

Commodity Credit Corporation, USDA

§ 1499.20

(B) Displaced or interfered with commercial sales of the United States;

(C) Disrupted world commodity prices or normal patterns of trade with friendly countries;

(D) Discouraged local production and marketing of commodities in the recipient country;

(E) Achieved the objectives of the Program Agreement; and

(F) Could be improved in future agreements.

(3) The Cooperating Sponsor shall furnish the Government of the Exporting Country such additional information and reports relating to the agreement as the Government of the Exporting Country may reasonably request.

[61 FR 60515, Nov. 29, 1996, as amended at 63 FR 59878, Nov. 6, 1998]

§ 1499.17 Audits.

Nongovernmental Cooperating Sponsors shall assure that audits are performed to assure compliance with Program Agreements and the provisions of this part. An audit undertaken in accordance with OMB Circular A-133, shall fulfill the audit requirements of this section. Audits shall be performed at least annually until all commodities have been distributed and sale proceeds expended. Both the auditor and the auditing standards to be used by the Cooperating Sponsor must be acceptable to CCC. The Cooperating Sponsor is also responsible for auditing the activities of recipient agencies that receive more than \$25,000 of provided commodities or sale proceeds. This responsibility may be satisfied by relying upon independent audits of the recipient

agency or upon a review conducted by the Cooperating Sponsor.

§ 1499.18 Suspension of the program.

All or any part of the assistance provided under a Program Agreement, including commodities in transit, may be suspended by CCC if:

(a) The Cooperating Sponsor fails to comply with the provisions of the Program Agreement or this part;

(b) CCC determines that the continuation of such assistance is no longer necessary or desirable; or

(c) CCC determines that storage facilities are inadequate to prevent spoilage or waste, or that distribution of commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the recipient country.

§ 1499.19 Sample documents and guidelines for developing proposals and reports.

CCC has developed guidelines to assist the Cooperating Sponsors in developing proposals and reporting on program logistics and commodity sales. Cooperating Sponsors may obtain these guidelines from the Director, PDD.

§ 1499.20 Paperwork reduction requirement.

The paperwork and record keeping requirements imposed by this part have been previously submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995. OMB has assigned control number 0551-0035 for this information collection.

CHAPTER XV—FOREIGN AGRICULTURAL SERVICE, DEPARTMENT OF AGRICULTURE

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PART 1520—AVAILABILITY OF INFORMATION TO THE PUBLIC

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AUTHORITY: 5 U.S.C. 552

SOURCE: 67 FR 45895, July 11, 2002, unless otherwise noted.

§ 1520.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture 7 CFR, part 1—Administrative Regulations, Subpart A—Official Records, §1.3, Agency Implementing Regulations, for the Freedom of Information Act (5 U.S.C. 552). The Secretary's Regulations, as implemented by the regulations in this part govern the availability of records of the Foreign Agricultural Service (FAS) to the public.

§ 1520.2 Location and hours.

Members of the public should contact the FAS FOIA Officer to arrange a place and time to review documents. Contact the U.S. Department of Agriculture, Foreign Agriculture Service, Public Affairs Division, 1400 Independence Avenue SW., Washington, DC 20250-1004. The office will be open from 8:30 a.m. to 5 p.m. Monday through Friday, except national holidays, Tel.: 202-720-3448, Fax: 202-720-1727.

§ 1520.3 Indexes/Record systems.

5 U.S.C. 552(a)(2) required that each agency publish or otherwise make available a current index of all materials for public inspection and copying. The Foreign Agricultural Service maintains the following record systems. FAS regulations, manuals, and notices; attache reports; general publications; and statements of policy and procedures for various FAS programs. Copies of the FAS index may be obtained free of charge by contacting the office specified in §1520.2.

§ 1520.4 Agency FOIA Officer.

Requests for records shall be made to the Freedom of Information Officer,

Public Affairs Division, Foreign Agricultural Service, Ag Box 1004, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-1004. Tel.: 202-720-3448, Fax: 202-720-1727.

§ 1520.5 Agency Appeal Official.

Any person whose request under §1520.4 is denied shall have the right to appeal such a denial. For appeals, write to the following official and mark your letters "FOIA Appeal": Administrator, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250-1004, Attn: FOIA Appeal.

§ 1520.6 Other information.

Many documents are available to the public without having to file an FOIA request. These include press releases, speeches, congressional testimony, program regulations, and some letters and memoranda. Some of this information can be found on the FAS web site, www.fas.usda.gov. Also, the FAS annual FOIA report is available on the agency's web site at www.fas.usda.gov. Click on FOIA at the bottom of the page. To request a paper copy of the FAS FOAI annual report, write to: Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Ag Box 1004, Washington, DC 20250-1004, Attn: Freedom of Information Officer.

PART 1530—THE REFINED SUGAR RE-EXPORT PROGRAM, THE SUGAR CONTAINING PRODUCTS RE-EXPORT PROGRAM, AND THE POLYHYDRIC ALCOHOL PROGRAM

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AUTHORITY: Additional U.S. note 6 to chapter 17 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202); 19 U.S.C. 3314; Proc. 6641, 58 FR 66867, 3 CFR, 1994 Comp., p. 172; Proc. 6763, 60 FR 1007, 3 CFR, 1995 Comp., p. 146.

SOURCE: 64 FR 7062, Feb. 12, 1999, unless otherwise noted.

§ 1530.100 General statement.

