

SUPPORTING STATEMENT
Certificate to Import Specialty Sugars under the Tariff-Rate Quota for Refined Sugar

15 CFR Part 2011

1. CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY
Explain the circumstances making the collection of information necessary. Identify any legal or administrative requirements that make the collection of information necessary. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The collection of information is necessary to fulfill the legal obligations of the Regulation at 15 CFR 2011 subpart B to issue specialty sugar certificates, letters to importers signed by the FAS Certifying Authority, and ensuring that U.S. importers comply with the program's requirements. The Regulation sets forth the terms and conditions under which the Certifying Authority in FAS issues certificates to importers allowing them to enter specialty sugars under the tariff-rate quota (TRQ) for refined sugar.

Subject to TRQ availability, an unlimited number of shipments may enter under a certificate, and a certificate may cover more than one type of specialty sugar. An importer must present a specialty sugar certificate to a U.S. Customs Service official at the date of entry. Entry is allowed only in conformity with the description of the sugars and other conditions stated on a certificate. Issuance of a certificate does not guarantee entry but permits entry until the TRQ quantity for specialty sugars is filled. Nothing in the Regulation affects the ability to enter specialty sugars at the over-TRQ tariff rates.

Legal Authority

Quota Background:

The United States imports about 15 percent of its sugar needs, making it one of the world's largest sugar importers. Simultaneously, U.S. policy has committed to maintaining the U.S. sugar industry, even when world prices are substantially below U.S. production costs. A quota on sugar imports has been a common feature of U.S. sugar policy since 1934. Quotas were first imposed under the Jones-Costigan Act of 1934 and were revised and continued under the Sugar Act of 1937 and the Sugar Act of 1948 -- which expired in 1973.

Sugar Head Note Authority:

In 1974, following the Kennedy Round GATT Agreement, authority to impose or modify sugar quotas through the head note to the "Tariff Schedules of the United States" (TSUS) was provided for in the Kennedy Round Protocol and implemented under Presidential Proclamation 4334 of November 16, 1974. In 1989, following U.S. conversion from the

TSUS to the Harmonized Tariff Schedule of the United States (HTS), the head note authority carried over to Additional U.S. Note 5 to chapter 17 the HTS.

Establishment of the Specialty Sugar

Country Quota Allocations:

Presidential Proclamation 4941 of May 5, 1982 replaced the global import quota with a quota system for individual countries. The U.S. Trade Representative was responsible for determining country quota allocations. Meanwhile, the Secretary of Agriculture was responsible for determining quota periods and quantities. Each official received authority to issue regulations modifying allocations, quota periods, and any such additional regulations deemed necessary to operate the quota system.

Specialty Sugar Allocation:

The quota allocations to countries derived from imports during a representative period (1975-81). Consequently, imports of specialty sugars virtually disappeared, because exporting countries shipped relatively small quantities for a niche market and had to compete for the small quota allocation (5.9 percent of the total) for "other countries." Specialty sugars were not sufficiently available from domestic producers.

To fulfill domestic demand for specialty sugars, the Secretary filed a *Federal Register* notice on June 23, 1983. This document announced that the sugar quota would increase by 2,000 short tons raw value, a quantity reserved for specialty sugars.

The U.S. Trade Representative published regulations governing the issuance of "certificates for the importation of specialty sugars" and delegated authority to operate and administer the certificate program to the Department of Agriculture. Under the original Regulation, there was no list of specialty sugar products. Specialty sugar was defined in terms of availability and usage.

Conversion of Sugar Quotas to Sugar TRQs

In 1990, Presidential Proclamation 6179 of September 13, 1990 replaced absolute quotas with TRQs, because TRQs were GATT consistent as the U.S. sugar tariff was not bound in the GATT.

