

SUPPORTING STATEMENT

Sugar Imported for Export as Refined Sugar, as a Sugar-Containing Product, or Used in the Production of Certain Polyhydric Alcohols

7 CFR Part 1530

1. CIRCUMSTANCES MAKING COLLECTION OF INFORMATION NECESSARY

Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements necessitating the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Regulation at 7 CFR part 1530 (Attachment 1) authorizes the Foreign Agricultural Service to issue import licenses to enter raw cane sugar (exempt from the tariff-rate quota (TRQ) for the raw cane sugar imports and the related requirements on the condition that an equivalent quantity of refined sugar be: (1) exported as refined sugar; (2) exported as an ingredient in sugar containing products; or (3) used in production of certain polyhydric alcohols. The information requirements set forth in the Regulation are necessary to enable FAS to administer the licensing program in full compliance with the Regulation and to ensure that licensed imports do not enter the commercial sugar market in circumvention of the TRQ for raw cane sugar. This Regulation, which amended the previous Regulation, became effective February 12, 1999.

Legal Authority: *Presidential Proclamation 6763 (Attachment 2) amended the Harmonized Tariff Schedule of the United States (HTS) to add Additional U.S. Note 6 to chapter 17 which states:*

Raw cane sugar classifiable in subheading 1701.11.20 shall be entered only to be used for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols as a substitute for sugar in human food consumption, or to be refined and re-exported in refined form or in sugar-containing products, or to be substituted for domestically produced raw cane sugar that has been or will be exported. The Secretary of Agriculture may issue licenses for such entries and may promulgate such regulations (including any terms, conditions, certifications, bonds, civil penalties, or other limitations) as are appropriate to insure that sugar entered under subheading 1701.11.20 is used only for such purposes.

2. PURPOSE AND ACTUAL USE OF AN INFORMATION COLLECTION

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

The sugar import licensing program is intended to: (1) assist U.S. sugar manufacturers, refiners, and processors in making U.S. products price competitive on the world market and (2) facilitate the use of domestic refining capacity.

The *Sugar-Containing Products Re-Export Program* is designed to put U.S. manufacturers of sugar-containing products on a level playing field in the world market. U.S. participants in the sugar-containing products re-export program may buy world-priced sugar from any of the refiner participants or their agents for use in products to be exported into the world market.

The *Refined Sugar Re-Export Program* is designed to facilitate the use of domestic refining capacity to export refined sugar to the world market. The program establishes licenses for sugar refiners. Then, the refiners may use the license to export domestically produced refined sugar and later import world raw sugar. They may import world raw sugar for refining and distribution into the domestic market and later export refined sugar. Finally, they may import raw sugar, refine it, and export it to the world market. The program operates to mitigate the imposition of sugar import restrictions, which reduced the quantity of raw sugar allowed to enter the U.S. domestic market.

The *Sugar for the Production of Polyhydric Alcohol Program* functions to provide world- priced sugar to U.S. manufacturers of polyhydric alcohols. Participating U.S. manufacturers purchase world-priced sugar from licensed refiners or their agents for use in the production of polyhydric alcohols, except polyhydric alcohols substituting for sugar in human food consumption.

This information collection fulfills four functions to: (1) it allows FAS to determine whether applicants for the program meet the Regulation's eligibility criteria; (2) the information permits FAS to monitor sugar imports, transfers, exports, and use to confirm that transactions are conducted and completed within the requirements of the Regulation; (3) the information serves to audit participants' compliance with the Regulation; and (4) the information prevents world-priced program sugar from entering the higher-priced domestic commercial sugar market. In general, licensees are required to regularly report specific information on sugar entries, transfers, transactions, sales, use, and license balances within specific time limits. The information collection is needed by the Licensing Authority to manage, plan, evaluate, and account for program activities.

Application: License applicants submit information required under §1530.104 and § 1530.110. There are no mandatory application forms. Applications on company letterhead must contain the following information:

(1) Date of letter; (2) address of manufacturing facility; (3) name and address of parent company and subsidiaries (if any); (4) description and sugar percentage of products to be exported; (5) kind and polarity of sugar to be used in the manufacturing process; (6) description of the manufacturing process in which the re-exported sugar will be used; (7) identity of companies that co-pack products or companies for whom an applicant is a co-packer of products; (8) identity of agent (if any) who will purchase sugar or export products for an applicant; (9) identity of the company that will prepare the paper work required for the program; (10) identity of a bonding agency or bank (if applicable) that will provide a bond or letter or credit in favor of the U.S. Government; (11) list of intended export destinations; (12) certification that the company will export an amount of sugar equal to that transfer from the refiner within the prescribed time limits; and (13) certification that the company will not request drawback from Customs for products exported under the program.

Terms and conditions for obtaining a license:

- (1) Ownership and/or operation of a facility in the U.S., as required under § 1530.103.
- (2) Filing an application for a license, including a proposal for a documentation agreement, as required under §1530.104 and §1530.110. The Licensing Authority evaluates the proposal and once agreement is reached with the applicant, the applicant submits a notarized documentation agreement identifying documents to be maintained by a licensee to substantiate program activity, and submits a certification that charges and credits made pursuant to §1530.106 will be kept on file.
- (3) Bonds posted under the previous Regulation must be updated, as required under §1530.107. Letters of credit are an acceptable alternative.
- (4) No person may hold more than one license.