This part provides regulations for the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, and the Polyhydric Alcohol Program. Under these provisions, refiners may enter raw sugar unrestricted by the quantitative limit established for the raw sugar tariff-rate quota or the requirements of certificates of quota eligibility provided for in 15 CFR part 2011, as long as licensees under the programs export an equivalent quantity of refined sugar, either as refined sugar or as an ingredient in sugar containing products, or use the refined sugar in the production of certain polyhydric alcohols.

§ 1530.101 Definitions.

Affiliated persons means two or more persons where one or more of said persons directly or indirectly controls or has the power to control the other(s), or, a third person controls or has the power to control the others. Indications of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.

Agent means a person who represents the licensee in any program transaction. An agent shall not, at any time, own any of the product produced by the program licensee. Agents may include brokers, shippers, freight forwarders, expeditors, and co-packers.

Bond or letter of credit means an insurance agreement pledging surety for the entry of foreign sugar without the required re-export within the program guidelines.

Certain polyhydric alcohols means any polyhydric alcohol, except polyhydric

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alcohol produced by distillation or polyhydric alcohol used as a substitute for sugar as a sweetener in human food.

Co-packer means a person who adds value to a licensed manufacturer's product, or produces a product for export by a licensed manufacturer.

Date of entry means the date raw sugar enters the U.S. Customs Territory.

Date of export means the date refined sugar or sugar containing products are exported from the U.S. Customs Territory, or, if exported to a restricted foreign trade zone, the date shown on the U.S. Customs Service form designating the product as restricted for export.

Date of transfer means the date that ownership of program sugar is conveyed from a refiner to a manufacturer or producer licensee.

Day means calendar day. When the day for complying with an obligation under this part falls on a weekend or Federal holiday, the obligation may be completed on the next business day.

Documentation agreement means a signed and notarized letter from a licensee specifying certain documentation that the licensee shall obtain and maintain on file before said licensee requests from USDA updating of a license balance.

Enter or entry means importation into the U.S. Customs Territory, or withdrawal from warehouse for consumption, as those terms are used by the U.S. Customs Service.

Export means the conveyance (shipment) of sugar or a sugar containing product from a licensee under this part to a country outside the U.S. Customs Territory, or to a restricted foreign trade zone.

Licensing Authority means a person designated by the Director, Import Policies and Programs Division, Foreign Agricultural Service, USDA.

Manufacturer means a person who produces or causes to be produced on their behalf a sugar containing product for export under the provisions of this part.

Person means any individual, partnership, corporation, association, estate, trust, or any other business enterprise or legal entity.

Program sugar means sugar that has been charged or credited to the license

of a licensee in conformity with the provisions of this part.

Program transaction means an appropriate entry, transfer, use, or export of program sugar.

Refined sugar means any product that is produced by a refiner by refining raw cane sugar and that can be marketed as commercial, industrial or retail sugar.

Refiner means any person in the U.S. Customs Territory that refines raw cane sugar through affination or defecation, clarification, and further purification by absorption or crystallization.

Sugar containing product means any product, other than those products normally marketed by cane sugar refiners, that is produced from refined sugar or to which refined sugar has been added as an ingredient.

Transfer means the transfer of legal title of program sugar from a licensed refiner to a licensed manufacturer of a sugar containing product or a licensed producer of certain polyhydric alcohols for the production of sugar containing products or the production of certain polyhydric alcohols.

Unique number means a tracking number established by a licensee for a transaction (entry, transfer, export, or use). A unique number is established for a transaction to or from a specific country or licensee. The unique number is also assigned by the licensee to a file that contains all of the supporting documentation for the transaction for which it was established. The unique number is the means by which program transactions will be tracked.

§ 1530.102 Nature of the license.

(a) A person who wishes to participate in the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, or the Polyhydric Alcohol Program must first obtain a license from the USDA, through the Licensing Authority.

(b) A license under the Refined Sugar Re-export Program permits a refiner to enter raw cane sugar under subheading 1701.11.20 of the HTS, and export an equivalent quantity of refined sugar onto the world market or transfer an equivalent quantity of refined sugar to licensees under the Sugar Containing

Products Re-export Program or the Polyhydric Alcohol Program.

(c) A license under the Sugar Containing Products Re-export Program or Polyhydric Alcohol Program permits licensees to receive transfers and export an equivalent quantity of sugar as an ingredient in sugar containing products, or use an equivalent quantity of sugar in the production of certain polyhydric alcohols.

(d) All refining, manufacturing, and production shall be accomplished in the U.S. Customs Territory, and within time-frames and quantity limitations prescribed in this part. Program sugar and non-program sugar are substitutable.

(e) A licensee must establish a bond or a letter of credit in favor of the U.S. Department of Agriculture to charge program sugar in anticipation of the export or transfer of refined sugar, the export of sugar in sugar containing products, or the production of certain polyhydric alcohols.

§ 1530.103 License eligibility.

(a) A raw cane sugar refiner, a manufacturer of sugar containing products, or a producer of certain polyhydric alcohols, that owns and operates a facility within the U.S. Customs Territory, is eligible for a license to participate in the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program, or the Polyhydric Alcohol Program, respectively.

(b) No person may apply for or hold more than one license, including a license held by an affiliated person.

