

Proposed Rules

Federal Register

Vol. 61, No. 152

Tuesday, August 6, 1996

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR PART 1530

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: Proposed rule.

SUMMARY: The Foreign Agricultural Service (FAS) proposes revising the regulations governing the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program and the Polyhydric Alcohol Program. The regulations permit entry of imported raw cane sugar exempt from the sugar tariff-rate quota for re-export in refined form or in a sugar containing product or for the production of certain polyhydric alcohols. The proposed rule will conform the regulations for the programs to the United States' international obligations and would also reduce the paperwork burden on program participants.

DATES: Interested parties are invited to submit written comments by or before October 7, 1996.

ADDRESSES: Comments should be mailed or delivered to the Team Leader, Sugar Team, Import Policies and Programs Division, Foreign Agricultural Service, Room 5531, South Agriculture Building, U.S. Department of Agriculture, Washington, D.C. 20250 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Room 10235, New Executive Office Building, Washington, DC 20503. Comments received may be inspected at Room 5531, South Agriculture Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW, Washington, D.C. between 9 a.m. and 4:30 p.m., Mondays through Fridays, except holidays.

FOR FURTHER INFORMATION CONTACT: Stephen Hammond (Team Leader, Sugar Team) at telephone number 202-720-1061.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed under USDA procedures implementing E.O. 12866 and Departmental Regulation 1512-1 and the OMB and has been classified as "not significant." In conformity with this designation, except for requirements under the Paperwork Reduction Act of 1995, the rule has not been reviewed by the OMB. The Administrator, FAS, has determined that the provisions of this proposed 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 E.O. 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 proposed 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.

Paperwork Reduction Act

The paperwork and recordkeeping requirements imposed by these

programs have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (approval number 0551-0015). An Information Collection Request (IRC) has been prepared for this rule by the USDA, and a copy may be obtained from Pam Hopkins, Compliance Review Staff, USDA, 14th and Independence Ave. S.W., Washington, D.C., 20250 or by calling (202) 720-6713.

The IRC explains the necessity, quantity and burden of information collection.

Need: This rule permits the entry of raw sugar, exempt from the tariff-rate quota for other raw sugar imports and the related requirements, on the condition that an equivalent amount of refined sugar be exported or used in the production of polyhydric alcohol. Compliance is assured through the accurate records and reports maintained and submitted by program participants. Without such records and reporting the FAS could not properly implement the programs.

Quantity: Information collection occurs at three (3) points: initial licensing; the acquiring of sugar via import (for refiners) or transfer (for sugar containing products manufacturers and producers of polyhydric alcohol); and, the disposition of sugar via transfer (for refiners), export (for refiners and sugar containing product manufacturers) and use (for producers of polyhydric alcohol).

Persons desiring to participate in one of the programs must apply for a license. Licensees may be refiners, sugar containing product manufacturers or producers of polyhydric alcohol. Once licensed, under the current regulations, each licensee notifies FAS of each import, transfer, use or export of sugar on a transaction by transaction basis.

Under the proposed rule, licensees would report all transactions in quarterly reports. The reports would contain specific information, in chronological order, on imports, exports, transfers, use, loss adjustments and a license balance. The information would be submitted in electronic format with a certification as to the accuracy of the report. Credits are effective on the date of export rather than when recorded by the Licensing Authority. This means licensees must keep track of their balance to stay within their license

balance or time limits or be subject to civil penalties.

Estimate of Burden: (1) "application for a license" would require 10 hours per response; (2) "regular reporting" would require between 10 and 15

minutes per transaction. The number of transactions per respondent will vary.

Respondents: Sugar refiners, manufacturers of sugar containing products and producers of polyhydric alcohol.

Estimated Number of Respondents: 250.

Estimated Total Burden Hours on Respondents: 3866.

