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

The regulation at 7 CFR part 1530 authorizes the Foreign Agricultural Service (FAS) to issue import licenses to enter raw cane sugar exempt from the tariff-rate quota (TRQ) for raw cane sugar imports and 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.

<u>Legal Authority:</u> *Presidential Proclamation 6763 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 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

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 use of domestic refining capacity to export refined sugar to the world market. The Program establishes licenses for sugar refiners, which 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 reduce the quantity of raw sugar allowed to enter the U.S. domestic market.

The *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 as a means to audit participants' compliance with the regulation; and (4) the information prevents world-priced sugar from entering the higher-priced domestic commercial sugar market. In general, licensees are regularly required to report specific information on sugar entries, transfers, transactions, sales, and use within specific time limits. The Licensing Authority needs the information collected to manage, plan, evaluate, and account for program activities.

<u>Application</u>: *License applicants must 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(ies); (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 U.S. Customs and Border Protection for products exported under the program.

<u>*Terms and conditions for obtaining a license:*</u> (1) ownership and/or operation of a facility(ies) in the United States, 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 the licensee to substantiate program activity, and certifies 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 five 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 the licensee, for the transaction; (2) date of the entry, transfer (only a refiner reports transfers to the Licensing Authority), export, or use; (3) quantity of 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 United States maintains a loan rate that is more than double the world price of sugar. As a result of these two policies, U.S. raw sugar prices during FY 2010 exceeded world sugar prices by 63 percent, based on prices published by USDA’s Economic Research Service.

This situation poses a challenge to U.S. exporters of sugar and sugar-containing products, which must compete with less expensive foreign products. To address this price discrepancy, the program was developed to provide U.S. exporters with access to world-priced sugar, thereby making them more competitive in international markets.

The information collection serves to verify that imported 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 monitor participants in an effort to ensure compliance with program parameters. Without this collection, there would be increased opportunity to divert sugar onto the domestic market by the 202 active program participants, defined as having made at least one submission since October 1, 2009.

A checking account is a good analogy. If banks did not reconcile checking accounts each month, 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 divert sugar onto the domestic market. As of October 2010, a total of 202 active companies (6 refiners, 15 polyhydric manufacturers, and 181 makers of sugar containing products) participate in the program.

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

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 manage more accurately license balances.

Objectives of the Electronic Program:

1. The system provides more efficient reporting options for program participants by allowing participants to upload data in an ASCII format. There will be no change in the amount or type of information currently required.

2. The SUGARS software links data for manufacturers of sugar-containing products, companies making inedible polyhydric alcohol, and sugar refiners. The semi-automatic on-line system offers interim feedback to participants about their program balances following a submission. While FAS continues to verify each submission, the ability to receive rapid feedback enables companies to know their program status and make more informed and timely decisions about their purchases of program sugar from licensed refiners.

3. This system eliminates most manual verification of program compliance measures. FAS believes that this change annually saves 20 percent of a GS-13/14 slot’s time and 25 percent of a GS- 8/12 slot’s hours while improving the accuracy of the review process. By reducing human error, the database notifies FAS staff when a participant has exceeded their bonded or license limit.

4. The system prevents participants from entering export data for destinations for which they have not been approved in their documentation agreements. This measure requires companies to first modify their documentation agreements to secure additional export destinations, thereby minimizing the likelihood of credits being rescinded during subsequent program audits.

4. EFFORTS TO IDENTIFY DUPLICATION

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

5. IMPACT ON SMALL BUSINESSES

About 100 companies of the entire 202 respondents, or 50 percent of the total, are small businesses. The SUGARS software reduces the administrative burden on small businesses.

6. CONSEQUENCES IF THE INFORMATION COLLECTION IS NOT CONDUCTED

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 tariff rate quota is not being circumvented.

7. SPECIAL CIRCUMSTANCES

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 five years from the date of such program transaction. Past investigations regarding the sugar licensing program have revealed that the Office of the Inspector General needs 5 years of data to substantiate compliance or non-compliance with the program.

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 41450-41451). 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 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 OUESTIONS 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

Details for Estimates of Annual Reporting and Recordkeeping Burden Hours

	A	B	C	D	E	F	G
Activity	**Respondents**	**Responses**	**Total Annual Responses (A*B)**	**Average Hours Needed for Activity**	**Total Annual Burden Hours**	**Avg. Hrs. for Rcrdkpg per Response**	**Total Annual Burden for Rcrdkpg**
Applications	7	1	7	20.00	140		
Reporting	202	7	1,414	0.12	170		
Recordkpg	202	1	202	-	-	.20	40
Bonds	28	1	28	1.00	28		
Waiver	1	1	1	2.00	2		
Appeal	1	1	1	30.00	30		
TOTAL	202		1,653	N.A.	370		40
N.A. = Not Applicable.							
Total Annual Responses = 1,653; Annual Burden Hours 410 = 370 + 40 **(both include Recordkeeping)*							

Table 3: Estimated Average Annual Reporting and Recordkeeping Burden *

Reporting Requirement	**Current OMB Inventory Average Annual Burden**	**Revised Annual Burden (avg. of years 1-3)**	**Estimated Burden, Year 1**	**Estimated Burden, Year 2**	**Estimated Burden, Year 3**
Total responses	3,051	1,653	1,653	1,653	1,653
Total burden in hours	717	410	410	410	410
Wage per hour ($)	$30	$32	$32	$32	$32
Burden cost ($)	$21,510	$13,120	$13,120	$13,120	$13,120
Difference in burden hours					
Difference in burden costs		-$8,390			
* Source for wage increase, Bureau of Labor Statistics, *Employment Cost Index*, Management Professional and Related Occupations, June, 2011.					

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 GS-13/step 5) and estimated percentage of work hours devoted to the program result in an estimated FY 2010 dollar cost of $104,184.

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

There is an adjusted decrease in the number of responses from 3,051 to 1,653 a minus of 1,398 and the burden hours from 717 to 410, a minus of 307. The number of respondents did not change. The reason for the decreases is that companies continue to master the electronic system and eliminated paper reporting more rapidly than expected in previous years by consolidating data for shipments of sugar, exports of refined sugar, exports of sugar-containing products, and use of sugar by makers of polyhydric alcohol. These companies have also increased their exporting through the option of third-party exporters to sell their products overseas. Use of this business strategy, included in the regulation, has contributed to generating fewer responses than anticipated in previous years.

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

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.