

Because the new Governmentwide authority is broad enough to encompass those individuals who may currently qualify for appointments under 5 CFR 213.3102(h) and 213.3202(k), we propose abolishing these two appointing authorities. Individuals currently appointed to these authorities would be given new appointments under 213.3102(gg). Current service under 5 CFR 213.3102(h) and 213.3202(k) would count toward the two-year service requirement of the new (gg) authority. Individuals would be eligible for noncompetitive conversion after serving two years total under the old (h) and (k) authorities and the new (gg) authority combined. Agencies may not require individuals to serve under a competitive temporary appointment, or begin new two-year service periods under the (gg) authority, if individuals are currently serving under the (h) and (k) authorities and are moved to the new authority.

Amending Civil Service Rule III

To reflect the Executive Order permitting noncompetitive conversion of adults with psychiatric disabilities, we are amending § 3.1 to add these employees to the list of individuals who may noncompetitively acquire status.

Amend Part 315

We propose amending § 315.709 to reflect the addition of those with psychiatric disabilities to the list of employees who may be noncompetitively converted to the competitive service.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 3, 213, and 315

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is proposing to amend parts 3, 213, and 315 of title 5, Code of Federal Regulations, as follows:

PART 3—NONCOMPETITIVE ACQUISITION OF STATUS (RULE III)

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302.

2. In § 3.1, paragraph (b)(3) is added to read as follows:

§ 3.1 Classes of persons who may noncompetitively acquire status.

* * * * *

(b) * * *

(3) An employee with a psychiatric disability who completes at least 2 years of satisfactory service in a position excepted from the competitive service.

PART 213—EXCEPTED SERVICE

3. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 195401958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*; and Pub. L. 105–339.

4. In § 213.3102, paragraph (h) is removed and reserved.

5. In § 213.3102, paragraph (gg) is added to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(gg) Positions when filled by persons with psychiatric disabilities who:

(1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or

(2) Are certified by a State vocational rehabilitation counselor, or a U.S. Department of Veterans Affairs Veterans Benefits Administration or Veterans Health Administration psychologist, vocational rehabilitation counselor, or psychiatrist, as likely to succeed in the performance of the duties of the position. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 as amended by Executive Order 13124.

* * * * *

6. In § 213.3202, paragraph (k) is removed and reserved.

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

7. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 5 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 3151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

8. Section 315.709 is amended by revising the section heading, the introductory text of paragraphs (a), (a)(1), and (b)(2) to read as follows:

§ 315.709 Employees who are mentally retarded, severely physically handicapped, or have psychiatric disabilities serving under Schedule A appointments.

(a) *Coverage.* Employees appointed under §§ 213.3102(t), (u), and (gg) of this chapter may have their appointments converted to career or career-conditional appointments when they:

(1) Complete 2 or more years of satisfactory service, without a break of more than 30 days, under nontemporary Schedule A appointments.

* * * * *

(b) * * *

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under §§ 213.3102(t), (u), or (gg) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

* * * * *

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

RIN 0551-AA59

Licensing for Certain Sugar-Containing Products Under Tariff-Rate Quota

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides for licensing of imports of sugar-containing products which enter under the tariff-rate quota (TRQ) provided for in Additional U.S. Note 8 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: Comments should be received on or before April 17, 2000 to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to Diana Wanamaker, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue SW, STOP 1021, U.S. Department of Agriculture, Washington, DC 20250-1021. Comments received may be inspected between 10 a.m. and 4 p.m. at room 5541-S, 1400 Independence Avenue SW, Washington, DC 20250-1021.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker at the address above, or telephone at 202-720-2916, or e-mail at Wanamaker@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been classified as "not significant." In conformity with this designation, except for requirements under the Paperwork Reduction Act of 1995, the rule has not been reviewed by the Office of Management (OMB). The provisions of this proposed rule would not: (1) Result in an annual effect on the economy of \$100 million or more; (2) adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; or (3) regulate issues of human health, human safety, or the environment.