	Refiners	SCP	PhA
Burden per transaction (minutes): ¹			
New License	N/A	10(hrs)	10(hrs)
Import	10	N/A	10
Transfer	10	10	N/A
Exports	15	15	N/A
Use	N/A	N/A	10
Transactions:			
New License	0	20	1
Imports	72	N/A	23 ³
Transfer	5170	2300 ²	N/A
Exports	6371	4610 ²	N/A
Use	N/A	N/A	120
Annual Burden Hours (multiply the cells of the above tables):			
New License	0	200	10
Imports	12	0	3.85
Transfers	861.66	383.33	0
Exports	1592.75	1152.5	0
Use	0	0	20

¹ Unless otherwise indicated numbers are for fiscal year 1994.

² Numbers are for the calendar year 1995. Transfers are different between refiners and manufacturers because of different accounting methodologies: refiners generally report each shipment as a distinct transfer where sugar containing products manufacturers will aggregate shipments from a single refiner to a single manufacturer.

³ Under the current regulations polyhydric alcohol producers have an import license which is used by refiners, on behalf of the polyhydric alcohol producer, to import raw sugar. Under the proposed regulations sugar polyhydric alcohol producers would not have refiners import and refine their sugar. Instead, they would be issued transfer licenses which would work similarly to those of the sugar containing product manufacturers. Consequently, this number would remain the same, but would be a burden resulting from transfers accepted, not imports.

Impact: The proposed rule will decrease the burden on program participants in three ways. First, it will reduce reporting and result in some reduction in information collection. Second, it will decrease the government's burden of entering data manually, thereby permitting more time for program support and compliance review. Third, it will simplify self-tracking of license balances so that program participation happens in real-time, instead of licensees waiting on action by government employees.

The agency has submitted a copy of the proposed rule to OMB in accordance with section 3507(d) of the Paperwork Reduction Act (44 U.S.C. 3507(d)) for its review of these information collections. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including (1) An evaluation of whether the proposed collection of information ensures that the collection of information is necessary for the proper performance of the functions of the agency; (2) an evaluation of the accuracy of the agency's estimate of burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the

burden of the collection of information, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Team Leader, Sugar Team, Import Policies and Programs Division, Foreign Agricultural Service, Room 5531, South Building, U.S. Department of Agriculture, Washington, DC 20250 and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503. Comments on the issues covered by the Paperwork Reduction Act are most useful to OMB if received within 30 days of publication of the Notice of Proposed Rulemaking, but must be submitted no later than 60 days from the date of publication to be assured of consideration.

National Environmental Policy Act

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

Executive Orders Nos. 12372 and 12875 and the Unfunded Mandates Reform Act (P.L. 104-4)

These Orders require intergovernmental review of programs. Neither the Refined Sugar Re-export Program, the Sugar Containing Products 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 No. 12372 or No. 12875 or the Unfunded Mandates Reform Act.

Executive Order No. 12612

Executive Order No. 12612 requires implications of "federalism" be considered in the development of regulations. The Administrator certifies that this proposed rule has been reviewed in light of E.O. 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 state's abilities to

discharge traditional State governmental functions.

Executive Order No. 12606

Executive Order No. 12606 requires that government action include consideration of maintaining stability and strengthening the family. The FAS has determined, under the principles and criteria established in E.O. 12606, that this rule will have no effect on the family.

Executive Order No. 12630

This 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 E.O. 12630.

Background

On October 12, 1990, the Department of Agriculture published an interim rule (55 FR 41487) to revise three programs for imports of raw cane sugar exempt from the tariff-rate quota: "Sugar To Be Re-exported in Refined Form" (7 CFR 1530.100 et seq.), "Sugar To Be Re-exported in Sugar Containing Products" (7 CFR 1530.200 et seq.), and "Sugar for the Production of Polyhydric Alcohol" (7 CFR 1530.300 et seq.). A final rule, published on July 8, 1991 (56 FR 30857) adopted the interim rule as final with modifications to various provisions. Since the promulgation of the final rule, the results of multilateral trade negotiations require the modification of certain provisions of the regulations. Some additional proposed revisions in the regulations result from program management and efficiency considerations.

