

TABLE 2.—UNIT RATES—Continued

Service <sup>1,3</sup>	Rough rice	Brown rice for processing	Milled rice
(b) Parboiled light (per sample) .....			21.30
Extra copies of certificates (per copy) .....	3.00	3.00	3.00

<sup>1</sup> Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or combined at other than at the applicant's facility.

<sup>2</sup> Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Executive Hills Boulevard, Kansas City, Missouri 68030. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, DC 20250-3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

<sup>3</sup> Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in Section 868.90, Table 1.

**James R. Baker,**

*Administrator.*

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## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### 7 CFR PART 1530

[Rin 0551-AA39]

#### **Sugar to be Imported and Re-Exported in Refined Form or in Sugar Containing Products, or Used for the Production of Polyhydric Alcohol**

**AGENCY:** Foreign Agricultural Service (FAS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule supersedes the regulation at 7 CFR part 1530, which governs the importation of world priced raw sugar and its subsequent re-export as refined sugar, or as an ingredient in sugar containing products, or its use in the production of certain polyhydric alcohols.

**EFFECTIVE DATE:** This final rule is effective February 12, 1999.

**ADDRESSES:** U.S. Department of Agriculture, Foreign Agricultural Service, Import Policies and Programs Division, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250-1021.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hammond, Division Director, Import Policies and Programs Division, U.S. Department of Agriculture, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250-1021. Telephone: 202/720-2916.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

This final rule is issued in conformance with Executive Order 12866. The Administrator of the Foreign

Agricultural Service (FAS) has determined that this rule is "not economically significant." Therefore, except for requirements under the Paperwork Reduction Act of 1995, the rule has not been reviewed by the Office of Management and Budget. The Administrator, FAS, has determined that the provisions of this final rule will not: (1) Result in an annual effect on the economy of \$100 million or more; (2) adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; or (3) regulate issues of human health, human safety, or the environment. Further, the Administrator has determined that the rule does not:

(1) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (2) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients; or (3) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

##### **Regulatory Flexibility Act**

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This final rule will not have a significant economic impact on a substantial number of small entities. Participation in the programs is voluntary. Direct and indirect costs are small as a percentage of revenue and in terms of absolute costs. The minimal regulatory compliance requirements are scaled to impact large and small businesses equally, and the programs improve businesses' cash flow and liquidity.

##### **National Environmental Policy Act**

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

##### **Executive Orders 12372 and 12875, and the Unfunded Mandates Reform Act (Pub. L. 104-4)**

These Executive Orders and Public Law 104-4 require intergovernmental review of programs. Neither the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program, nor the Polyhydric Alcohol Program impose an unfunded mandate or any other requirement on State, local or Tribal governments. Further, the programs are national in scope and involve a power delegated to the United States by the Constitution. Accordingly, these programs are not subject to the provisions of either Executive Order 12372, or Executive Order 12875, or the Unfunded Mandates Reform Act, Pub. L. 104-4.

##### **Executive Order 12612**

Executive Order 12612 requires implications of "federalism" be considered in the development of regulations. The Administrator certifies that this final rule has been reviewed in light of Executive Order 12612 and that it is consistent with the principles, criteria, and requirements stated in sections 2 through 5 of this Executive Order. The Administrator further certifies that this rule would impose no additional cost or burden on the States, nor affect the States' abilities to discharge traditional State governmental functions.

##### **Executive Order 12606**

Executive Order 12606 requires that government action include consideration of maintaining stability and strengthening the family. The

Administrator, FAS, has determined, under the principles and criteria established in Executive Order 12606, that this rule will have no effect on the family.

#### **Executive Order 12630**

This Executive Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule does not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

#### **Background**

This final rule revises the regulations at 7 CFR part 1530, which govern the importation of world priced raw sugar and its subsequent re-export as refined sugar, or as an ingredient in sugar containing products, or its use in the production of certain polyhydric alcohols. In order to encourage public input into the revision of this regulation, USDA published a proposed rule in the **Federal Register** on August 6, 1996 (61 FR 40749) requesting public comment through October 7, 1996. USDA received comments from 21 respondents: 6 industry associations; five agents representing some 27 private entities; and the remainder, private concerns with vested interests in the outcome of the regulation review. Most of the comments focused on license limits, information reporting, time-frames for reporting, use of bonds versus civil penalties, and program definitions.

#### **Discussion of Comments**

The comments focused on twelve issue areas. The relevant section number in the final rule is included in parenthesis where applicable. The focus areas were as follows:

##### *License Balance and Limits (§ 1530.105)*

A majority of respondents spoke to the issue of license limits, with all opposed to at least some facet of the proposed changes. Many respondents spoke of an increased likelihood of market manipulation under the proposed limit changes. Other respondents suggested that the changes limited flexibility of participants to take advantage of world market conditions. Because of the lack of support from any of the respondents regarding the proposed changes in license limits, the final rule leaves the license limits currently in use unchanged for refiners and sugar containing product manufacturers, except for the inclusion of a consolidated license for sugar containing product manufacturers. Polyhydric alcohol producer license

limits were made consistent with sugar containing product manufacturer license limits to further simplify the program.