Furthermore, the proposed rule would not: (1) Create a serious inconsistency or

otherwise interfere with an action taken or planned by another agency; (2) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients; or (3) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

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 proposed rule will not have a significant economic impact on a substantial number of small entities. Participation in the programs is voluntary. Direct and indirect costs are likely to be very small as a percentage of revenue and in terms of absolute costs. The minimal regulatory requirements impact large and small businesses equally, and the licensing program should improve small businesses' cash flow and liquidity.

Paperwork Reduction Act

The paperwork and record keeping requirements must be approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. A Paperwork Reduction Act submission has been prepared for the proposed rule and copies of the information collection may be obtained from Kimberly Chisley, the Agency Information Collection

Coordinator, at (202) 720-2568 or e-mail at Chisley@fas.usda.gov.

The information collection is necessary to enable FAS to implement and administer the licensing system that will be established by the proposed rule. The proposed rule will require eligible applicants for historical or nonhistorical licenses to submit a letter of application to the Department for each TRQ year that a license is being requested. All applicants shall provide the standard business information set forth in § 6.53 (e.g., address, fax number). For applicants for historical licenses, § 6.53(c)(8) also requires that: (1) Importers of sugar-containing products entered in retail size containers, submit either U.S. Customs Service Forms 7501 to document entries during the representative period, or submit a summary listing of such import entries; and (2) buyers of imports in bulk form which were packaged or processed in the United States by or for the account of an applicant, submit supporting documentation (e.g., purchase orders) that provides a record of the quantities of bulk imports that were entered during the representative period for processing or packaging in the United States. In addition, all applicants for historical licenses shall submit a notarized certification statement that the information submitted is true and accurate.

The estimated public reporting burden for the information collection for the three years period for which OMB approval is being requested is indicated in following table:

ESTIMATED ANNUAL REPORTING BURDEN

	Year 1	Year 2	Year 3	3 year average
Number of respondents	20	20	20	20
Responses per respondent	1	1	1	1
Total annual burden in hours	91.25	5.00	5.00	33.75

The estimated burden hours in the first TRQ year is higher than in the second and third TRQ years because the supporting documentation required to establish eligibility for a historical license will be compiled and submitted in that TRQ year. Once eligibility for a historical license is established, applicants will be required only to submit the standard business information and certification statement.

During the first TRQ year, it is estimated that: (1) Five applicants will apply for a historical license to import from Canada, and 10 applicant will apply for a historical license to import

from other countries, and the information collection will take an estimated 6 hours per applicant (total 90 hours); (2) five applicants will apply for a nonhistorical license and the information collection will take an estimated 15 minutes per applicant (total 1.25 hours). During the second and third TRQ years, it is estimated that 20 applicants will apply for either renewal of a historical licenses or issuance of a nonhistorical license. The information collection will take an estimated 15 minutes per applicant (total 5 hours).

The total average hourly burden for the three TRQ years will be 33.75 hours. The total estimated average cost associated with the information collection, based on costs of preparing similar information collections, for the three TRQ years will be \$1,012.50.

The Department requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the

quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information to those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other form of information technology. Comments on the information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503. Attention: Desk Officer for USDA/FAS. Comments on the issues covered by the Paperwork Reduction Act should be submitted no later than 60 days from the date of publication to be assured of consideration.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have 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 proposed rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

National Environmental Policy Act

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

Executive Orders 12372 and 12875, and the Unfunded Mandates Reform Act (Pub. L. 104-4)

These Executive Orders and Public Law 104-4 require intergovernmental review of programs. This proposed rule does not impose an unfunded mandate or any other requirement on state, local or tribal governments. Further, the program is national in scope and involves a power delegated to the United States by the Constitution to regulate international trade. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 12875, or the Unfunded Mandates Reform Act.

Executive Order 12612

Executive Order 12612 requires implications of "federalism" be considered in the development of regulations. The Secretary of Agriculture certifies that this proposed

rule has been reviewed in light of Executive Order 12612 and that it is consistent with the principles, criteria and requirements stated in sections 2 through 5 of this Executive Order. The Secretary of Agriculture further certifies that this proposed rule would impose no additional cost or burden on the states, nor affect the state's abilities to discharge traditional State governmental functions.

Executive Order 12606

Executive Order 12606 requires that government action include consideration of maintaining stability and strengthening the family. The Secretary of Agriculture has determined, under the principles and criteria established in Executive Order 12606, that this proposed rule will have no effect on the family.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This proposed 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.