Licenses are issued to: (1) refiners to import raw sugar and transfer or export refined sugar; and (2) manufacturers and producers to receive transfers from refiners and export sugar-containing products or produce polyhydric alcohols. All program participants must submit information required by the Regulation. The licensee shall maintain the documentation established in the documentation agreement for 5 years from the date of such program transaction.

Submission of regular reports regarding licensing activity as required under §1530.109:

Reports are submitted on exports, imports, transfers, or license use (charges and credits against license balances). A licensee may submit reports as often as monthly for charges and credit against a license balance. At minimum, a licensee must submit at least a quarterly report not later than 90 days after the earliest transaction (unless there have been no transactions). Licensees are to update data as necessary to maintain accurate information in previously submitted reports.

Each report must include the following for all program transactions:

- (1) A unique number, assigned by FAS, for the transaction;
- (2) date of the entry, transfer (only a refiner reports transfers to the Licensing Authority), export, or use;
- (3) quantity of program sugar entered, transferred, exported as refined sugar, or used in the production of certain polyhydric alcohols;
- (4) the licensee's number or if a transfer is being reported, the licensee's number as well as the transfer recipient's license number;
- (5) country of origin (entry of raw sugar) or final destination (refined exports), using the country code designated in the HTS; and
- (6) initial and final polarization and final weight (when available) for entries of raw sugar.

Submission of information pertaining to bonds and/or letters of credit as required under § 1530.107:

The licensee may charge program sugar in anticipation of transfer, export, or production, if the licensee established a performance bond or a letter of credit (L/C) with USDA which meets the following criteria: (1) A bond or L/C may cover entries made during the time period stated in a bond or for a specified entry (single entry bond). (2) The obligation under bond or L/C shall be effective no later than the date of entry or date of transfer. (3) The amount of bond or L/C shall be equal to 20 cents/pound of sugar to be entered. (4) If the licensee fails to credit a license within the given time period, a specified payment shall be made to the U.S. Treasury.

Practical Utility of this Collection in Determining Compliance with the Program

To set the stage for this discussion, it may be instructive to review elements of U.S. sugar policy. The United States limits imports of raw and refined sugar through tariff-rate quotas. Additionally, the U.S. sugar program maintains a loan rate that is more than double the world price of sugar. As a result of these two policies, U.S. sugar prices are typically 2 to 2.5 times higher than the world price of sugar. This situation poses a problem to U.S. exporters of sugar and sugar containing products that must compete with foreign products produced with much cheaper sugar. To address this problem, the program was developed to provide U.S. exporters with access to world-priced sugar, thereby making them more competitive in international markets.

The purpose of the information collection is to verify that the world-priced sugar is actually exported and not diverted onto the domestic market, thereby undermining 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, there would be increased opportunity to purposely divert sugar onto the domestic market. Additionally, with approximately 230-250 program participants, there is a strong likelihood that some participants would inadvertently divert sugar to the domestic market. A checking account is a good analogy. If banks did not reconcile checking accounts on a monthly basis, the possibility that people would overdraw their accounts would increase dramatically. Similarly, if participants were not required to report and document their activities on a regular basis, the likelihood that cheap foreign sugar would be diverted onto the domestic market would increase.

Without this collection, there would be increased opportunity to purposely divert sugar onto the domestic market. As of December 2007, a total of 234 companies (5 refiners, 16 polyhydric manufacturers, and 234 makers of sugar containing products) participate in the Program. Hence, inevitably, some participants would inadvertently direct sugar to the domestic market.

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

Describe whether, and to what extent, the collection of information involves the use of 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.

Integrated Data Base: Beginning in 2005, a web-based software system called SUGARS (<http://www.fas.usda.gov/sugars/fassugarshome.aspx>) was adopted to allow participants to submit reports through the Internet and to better manage license balances internally. If licensees do not have this capability, they may continue to submit reports via fax or mail. However, during the past year, all reports were submitted through SUGARS.

Objectives of the Electronic Program:

1. The system provides more efficient reporting options for Program participants by allowing participants to enter their program transaction data online or upload data in an ASCII format from their own database. Faxing, mailing, and submitting via e-mail remain submission options. There will be no change in the amount or type of information currently required.
2. SUGARS links data for manufacturers of sugar containing products, companies making polyhydric alcohol, and sugar refiners. The on-line system offers immediate interim feedback to participants about their program balances following a submission. While FAS continues to verify each submission, the ability to receive immediate feedback enables companies to know their program status and make more informed and timely decisions about their purchases of world price sugar.
3. This system eliminates most manual verification of certain program compliance measures. FAS believes that this change annually saves 15 percent of a GS-13/14 slots time and 20 percent of a GS- 8/12 slots hours while improving the accuracy of the review process.

The database notifies FAS staff when a participant has exceeded their bonded or license limit. Here again, the element of human error is reduced.