Requirements of the North American Free Trade Agreement

North American Free Trade Agreement Implementation Act of 1993 (Public Law No. 103-182, 107 Stat. 2057), Presidential Proclamation No. 6641 of December 15, 1993 (58 FR 66867), implemented the North American Free Trade Agreement (NAFTA). Paragraph 22(a) of Section A of Annex 703.2 of the NAFTA provides for the duty-free entry of raw cane sugar from Mexico for refining in the United States and re-export to Mexico and for the duty-free entry of refined sugar from Mexico that has been refined from raw sugar produced in the United States (NAFTA U-turn provision). U.S. note 17(b) to subchapter VI of chapter 99 of the HTS incorporates this provision into U.S. statutory law.

The two noteworthy sections of this rule are (1) That sugar imported under

this provision must be re-exported in refined form, and not as a sugar containing product, within 18 months of the date of entry, and; (2) sugar entered under this provision will have no effect on the refiner's license balance.

The Foreign Agricultural Service proposes amending the current rules to permit the Sugar Team to implement the NAFTA U-turn provision.

Changes in Chapter 17 of the HTS

Presidential Proclamation No. 6763 of December 23, 1994 (60 FR 1007) amended the HTS, effective January 1, 1995, in order to carry out the tariff modifications provided for by the Uruguay Round Agreements Act. Former tariff subheading 1701.11.02, which provided for the quota-exempt sugar entries and is cited repeatedly in the regulations, was replaced by a new subheading 1701.11.20. Moreover, former additional U.S. note 3(c) was replaced by a revised additional U.S. note 6, which now reads as follows:

Raw cane sugar classifiable in subheading 1701.11.20 shall be entered only to be used for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or to be refined and reexported in refined form or in sugar-containing products, or to be substituted for domestically produced raw cane sugar that has been or will be exported. The Secretary of Agriculture may issue licenses for such entries and may promulgate such regulations (including any terms, conditions, certifications, bonds, civil penalties, or other limitations) as are appropriate to ensure that sugar entered under this subheading is used only for such purposes.

Authorization of civil penalties is a new provision.

The President's Regulatory Reinvention Initiative, Memorandum of March 4, 1995, obliges department heads, including the Secretary of Agriculture, to incorporate flexibility into the administration of civil penalties. Current regulations use liquidated damages to protect the domestic sugar program against injury from unauthorized use of the Refined Sugar Re-export Program, the Sugar Containing Products Re-export Program or the Polyhydric Alcohol Program. However, the liquidated damages currently in the regulations provide no flexibility in the assessment of damages. Presidential Proclamation No. 6763 grants the Secretary of Agriculture the authority to institute civil penalties for non-compliance with the re-export program. Civil penalties could be imposed for certifying inaccurate information to the Licensing Authority or violating the terms of the license, including the license balance limit.

Under the proposed rule, civil penalties will be imposed in the following situations, in ascending order of severity: (1) for failure to submit quarterly reports in a timely manner; (2) for submitting reports with incorrect information; (3) for exceeding the license limits on charges or credits; (4) for exceeding the time limits within which licensees must credit their license. The latter two require that the licensee maintain its balance within the license limits at all times.

The availability of civil penalties as an enforcement mechanism reduces the need to require that a licensee post a bond. Combined with changes in license limits outlined below the bond requirement is no longer necessary; accordingly, FAS proposes to remove the bond requirements.

Thus, FAS proposes amending the regulations (1) to change references to additional U.S. note 3 and subheading 1701.11.02 to references to additional U.S. note 6 and subheading 1701.11.20, respectively, (2) to convert from liquidated damages to civil penalties as a means of enforcement of the regulatory requirements, and (3) to eliminate the bond requirement.