Background

Previous Quotas

Presidential Proclamation 5294 of June 28, 1985 imposed absolute quotas on imports of certain sugar-containing products pursuant to the provisions of section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Action was taken to restrict imports which were entering the United States in circumvention of the absolute quota on imports of raw sugar and were entering under such conditions and in such quantities as to cause or threaten to cause material interference with the price support program for sugar beets and sugar cane. Presidential Proclamation 5340 of May 17, 1985, modified these section 22 quotas to limit their scope to imports containing over 10 percent by dry weight of sugar, and to exclude "articles not principally of crystalline structure or not in dry amorphous form that are prepared for marketing to the retail consumers in the identical form and package in which imported."

Uruguay Round Commitment on TRQs

On April 15, 1994, the President entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations ("Uruguay Round Agreements"). As part of those agreements, countries agreed that all systems of absolute quotas for all

agricultural products would be eliminated and converted to TRQs, including imports of certain sugar-containing products containing over 10 percent dry weight of sugar. In section 101(a) of the Uruguay Round Agreements Act (the URAA) (Pub. L. 103-65; 108 Stat. 4809), Congress approved the Uruguay Round Agreements, including the General Agreement on Tariffs and Trade 1994. Presidential Proclamation 6763 of December 23, 1994, implemented the Uruguay Round Agreements (URAA). The Proclamation terminated section 22 quotas; proclaimed TRQs for such articles; and modified the HTS accordingly. Under the HTS, Additional U.S. Note 3 to chapter 17 defines the term sugar-containing products containing over 10 percent by dry weight of sugar. Additional U.S. Note 8 to chapter 17 provides that the aggregate quantity of articles described in Additional U.S. Note 3 which are entered under 10 specific HTS numbers are subject to a TRQ which limits imports entered from October 1 through September 30 to 64,709 metric tons. Imports from Mexico are not permitted entry under this TRQ.

Bilateral Agreement

Subsequent to the Uruguay Round, the United States and Canada entered into a bilateral agreement (September 4, 1997). As a result of that agreement, the United States Trade Representative announced on September 16, 1998, (effective October 1, 1998) an allocation of 59,250 metric tons to Canada for certain sugar-containing products entered under the TRQ set forth in U.S. Additional Note 8 of chapter 17 of the HTS. This allocation was based on Canada's historical exports to the United States. In addition, an allocation to other countries (excluding Canada) of 5,459 metric tons became effective on October 1, 1998.

The United States and Canada also signed a Record of Understanding Regarding Areas of Agricultural Trade (December 4, 1998) which requires export permits issued by the Canadian Government to accompany imports of articles containing more than 10 percent by dry weight of sugar as a condition of entry under this TRQ, effective February 4, 2000. On June 11, 1999, the Canadian Government issued the Notice to Exporters No. 117 pursuant to the Export and Import Permits Act which governs the issuance of export permits for each shipment of sugar-containing products covered by the U.S. TRQ. For each of three years beginning in 1999/2000, six percent of each licensee's bulk shipment allocation will be converted to

a retail packaged allocation or moved to a retail packaged allocation pool. This proposed rule is intended to establish a U.S. import licensing system to ensure that the opportunity to fill this TRQ continues to be based on customer requirements.

Implementation of TRQs

Section 404(a) of the URAA, 19 U.S.C. 3601(a), directs the President to take such action as may be necessary in implementing Uruguay Round TRQs (set forth in Schedule XX—United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994) to ensure that imports of agricultural products do not disrupt the orderly marketing of commodities in the United States.

Presidential Proclamation 6763 delegated authority under the statutes cited in the proclamation, including section 404(a), to the Secretary of Agriculture, the Secretary of the Treasury, and the United States Trade Representative, as necessary to perform functions assigned to them to implement the proclamation.

Presidential Proclamation 7235 of October 7, 1999, delegated authority under section 404(a) to administer the TRQs relating to agricultural products to the United States Trade Representative and delegated authority to the Secretary of Agriculture to issue licenses governing the importation of such products under the applicable TRQs. The Secretary of Agriculture exercises such licensing authority in consultation with the United States Trade Representative.

