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RULES AND REGULATIONS

Title 9 - Animals and Animal Products

CHAPTER I - Animal and Plant Health Inspection Service, Department of Agriculture

PART 94 - Rinderpest, foot-and-mouth disease, fowl pest (fowl plague), Newcastle disease (avian pneumoencephalitis), African swine fever, and restricted importations

Restrictions on Importation of Milk and Milk Products

Statement of considerations

Existing regulations in 9 CFR Part 94 provide a general prohibition against the importation of fresh, chilled, or frozen milk, cream or other milk products originating in any country considered to be infected with rinderpest or foot-and-mouth disease. There is no provision in the regulations with respect to the import eligibility status of milk and milk products, including those articles and items generally classed as dairy products, which have been subjected to one or more processing procedures, which remove them from the category of fresh, chilled, or frozen.

Research has shown that the virus of rinderpest and foot-and-mouth disease is present in the milk of infected ruminants. Pasteurization is a procedure commonly used in the processing of milk, cream and most dairy products. While it is known that the application of heat is detrimental to virus survival, scientists of this Department

have advised that modern methods of pasteurization cannot be relied upon to provide an acceptable degree of protection if the product reaches susceptible livestock.

Accordingly, on 6 September 1973, there was published in the FEDERAL REGISTER (38 FR 24219-24220) a proposal to regulate the importation of certain milk and milk products in order to prevent the introduction or dissemination of livestock diseases, especially rinderpest and foot-and-mouth disease. A period of 30 days was allowed for submission of comments by interested persons. Based on a review of the many comments received and consideration of additional pertinent information, it appeared that cheese, butter and butteroil should be exempt from such import restrictions and also consumer size packages containing dry milk products or any formulations thereof provided that such packages were identified thereon as articles prepared for retail sale as human food.

On 6 March 1974, there was published in the FEDERAL REGISTER (39 FR 8619-8620) for further consideration, a new proposal in which such exemptions were provided. In response to publication of this proposal, nineteen written comments were received, four of which supported the proposal with fifteen opposing it.

Among the opposing comments, three respondents indicated an erroneous assumption that existing regulations would be weakened; three were concerned that the regulation may not provide adequate protection to the livestock industry from rinderpest and foot-and-mouth disease; five indicated apprehension that the proposal would severely restrict the importation of certain milk products or constitute a barrier to international trade in such products; and four were opposed pending further clarification of application of the proposal to certain milk products.

After due consideration of all relevant material available to the Department, including that submitted in connexion with such notices, the proposal of 6 March 1974, is hereby adopted with the following changes to afford greater protection to the livestock industry from livestock diseases:

1. The provision exempting consumer size packages of dry milk products from import restrictions is deleted since it has been concluded that adequate controls could not be exercised to insure that such product or containers thereof would not reach livestock susceptible to diseases that could be transmitted thereby;
2. in Section 94.16, paragraph (b)(2) which made provision for the unrestricted importation of sterilized milk processed in a specified manner is deleted and that category of milk product has been added to the group of products eligible for importation when authorized by the Deputy Administrator, Veterinary Services, under restrictions in specific cases;

3. also deleted is the provision in Section 94.16(b)(6) which would have permitted the importation for personal consumption of small quantities of milk products under certain restrictions; and

4. paragraphs 94.16(b)(3), (4) and (5) are redesignated as paragraphs (b)(2), (3) and (4), respectively.

Additional information relative to methods of processing sterilized milk was received following publication of the proposed amendment. This information indicated that the proposal was based on an understanding that was not technically correct, so that application of the proposal would be impractical, and that the intent and purpose of the provision could best be accomplished by including this product under the proposed Section 94.16(b)(3). It was concluded that the reasons for deletion of the exemption for consumer size packages of dry milk products were also applicable to warrant deletion of the exemption that would have permitted small amounts of milk products to be imported for personal consumption. Other changes are made for clarity and consistency in wording with other sections of Part 94 including the application of specified restrictions to the described products if they are shipped from or transit the designated countries, in addition to those products that originate in such countries. These changes are necessary to prevent the introduction or dissemination of livestock diseases into the United States.

Accordingly, Part 94, Title 9, Code of Federal Regulations is hereby amended in the following respects:

1. Section 94.2 and the heading thereof is revised to read as follows:

Section 94.2 Fresh, chilled, or frozen products (other than meat), and milk and milk products of ruminants and swine.

(a) The importation of fresh, chilled or frozen products (other than meat and milk and milk products) derived from ruminants or swine, originating in, shipped from, or transiting any country designated in Section 94.1(a) as a country infected with rinderpest or foot-and-mouth disease is prohibited, except as provided in Section 94.3 and Parts 95 and 96 of this chapter.

(b) The importation of milk and milk products of ruminants and swine originating in, shipped from, or transiting any country designated in Section 94.1(a) as a country infected with rinderpest or foot-and-mouth disease is prohibited, except as provided in Section 94.16.

Section 94.15 ~~/Reserved/~~

2. Section 94.15 is reserved and a new Section 94.16 is added to read:

Section 94.16 Milk and milk products.

(a) The following milk products are exempt from the provisions of this Part: cheese, butter and butteroil.