Changes in Drawback

Section 404(e)(5) of the Uruguay Round Agreements Act amended section 313 of the Tariff Act of 1930 to provide, in a new subsection (w), that "no drawback shall be available with respect to an agricultural product subject to the over-quota rate of duty established under a tariff-rate quota, except pursuant to subsection (j)(1)." This provision will prevent the drawback of over-quota import duties in all cases except where imported sugar is re-exported without any substitution or processing. Accordingly, FAS proposes eliminating all references to customs duty drawback in the current regulations.

Transitional Provisions

Current regulations provided transitional provisions for the period during which the former absolute import quota was converted to a tariff-rate quota and licenses were replaced. Since these provisions no longer have any relevance, FAS proposes deleting them.

Polyhydric Alcohol Program

FAS proposes converting the licenses of polyhydric alcohol manufacturers from import licenses into "transfer" licenses under which licensees would contract with refiners for transfers of refined sugar rather than import foreign sourced raw sugar directly. This change

would enable licensees to receive the benefits of polarity adjustments, and it would extend the time period for use of program sugar by moving the start of the period from the date of entry of the imported raw sugar to the later date of transfer of the refined sugar. The change would also facilitate program administration.

Other Changes

FAS is proposing changes in the current maximum license balance amounts. The changes to increase the credit limit and reduce the maximum limit on charges will alleviate the need for bonds. In addition, FAS is proposing the creation of a consolidated license that would cover both a parent corporation and its wholly-owned subsidiaries under one license. The proposed rule authorizes the use of co-packers in certain circumstances; the licensees would be responsible for license transactions and activities of co-packers acting on their behalf.

FAS would also welcome comments on whether quantities of sugar transferred by a refiner to sugar containing products manufacturers and polyhydric alcohol producers should be counted against the refiner's maximum license balance limit.

List of Subjects in 7 CFR Part 1530

Sugar, Agriculture, Agricultural trade, International trade, Exports, Imports.

Accordingly, FAS is proposing to revise 7 CFR part 1530 to read as follows:

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

- 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 Expiration or surrender of licenses.
- 1530.108 Reporting and certification.
- 1530.109 Records and documentation.
- 1530.110 Enforcement and penalties.
- 1530.111 Administrative appeals.
- 1530.112 Waivers.
- 1530.113 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.

Under the provisions of the regulations of this part, raw sugar may be imported unrestricted by the quantitative limit established for the tariff-rate quota for importation of raw cane sugar and not subject to the certificate of quota eligibility requirements provided for in 15 CFR part 2011, as long as an equivalent quantity of refined sugar is exported, either as refined sugar or as an ingredient in a sugar containing product, or is used in the production of certain polyhydric alcohols. A raw cane sugar refiner may receive a license to import raw sugar under the provisions of these regulations, which becomes program sugar and is charged against the refiner's license balance. Refiners may receive credit to their license balance by selling sugar in the world market or by transferring sugar to a licensed manufacturer of a sugar containing product or licensed producer of polyhydric alcohol. A manufacturer of a sugar containing product may receive a license to accept transfers of refined program sugar from licensed refiners which will be charged against its license balance. A manufacturer may receive credit to its license balance for exports of program sugar in sugar containing products. A producer of polyhydric alcohol may receive a license to accept transfers of refined program sugar from licensed refiners which will be charged against its license balance. A producer may receive credit to its license balance for use of sugar in the production of certain polyhydric alcohols. For all licensees, credits shall be made within the time-limits and the balance shall be within the quantity limits set forth in this part. For the purposes of these programs, program sugar and non-program sugar are substitutable.

§ 1530.101 Definitions.

Additional U.S. note 6 means additional U.S. note 6 to chapter 17 of the HTS.

Affiliated person means two or more persons where one or more of said persons directly or indirectly control or have the power to control the other(s), or, a third person controls or has the power to control the rest. Indicia 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.

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.

Date of entry means the date of entry on the relevant U.S. Customs Service entry form.