Proposed Rule

This proposed rule specifies which sugar-containing products may be entered only by or for the account of a person to whom a license has been issued. Licenses issued pursuant to the provisions of this subpart will permit a license holder to import quantities of the subject articles into the United States at the applicable TRQ rate of duty. Imports may enter without an import license (with certain exceptions) at the applicable high-tier rate of duty.

License Eligibility—Eligibility for either a historical or nonhistorical license requires that a person have a business office in the United States, be doing business in the United States, and have an agent for service of process. Eligibility for a historical license also requires that an applicant, during the representative base period, must have imported sugar-containing products under the TRQ and have been either: (1) An importer of sugar-containing

products in retail size packages; or (2) a buyer of sugar-containing products entered in bulk form for processing or packaging in the United States by, or for, the account of such person.

License Applications—The annual period begins on May 1 of each TRQ year. Applicants will be requested to submit applications by August 30 in order for licenses to be issued by October 1. An application for a nonhistorical license must provide the standard business information required in § 6.53(b). An application for a historical license must provide the standard business information required in § 6.53(c), and the supporting documentation and certification statement required in § 6.53(c)(8) with respect to transactions during the representative base period. In subsequent TRQ years, historical licenses may be renewed for the same quantity from the same country without re-submission of supporting documentation. An applicant issued a historical license is not eligible for a nonhistorical license.

License Issuance—Of the total TRQ quantity of 64,709 metric tons, 59,250 metric tons will be issued for licenses to import from Canada and 5,459 metric tons will be issued to import from other countries. All licenses will specify a quantity and the country of origin. Historical license quantities will be based on an applicant's supporting documentation submitted under § 6.53(c)(8). Nonhistorical license quantities will be based on the TRQ quantities not allocated to historical licenses and the number of applicants for nonhistorical licenses. Once licenses are issued, licensees will be responsible for maintaining records on license usage.

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

The Department invites comments on all aspects of the proposed rule including the: eligibility and performance requirements for historical licenses; representative historical period; percentage of the total TRQ that should be set aside for new entrants to establish themselves in the sugar-containing products business; minimum license sizes for nonhistorical licenses for imports in bulk and retail size packages; costs and unintended market consequences of the licensing

requirement to importers, buyers and consumers; and less restrictive alternatives to licensing that would address concerns that Canada's export permit system does not alter trade flows (e.g., continuing not to require the submission to the U.S. Customs Service of export permits from the Government of Canada).

List of Subjects in 7 CFR Part 6

Agricultural commodities, Agricultural trade, Exports, Imports, Sugar.

Accordingly, the regulations at 7 CFR part 6 are proposed to be amended by adding a new subpart, Licensing for Certain Sugar-Containing Products Under Tariff-Rate Quota, to read as follows:

Subpart —Licensing for Certain Sugar-Containing Products Under Tariff-Rate Quota

Sec.

6.50 Definitions.

6.51 Requirements for a license.

6.52 Eligibility for a license.

6.53 Application for a license.

6.54 Allocation of licenses.

6.55 Surrender and reallocation.

6.56 License use and license expiration.

6.57 Debarment and suspension.

6.58 Globalization or suspension of licenses.

6.59 License fee.

Subpart —Licensing for Certain Sugar-Containing Products Under Tariff-Rate Quota

Authority: Proc. 7235 of October 7, 1999, 64 FR 55609; Additional U.S. Note 8 to chapter 17 of the Harmonized Tariff Schedule of the United States 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); Pub. L. 103-465, secs. 103, 104, 108 Stat. 4819 (19 U.S.C. 3513, 3601).

§ 6.50 Definitions.

As used in this subpart, the following terms mean:

Agent for service of process. A person upon whom legal papers can be served.

Article or sugar-containing article.

Any sugar-containing products described in Additional U.S. Note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) and listed in Additional U.S. Note 8 to chapter 17 of the HTS.

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 (19 CFR chapter I).

Department. The United States Department of Agriculture.

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

Licensing authority. The person designated by the Director of the Import Policies and Programs Division (or its successor organization) of the Foreign Agricultural Service to administer the licensing program.

Other countries. Countries other than Canada.

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

Representative base period. October 1, 1996 through September 30, 1999, inclusive.

