

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

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 and Border Protection 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: From Fiscal Year (FY) 2000 through FY 2010, the ratio of imports to total U.S. supply of sugar has risen from 13 percent to 27 percent. Hence, the United States has become the world's fourth largest sugar importer. Simultaneously, U.S. policy has committed to maintaining the U.S. sugar industry, even when world prices are 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 Quota

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 §2011.202 (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: U.S. Customs and Border Protection permits the "global" allocation for refined sugar to fill *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 FAS according to §2011.203 to enter goods under the specialty sugar TRQ.

SPECIALTY SUGAR CERTIFICATES

The FY 2012 press release announced that the FY 2012 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 Refiners 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 2012 specialty sugar TRQ were announced as follows:

Tranche 1 – Opens 10/12/2011 – 1,656 metric tons

Tranche 2 – Opens 10/26/2011 – 33,365 metric tons

Tranche 3 – Opens 01/11/2012 – 19,051 metric tons

Tranche 4 – Opens 04/11/2012 – 19,051 metric tons

Tranche 5 – Opens 07/11/2012 – 19,051 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 to §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

Purpose: 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). U.S. raw sugar prices currently exceed world sugar prices by 36 percent, based on prices published by USDA's Economic Research Service. The FY 2011 U.S. wholesale refined sugar price reached 56 cents per pound, while the world wholesale refined sugar price was 33 cents per pound for the same period. 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 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 divert non-specialty sugar into the domestic U.S. 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 enter the domestic U.S. 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

The regulation requires submission of written applications, 90 percent of which arrive via e-mail. Aside from the relatively simple annual application, no other submissions are required to participate in the program.

4. EFFORTS TO IDENTIFY DUPLICATION

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

5. IMPACT ON SMALL BUSINESSES

Twenty-two companies of all 41 FY 2011 recipients of specialty sugar certificates, or 54 percent of the total, qualify as small businesses.

6. CONSEQUENCES IF THE INFORMATION COLLECTION IS NOT CONDUCTED

The regulation stipulates the frequency of data collection as every fiscal year. 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

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

The *Federal Register* notice was published on July 14, 2011 (76 FR 41451). No comments were received regarding the program

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

No additional assurance of confidentiality is provided with this information collection. Any and all information obtained in this collection shall not be disclosed except in accordance with 5 U.S.C.552a.

11. JUSTIFICATION FOR QUESTIONS OF A SENSITIVE NATURE

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

12. ESTIMATE OF THE HOUR BURDEN OF THE INFORMATION COLLECTION

| Estimate of Annual Reporting Burden Hours | | | | | |
|--|--------------------|------------------|-------------------------------------|--|----------------------------------|
| | A | B | C | D | E |
| Activity | Respondents | Responses | Total Annual Responses (A*B) | Average Hours Needed for Activity | Total Annual Burden Hours |
| Application | 41 | 1 | 41 | 1.10 | 45.10 |

Based on data from the Bureau of Labor Statistics, a reasonable estimate of \$32.60 per hour has been used as the average cost for respondents' program participation. The total FY 2011 annual burden in dollars is \$1,470.26 (41 respondents x 1.1 hours=45.1 total hours times \$32.60 per hour = \$1,470.26).

13. ESTIMATE OF DOLLARS SPENT FOR CAPITAL START UP COSTS

The program involves no capital start up costs.

14. ESTIMATE OF DOLLAR COST TO THE FEDERAL GOVERNMENT

Based on a 3-year period, a GS-13/step 5 wage International Economist and a Branch Chief at GS-14/step 5 reviewed 41 applications and issued 41 certificates. Their wages totaled \$31,356. (see attached cost table)

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

There is an adjusted increase of respondents from 25 to 41, a plus of 16, the responses increased from 25 to 61, a plus of 36 and the burden hours increased from 30 to 45.1, a plus of 15.1. The reason for the change is due to more importers requesting letters to permit entry of organic specialty sugars charged against the TRQ for specialty sugars.

16. PLANS FOR TABULATION AND PUBLICATION OF THE INFORMATION COLLECTION

Information is published in only aggregate form without revealing business proprietary material.

17. REASONS FOR SEEKING NOT TO DISPLAY THE EXPIRATION DATE

The step does not apply to this data collection.

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.