Date of export means (1) The on-board date of an ocean going carrier bill of lading or an airway bill of lading; (2) if export occurs by rail or truck, the date on the inland bill of lading; or (3) if exported to a foreign trade zone, the date of entry shown on the U.S. Customs Service form designating the product as restricted for export.

Date of transfer means the date of shipment on a relevant inland bill of lading or the date of a relevant warehouse receipt.

Day means calendar day.

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.

HTS means the Harmonized Tariff Schedule of the United States.

Licensing Authority means the Team Leader, Sugar Team, Import Policies and Programs Division, Foreign Agricultural Service, USDA, or the Team Leader's designee.

Manufacturer of a sugar containing product means a person who owns and operates a food processing facility that is used in the manufacture of a sugar containing product.

Materially incorrect includes mistakes in reporting the customs entry number or information required from the bill of lading, or errors that affect the license balance.

Notice of transfer means a document certifying transfer of a specified quantity of program sugar, in form and substance satisfactory to the Licensing Authority.

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

Polyhydric Alcohol Program means the licensing program provided for in this part for manufacturers of polyhydric alcohols, including all of the terms conditions and requirements applicable to such licensees.

Program sugar means sugar that has been imported, transferred, exported, either in refined form or as an ingredient in a sugar containing product, or used in the production of certain polyhydric alcohols in conformity with the provisions of this part.

Program transaction means an appropriate entry, export, either in refined form or as an ingredient in a sugar containing product, transfer, acceptance of transfer or production of certain polyhydric alcohols.

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.

Refined Sugar Re-export Program means the licensing program provided for in this part for refiners of raw cane sugar, including all of the terms conditions and requirements applicable to such licensees.

Refiner means any person in the U.S. customs territory that refines raw sugar through:

- (1) Affination or defecation;
- (2) Clarification; and
- (3) 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.

Sugar Containing Products Re-export Program means the licensing program provided for in this part for manufacturers of sugar containing products, including all of the terms conditions and requirements applicable to such licensees.

Transfer means the transfer of physical possession or legal title of program sugar from a licensed refiner to a licensed manufacturer of a sugar containing product or a licensed producer of polyhydric alcohol.

USDA means the United States Department of Agriculture.

§ 1530.102 Nature of the licenses.

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

(b) A license granted to a refiner under the Refined Sugar Re-export Program permits the refiner to receive entries of imported raw cane sugar under subheading 1701.11.20 of the HTS, which are not subject to the quantitative limitations or certificate of quota eligibility requirements of the tariff-rate quota for imports of raw cane sugar. Such license requires a refiner licensee to refine raw sugar within the U.S. customs territory and export or transfer a quantity of refined sugar equivalent to the quantity of raw sugar imported within the required time-frames.

(c) A license granted to a manufacturer of a sugar containing product under the Sugar Containing Products Re-export Program permits the manufacturer to receive transfers of refined sugar from licensed refiners.

Such license requires a manufacturer licensee to export an equivalent quantity of sugar as an ingredient in a sugar containing product that has been manufactured in the U.S. customs territory within the required time-frames.

(d) A license granted to a producer of polyhydric alcohol under the Polyhydric Alcohol Program permits the producer to receive transfers of refined sugar from licensed refiners. Such license requires the producer licensee use an equivalent quantity of sugar in the production of certain polyhydric alcohols in the U.S. customs territory within the required time-frames.

(e) Program participants may use sugar to produce certain polyhydric alcohols, transfer sugar, or export sugar, whether in refined form or as an ingredient in a sugar containing product, in anticipation of future purchases of program sugar as long as such transactions maintain license balances within permitted license limits.

§ 1530.103 License eligibility.

(a) Any refiner with a facility within the U.S. customs territory is eligible for a license to participate in the Refined Sugar Re-export Program.

(b) Any manufacturer of a sugar containing product with a facility within the U.S. customs territory is eligible for a license to participate in the Sugar Containing Products Re-export Program.

