

USDA's Dairy Import Licensing Program

Ron Lord, Director, Import Programs and Export Sales Reporting Division

Teresa McKeivier, Branch Chief, Sugar and Dairy Import Programs

Program Goals

- Maximize quota fill rate
- Follow/enforce regulations

Dairy Tariff-rate quota amount (TRQ)

The total amount of the licenses shall not exceed TRQ

NON-CHEESE (Kg)

• Butter (Note 6)	6,977,000
• Dried Skim Milk (Note 7)	5,261,000
• Dried Whole Milk (Note 8)	3,321,300
• Dried Buttermilk/Whey (Note 12)	224,981
• Butter Sub (Note 14)	<u>6,080,500</u>
	21,864,781

CHEESE (Kg)

• Other cheese/NSPF (Note 16)	48,626,859
• Blue Mold (Note 17)	2,911,001
• Cheddar (Note 18)	12,422,889
• American (Note 19)	3,522,556
• Edam & Gouda (Note 20)	6,816,402
• Italian (Note 21)	13,481,064
• Gruyere (Note 22)	7,854,833
• Low fat (Note 23)	5,474,908
• Swiss (Note 25)	<u>34,475,276</u>
	135,585,788

Types of Licenses

Designated licenses

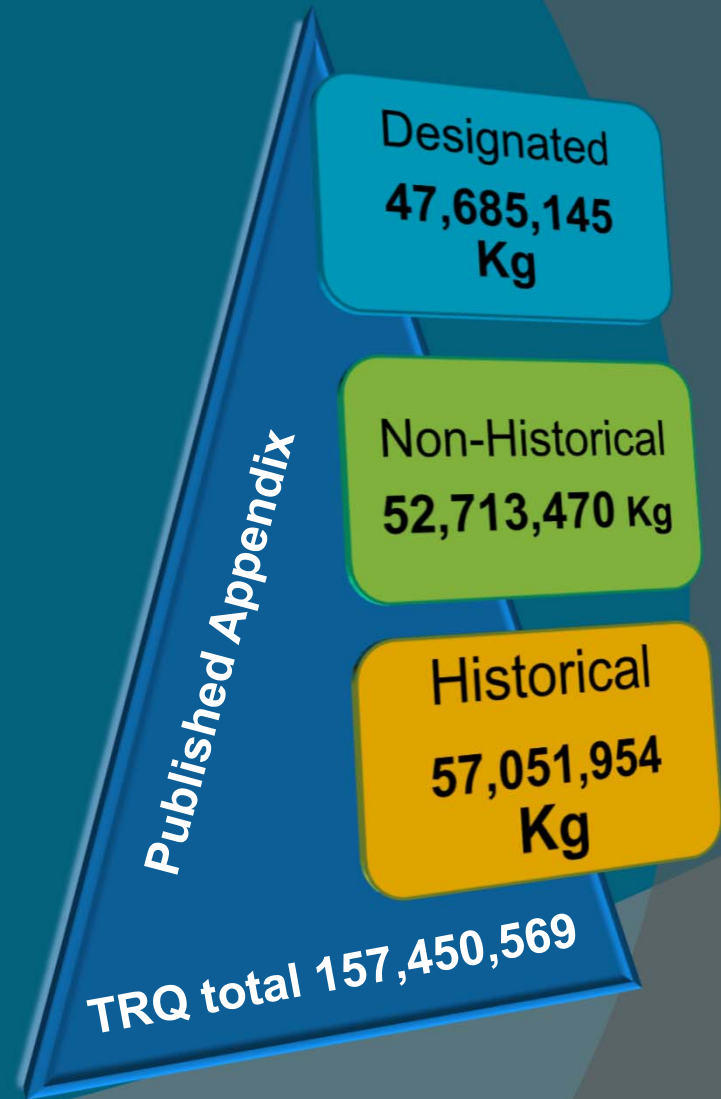
Amounts and importers are assigned by the foreign country to which the TRQ applies. The importer must apply to the program and qualify every year.

Non-Historical licenses (Lottery)

Issued by a random lottery system. The importer must apply to the program and qualify every year.

Historical licenses

Remain with the importer and are renewable year to year. The importer must apply to the program and qualify every year.



License Management



Program Reminders

- Pay attention to deadlines
- Please make sure you fill out all forms and submit them
- Example: Staff helped importer to submit 923 application, but they did not submit 923 A and B, therefore received zero licenses. Importer then blames USDA?
- USDA will update instructions to simplify.
- Dairy import licensing staff are 2 people to manage 500 importers plus large number of users, and 2500 licenses.

923 Forms/Application

- It is required that the Form is filled out accurately and completely
- Feature of automatic fill-ins on form likely to be disabled in the future. Information needs to be filled in every year
- P.O. Boxes not permitted. Physical address only
- Name, Complete address, phone number, and email all required

Example of an issue with 923 Form:

- Called a phone number listed on a 923 Form: Was told that the person has not worked for this company for 7 years. I asked about the address listed and was told that building had been torn down years ago???
- How do I find this importer if I want to conduct an audit?

The minimum license size shall be

Non-historical license amounts are dictated by the regulations and are based on the total amount available under the non-historical TRQs (Appendix 2) for each article and for each country.

Cheese License

- 9,500 kg
- 19,000 kg
- 38,000 kg

Non-Cheese License

- 19,000 kg
- 38,000 kg
- 57,000 kg

Total Available

- 9,500 – 500,000 kg
- 500,001 – 1,000,000 kg
- 1,000,001 kg +

Total Available

- 19,000 – 550,000 kg
- 550,001 – 1,000,000 kg
- 1,000,001 kg +

If the total amount available is less than the smallest license amount, the license amount will be the total available.