This Proclamation also amended the definition of specialty sugars to identify specific products. Amended Definition:

Brown slab sugar, pearl sugar, vanilla sugar, rock candy, demerara sugar, dragées for cooking and baking, fondant, ti light sugar, caster sugar, golden syrup, and ferdiana granella grossa which are: (1) the product of a specialty source country; and (2) require no further refining, processing, or other preparation prior to consumption other than incorporation as an ingredient in human food.

Implementation of Uruguay Round Agreement Concessions:

Presidential Proclamation 6763 of December 23, 1994 amended the HTS to increase the sugar TRQs. The *Federal Register* notice of May 29, 1996 made the conforming modifications to the Regulation. In addition, it amended the definition of specialty sugars and revised the definition of specialty sugar source countries.

Specialty sugars are currently defined in §2011.202(i) of the Regulation as:

Brown slab sugar, pearl sugar, vanilla sugar, rock candy, demerara sugar, dragées for cooking and baking, fondant, ti light sugar, caster sugar, golden syrup, ferdiana granella grossa, golden granulated sugar, muscovado, molasses sugar, sugar decorations, sugar cubes, organic sugar (added by USTR in August 1996), and other sugars as determined by the U.S. Trade Representative that would be considered specialty sugar products in the normal commerce of the United States.

Specialty sugar source countries are currently defined in §20 II.202 (j) of the Regulation:

Any country or area to which the U.S. Trade Representative has allocated an amount of the quantity reserved for the importation of specialty sugars under Additional U.S. Note 5 to the HTS.

The Current System: Specialty Sugar and Sugar TRQs

The Secretary of Agriculture announces the quantity that will be subject to the TRQ, including specialty sugars for each fiscal year (October 1-September 30). This authority is provided under Additional U.S. Note 5 (a) (i) to chapter 17 which permits the Secretary:

- To establish the TRQ quantity for *raw sugar* of not less than 1,117,195 metric tons (raw value) to be entered under HTS 1701.11.10;
- To establish the TRQ quantity for *refined sugar* of not less than 22,000 metric tons (raw value) to be entered under HTS 1701.12.10, 1701.91.10, 1701.99.10, 1702.90.10, and/or 2106.90.44; and
- To reserve a quota quantity for imports of specialty sugars, entered under the refined sugar TRQ, as defined by the United States Trade Representative.

Refined sugar TRQ:

Specialty sugar imports receive an annual share of the refined sugar TRQ. There is also an allocation of 10,300 metric tons for Canada; 2,954 metric tons for Mexico, and a "global" allocation which is the residual quantity that remains after subtracting the Canadian, Mexican, and specialty sugar allocations from the refined sugar TRQ.

Specialty Sugar TRQ Imports:

The U.S. Customs Service fills the "global" allocation for refined sugar *before opening the allocation reserved for specialty sugars*. The specialty sugar allocation is filled on a first-come, first-served basis. Importers of specialty sugars must have a certificate issued by the FAS according to the Regulation (§ 2011.203) to enter under the specialty sugar TRQ.

Specialty Sugar Certificates

The FY 2008 press release announced that the FY 2008 program will be administered in five tranches.

Before implementing the multiple tranche approach, FAS issued on July 13, 2001 a *Federal Register* notice requesting public comments. This notice responded to industry concerns about reduced access to foreign supplies of organic sugar due to growing imports of caster sugar. Surging imports of refined caster sugar from Guatemala hampered the objective of providing suitable access for organic sugar.

The domestic industry and the FAS Certifying Authority viewed imports from Guatemala as *de facto* circumvention of the raw and refined TRQ, because caster sugar and refined sugar with similar end uses are fungible, differing basically in crystal size. Without providing greater access for ordinary refined sugar, the intent of the specialty sugar TRQ was to fill a separate niche market in the United States for unique sugars not produced domestically.

In response to the *Federal Register* notice, FAS received submissions from the American Sugar Alliance, the United States Cane Sugar Refiner's Association, Florida Crystals, the Embassy of Paraguay, Global Organics, Wholesome Sweeteners, Stonyfield Farm, and the Candy Institute. The industry overwhelmingly favored the proposal and widely supported a separate organic specialty sugar certificate for multiple tranches. The industry also advised FAS that domestically produced caster sugar is now commercially available in the United States.