(c) Any producer of certain polyhydric alcohol with a facility within the U.S. customs territory is eligible for a license to participate in the Polyhydric Alcohol Program.

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

(e)(1) Notwithstanding paragraph (d) of this section, a corporation which owns one or more wholly-owned subsidiary corporations that 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).

(2) For purposes of the regulations in this part, the program transactions and other program activities of the subsidiary corporations covered by a consolidated license will be treated as the activities of the corporation holding the consolidated license.

(3) The maximum license balance limits for a consolidated license will be two times larger than the limits provided for in § 1530.105(g).

§ 1530.104 Application for a license.

(a) A person seeking a license may 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 § 1530.108;
- (3) The address(es) of the applicant's processing plant(s), including those of any co-packers;
- (4) A description of the applicant's product(s), and
 - (i) In the case of a refined sugar product, the polarity of the product and the formula proposed by the refiner for calculating the raw value of the product;
 - (ii) 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); or
 - (iii) In the case of polyhydric alcohol, the quantity of refined sugar used producing such polyhydric alcohol; and
- (5) A certification that the applicant is not affiliated to any other licensee.

(b) 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 including such changes.

§ 1530.105 Terms and conditions.

(a) A refiner who holds a license under the Refined Sugar Re-export Program shall, not later than 18 months after the entry of a quantity of raw cane sugar under subheading 1701.11.20 of the HTS:

- (1) export an equivalent quantity of refined sugar; or
- (2) transfer an equivalent quantity of refined sugar to a licensed manufacturer of a sugar containing product or to a licensed producer of polyhydric alcohol.

(b) A manufacturer of a sugar containing product who holds a license under the Sugar Containing Products Re-export Program shall, not later than 18 months from the date of transfer of a quantity of refined sugar from a licensed refiner, export an equivalent quantity of refined sugar as an ingredient in a sugar containing product.

(c) A producer of polyhydric alcohol who holds a license under the Polyhydric Alcohol Program shall, not later than 18 months from the date of transfer of a quantity of refined sugar from a licensed refiner, use an equivalent quantity of refined sugar in the production of certain polyhydric alcohols.

(d) Notwithstanding paragraphs (a) through (d) 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 to a manufacturer of a sugar containing product or to a producer of certain polyhydric alcohols.

(e) Transfers between licensees require a notice of transfer.

(1) A licensed refiner that transfers program sugar to a manufacturer of a sugar containing product or a producer of polyhydric alcohol shall send two signed copies of the notice of transfer to the transferee within 7 days of the date of transfer.

(2) A licensed manufacturer of a sugar containing product or producer of polyhydric alcohol that accepts a transfer of program sugar shall retain one copy of the notice of transfer and shall endorse and return the other copy to the transferring refiner not later than one month from date of transfer.

(3) Refiners shall retain the returned notice of transfer.

(f) At any given time, charges to a license pursuant to § 1530.106 shall not be greater than or less than credits to the license pursuant to such section by more than the following limits:

(1) For refiners, except for entries of raw sugar from Mexico for refining and re-export to Mexico:

(i) Credits shall not exceed charges by more than 75,000 metric tons; and

(ii) Charges shall not exceed credits by more than 25,000 metric tons;

(2) For manufacturers of a sugar containing product:

(i) Credits shall not exceed charges by more than 15,000 short tons; and

(ii) Charges shall not exceed credits by more than 5,000 short tons; and

(3) For producers of polyhydric alcohol:

(i) Credits may not exceed charges by more than 15,000 short tons, and

(ii) Charges shall not exceed credits by more than 5,000 short tons.

(g) For the purposes of the programs governed by this part, sugar is fully substitutable. The refined sugar exported or transferred does not need to be the same sugar produced by refining the raw sugar entered under subheading 1701.11.20 of the HTS, and the sugar used in the production of sugar containing products or polyhydric alcohol does not need to be the same sugar that was transferred by a licensed refiner.

(h) A licensee may use an agent to carry out the requirements of participation in the program. Agents may include brokers, shippers, freight forwarders, expeditors and co-packers.