License Quantities Issued- 2018 VS. 2017

- In 2017, The USDA issued licenses with a total quantity of 147.9 million KGs in 2018:
- In 2018, The USDA issued 150.8 million Kg.
 - A 2 percent increase. Why?
 - Regulation requires a minimum license amount, but not a maximum.
 - There are some articles that received a larger than minimum quantity
 - Any lost historical license quantities were allocated in third round of lottery instead of waiting until the reallocation period.

Example:

- EU OT, large number of requests, high demand, requests > than available quantity
 - License size 38,000 kg/license
 - There is one license with 39267kg. 1,267 leftover after all lottery issued. One lucky importer received left over
- EU GR cheese, lower demand, requests < available supply
 - license size -old 38,000kg -new 51,625kg
 - Total increase of 39,307kg

Surrender and Reallocation

- ⦿ Remember that if you surrender a portion of a license for a particular article, you are not eligible to receive reallocated quantities for the same article
- ⦿ There are 2 lottery-type rounds, then first come, first serve.
- ⦿ It is not a good idea to wait until December 31 to make a FCFS request

Affiliation Rule 6.23(4)

- (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 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, child or grandchild of such other applicant;
 - (ii) The applicant is the spouse, brother, sister, parent, child 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, child or grandchild of an individual who owns or controls such other applicant.
 - (iv) Both applicants are 5 percent or more owned or directly or indirectly controlled, 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.

Association Rule 6.23 (5)

- (5) 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 manages or is managed by such other applicant, or economically benefits, **directly or indirectly**, from the use of the license issued to such other applicant.

Lottery (Non-historical) Process

- Applications submitted, with rankings
- A random computer lottery process is run
- An output table is generated with rankings (separately for each Commodity/Country item)
- Then,
- USDA performs an Affiliation/Association screening.

What happened in 2018?

- USDA ran the lottery, and performed the affiliation and association check
- Each year, an assessment of affiliation and association is made
- In 2018, the assessment resulted in an increased number of applicants deemed either affiliated or associated

Affiliation and Association (cont)

- USDA has always viewed the affiliation and association rules as a key element of the program
- The intention of these rules is to prevent related applicants from exhausting lottery licenses, to the exclusion of others
- How important is the administration of 6.23(4) and 6.23(5) to the functioning of the program?
- Is there sufficient information being requested from applicants?

Affiliation and Association (Cont)

§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, and
- (3) An email address to be used for correspondence regarding licensing activities and reports.

The licensee is responsible to continuously maintain a valid email address in DAIRIES for use in communicating with the Licensing Authority.

Affiliation and Association (cont)

- Example case:
- Six companies using the same Agent submitted identical Lottery applications, including the identical rankings of all the preferences on all of the forms
- What is the probability that there was no communication between the 6 companies? If they did communicate, are they therefore affiliated or associated?
- Companies that discuss each other's application ranking clearly have a relationship, potentially impacting each other's bottom line

Current 923 Form, including Address, & Agent for Service of Process

U.S. DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

FAS-923 Certification Required to Apply for Dairy Import Licenses for 2018

Control No.: ~~XXXXXX~~

IRS Number: *****

Company Name: Dairy System Administrator

1. Mailing Address: Street1: 1400 Independence Ave., SW
Street2:
City: Washington State: DC ZipCode: 20250 -

2. Name of Representative: Mickey Mouse 3. Agent for Service of Process: Donald Duck

4. Telephone: 202 -720 -0000 5. FAX Number: 000 -000 -0000

6. Email Address:

7. Check the box to identify whether you are applying for license as an:

- Importer
- Exporter
- Manufacturer

LIST OF FIRM'S OWNERS

	First Name If Person or Leave Blank If Company Name	Last Name If Person or Full Company Name	Percent of Ownership
1.	Donald	Duck	100
2.			0

Certification of current 923 Form

FAS-923 Certification Required to Apply for Dairy Import Licenses for 2018

Control No.: 

Company Name: Dairy System Administrator

A. This certification must be submitted no earlier than September 1, 2018 , and no later than October 15, 2018, and accompany all information required under §6.24 of the Import Regulation (7 CFR §§6.20-6.37).

B. **WARNING:** False statements made knowingly and willfully on this application or other supporting documents submitted therewith are punishable by fine and/or imprisonment under the provisions of 18 U.S.C. 1001.

C. **OFFICIAL CERTIFICATION STATEMENT:**

I, the duly authorized representative of the applicant, hereby request the issuance of historical, non-historical, and/or designated importer licenses.

I certify that the applicant meets the applicable eligibility requirements of §6.23 of the Import Regulation. I also certify that the applicant is maintaining on file at the applicant's premises, for audit and inspection by the USDA, all applicable records related to sales, purchases, and transactions, including all applicable records for entries used to qualify for eligibility, for a minimum of 5 years, as described in §6.30 of the Import Regulation.

Additionally, I certify that the applicant will not obtain or use any license for speculation, brokering, or offering for sale, and will not permit any other person to use the license for profit. Furthermore, I understand that the Import Regulation prevents applicants who are affiliated with each other [as defined in §6.23(c)(4)], or who are associated with each other [as defined in §6.23(c)(5)], from receiving a non-historical license for the same article from the same country for quota year 2018.

I Certify

I Don't Certify

Previous Page

Thank you

Ron Lord, ronald.lord@fas.usda.gov
Teresa McKeivier, teresa.mckeivier@fas.usda.gov
Import Policies and Export Reporting Division
Office of Trade Programs
Foreign Agricultural Service, USDA