(c) Notwithstanding paragraph (b) of this section, a person who owns one or more wholly-owned subsidiary corporations manufacturing sugar containing products or producing certain polyhydric alcohols, which would otherwise qualify for an individual license, is eligible for a consolidated license to cover the program transactions and other program activities of both the parent corporation and the subsidiary corporation(s). The program transactions and other program activities of the subsidiary corporation(s) covered by a consolidated license shall be treated as the activities of the corporation holding the consolidated license.

(d) Notwithstanding paragraph (c) of this section, each wholly-owned subsidiary manufacturing sugar containing products or producing certain polyhydric alcohols may establish a license for program activities instead of the parent corporation establishing a consolidated license. The sum total of license limits for the parent corporation and its wholly-owned subsidiary corporation(s) shall not exceed the quantitative limits established in § 1530.105 of this part.

§ 1530.104 Application for a license.

(a) A person seeking a license shall apply in writing to the Licensing Authority and shall submit the following information:

(1) The name and address of the applicant;

(2) The address at which the applicant will maintain the records required under § 1530.110;

(3) The address(es) of the applicant's processing plant(s), including any wholly-owned subsidiary(s) and plant(s) in the case of a consolidated license, and including those of any co-packer(s);

(4) In the case of a refined sugar product, the polarity of the product and the formula proposed by the refiner for calculating the refined sugar in the product;

(5) In the case of a sugar containing product, the percentage of refined sugar (100 degree polarity), on a dry weight basis, contained in such product(s);

(6) In the case of polyhydric alcohol, the quantity of refined sugar used producing certain polyhydric alcohols; and

(7) A certification explaining that the applicant is not affiliated with any other licensee, or explaining any affiliations, should they exist.

(b) A documentation agreement must be concluded with the Licensing Authority.

(c) If any of the information required by paragraph (a) of this section changes, the licensee shall promptly apply to the Licensing Authority to amend the application to include such changes.

§ 1530.105 Terms and conditions.

(a) A licensed refiner (refiner) shall, not later than 90 days after entering a quantity of raw cane sugar under subheading 1701.11.20 of the HTS, export or transfer an equivalent quantity of refined sugar if the entry results in a positive license balance.

(b) A licensed sugar containing products manufacturer (manufacturer) or a licensed polyhydric alcohol producer (producer) shall, not later than 18 months from the date of transfer of a quantity of refined sugar from a refiner, export an equivalent quantity of refined sugar as an ingredient in a sugar containing product if the transfer results in a positive license balance, or use an equivalent quantity of refined sugar in the production of certain polyhydric alcohols if the transfer results in a positive license balance, respectively.

(c) Notwithstanding paragraphs (a) and (b) of this section, licensees may receive credit for the exportation or transfer of refined sugar, the exportation of a sugar containing product, or the production of certain polyhydric alcohols prior to the corresponding date of entry of raw cane sugar the date of transfer of refined sugar.

(d) Licensees are encouraged to submit monthly program transaction reports, but shall report no later than 90 days from the date of entry, transfer, export, or use.

(e) A refiner may enter raw sugar, or a manufacturer or producer may receive a transfer of refined sugar, in anticipation of the transfer or export of refined sugar (refiner), the export of sugar in sugar containing products (manufacturer) or the production of a polyhydric alcohol (producer) not to exceed the value of a bond or letter of credit, which must be established pursuant to § 1530.107 of this part. The value of a bond or letter of credit shall not exceed the license limits established in this section.

(f) A refiner shall not exceed a license balance of 50,000 metric tons, raw value for the sum of all charges and credits.

(g) A refiner may enter raw sugar from Mexico and re-export, within 30 days of entry, refined sugar to Mexico without a charge against the refiner's

license balance. If the refined sugar is not re-exported to Mexico within 30 days of entry, the license shall be charged the quantity that has not been re-exported.

(h) A manufacturer or a producer shall not exceed a license balance of 10,000 short tons, refined value for the sum of all charges and credits.

(i) A manufacturer's or a producer's consolidated license balance, or the sum of a parent company and wholly-owned subsidiary license balances if held separately, shall not exceed a license balance of 25,000 short tons, refined value for the sum of all charges and credits.

(j) For the purposes of the programs governed by this part, sugar is fully substitutable. The refined sugar transferred, exported, or used does not need to be the same sugar produced by refining raw sugar entered under sub-heading 1701.11.20 of the HTS.

(k) A licensee may use an agent to carry out the requirements of participation in the program. The licensee must retain ownership of and responsibility for the product until exported from the U.S. Customs Territory, to a restricted foreign trade zone, or used in the production of certain polyhydric alcohols, and must establish and maintain sufficient documentation, as agreed in the documentation agreement pursuant to §1530.110, to substantiate export of the product or the production of certain polyhydric alcohols.

(l) A license may be assigned only with the written permission of the Licensing Authority and subject to such terms and conditions as the Licensing Authority may impose.

(m) The Licensing Authority may impose such conditions, limitations or restrictions in connection with the use of a license at such time and in such manner as the Licensing Authority, at his or her discretion, determines to be necessary or appropriate to achieve the purposes of the relevant program.

§ 1530.106 License charges and credits.

(a) A license shall be charged or credited for the quantity of sugar entered, transferred, exported, or used, adjusted to a dry weight basis. Refiner quantities shall be adjusted to raw value, using the formulas set forth in para-

graphs (a) (1), (2), and (3) of this section. Manufacturer and producer quantities shall be adjusted to 100 degrees polarity on a dry weight basis.

(1) To adjust the raw value for sugar with a polarization of less than 92 degrees, divide the total sugar content by 0.972 (polarization × outturn weight/.972).

