

An Exclusive CIAA Member Update



Update on 6.25(b)

The Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture (USDA) provided an **advance copy** of an interim final rule today (August 26, 2022) suspending for one (1) year the historical license reduction provision at 7 C.F.R. 6.25(b). This historical license reduction provision in section 6.25(b) provides that historical license holders surrendering more than half (50%) of their license amount for the same item and country in three (3) of the most recent five (5) years will only be issued a historical license equal to the average amount imported for those five (5) quota years.

Section 6.25(b) has never been implemented, with FAS suspending the provision on four (4) previous occasions. CIAA submitted a rule waiver request to FAS earlier this year. The continuation proposed in the interim final rule is significantly shorter than previous suspensions. For example, the most recent suspension was for an additional seven (7) years encompassing the 2016-2022 quota year period. The shorter suspension may be related to the timing of the interim final rule. In the preamble to the rule, USDA states that, “[t]o have meaningful effect, the [suspension] must take effect prior to the application period for quota year 2023,” which starts on September 1, 2022. USDA, Interim Final Rule. The Administrative Procedure Act (APA) provides that notice and comment are not required where “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. §553(b)(B). In this situation, USDA opted to waive notice and comment in order to ensure that the rule could be issued prior to the start of the 2023 application period. As there was no urgency for subsequent application years, notice and comment rulemaking likely could not be waived for those periods under the APA.

This rule will take immediate effect upon publication in the Federal Register, which is scheduled to occur on August 30, 2022. USDA states that it “invites interested persons to submit comments on the rule and will consider all relevant comments when determining whether further amendments to the regulation are needed.” CIAA is preparing comments in response to this interim final rule to request a longer waiver period consistent with past USDA-FAS delays of Section 6.25(b).

Should you have any questions regarding this alert, contact the Husch Blackwell LLP team at CIAAGeneralCounsel@huschblackwell.com.

DATES TO REMEMBER

AUGUST 31, 2022

Last day to enter dairy products into U.S. Customs territory that may be used to qualify and establish eligibility for a calendar year 2022 license.

SEPTEMBER 1, 2022

First day of license eligibility period for next quota year-plus one. Example: entries made on or after September 1, 2022 can be used to establish eligibility for a license for calendar year 2023.

SEPTEMBER 1, 2022

Last date to request globalization of a calendar year 2022 license. First transmission date for applications for reallocated license amounts for calendar year 2022. First transmission date for all applications for calendar year 2023 licenses.

SEPTEMBER 15, 2022 (no exceptions)

Last transmission date for licensees applying for reallocated license amounts for calendar year 2020.

OCTOBER 1, 2022 (no exceptions)

Last transmission date for licensees to surrender all or the unused portion of their calendar year 2022 licenses.

OCTOBER 15, 2022 (no exceptions)

Last transmission date for all applications for calendar year 2023 licenses.

OCTOBER 15 - 19, 2022

SIAL Show
Paris, France

OCTOBER 31, 2022

Exporting countries that are designating U.S. importers for calendar year 2023 must submit their designations to FAS by this date.

NOVEMBER 10, 2022

CIAA Member Meeting
9:30am – 11:30am
Saddle Brook Marriot
Saddle Brook, NJ

DECEMBER 20, 2022 (approximately)

FAS issues first notice of calendar year 2023 licenses to licensees.

DECEMBER 31, 2022

Last day for licensees to make entries to fulfill the requirement to use 85% of their calendar year 2022 license amount. Last day for which calendar year 2022 licenses are valid. or "only 7 remaining"!

*Ralph Hoffman * CIAA President * 202-547-0899*



Cheese Importers Association | 515 2nd Street, NE, Washington, DC 20002

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