The Five Tranches:

The tranches of the FY 2008 specialty sugar TRQ were announced as follows:

Tranche 1 – Opens 10/24/2007 – 1,656 metric tons

Tranche 2 – Opens 11/15/2007 – 22,544 metric tons

Tranche 3 – Opens 01/30/2008 – 13,653 metric tons

Tranche 4 – Opens 05/14/2008 – 13,653 metric tons

Tranche 5 – Opens 08/27/2008 – 13,653 metric tons

The second, third, fourth and fifth tranches will be reserved for organic sugar and other specialty sugars not currently produced commercially in the United States or reasonably available from domestic sources.

An importer issued a certificate in the first tranche need not reapply to participate in later tranches. Tranches limit entry to specialty sugars (primarily organic sugar) not currently commercially produced in the United States or reasonably available from domestic sources. This limitation conforms with:

§ 2011.203(b) of the Regulation which states;

A certificate may be issued to an importer who complies with the provisions of this part. The certificate may contain such conditions, limitations, or restrictions as the Certifying Authority, in its discretion, deems necessary.

2. PURPOSE AND ACTUAL USE OF INFORMATION COLLECTION

Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information collection is used principally to: (1) determine whether applicants for the program meet the Regulation's eligibility criteria; (2) ensure that sugar to be imported is specialty sugar fulfilling the requirements of the Regulation; (3) audit participants' compliance with the Regulation; and (4) prevent entry of world-priced program sugar into the higher-priced domestic commercial sugar market instead of the restricted specialty sugar market. The Certifying Authority needs the information to manage, plan, evaluate, and account for program activities.

Application:

Submission of information by a license applicant as required under § 92011.205 involves no application forms, but written applications must contain the following information: (1) name and address of applicant; (2) anticipated quantity of specialty sugar to be imported; (3) HTS number; (4) description of specialty sugar to be imported during the period of the certificate, including the manufacturer's or exporter's trade name or designation and use of such specialty sugar, and the importer's use of such sugar; (5) sufficient evidence to permit a reasonable determination that such sugars are specialty sugars as defined in the Regulation; (6) name of anticipated consumer of the specialty sugar, if known at the time of application, and (7) anticipated date of entry, if known at the time of application. The Certifying Authority may waive any provision of this section for good cause if it will not adversely affect implementation of this subpart.

Appeal by an importer concerning suspension or revocation of individual certificates under § 2011.206:

The Certifying Authority may suspend, revoke, modify, or add limitations to any certificate if such action is necessary for the effective operation of the quota for specialty sugars, or if an importer has not complied with the Regulation. The Certifying Authority may also reinstate or restore a license. An importer may appeal a determination of non-compliance within 30 days of suspension or revocation. The written request must specifically state the reasons to change such a determination.

Practical Utility of This Collection in Determining Compliance with the Program

As background, we review elements of U.S. sugar policy. The United States limits imports of raw and refined sugar through tariff-rate quotas (TRQs), while maintaining a loan rate more than double the world price of sugar. Consequently, U.S. sugar prices are typically 2 to 2.5 times higher than world sugar prices.

This information collection serves to verify that world-priced sugar is not diverted into the domestic market through importation of specialty sugars. Such an outcome would undermine the objectives of politically sensitive U.S. sugar policies. This collection enables USDA to regularly monitor the status of program participants in an effort to ensure that they remain within Program parameters. Without this collection, increased opportunity would exist to purposely divert non-specialty sugar into the domestic market. If participants were not required to have a certificate so that FAS could consistently document their activities, the likelihood would increase that lower-priced foreign sugar would be diverted into the domestic market.

Compliance involves asking six questions.