(2) To adjust the raw value for sugar with polarization of 92 degrees or above, multiply the polarization times 0.0175, subtract 0.68, and multiply the difference by the outturn weight ((polarization × 0.0175)–0.68) × outturn weight).

(3) To determine the quantity of refined sugar that must be transferred or exported to equal a corresponding quantity of entered raw sugar charged to a license, divide the quantity of entered raw sugar by 1.07 (raw quantity/1.07).

(b) [Reserved]

§ 1530.107 Bond or letter of credit requirements

(a) The licensee may charge program sugar in anticipation of the transfer or export of refined sugar, the export of sugar in sugar containing products, or the production of certain polyhydric alcohols, if the licensee establishes a performance bond or a letter of credit with the U.S. Department of Agriculture, which meets the criteria set forth in this section.

(b) The bond or letter of credit may cover entries made either during the period of time specified in the bond (a term bond) or for a specified entry (a single entry bond).

(c) Only the licensee who will refine the sugar, manufacture the sugar containing product, or produce certain polyhydric alcohols may be the principal on the bond or letter of credit covering such sugar to be re-exported or used in the production of certain polyhydric alcohols. The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(d) The obligation under the bond or letter of credit shall be made effective no later than the date of entry of the

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sugar for refiners or the date of transfer of the corresponding sugar for manufacture into a sugar containing product or certain polyhydric alcohols.

(e) The amount of the bond or letter of credit shall be equal to 20 cents per pound of sugar to be entered under the license.

(f) If a licensee fails to qualify for credit to a license within the specified time period of the date of export or use of corresponding sugar in an amount sufficient to offset the charge to the license for that corresponding sugar, payment shall be made to the U.S. Treasury. The payment shall be equal to the difference between the Number 11 contract price and the Number 14 contract price (New York Coffee, Sugar and Cocoa Exchange) in effect on the last market day before the date of entry of the sugar or the last market day before the end of the period during which export or use was required, whichever difference is greater. The difference shall be multiplied by the quantity of refined sugar, converted to raw value, that should have been exported in compliance with this part. If there was not a Number 11, or a Number 14 contract price for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

§ 1530.108 Revocation or surrender of licenses.

(a) A license may be revoked upon written notice by the Licensing Authority.

(b) A licensee may surrender a license when the sum of all credits is equal to or greater than the sum of all charges.

§ 1530.109 Reporting.

(a) A licensee may submit as often as monthly for charges and credits against a license balance, but must submit at least a quarterly report to the Licensing Authority not later than 90 days after the earliest transaction in the report for which credits or charges are being submitted. The licensee need not report when there have not been transactions during the reporting period.

(b) Reports may be submitted by e-mail, U.S. mail, private courier, or in

person, but must be in an integrated database format acceptable to the Licensing Authority. A copy of this format may be obtained from the Licensing Authority. Applicants unable to submit a report in the specified electronic format may seek a temporary waiver to permit them to submit the report on paper.

(c) The reports must include the following for all program transactions:

(1) A unique number associated with the transaction;

(2) The date of the entry, transfer (only a refiner shall report transfers to the Licensing Authority), export, or use;

(3) The quantity of program sugar entered, transferred, exported as refined sugar, or used in the production of certain polyhydric alcohols;

(4) The licensee's license number, or if a transfer is being reported, the licensee's license number as well as the transfer recipient's license number;

(5) The country of origin (entry of raw sugar) or final destination (refined exports), using the exact country code designated in the HTS; and

(6) The initial and final polarization, and final weight (when available) for entries of raw sugar.

(d) Licensees have an affirmative and continuing duty to maintain the accuracy of the information contained in previously submitted reports.

(1) The licensee shall immediately notify the Licensing Authority and promptly request that previously claimed credits be charged back upon discovery that previously claimed exports of refined sugar, refined sugar in sugar containing products, or refined sugar used in the production of polyhydric alcohol were re-entered into the U.S. Customs Territory without substantial transformation, not used in the production of certain polyhydric alcohols, made under a false underlying proof of export, or made but previously submitted exports do not otherwise satisfy the requirements of regulations or the documentation agreement.

(2) Charge backs shall be as of the date of the erroneously claimed credit.

Foreign Agricultural Service, USDA

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§ 1530.110 Records, certification, and documentation.

(a) A licensee shall establish a documentation agreement with the Licensing Authority before submitting for credit against a license. The licensee shall propose to the Licensing Authority a list of documents to substantiate entries, transfers, exports, or use as appropriate. The Licensing Authority shall consider the licensee's proposal to assure that it provides that a program transaction is fully substantiated, and shall then respond in writing to the licensee in a timely fashion outlining any deficiencies. Once agreed, the licensee shall submit a notarized letter specifying the documents to be maintained on file and certifying that the charges and credits made pursuant to § 1530.106 will be kept on file, identifiable by a unique number, and available for inspection pursuant to § 1530.110.

(b) For all transactions, the documentation shall:

(1) Substantiate the information required in § 1530.109 (c), and the completion of the reported transaction;

(2) Establish the buyer and seller specifications for a transaction;

(3) Include all U.S. Customs forms submitted in the entry or export process;

(4) Provide the correct telephone numbers and addresses of any agents, consignees, foreign purchasers, and non-vessel operating common carriers used in completing the transaction;

(5) Indicate the port of entry or export for the program transaction;

(6) Provide the percentage of sugar in a sugar containing product or certain polyhydric alcohols; and

(7) Provide the name of export carrier, vessel name, and container number.