##### *Time Period Allowed to Export Sugar Imported Under Program Provisions (§ 1530.105)*

Respondents were evenly split between those in favor and those opposed to lengthening the time permitted by refiners to export program sugar, from 90 days to 18 months. Those opposed expressed concerns that under an 18 month period, imported sugar could remain in the United States for as long as 3 years. These respondents made the argument that under the regulations, a refiner would have 18 months to transfer imported sugar to a manufacturer, who has 18 months to export it in sugar containing products, which could lead to market manipulation. The respondents supporting the proposed change in the upper license limit for refiners did not support the proposed reduction in the positive balance limit. As a result, FAS retained the existing license limits and export periods for refiners and for sugar containing product manufacturers. FAS also made polyhydric alcohol producer time-use requirements consistent with the limitations for sugar containing product manufacturers. However, to facilitate the elimination of redundant reporting of transfers, the length of time to report transfers was extended from 10 to 90 days.

##### *Reporting Requirements (§ 1530.109)*

A majority of the respondents welcomed the proposed changes; however, some expressed concern that FAS had actually increased the reporting burden. Some respondents suggested that FAS was not requiring enough information and not making it available to the public. In the final rule, FAS reduced the number of reporting fields for manufacturers from 14 (as proposed), to 6. This change does not, however, reduce the quantity or quality of the information used to make important tariff-rate quota decisions. FAS will provide participants the database format for reporting and/or the database software to facilitate reporting.

Some respondents suggested that the proposed reporting burden did not take into account the commercial reality of availability of certain export documentation. FAS added the Documentation Agreement, which provides program participants an opportunity to participate in the process of determining the documentation that both the licensee and the Licensing

Authority will agree is sufficient to demonstrate proof of export.

##### *Phase-in Period (§ 1530.114)*

Three respondents asked that FAS either include a method for transferring existing contracts to the new system, or allow these contracts to continue to operate under the previous rule. Their reason was that refiners typically forward contract for raw sugar for period of up to 18 months, and some of these contracts could be in violation of the new rule. Program participants will be allowed to place all existing contracts under the procedures of this final rule during a period of 24 months from the effective date of the rule.

##### *Bonding Requirements (§ 1530.107)*

The majority of persons commenting on this issue favored retaining the bonding requirements as a deterrent to fraud and/or other non-compliance with the regulations. Most respondents suggested that the bonding requirement had deterred program violations. Many respondents spoke against using civil penalties as an alternative for the bond requirement. FAS retained the bonding requirements and eliminated the proposed civil penalties. In the final rule, to provide greater flexibility for participants, FAS has also provided for the use of a letter of credit as an alternative to a bond.

##### *Impact of North American Free-Trade Agreement (§ 1530.105(h))*

Most respondents on this issue expressed concerns about the impact the North American Free-Trade Agreement (NAFTA) on the importation of Mexican sugar under the rule. Several respondents requested that the provision be extended to sugar containing products exports to Mexico. The final rule allows a refiner to import Mexican raw sugar for further refining without the quantity affecting the refiner's license balance as long as the sugar is re-exported within 30 days of entry. If 30 days pass without re-export, the Licensing Authority will charge the entry against the refiner's license. The NAFTA does not contain a provision that would permit FAS to extend this provision to sugar containing products.

##### *Definitions of Terms Relating to the Sugar Containing Products Re-export Program (§ 1530.101)*

The table below lists the issues raised by the respondents, as well as FAS' response in the final rule.

Respondent Issue	Final Rule	Respondent Issue	Final Rule
<p>“Refiner” should be limited to only those firms which refine sugar.</p>	<p>The final rule defines a refiner as “any person . . . refines raw cane sugar . . .”</p>	<p>“Agent,” “licensee,” “transfer,” “notice of transfer,” and “export, use and quarterly report” are terms which need clarification.</p>	<p>These terms are clearly defined in this rule. FAS did not define “use” because of the self-explanatory nature of the word.</p>
<p>“Sugar containing products” should not be restricted to human food only. Sugar containing pet food and non-food products should be included.</p>	<p>The new definition is expanded to include all sugar containing products except those normally marketed by cane sugar refiners.</p>	<p>Include a separate definition for “export.”</p>	<p>The definition of export is provided in the final rule.</p>
<p>“Co-packer” should be expanded to include firms that duplicate the product line of the parent company, produce some items of the parent firm’s product line, or produce ingredients.</p>	<p>A co-packer is now defined as “a person that adds value to a licensed manufacturer’s product, or produces a product for export by the licensed manufacturer, but does not at any time own any of the program sugar used as an ingredient in the final product.”</p>		

subheading 1701.11.20 in the Harmonized Tariff Schedule of the United States (HTS)) if the imported sugar is to be substituted for domestically-produced raw cane sugar that has been or will be exported. The final regulation permits a refiner to import raw sugar in anticipation of exports of refined sugar or the transfer of refined sugar to sugar containing product manufacturers or polyhydric alcohol producers.

