. In October 1997, to avoid exceeding its export subsidy limit, the EU adjusted subsidies for various cheeses and lowered subsidies by 20 percent for cheese exports destined for the United States. EU subsidy cuts during the 1997 quota year were sufficient to raise EU prices of various cheeses to levels that impeded EU cheese sales to U.S. historical licensees. In particular, prices of EU industrial-grade cheeses rose above U.S. prices for comparable cheese (i.e., domestic barrel Cheddar cheese), thereby removing the economic incentive to import. In addition to EU export subsidy reductions, the 1998 merger of the license allocations for Austria, Finland, and Sweden into an EU-15 allocation added approximately 21,000 metric tons of EU historical licenses for cheese.

In view of rapid and significant changes in U.S. import market conditions for EU cheeses beginning in 1997, FAS has determined that temporary suspension of the historical license reduction requirement is justified through the year 2000. The overriding purpose of the five-year suspension is to provide adequate time for historical licensees of EU cheeses to adjust to changing market conditions, to find alternative suppliers of cheese in the EU, and to develop new markets to enable importers to fully utilize their historical licenses for EU cheese. The suspension is consistent with the intent of the U.S.-EU Uruguay Round bilateral

agreement on maximizing utilization of U.S. licenses for EU cheese.

*Summary of Public Comments:* Comments, views, and recommendations were submitted by 32 importers holding historical licenses; three members of Congress; and two trade associations. Submissions by most historical licensees stressed that substantial business investments rely on historical import licenses, and permanent reductions can cause significant harm to employees, distributors, customers, and the survival of many businesses. Most historical licensees supported immediate elimination of the historical license reduction requirement. Certain other historical licensees supported either: (1) the permanent reduction and reallocation of historical licenses in order to provide new entrants and growing businesses a greater opportunity to import cheese; or (2) postponement of the historical license reduction requirement to provide time for adjustment to and analysis of changing market conditions. Comments submitted by the members of Congress and trade associations favored elimination of the historical license reduction requirement based on market conditions.

With respect to market conditions, the members of Congress stated that, under current circumstances, surrenders of historical licenses result from market conditions beyond an importer's control. Historical licensees and the trade associations identified the following market conditions as causes of historical license surrenders: (1) lack of exportable supply; (2) non-competitive foreign prices (resulting in some cases from foreign export administration decisions, and currency fluctuations); (3) low-quality or high-priced foreign products; and (4) foreign export monopolies which can affect license utilization through supply and price controls.

Signed at Washington, D.C. on March 13, 1998.

**Timothy J. Galvin,**

*Acting Administrator, Foreign Agricultural Service.*

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 96-082-2]

#### Bamboo

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are consolidating the regulations pertaining to the importation of bamboo, contained in "Subpart—Bamboo Capable of Propagation," and the regulations pertaining to propagative material in general, contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products." This change will simplify and clarify our regulations. We are also amending the regulations in "Subpart—Fruits and Vegetables" to add provisions allowing fresh bamboo shoots without leaves or roots to be imported into the United States from various countries for consumption. This action is based on assessments that indicate that bamboo shoots without leaves or roots may be imported into the United States from certain countries without a significant risk of introducing plant pests.

**EFFECTIVE DATE:** April 20, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Petit de Mange, Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1231, telephone (301) 734-6799; or e-mail [jpdmange@aphis.usda.gov](mailto:jpdmange@aphis.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations at 7 CFR part 319 prohibit or restrict the importation of plants, plant parts, and related materials to prevent the introduction of foreign plant pests into the United States.

The importation into the United States of any variety of bamboo seed, bamboo plants, and bamboo cuttings capable of propagation, including all genera and species of the tribe *Bambuseae*, has been regulated under "Subpart—Bamboo Capable of Propagation," contained in 7 CFR 319.34. Section 319.34(a) provides that all varieties of bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation are prohibited importation into the United States unless they are imported: (1) For experimental or scientific purposes by the United States Department of Agriculture; (2) for export, or for transportation and

exportation in bond, in accordance with 7 CFR part 352; or (3) into Guam, in accordance with § 319.37-4(b).

"Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (referred to below as "Subpart—Nursery Stock"), contained in 7 CFR 319.37 through 319.37-14, regulates the importation into the United States of most other propagative plant material. Regulated articles are designated as either prohibited or restricted.

On September 11, 1997, we published in the **Federal Register** (62 FR 47770-47772, Docket No. 96-082-1) a proposal to consolidate "Subpart—Bamboo Capable of Propagation" and "Subpart—Nursery Stock" by adding bamboo seed, bamboo plants, and bamboo cuttings capable of propagation, except those imported into Guam, to the list of prohibited articles in § 319.37(a). In conjunction with this action, we proposed to remove "Subpart—Bamboo Capable of Propagation" and all references to § 319.34 contained in part 319.

Under this proposal, bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation would have continued to be eligible for importation into Guam as restricted articles. (The term *restricted article* is defined in § 319.37-1 of "Subpart—Nursery Stock" as any class of nursery stock or other class of plant, root, bulb, seed, or other plant product for, or capable of, propagation, excluding any prohibited articles listed in § 319.37-2 (a) or (b) of "Subpart—Nursery Stock," and excluding any articles regulated under other subparts of part 319.)

The importation of bamboo seeds, bamboo plants, and bamboo cuttings for experimental or scientific purposes by the United States Department of Agriculture also would not have been affected by this change. In "Subpart—Nursery Stock," § 319.37-2(c) provides that any article listed as a prohibited article in § 319.37(a) may be imported for experimental or scientific purposes by the Department of Agriculture.

In addition, bamboo seeds, bamboo plants, and bamboo cuttings capable of propagation would have continued to be eligible for movement through the United States for export, or for transportation and exportation in bond, in accordance with 7 CFR part 352. The regulations at 7 CFR part 352, "Plant Quarantine Safeguard Regulations," allow plants and plant parts that are not eligible for entry into the United States to move through the United States for export to other countries under safeguards intended to prevent the introduction of plant pests.