Tariff-rate quota quantity or TRQ quantity. The aggregate quantity of sugar-containing products provided for in Additional U.S. Note 8 of chapter 17 of the HTS.

TRQ year. The 12-month period beginning on October 1 of any year through September 30 of the following year, inclusive.

United States. The Customs Territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

§ 6.51 Requirement for a license.

(a) *General rule.* Except as provided in paragraph (b) of this section, a person who seeks to enter into the Customs Territory of the United States sugar-containing products subject to the TRQ established by Additional U.S. Note 8 to chapter 17 of the HTS shall obtain a license in TRQ year 2001 and subsequent TRQ years in accordance with this subpart. Such license shall be presented to the U.S. Customs Service at the time and place of importation of such sugar containing products.

(b) *Exceptions.* Licenses are not required if:

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

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

(3) The article imported will not enter the commerce of the United States and is imported as a sample for taking orders, for exhibition, for display or sampling at a trade fair, for research, for testing of equipment; or for use by embassies of foreign governments. Written approval of the Licensing Authority shall be obtained prior to entry, and the importer of record (or a broker or agent acting on its behalf) shall provide to the Licensing Authority, prior to the release of such articles, the appropriate Customs

documentation identifying the article, quantity to be imported, its location, intended use, an entry number and the importer of record. The Licensing Authority may also require as a condition of import that the article be destroyed or re-exported after such use; or

(4) Such person importing the article pays the applicable high-tier rate of duty.

§ 6.52 Eligibility for a license.

(a) *Eligibility to apply for a nonhistorical license.* A person may apply for a license for each TRQ year provided such person has:

(1) A business office, and is doing business, in the United States, and

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

(b) *Eligibility to apply for a historical license.* In addition to meeting the requirements of paragraph (a) of this section, a person may apply for a historical license provided such person was either:

(1) A buyer of sugar-containing products that were imported in bulk form during the representative base period under the TRQ set forth in Additional U.S. Note 8 to chapter 17 of the HTS and were processed or packaged in the United States by, or for the account of such person; or

(2) An importer of record of imports of retail size packaged sugar-containing products entered during the representative base period under the TRQ set forth in Additional U.S. Note 8 to chapter 17 of the HTS.

(3) Eligibility for a historical license for imports from Canada and/or from other countries requires that the criteria of paragraphs (b)(1) or (2) of this section be met for Canada and/or other countries, respectively.

(c) *Exceptions.* (1) Any licensee that fails in a TRQ year to enter at least 95 percent of the amount permitted under a license, shall not be eligible to receive a license for the next TRQ year. For purposes of this paragraph, the amount permitted entry under a license will exclude any license amount surrendered pursuant to § 6.55(a), but will include an additional amount received pursuant to § 6.55(c). Failure to meet the 95 percent license utilization requirement for a historical license will result in cancellation of that license and the transfer of that license amount to nonhistorical licenses.

(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier

of its contract to supply the articles, act of God, or force majeure.

§ 6.53 Application for a license.

(a) A person seeking a license shall apply in writing to the Licensing Authority. An application for a license should be submitted between May 1 and August 30 in order for the Licensing Authority to issue licenses by October 1. However, applications may be submitted at any time during the TRQ year, and licenses may be issued based on TRQ quantities remaining unallocated.

(b) *Nonhistorical license.* A person meeting the eligibility requirements of § 6.52(a) may apply for a nonhistorical license. The letter of application shall state the:

(1) Name of the applicant and the firm;

(2) Address of the firm;

(3) Name of agent for service of process;

(4) Telephone and fax numbers for the firm;

(5) IRS number under which the applicant is conducting business;

(6) Whether a license is being requested for entry of product only for Canada, other countries, or both; and

(7) License quantity being requested.

