2018 SUPPORTING STATEMENT

Specialty Sugar Certificate Application

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. 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 (Attachment 1) 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 compete 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. An importer must present a specialty sugar certificate to a U.S. Customs and Border Protection official on 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:* 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 (Attachment 2). 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 in chapter 17 of 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 (Attachment 3). The U.S. Trade Representative with rank of Ambassador 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) with "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 (Attachment 4). 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 (Attachment 5) replaced absolute quotas with tariff-rate quotas (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 (Attachment 6). The *Federal Register* notice of May 29, 1996 (Attachment 7) 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 as shown in Attachment 8), 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 1701.13.10 and 1701.14.10;

- 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, 1701.99.15, 1701.99.17, 1702.90.10, and/or 2106.90.44; (Most TRQ imports enter under HTS 1701.99.15 and 1701.99.17.) as well as

- 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 compete to enter goods under the specialty sugar TRQ.

SPECIALTY SUGAR CERTIFICATES

The FY 2018 press release (Attachment 9) announced that the FY 2018 program will be administered in five tranches.

Before implementing the multiple-tranche approach, FAS issued on July 13, 2001 a *Federal Register* notice (Attachment 10), 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 sugar TRQs, 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 2018 specialty sugar TRQ were announced as follows:

- Tranche 1 – Opened 10/02/2017 – 1,656 metric tons
- Tranche 2 – Opened 10/18/2017 – 48,000 metric tons
- Tranche 3 – Opened 01/23/2018 – 48,000 metric tons
- Tranche 4 – Opened 04/17/2018 – 32,000 metric tons
- Tranche 5 – Opens 07/17/2018 – 32,000 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. (Attachment 11)

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. 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 had made of the information received from the current 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 §2011.205 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 or reinforce 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, including with a request for audit documents. 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). This information collection serves to verify that world-priced sugar is not diverted into the domestic market through importation of non-specialty sugars. Such an outcome would undermine the objectives of 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 certificate in effect for the current tranche?

5. Do the necessary Customs forms accompany the shipment?

6. Is the sugar trying to enter from a country subject to a trade embargo?

3. 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 information 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, all of which arrive via e-mail. Aside from the relatively simple annual application, no other submissions are required to participate in the program.

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

The method used to obtain information has been minimized to ensure all respondents, including small businesses, will not be burdened. Of the 60 respondents, the agency estimates 40 percent are small businesses.

6. 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 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. Explain any special circumstance that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical or government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a survey that is not designed to produce valid and reliable results that can be generalized to the universe of the study;**

- **requiring the use of statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statue or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances. This information collection is conducted in a manner consistent with the guidelines established in 5 CFR 1320.5.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The *Federal Register* notice was published on February 6, 2018 (83 FR 5239). (Attachment 12) No comments were received regarding the program.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

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

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

Any and all information obtained in this collection shall not be disclosed except in accordance with 5 U.S.C.552a.

11. 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. . Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**

- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83–1.**

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contraction out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

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	60	1	60	1.1	66

Based on data from the Bureau of Labor Statistics for a compliance specialist, a reasonable estimate of $36.23 per hour has been used as the average cost for respondents' program participation. The total FY 2017 annual estimated burden in dollars is $2,391.18 (60 respondents x 1.1 hours=66 total hours times $36.23 per hour = $2,391.18).

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a capital and start–up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of the methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start–up costs include among other items, preparations for collection information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60–day pre–OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

The program involves no capital start up costs.

14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

Based on a 3-year period, a GS-13/step 5 wage International Economist and a Branch Chief at GS-14/step 5 managed the specialty sugar program. In FY 2017, they reviewed 64 applications and issued 60 certificates. Their FY 2017 wages totaled $34,476. (Attachment 13)

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83–I.

There is an adjusted increase of respondents from 53 to 60, a plus of 7, and the burden hours went from 58 to 66 hours, a plus of 8 hours. More importers requesting letters to permit entry of specialty sugars charged against the TRQ for specialty sugars.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Information is published in only aggregate form without revealing business proprietary material. (Attachment 14)

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

There are no forms in this collection.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions" of OMB Form 83–1.

There are no exceptions.

B. COLLECTION OF INFORMATION EMPLOVING STATISTICAL METHODS

The collection of data employs no statistical methods.