The system prevents participants from entering export data for destinations for which they have not been approved in their documentation agreements. This measure will prevent companies from developing additional export destinations without first modifying their documentation agreements, thereby reducing or eliminating the likelihood of credits being rescinded during subsequent program audits.

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 impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.

About 100 companies of the entire 200 respondents or 50 percent of the total are small businesses. We are currently looking into ways to minimize burden to small businesses.

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 burden.

The Regulation stipulates the frequency of data collection and reporting. Less frequent reporting or no reporting would impede administration of the sugar licensing program to assure that the U.S. raw sugar import TRQ is not being circumvented.

7. SPECIAL CIRCUMSTANCES

Requiring - reporting more than quarterly; response to a collection in less than 30 days; submission of more than an original and two copies of documents; record keeping for more than three years, additional statistical surveys and classifications; submission of proprietary/confidential information.

Under Section 1530.105: (1) Refiners have 90 days to export or transfer an equivalent amount of sugar if entry results in a positive license balance, and manufacturers and producers have 18 months to export or use an equivalent amount of sugar charged against a license.

(2) Licensees have 90 days to report transactions. The 90-day reporting requirement is necessary to maintain timely information on license balances.

Under section 1530.110(c): Licensees are to maintain the documentation established in the documentation agreement for 5 years from the date of such program transaction. It has been determined, based on past investigations regarding the sugar licensing program, that 5 years of data are needed by the Office of the Inspector General to substantiate compliance or non-compliance with the program by program participants.

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 (Vol. 72, No. 208). No comments were received regarding the Program.

9. PAYMENTS OR GIFTS TO RESPONDENTS

Respondents do not receive any payment or gifts for participation 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 sugar import licensing program. Data for individual participants are not made publicly available. Nevertheless, FAS may periodically publish aggregate data. 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 that are 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

| Details for Estimates of Annual Reporting and Recordkeeping Burden Hours | | | | | | | |
|--|------------|----------|------------------------------|-----------------------------------|--------------------|--|------------------------------------|
| | A | B | C | D | E | F | G |
| Activity | Respondent | Response | Total Annual Responses (A*B) | Average Hours Needed for Activity | Total Burden Hours | Avrg. Hrs. for Record Keeping per Response | Total Annual Burden for Recordkpg. |
| Application | 10 | 1 | 10 | 20.00 | 200 | | |
| Reporting | 200 | 15 | 3,000 | 0.12 | 360 | | |
| Recordkpg | 200 | N.A. | 200 | N.A. | N.A. | .20 | 72 |
| Bond | 25 | 1 | 25 | 1.00 | 25 | | |
| Waiver | 15 | 1 | 15 | 2.00 | 30 | | |
| Appeal | 1 | 1 | 1 | 30.00 | 30 | | |
| TOTAL | 200 | | 3,251 | | 645 | | 72 |
| N.A. = Not Applicable. | | | | | | | |
| Total Annual Manhours (incl. recordkeeping): 645 + 72 = 717 | | | | | | | |

The method used to derive “total responses” in the current estimate is different from the method used for the OMB current inventory, and thus, the results are not comparable.

13. ESTIMATE OF DOLLARS SPENT FOR CAPITAL STARTUP COSTS

No capital startup costs are necessary.

14. ESTIMATE OF DOLLAR COST TO THE FEDERAL GOVERNMENT

Government officials are responsible for administering the Regulation. Their annual salary (based on step 5 of their grade level) and estimated percentage of work hours devoted to the program result in an estimated 2008 annual dollar cost of \$160,446. (See table.)

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

The reduction in total burden from 2,115 to 717 is due primarily to two factors. First, as companies gained more experience with the electronic system, they could report less frequently, because fewer of their submissions contained errors leading to rejection. Second, since mid-2005, the software of SUGARS, which is linked to the computers of Customs and Border Protection, automatically records imports by refiners. Thus, refiners and other companies no longer send and maintain paper reports. This improvement has dramatically reduced the reporting burden on refiners.

16. PLANS FOR TABULATION AND PUBLICATION OF THE INFORMATION COLLECTION

This collection of information will not be published.

17. REASONS FOR SEEKING APPROVAL 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.

This question does not apply to the program. There are no forms.

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 does not employ statistical methods.

**ESTIMATE OF COST
TO THE FEDERAL GOVERNMENT**

| Position | Salary (GS Scale) | 2008 Salary | Percent of Time Allocated to the Program | Total Cost |
|-----------------|------------------------------|------------------------|---|-------------------|
| Program | | | | |
| Assistant | 8 | \$49,364 | 10.0% | \$4,936 |
| Import Control | | | | |
| Specialist | 12 | \$79,068 | 100.0% | \$79,068 |
| International | | | | |
| Economist | 13 | \$94,025 | 25.0% | \$23,506 |
| Branch Chief | 14 | \$111,104 | 30.0% | \$33,331 |
| Division | | | | |
| Director | 15 | \$130,694 | 10.0% | \$13,069 |
| Senior Counsel | 15 | \$130,694 | 5.0% | \$6,535 |
| TOTAL | N.A. | N.A. | N.A. | \$160,446 |