(c) The licensee shall maintain the documentation established in the documentation agreement for 5 years from the date of such program transaction.

(d) Upon request, the licensee shall make the records, outlined by the documentation agreement and identified (associated) by the unique number assigned by the licensee to the program transaction as reported to the Licensing Authority for posting against a license balance, available for inspection and copying by the Licensing Author-

ity, the Compliance Review Staff of the Foreign Agricultural Service, and/or the Office of the Inspector General, USDA, the U.S. Department of Justice, or any U.S. Government regulatory or investigative office.

§ 1530.111 Enforcement and penalties.

(a) The Licensing Authority may revoke credits granted on a license if the credits granted do not meet the requirements set forth in the regulations of this part, or if the licensee does not voluntarily charge back credits erroneously claimed in accordance with these regulations. The Licensing Authority may also recommend revocation of a license, if the licensee has been in violation of § 1530.109 (c) of this part.

(b) The Administrator of the Foreign Agricultural Service, USDA, may suspend or revoke a license upon recommendation of the Licensing Authority. Suspension of a license will be governed by 7 CFR part 3017, subpart D and debarment will be governed by 7 CFR part 3017, subpart C.

§ 1530.112 Administrative appeals.

(a) The licensee may appeal the Licensing Authority's determination by filing a written notice of appeal, signed by the licensee or the licensee's agent, with the Director, Import Policies and Programs Division, Foreign Agricultural Service (Director), or his or her designee. The decision on such an appeal shall be made by the Director, and will be governed by § 3017.515 of this title. The appeal must be filed not later than 30 days after the date of the Licensing Authority's determination, and shall contain the licensee's written argument.

(b) The licensee may request an informal hearing. The Director shall arrange a place and time for the hearing, except that it shall be held within 30 days of the filing date of the notice of appeal if the licensee so requests.

(c) The licensee may be represented by counsel, and shall have full opportunity to present any relevant evidence, documentary or testimonial. The Director may permit other individuals to present evidence at the hearing and the licensee shall have an opportunity to question those witnesses.

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(d) The licensee may request a verbatim transcript of the hearing, and shall be responsible for arranging for a professional reporter and shall pay all attendant expenses.

(e) The Director shall make the determination on appeal, and may affirm, reverse, modify or remand the Licensing Authority's determination. The Director shall notify the licensee in writing of the determination on appeal and of the basis thereof. The determination on appeal exhausts the licensee's administrative remedies.

§ 1530.113 Waivers.

Upon written application of the licensee or at the discretion of the Licensing Authority, and for good cause, the Licensing Authority may extend the period for transfer, export, or production, and/or may temporarily increase a maximum license limit, may extend the period for submitting regularly scheduled reports, or may temporarily waive or modify any other requirement imposed by this part if the Licensing Authority determines that such a waiver will not undermine the purpose of the relevant program or adversely affect domestic sugar policy objectives. The Licensing Authority may specify additional requirements or procedures in place of the requirements or procedures waived or modified.

§ 1530.114 Implementation.

Current program participants may qualify under this rule upon concluding a documentation agreement with the Licensing Authority, but must conclude a documentation agreement within 24 months of the effective date of this rule. Participant license balances, as of the effective date of this rule, shall continue under this rule.

§ 1530.115 Paperwork Reduction Act assigned number.

Licensees are not required to respond to requests for information unless the form for collecting information displays a currently valid Office of Management and Budget (OMB) control number. OMB has approved the information collection requirements contained in this part in accordance with 44 U.S.C. chapter 35. OMB number 0551-

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0015 has been assigned and will expire November 30, 1999.

PART 1540—INTERNATIONAL AGRICULTURAL TRADE

Subpart A—Emergency Relief From Duty-Free Imports of Perishable Products

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AUTHORITY: Sec. 213(f), Pub. L. 98-67, 97 Stat. 391 (19 U.S.C. 2703(f)); 5 U.S.C. 301; sec. 404, Pub. L. 98-573, 98 Stat. 3016, as amended (19 U.S.C. 2112 note); 5 U.S.C. 301.

Subpart A—Emergency Relief From Duty-Free Imports of Perishable Products

AUTHORITY: Sec. 213(f), Pub. L. 98-67, 97 Stat. 391 (19 U.S.C. 2703(f)); 5 U.S.C. 301.

SOURCE: 49 FR 22265, May 29, 1984, unless otherwise noted.

CROSS REFERENCE: For United States International Trade Commission regulations on investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

Foreign Agricultural Service, USDA

§ 1540.5

§ 1540.1 Applicability of subpart.

This subpart applies to requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 213(f) of the Caribbean Basin Economic Recovery Act of 1983, title II of Pub. L. 98-67, 97 Stat. 384 (19 U.S.C. 2701 *et seq.*) (the Act).

§ 1540.2 Definitions.

(a) *Perishable product* means:

(1) Live plants provided for in subpart A of part 6 of schedule 1 of the Tariff Schedules of the United States (TSUS);

(2) Fresh or chilled vegetables provided for in items 135.10 through 138.42 of the TSUS;

(3) Fresh mushrooms provided for in item 144.10 of the TSUS;

(4) Fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS;

(5) Fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(6) Concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(b) *Beneficiary country* means any country listed in section 212(b) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

§ 1540.3 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group or workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported into the United States duty-free under the provisions of the Act from a beneficiary country(ies) in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.4 Contents of request.