(c) *Historical license.* A person meeting the eligibility requirements of § 6.52(a) and (b) may apply for a historical license. The letter of application shall state the:

(1) Name of the applicant;

(2) Address of the applicant;

(3) Name of agent for service of process;

(4) Telephone and fax numbers for the applicant;

(5) IRS number under which the applicant is conducting business;

(6) Whether a license is being requested for entry of product only from Canada, other countries, or both;

(7) License quantity being requested; and

(8) For a first time historical license, provide the information in paragraphs (c)(8)(i) and (ii) of this section. For renewal of a historical license share in subsequent TRQ years, submission of information in paragraph (c)(8)(i) is not required. The information to be provided is:

(i) The total quantity of imports from Canada and from other countries for each of the TRQ years in the representative base period (October 1, 1996 through September 30, 1999) that was imported in bulk form and packaged or processed in the United States by or for the account of the applicant, or imported in retail size packages by, or for, the account of the

applicant. Where the applicant seeks to establish eligibility on the basis of imports of sugar-containing products entered in retail size containers, the application shall include either Customs Form 7501 to document entries from Canada and from other countries during the representative base period, or include a summary listing of import entry numbers, the quantity entered under the entry number, and date of entry for imports during the representative base period. Where the applicant seeks to establish eligibility on the basis of imports of sugar-containing products entered in bulk form, the application shall include supporting documentation that provides a record of those quantities imported in bulk form from Canada and from other countries to be packaged or processed in the United States by or for the account of the applicant.

(ii) The applicant shall submit a notarized certification statement that the applicant, or a duly authorized agent, was engaged in importing, processing, or packaging sugar-containing products imported under the TRQ set forth in Additional U.S. Note 8 to chapter 17 of the HTS during the representative base period; the applicant meets the eligibility requirements in § 6.52; and that the reported quantities of imports of sugar-containing products entered during the representative base period for which the applicant was the importer, packer, or processor is true and accurate.

§ 6.54 Allocation of licenses.

(a) *Historical licenses.* Allocation of historical licenses will be based on documentation submitted under § 6.53(c)(8). For each applicant, a renewable historical share for Canada, other countries, or both will be calculated on the basis that applicant's imports of sugar-containing products entered under Additional U.S. Note 8 to chapter 17 during the representative base period for which the applicant was either a buyer of sugar-containing products imported in bulk form which were processed or packaged in the United States by, or for the account of such person; or an importer of record of entries of sugar-containing products entered in retail size packages. Once a renewable historical share is determined, a person may apply for and be issued a historical license for the same quantity from the same supplying country in subsequent TRQ years. If an applicant requests, and is issued, a historical license in any TRQ year which exceeds that person's renewable historical share, that additional amount does not become part of the renewable

historical share. Any supplementary quantities added to a historical license in any TRQ year will depend on TRQ quantities available. A person issued a historical license will not be issued a nonhistorical license.

(b) *Nonhistorical licenses.* Allocation of nonhistorical license quantities will be based on the quantities remaining after TRQ quantities have been allocated to historical licenses, license quantities requested in the applications, and the number of applicants.

(c) Of the total TRQ quantity of 64,709 metric tons, import licenses for 59,250 metric tons shall be allocated to Canada, and import licenses for 5,459 metric tons shall be allocated to other countries.

(d) Any TRQ amount not allocated by October 1 may be allocated by the Licensing Authority in any manner deemed equitable.

§ 6.55 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 should surrender its licensee right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority in writing not later than July 1. Any surrender shall be final and shall be only for that TRQ year. The amount of the license not surrendered shall be subject to the license utilization requirement of § 6.52(c)(1).

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

(c) Any person who has been issued a license for a TRQ year may apply to receive an additional license, or an addition to an existing license for a portion of the amount being reallocated. The Licensing Authority will issue a notice to licensees after July 1 advising licensees of the application period. Any new license issued shall be subject to the license utilization requirement of § 6.52(c)(1). For existing licenses, the combined total of a license amount plus any addition to that license shall be subject to the license utilization requirement of § 6.52(c)(1).

§ 6.56 License use and license expiration.

(a) All articles entered under a license shall meet country of origin requirements.

(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.

(c) Nothing in this subpart shall prevent the use of immediate delivery in accordance with the provisions of U.S.

Customs Service regulations relating to tariff-rate quotas.

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

(e) A licensee shall not transfer a license to another person.

(f) If a licensee sells, transfers, or conveys its business involving sugar-containing products covered by this subpart, the license will expire.

§ 6.57 Debarment and suspension.

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

§ 6.58 Globalization or suspension of licenses.