1. Does the sugar meet the Regulation's definition of specialty sugar with its polarity requirements listed on the certificate?
2. Is the sugar being imported under the relevant HTS numbers for specialty sugars?
3. Does the sugar meet the packaging or weight requirements listed on the certificate?
4. Is the sugar trying to enter from a country subject to a trade embargo?
5. Is the certificate in effect for the current tranche?
6. Do the necessary Customs forms accompany the shipment?

3. USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES

Describe whether, and to what extent, the collection of information involves the using automated, electronic, mechanical, or other technological collection techniques or other forms of technology, e.g., permitting electronic submission of responses, and the

basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

The Regulation requires submission of written applications. Aside from the relatively simple annual application, no other submissions are required to participate in the program.

4. EFFORTS TO IDENTIFY DUPLICATION

Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information collection does not duplicate information or data available elsewhere.

5. IMPACT ON SMALL BUSINESSES

If the collection of information affects small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize this burden.

The simple application procedure does not burden small businesses. Provided on a one-page document, the same information may be resubmitted each year.

6. CONSEQUENCES IF THE INFORMATION COLLECTION IS NOT CONDUCTED

Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing the burden.

The Regulation stipulates the frequency of data collection. Less frequent collection or no collection would impede administration of the specialty sugar certificate program and reduce or eliminate imports essential to U.S. organic food and beverage processors.

7. SPECIAL CIRCUMSTANCES

Special circumstances include requiring reporting more than quarterly; response to a collection in less than 30 days; providing more than an original and two copies of documents; keeping records for more than three years; additional statistical surveys and classifications; submitting proprietary/confidential information.

There are no special circumstances.

8. FEDERAL REGISTER NOTICE REQUIRED BY 5 CFR 1320.8(D) AND EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY REGARDING THE INFORMATION COLLECTION

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice. Summarize public comments received in

response to that notice and describe actions taken by the agency in response to these comments. Specifically address comment received on cost and hour burden.

The *Federal Register* notice was published on October 29, 2007 (72 FR 208). FAS received one comment not related to burden package.

9. PAYMENTS OR GIFTS TO RESPONDENTS

Respondents do not receive any payment or gifts to participate in the reporting program.

10. ASSURANCE OF CONFIDENTIALITY FOR RESPONDENTS

Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

Information collected is only used to administer the specialty sugar certificate program and not made publicly available. The Regulation has no specific provision dealing with confidentiality.

11. JUSTIFICATION FOR QUESTIONS OF A SENSITIVE NATURE

Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The information requested under the Regulation is not of a sensitive nature.

12. ESTIMATE OF THE HOUR BURDEN OF THE INFORMATION COLLECTION

Changes to the Current OMB Inventory	
Estimate of the burden - in hours	1.2
Number of responses per respondent	1
estimated number of respondents	25
Total Annual Burden Hours	30

13. ESTIMATE OF DOLLARS SPENT FOR CAPITAL START UP COSTS

There are no capital start up costs.

14. ESTIMATE OF DOLLAR COST TO THE FEDERAL GOVERNMENT

At a GS-13, step 5 wage of \$45.05 per hour based on an annual salary of \$94,025, the Government will incur an annual estimated cost of \$1,126 to review 25 applications and issue 25 certificates.

15. REASONS FOR PROGRAM CHANGES OR ADJUSTMENTS IN ITEM 13/14 OF OMB FORM 83-1

The annual average reporting burden in the current OMB inventory is estimated to rise from 24 hours to 30 hours -- based on the number of applicants increasing from 20 respondents to 25 respondents. This outcome results from importers of caster sugar filling the TRQ and displacing applicants who import other specialty sugars.

16. PLANS FOR TABULATION AND PUBLICATION OF THE INFORMATION COLLECTION

This collection of information will not be published.

17. REASONS FOR SEEKING NOT TO DISPLAY THE EXPIRATION DATE

If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

FAS is not seeking approval to not display the expiration date.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT IN ITEM 19 ON OMB FORM 83-1

There are no exceptions.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection of data employs no statistical methods.