A request for emergency action under section 213(f) of the Act shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such requests shall be supported by appropriate information and data and shall include to the extent possible:

(a) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(b) The beneficiary country(ies) of origin of the allegedly injurious imports;

(c) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from the designated beneficiary country(ies) in increased quantities as compared with imports of the same product from the designated beneficiary country(ies) during a previous representative period of time (including a statement of why the period used should be considered to be representative);

(d) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from the beneficiary country(ies); and

(e) A statement indicating why emergency action would be warranted under section 213(f) of the Act (including all available evidence that the injury caused by the increased quantities of imports from the beneficiary country(ies) would be relieved by the suspension of the duty-free treatment accorded under the Act).

A copy of the petition and the supporting evidence filed with the United States International Trade Commission under section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.5 Submission of recommendations.

If the Secretary has reason to believe that the perishable product which is the subject of a petition under § 1540.4 of this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly

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competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.4 of this subpart, shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary shall publish a notice of such determination and will so advise the petitioner within 14 days after the filing of the petition.

§ 1540.6 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of section 213(f) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§ 1540.7 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. chapter 25, and OMB number 0551-0018 has been assigned.

Subpart B—Emergency Relief From Certain Perishable Products Imported From Israel

AUTHORITY: Sec. 404, Pub. L. 98-573, 98 Stat. 3016, as amended (19 U.S.C. 2112 note); 5 U.S.C. 301.

SOURCE: 50 FR 43692, Oct. 29, 1985, unless otherwise noted.

CROSS REFERENCE: For U.S. International Trade Commission regulations concerning investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

§ 1540.20 Applicability of subpart.

This subpart applies to requests filed with the Department of Agriculture under section 404 of the Trade and Tariff Act of 1984, Pub. L. 98-573, for emergency relief from imports of certain perishable products from Israel entering the United States at a reduced rate of duty or duty-free pursuant to a trade agreement between the United States

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and Israel entered into under section 102(b)(1) of the Trade Act of 1974, as amended.

§ 1540.21 Definition.

Perishable product means:

(a) Live plants provided for in subpart A of part 6 of schedule 1 of the 1985 Tariff Schedules of the United States (the "TSUS");

(b) Fresh or chilled vegetables provided for in items 135.03 through 138.46 of the TSUS;

(c) Fresh mushrooms provided for in item 144.10 of the TSUS;

(d) Fresh fruits provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.44, 147.50 through 149.21 and 149.50 of the TSUS;

(e) Fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(f) Concentrated citrus fruit juice provided for in items 165.25, 165.29 and 165.36 of the TSUS.

§ 1540.22 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group or workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported from Israel into the United States at a reduced duty or duty-free under the provisions of a trade agreement between the United States and Israel entered into under section 102(b)(1) of the Trade Act of 1974, as amended, in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.23 Contents of request.

A request for emergency action under section 404 of the Trade and Tariff Act of 1984 shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such request shall be supported by appropriate information and data and shall include to the extent possible:

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(a) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(b) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from Israel in increased quantities as compared with imports of the same product from Israel during a previous representative period of time (including a statement of why the period selected by the petitioner should be considered to be representative);

(c) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from Israel; and

(d) A statement indicating why emergency action would be warranted under section 404 (including all available evidence that the injury caused by the increased quantities of imports from Israel would be relieved by the withdrawal of the reduction of the duty or elimination of the duty-free treatment provided to the product under the trade agreement). A copy of the petition and the supporting evidence filed with the United States International Trade Commission under section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.24 Determination of the Secretary of Agriculture.

If the Secretary of Agriculture has reason to believe that the perishable product(s) which is the subject of a petition under this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.23 shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary, within 14 days after the filing of the petition, will publish in the FEDERAL REGISTER a no-

tice of such determination and will so advise the petitioner.

§ 1540.25 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation of section 404 of the Trade and Tariff Act of 1984 should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250.

§ 1540.26 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. chapter 25, and OMB number 0551-0023 has been assigned.

Subpart C—Emergency Relief From Duty-Free Imports of Perishable Products From Certain Andean Countries

AUTHORITY: Title II, sec. 204(e), Pub. L. 102-182, 105 Stat. 1239 (19 U.S.C. 3203(e)); 5 U.S.C. 301.

SOURCE: 58 FR 16104, Mar. 25, 1993, unless otherwise noted.

CROSS REFERENCE: For United States International Trade Commission regulations on investigations of import injury and the rules pertaining to the filing of a section 201 petition, see 19 CFR part 206.

§ 1540.40 Applicability of subpart.

This subpart applies to requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 204(e) of the Andean Trade Preference Act, title II of Public Law 102-182, 105 Stat. 1236 (19 U.S.C. 3201 *et seq.*) (the "Act").

§ 1540.41 Definitions.

(a) *Perishable product* means:

(1) Live plants and fresh cut flowers provided for in chapter 6 of the Harmonized Tariff Schedule (HTS);

(2) Fresh or chilled vegetables provided in heading 0701 through 0709 (except subheading 0709.52.00) and heading 0714 of the HTS;

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(3) Fresh fruit provided for in subheadings 0804.20 through 0810.90 (except citrons of subheadings 0805.90.00, tamarinds and kiwi fruit of subheading 0810.90.20, and cashew apples, mameyes colorados, sapodillas, soursops and sweetsops of subheading 0810.90.40) of the HTS; or

(4) Concentrated citrus fruit juice provided for in subheadings 2009.11.00, 2009.19.40, 2009.20.40, 2009.30.20, and 2009.30.60 of the HTS.