(b) Milk and milk products originating in, or shipped from, any country designated in Section 94.1(a) as a country infected with rinderpest or foot-and-mouth disease may be imported into the United States if they meet the requirements of paragraph (b)(1), (2), or (3) of this section:

- (1) They are in a concentrated liquid form and have been processed by heat by a commercial method in a container hermetically sealed promptly after filling but before such heating, so as to be shelf stable without refrigeration.
- (2) They are dry milk or dry milk products, including dry whole milk, non-fat dry milk, dried whey, dried buttermilk, and formulations which contain any such dry milk products, and are consigned directly to an approved establishment⁵ for further processing for human food in a manner approved by the Deputy Administrator, Veterinary Services as adequate to prevent the introduction or dissemination of livestock diseases into the United States. However, in specific cases, upon request by the importer to the Deputy Administrator, Veterinary Services, and approval by the Deputy Administrator, they may be stored for a temporary period in an approved warehouse⁵ under the supervision of an inspector of the Animal and Plant Health Inspection Service pending movement to an approved establishment. Such products shall be transported from the United States port of first arrival to an approved establishment⁵ or an approved warehouse⁵ and from an approved warehouse⁵ to an approved establishment⁵ only under Department seals or seals of the United States Customs Service. Such seals shall be broken only by such an inspector or other person authorized to do so by the Deputy Administrator, Veterinary Services. Such products shall not be removed from the approved warehouse⁵ or approved establishment⁵ except upon special permission by the Deputy Administrator, Veterinary Services, and upon compliance with all the conditions and requirements specified by him for such movement in each specific case.
- (3) Milk and milk products not exempted under paragraph (a) and not of classes included within the provisions of paragraphs (b)(1) or (2) of this section may be imported if the importer first applies to and receives written permission from the Deputy Administrator, Veterinary Services, authorizing such importation. Permission will be granted only when the Deputy Administrator determines that such action will not endanger the health of the livestock of the United States. Products subject to this provision include but are not limited to condensed milk, long-life milks such as sterilized milk, casein and caseinates, lactose and lactalbumin.
- (4) Small amounts of milk and milk products subject to the restrictions of this Part may in specific cases be imported for purposes of examination, testing, or analysis, if the importer applies to and receives written

approval for such importation from the Deputy Administrator, Veterinary Services. Approval will be granted only when the Deputy Administrator determines that such action will not endanger the health of the livestock of the United States.

(c) Milk and milk products originating in and shipped from countries listed in Section 94.1(a)(2) as free of rinderpest and foot-and-mouth disease but which have entered a port or otherwise transited any country designated in Section 94.1(a)(1) as a country infected with rinderpest or foot-and-mouth disease shall not be imported into the United States unless:

- (1) The product was transported under serially numbered official seals applied at the point of origin of the shipment by an authorized representative of the country of such origin.
- (2) The numbers of such seals are listed on, or are on a list attached to, the bill of lading or similar document accompanying the shipment.
- (3) Upon arrival of the carrier at the United States port, an inspector of the Animal and Plant Health Inspection Service determines that the seals are intact and that their numbers are in agreement with the numbers appearing on the accompanying document.
(21 U.S.C. 111; 37 FR 28464, 28477; 38 FR 19141.)

Effective date

The foregoing amendments shall become effective 25 September 1975, except with respect to shipments of milk and milk products consigned to the United States on or before that date. Such shipments so consigned and regulated under the amendments shall upon arrival in the United States be allowed entry only under such specific requirements or be disposed of in such manner as the Deputy Administrator, Veterinary Services, may determine in each specific case to be necessary and adequate to safeguard against the introduction or dissemination of livestock diseases into the United States.

The amendments impose restrictions on the importation of milk and milk products which are necessary in order to prevent the introduction and dissemination of rinderpest and foot-and-mouth disease and other livestock diseases from foreign countries into the United States. It does not appear that further public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further notice and other public procedure with respect to the amendments are impracticable and unnecessary, and good cause is found for making them effective as provided in this document less than 30 days after publication in the Federal Register.

Done at Washington, D.C., this 22nd day of September, 1975.

PIERRE A. CHALOUX,

Acting Deputy Administrator,
Veterinary Services Animal and
Plant Health Inspection Service.

(FR Doc. 75-25652 Filed 24 September 1975; 8.45 a.m.)

⁵Information as to the identity of approved establishments, warehouses or manner of processing may be obtained from, and request for approval of any such establishment, warehouse or manner of processing may be made to the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Hyattsville, Maryland 20782. Any establishment or warehouse will be approved for the purpose of this section only if the operator has provided the Deputy Administrator, Veterinary Services, with satisfactory evidence that the establishment or warehouse has the equipment, facilities, and capability to store, handle and process the imported dry milk or dry milk product subject to Section 94.16(b)(2) in a manner which will prevent the introduction or dissemination of livestock diseases into the United States. Similarly, processing methods will be approved only if the Deputy Administrator determines they are adequate to prevent the introduction or dissemination of such diseases into the United States. Approval of any establishment or warehouse or processing method may be refused or withdrawn by the Deputy Administrator only after the operator thereof has been given notice of the proposed action and has had an opportunity to present his views thereon, and upon a determination by the Deputy Administrator that the conditions for approval are not met. Approval of an establishment or warehouse may also be withdrawn after such notice and opportunity if the Deputy Administrator determines that such imported dry milk or milk products have been stored, handled, or processed by the operator thereof other than at an approved establishment or warehouse or other than in an approved manner.