(i) 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.

(j) 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, in his or her discretion, determines to be necessary or appropriate to achieve the purposes of the relevant program.

(k) Measuring time for complying with license obligations: The date of completion for complying with an obligation under this part is the same numbered day in the later month from which the obligation is measured; except that where there is not the same numbered day in the later month, the final date for completion shall be the last day of the later month. Where the final date for completion falls on a weekend or on a federal holiday, the obligation may be completed on the next business day.

§ 1530.106 License charges and credits.

(a) A refiner's license shall be charged for the quantity of raw cane sugar entered, and credited for the quantity of refined sugar exported or transferred.

(b) A manufacturer of a sugar containing product's license shall be charged for the quantity of refined sugar accepted as a transfer, and credited for the quantity of sugar exported as an ingredient in a sugar containing product.

(c) A polyhydric alcohol producer's license shall be charged for the quantity of refined sugar accepted as a transfer, and credited for the quantity of sugar used in the production of certain polyhydric alcohols.

(d) All charges and credits will be made on a 100° polarity refined sugar, dry weight basis. Quantities of sugar not on that basis will be adjusted, for the purpose of calculating charges and credits, using the formulae set forth in paragraph (f) of this section.

(e) Charges and credits will be effective as of the following dates:

(1) charges for entries, as of the date of entry;

(2) charges and credits for transfers, as of the date of transfer;

(3) credits for exports, as of the date of export; and

(4) credits for production of certain polyhydric alcohols, as of the date of production.

(f)(1) Quantities of raw cane sugar entered shall be adjusted to a 100°, Refined Sugar, dry weight basis as follows:

(i) Determine the quantity, on a raw value basis, of the imported sugar by

multiplying the polarity, on a dry weight basis, by 0.0175; by subtracting 0.68 from the resulting product; and then by multiplying the resulting difference by the weight of the imported sugar; and

(ii) Divide the quantity of sugar, raw value basis, determined in paragraph (f)(1)(i) of this section by 1.07.

(2) Quantities of transferred sugar, or sugar exported by refiners, shall be adjusted to a 100°, 100% sucrose or sucrose equivalent-refined, dry weight basis.

(3) Quantities of sugar exported by manufacturers of a sugar containing product shall be adjusted to a 100°, 100% sucrose or sucrose equivalent-refined, dry weight basis.

(4) Quantities of sugar used by producers of certain polyhydric alcohols shall be adjusted to a 100°, 100% sucrose or sucrose equivalent-refined, dry weight basis.

(g) Credits for exports of sugar as refined sugar or as an ingredient in a sugar containing product that are subsequently returned to the U. S. customs territory without a substantial transformation will be revoked.

§ 1530.107 Expiration or surrender of licenses.

(a) A license will expire:

(1) If there have been no charges or credits on the license in any consecutive 18 month period; or

(2) Upon written notice by the Licensing Authority.

(b) A licensee may surrender a license at any time if credits exceed charges or, if charges exceed credits, only on terms and conditions acceptable to the Licensing Authority.

§ 1530.108 Reporting and certification.

(a) A licensee shall submit a quarterly report to the Licensing Authority not later than three months after the close of the reporting period.

(1) Each report shall be certified as true and correct and shall certify that the charges and credits are made pursuant to § 1530.106 and documented pursuant to § 1530.109.

(2) The certification shall contain the licensee's name, address, and license number and be signed by a person acting on behalf of the licensee.

(3) Reports shall be submitted in electronic format acceptable to the Licensing Authority. Applicants unable to submit a report in electronic format may seek a waiver permitting them to submit the report in hard copy.

(4) Reports may be submitted in person, by U.S. mail, by private courier, or by other method acceptable to the Licensing Authority. Reports will be

deemed submitted when sent, as identified by postmark or other appropriate date stamp, with sufficient postage affixed. Certified postal receipt or private courier receipt are acceptable as proof of filing.