(a) If the Licensing Authority determines that entries of sugar-containing products are likely to fall short of a country's allocated quantity, 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 of their license from any country during the remainder of the TRQ year. Requests for consideration of such adjustments shall be submitted to the Licensing Authority no later than July 1 of any TRQ year.

(b) If the Licensing Authority determines that entries of sugar-containing products under all import licenses have been less than 85 percent of the aggregate TRQ quantity, due to the failure of the licensees to make good faith efforts to procure substantially the full quantity of articles covered by their licenses, the Licensing Authority may suspend the import licensing system with the approval of the Office of the United States Trade Representative.

(c) If the Licensing Authority determines that for overriding economic reasons the licensing system should be suspended during any TRQ year, the Licensing Authority may temporarily suspend the import licensing system with the approval of the Office of the United States Trade Representative.

§ 6.59 License fee.

(a) A fee shall be assessed each TRQ year for each historical license and nonhistorical license issued 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 May 1 of the year preceding TRQ year for which the fee is assessed.

(b) The license fee for each license issued is due and payable in full by mail, postmarked no later than 60 days after issuance of a license for which the fee is assessed. Fee payments shall be made by certified check or money order payable to the Treasurer of the United States.

(c) If the license fee is not paid by the final payment date, a hold will be placed on the use of the license and no further articles will be permitted entry under that license until the fee has been paid. The Licensing Authority shall send a warning letter by certified mail, return receipt requested, advising the licensee that if payment is not mailed within 21 days from the date of the letter, that the license will be permanently revoked.

Signed at Washington, D.C. on March 9, 2000.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA-00-07]

Fluid Milk Promotion Order; Invitation To Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on proposals to amend the Fluid Milk Promotion Order. The proposed amendments, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the order, would modify the membership status of Board members. The proposed amendments would allow a fluid milk processor to be represented by up to 3 members on the 20-member Board and allow a Board member whose fluid milk processor company affiliation has changed to serve for a period of up to 6 months or until a successor is appointed, whichever is sooner. The Board states that the proposed amendments are necessary to ensure Board continuity and full representation and allow it to operate in an efficient and effective manner.

DATES: Comments are due no later than April 17, 2000.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/

Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, SW, Stop 0233, Room 2958, South Building, Washington, DC 20250-0233. Advance, unofficial copies of such comments may be faxed to (202) 720-0285. Comments should reference the title of the action and docket number and will be made available for public inspection in Room 2958 South Building during regular business hours.

FOR FURTHER INFORMATION CONTACT:

David Jamison, Chief, USDA/AMS/ Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, Room 2958, South Building, Washington, DC 20250-0233, (202) 720-6909, David.Jamison2@usda.gov.

SUPPLEMENTARY INFORMATION:

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those processors employing more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. There are approximately 275 fluid milk processors subject to the provisions of the Fluid Milk Promotion Order. Most of these processors are considered small entities.

The Fluid Milk Promotion Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. 6401 *et seq.*). The Order provides for a 20-member Board with 15 members representing geographic regions and five at-large members which include at least three fluid milk processors and at least one member from the general public. To the extent practicable, members representing geographic regions should represent processing operations of differing sizes.

The National Fluid Milk Processor Promotion Board has proposed amendments to the membership provisions of the Order. The proposed amendments would allow up to three representatives of a fluid milk processor to serve on the 20-person Board. Currently, the Order states that a fluid milk processor shall be represented on the Board by no more than two members. The Board indicates that this proposal is due to changes in the industry which have resulted in the formation of larger regional and national companies.

The proposed amendments also would allow a Board member whose fluid milk processor company affiliation changes to serve on the Board for a period of up to six months or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. Under current Order provisions, a Board member whose company affiliation changes may continue to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided that such member continues to meet the Order's eligibility standards. The Board states that the proposed amendment would more accurately reflect the time needed to fill a Board vacancy.

The Board believes that the proposed amendments would ensure Board continuity and full representation and allow it to operate in an effective and efficient manner.

The proposed amendments to the Order should not add any burden to regulated parties because they relate to provisions concerning Board membership. Additionally, the proposed changes would not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this rule.

Accordingly, pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12866 and the Paperwork Reduction Act

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990, as amended, authorizes the Fluid Milk Promotion Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a Fluid Milk Promotion Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or to be exempted from the Order. A person