*Beet Sugar*

Three respondents requested that FAS include beet sugar refiners as eligible participants in the Refined Sugar Re-export Program. One respondent stated that FAS should limit participation to cane sugar refiners only. In the final regulation, FAS continued to limit participation in the Refined Sugar Re-Export Program to cane sugar refiners, because the initial purpose of the program, which was to enhance cane sugar refiners’ throughput after the imposition of restrictive raw sugar quotas and subsequent tariff-rate quotas, has not changed with the implementation of this regulation.

*Other Issues Related to the Sugar Containing Products Re-export Program*

A respondent requested that a manufacturer of a product which is 100 percent sugar, for instance, sugar put into paste form, to which dye is added, should be able to export the product under the rule’s provisions for sugar containing products. The definition of sugar containing product in the final regulation addresses this question by incorporating all sugar containing products except those normally marketed by refiners.

Another respondent requested that FAS publish a list of licensees under the Sugar Containing Products Re-export Program, and suggested that if a firm acted in good faith based upon the information contained in the list, it should not be held liable for any transactions that fell outside program limits. FAS maintains a list of program participants, but does not provide any other information about the companies on that list. Program participants are held responsible in the final rule to ensure that the program refined sugar and sugar in sugar containing products are exported from the U.S. Customs Territory.

Two other respondents requested a provision for a 5.0 percent loss allowance for refined sugar (with 100 percent polarity) used in manufacturing sugar containing products. These respondents claimed that the license balance system did not account for

*Polarization (§ 1530.109)*

Two respondents requested that FAS include a provision to allow for polarization adjustments. The rule requires that raw sugar entering the U.S. Customs Territory be reported on a metric ton, raw value basis. The initial and final polarization, and final weight (when available) for entries of raw sugar are required in § 1530.109. Another respondent requested that the definition of white sugar as having 99.5 degree polarity should be waived for raw sugar which is imported under the Refined Sugar Re-export Program. FAS did not address the international definition of raw sugar in the final regulation.

*Polyhydric Alcohol Program (§ 1530.114)*

One respondent stated that the rule should contain a provision concerning how outstanding balances are to be treated at the time the final rule is effective. Since license balances will continue under the final rule, no special treatment is needed. Another respondent requested that FAS require the licensee to certify that the polyhydric alcohol will be used for non-food products only. By the FAS definition, any polyhydric alcohol, except polyhydric alcohol produced by distillation or polyhydric alcohol used as a substitute for sugar as a sweetener in human food, can be produced with program sugar. Therefore, an additional certification would be redundant.

*Export of Raw Cane Sugar*

One respondent requested that FAS include a provision to permit the entry of raw cane sugar (classified under

sugar lost in the normal manufacturing process. Most respondents, however, did not object to the removal of the loss provision in the proposed regulation. In the final rule FAS does not provide credit for sugar lost in the manufacturing process.

FAS collapsed the regulations for the Refined Sugar Re-Export Program, the Sugar Containing Products Re-Export Program and the Polyhydric Alcohol Program into one rule.

Where possible the terms and conditions for each program were unified in order to simplify and facilitate use of the rule.

#### List of Subjects in 7 CFR Part 1530

Agricultural commodities, Sugar, Imports, Procedural rules, Appeal procedures, Reporting and record keeping requirements.

#### Final Rule

Accordingly, the regulations at 7 CFR part 1530 are revised to read as follows:

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

#### Sec.

- 1530.100 General statement.
- 1530.101 Definitions.
- 1530.102 Nature of the license.
- 1530.103 License eligibility.
- 1530.104 Application for a license.
- 1530.105 Terms and conditions.
- 1530.106 License charges and credits.
- 1530.107 Bond or letter of credit requirements.
- 1530.108 Revocation or surrender of licenses.
- 1530.109 Reporting.
- 1530.110 Records, certification, and documentation.
- 1530.111 Enforcement and penalties.
- 1530.112 Administrative appeals.
- 1530.113 Waivers.
- 1530.114 Implementation.
- 1530.115 Paperwork Reduction Act assigned number.

**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.

#### § 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 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 or 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 subheading 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 paragraphs (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  $\times$  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  $((\text{polarization} \times 0.0175) - 0.68) \times \text{outturn weight}$ .

(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).

#### § 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 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.

**§ 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 Authority, 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.

(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 0551-0015 has been assigned and will expire November 30, 1999.

Signed at Washington, DC on February 5, 1999.

**Timothy J. Galvin,**

*Acting Administrator, Foreign Agricultural Service.*

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**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 11 and 135**

[Docket No. 28743; SFAR 81; Amdt. No. 11-43, 135-72]

RIN 2120-AG55

**Commercial Passenger-Carrying Operations in Single-Engine Aircraft Under Instrument Flight Rules; Correction**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final rule, published in