(b) *Beneficiary country* means any country listed in subsection 203(b)(1) of the Act with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of the Act.

§ 1540.42 Who may file request.

A request under this subpart may be filed by an entity, including a firm, or group of workers, trade association, or certified or recognized union which is representative of a domestic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported into the United States duty-free under the provisions of the Act from a beneficiary country(ies) in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 1540.43 Contents of request.

(a) A request for emergency action under section 204(e) of the Act shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Such request shall be supported by appropriate information and data and shall include to the extent possible:

(1) A description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury;

(2) The beneficiary country(ies) of origin of the allegedly injurious imports;

(3) Data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from the designated beneficiary country(ies) in increased quantities as compared with imports of the same product from the designated ben-

eficiary country(ies) during a previous representative period of time (including a statement of why the period used should be considered to be representative);

(4) Evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from the beneficiary country(ies); and

(5) A statement indicating why emergency action would be warranted under section 204(e) of the Act (including all available evidence that the injury caused by the increased quantities of imports from the beneficiary country(ies) would be relieved by the suspension of duty-free treatment accorded under the Act).

(b) A copy of the petition and the supporting evidence filed with the United States International Trade Commission under Section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

§ 1540.44 Submission of recommendations by the Secretary of Agriculture.

If the Secretary has reason to believe that the perishable product(s) which is the subject of a petition under § 1504.43 of this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under § 1540.43 of this subpart, shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary within 14 days after the filing of the petition shall publish a notice of such determination and so advise the petitioner.

§ 1540.45 Information.

Persons desiring information from the Department of Agriculture regarding the Department's implementation

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of section 204(e) of the Act should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, DC 20250. Issued at Washington, DC this 19th day of March, 1993.

PART 1560—PROCEDURES TO MONITOR CANADIAN FRESH FRUIT AND VEGETABLE IMPORTS

- Sec.
- 1560.1 Scope.
- 1560.2 Definitions.
- 1560.3 Determination of fresh fruit or vegetable.
- 1560.4 Calculation of data to support imposition of temporary duty.
- 1560.5 Calculation of data to support removal of temporary duty.

AUTHORITY: Secs. 105 and 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Pub. L. 100-449 (102 Stat. 1855 and 1865-67).

SOURCE: 54 FR 1327, Jan. 13, 1989, unless otherwise noted.

§ 1560.1 Scope.

This part outlines the procedures that will be used by the Administrator of the Foreign Agricultural Service to monitor and inform the Secretary of Agriculture of data regarding the importation of fresh fruits and vegetables from Canada.

§ 1560.2 Definitions.

The following definitions shall be applicable to this part:

(a) *Administrator* means the Administrator of the Foreign Agricultural Service, United States Department of Agriculture.

(b) *Average Monthly Import Price* means the average unit value for all shipments of a particular Canadian fresh fruit or vegetable imported into the United States from Canada during a particular calendar month based on official data from the U.S. Customs Service and/or the Bureau of Census, and shall be calculated by dividing the total value of the fresh fruit or vegetable imported in that month by the total quantity of the fresh fruit or vegetable imported in that month.

(c) *Average Planted Acreage* means the average of the annual planted acreage

in the U.S. for a particular fresh fruit or vegetable for the preceding five years excluding the years with the highest and lowest acreages based on available data from agencies within the United States Department of Agriculture and data from appropriate state agencies, as required.

(d) *Canadian fresh fruit or vegetable* means a fresh fruit or vegetable that is a product of Canada as determined in accordance with the rules of origin set forth in section 202 of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988.

(e) *Corresponding Five-Year Average Monthly Import Price* for a particular day means the average import price of a Canadian fresh fruit or vegetable imported into the United States from Canada, for the calendar month in which that day occurs, for that month in each of the preceding 5 years, excluding the years with the highest and lowest monthly averages.

(f) *F.O.B. Point of Shipment Price in Canada* means the daily average of prices of a particular Canadian fresh fruit or vegetable imported into the United States from Canada that are reported to the U.S. Customs Service at the U.S. border as part of the official documentation accompanying such shipments less freight costs where applicable.

(g) *Fresh Fruit or Vegetable* means a fruit or vegetable determined in accordance with § 1560.3 within one of the HS headings.

(h) *HS heading* means any of the following tariff headings of the Harmonized System (HS) as modified by the description for each heading:

HS tariff heading	Description
07.01	Potatoes, fresh or chilled.
07.02	Tomatoes, fresh or chilled.
07.03	Onions, shallots, garlic, leeks, and other alliaceous vegetables, fresh or chilled.
07.04	Cabbages, cauliflowers, kohlrabi, kale and similar edible brassicas, fresh or chilled.
07.05	Lettuce (<i>lactuca sativa</i>) and chicory (<i>cichorium</i> spp.), fresh or chilled.
07.06	Carrots, salad beets or beetroot, salsify, celeriac, radishes and similar edible roots (excluding turnips), fresh or chilled.
07.07	Cucumbers and gherkins, fresh or chilled.
07.08	Leguminous vegetables, shelled or unshelled, fresh or chilled.
07.09	Other vegetables (excluding truffles), fresh or chilled.
08.06.10	Grapes, fresh.

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HS tariff heading	Description
08.08.20	Pears and quinces, fresh.
08.09	Apricots, cherries, peaches (including nectarines), plums and sloes, fresh.
08.10	Other fruit (excluding cranberries and blueberries), fresh.

(i) *Import Price* means the unit value based on data available from the U.S. Customs Service of a particular Canadian fresh fruit or vegetable imported into the U.S. from Canada taking into account any other relevant data, as necessary.

(j) *Secretary* means the Secretary of Agriculture.

(k) *United States* means the United States Customs Territory which includes the fifty states, the District of Columbia and Puerto Rico.

(l) *Wine Grape* means grapes of labrusca, vinifera or hybrid vinifera varieties used for making wine.

(m) *Working Day* means a day which falls on a Monday through Friday, excluding holidays observed by the United States Government and days in which the U.S. Customs Service is not operating.

§ 1560.3 Determination of fresh fruit or vegetable.

The specific group of articles that will be monitored as a particular fresh fruit or vegetable will be determined based on the practicability of monitoring at the eight digit subheading level of the Harmonized Tariff Schedule of the United States. The determination of practicability will be made by the Administrator taking into account: (a) The availability of reliable volume and price data on imports from Canada and data on U.S. planted acreage, (b) market differentiation for the group of articles, and (c) such other factors as the Administrator determines to be appropriate.

§ 1560.4 Calculation of data to support imposition of temporary duty.

The Administrator will inform the Secretary when the following conditions are met with respect to a particular fresh fruit or vegetable imported into the United States from Canada:

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(a) If for each of five consecutive working days the import price of the fresh fruit or vegetable is below ninety percent of the corresponding five-year average monthly import price for such fresh fruit or vegetable excluding the years with the highest and lowest corresponding monthly import price; and

(b) The planted acreage in the United States for such fresh fruit or vegetable based on the most recent data available is no higher than the average planted acreage over the preceding five years excluding the years with the highest and lowest planted acreages. For the purposes of calculating any planted acreage increase attributed directly to a reduction in wine grape planted acreage existing on October 4, 1987 shall be excluded.

§ 1560.5 Calculation of data to support removal of temporary duty.

During the time a temporary duty on a particular fresh fruit or vegetable is imposed pursuant to section 301(a) of the United States-Canada Free-Trade Agreement Implementation Act of 1988, the Administrator will inform the Secretary if the F.O.B. point of shipment price in Canada of such fresh fruit or vegetable exceeds, for five consecutive working days, ninety percent of the corresponding five-year average monthly import price excluding the years with the highest and lowest average corresponding monthly import price, adjusted to an F.O.B. point of shipment price, if necessary, for that fresh fruit or vegetable.

PART 1570—EXPORT BONUS PROGRAMS

Subpart A—Sunflowerseed Oil Assistance Program and Cottonseed Oil Assistance Program Criteria

- Sec.
- 1570.10 General statement.
- 1570.20 Criteria.

Subpart B—SOAP and COAP Drawback Certification

- 1570.1100 Drawback certification.

SOURCE: 56 FR 42223, Aug. 27, 1991, unless otherwise noted.

Subpart A—Sunflowerseed Oil Assistance Program and Cottonseed Oil Assistance Program Criteria

AUTHORITY: 7 U.S.C. 5663.

§ 1570.10 General statement.

This subpart sets forth the criteria to be considered in evaluating and approving proposals for initiatives to facilitate export sales under the Sunflowerseed Oil Assistance Program (SOAP) and Cottonseed Oil Assistance Program (COAP) administered by the Foreign Agricultural Service (FAS). These criteria are interrelated and will be considered together in order to select eligible countries for SOAP and COAP initiatives which will best meet the programs' objective. The objective of the programs is to encourage the sale of additional quantities of sunflowerseed oil and cottonseed oil in world markets at competitive prices. Under the SOAP and the COAP, bonuses are made available by FAS to enable exporters to meet prevailing world prices for sunflowerseed oil and cottonseed oil in targeted destinations. In the operation of the SOAP and the COAP, FAS will make reasonable efforts to avoid the displacement of usual marketings of U.S. agricultural commodities.

§ 1570.20 Criteria.

The criteria considered by FAS in reviewing proposals for SOAP and COAP initiatives will include, but not be limited to, the following:

(a) The expected contribution which initiatives will make toward realizing

U.S. agricultural export goals and, in particular, in developing, expanding, or maintaining markets for U.S. sunflowerseed and/or cottonseed oil;

(b) The subsidy requirements of proposed initiatives in relation to the sums made available to operate the programs in any given fiscal year; and

(c) The likelihood that sales facilitated by initiatives would have the unintended effect of displacing normal commercial sales of sunflowerseed and/or cottonseed oil.

Subpart B—SOAP and COAP Drawback Certification

AUTHORITY: 7 U.S.C. 5676.

§ 1570.1100 Drawback certification.

An offer submitted by an exporter to FAS for an export bonus under the SOAP or the COAP must contain, in addition to any other information required by FAS, a certification stating the following: "None of the eligible commodity (sunflowerseed oil and/or cottonseed oil) has been or will be used as the basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) of any duty, tax, or fee imposed under Federal law on an imported commodity or product." This certification must be signed by the exporter, if the exporter is an individual, or by a partner or officer of the exporter, if the exporter is a partnership or a corporation, respectively. FAS will reject any offer that does not contain the prescribed certification.