(5) Initial reporting periods will be determined by the Licensing Authority.

(b)(1) The report shall be in an integrated spreadsheet format with all program transactions in chronological order including, as appropriate, entries of raw cane sugar, transfers of refined sugar, exports of refined sugar or a sugar containing product, and the production of certain polyhydric alcohols. A copy of this format may be obtained from the Licensing Authority;

(2) Reports from a refiner shall identify the date and type of each program transaction, the license balance (keeping a separate balance for sugar imported from Mexico that will be refined and re-exported to Mexico) resulting from such transaction, and the following data, as appropriate:

(i) For entries:

(A) Quantity of program sugar entered (commercial weight—MT);

(B) Polarization;

(C) Refined sugar equivalent, 100 degree, dry weight basis (MT);

(D) Customs entry number;

(E) Warehouse release number where applicable;

(F) Port of entry; and

(G) Country of origin.

(ii) For transfers:

(A) Quantity of refined program sugar transferred (pure sugar, dry weight basis—cwt);

(B) Sugar content or polarity;

(C) Commercial weight (cwt);

(D) Notice of transfer number; and

(E) Transferee's license number.

(iii) For exports:

(A) Quantity exported (refined sugar, 100 degree, dry weight basis—MT);

(B) Sugar content or polarity;

(C) Commercial weight (MT);

(D) Port of export;

(E) Country of destination;

(F) Export carrier;

(G) Vessel name;

(H) On-board ocean-going or airway bill of lading number; or where exports are to Canada or Mexico by rail or truck, inland bill of lading number; or where exports are to a foreign trade zone, U.S. Customs Service entry number;

(I) Container number, where the export is by sea;

(J) Name of the freight forwarder or non-vessel operating common carrier;

(K) Bill of lading number on the bill of lading issued by the agent identified in paragraph (b)(2)(iii)(J) of this section; and

(L) Consignee or foreign customer.

(3) Reports from a manufacturer of a sugar containing product shall identify the date and type of each program transaction, the license balance resulting from such transaction, and the following data, as appropriate:

(i) For transfers:

(A) Quantity of program sugar transferred (pure sugar, dry weight basis—cwt);

(B) Sugar content or polarity;

(C) Commercial weight (cwt);

(D) Notice of transfer number; and

(E) Refiner's license number.

(ii) For exports:

(A) Quantity exported (pure sugar, dry weight basis—lbs.);

(B) Percentage sugar contained in the sugar containing product;

(C) Commercial weight of the exported sugar containing product;

(D) Description of the product;

(E) Port of export;

(F) Country of destination;

(G) Export carrier;

(H) Vessel name;

(I) On-board ocean-going or airway bill of lading number; or where exports are to Canada or Mexico by rail or truck, inland bill of lading number; or where exports are to a foreign trade zone, U.S. Customs Service entry number;

(J) Container number, where the export is by sea;

(K) Name of the freight forwarder or non-vessel operating common carrier;

(L) Bill of lading number on the bill of lading issued by the agent identified in paragraph (b)(3)(ii)(K) of this section; and

(M) Consignee or foreign customer.

(4) Reports from a producer of polyhydric alcohol shall identify the date and type of each program transaction; the license balance resulting from such transaction; and the following data, as appropriate:

(i) For transfers:

(A) Quantity of program sugar transferred (pure sugar, dry weight basis—cwt);

(B) Sugar content or polarity;

(C) Commercial weight (cwt);

(D) Notice of transfer number; and

(E) Refiner's license name and number.

(ii) For use in the production of polyhydric alcohol:

(A) Quantity of sugar used (pure sugar, dry weight basis—lbs.);

(B) Percentage sugar contained in the polyhydric alcohol product;

(C) Quantity of product produced (lbs.); and

(D) description of the polyhydric product.

(c) Licensees have an affirmative and continuing duty to maintain the accuracy of previously certified reports.

Upon discovery, licensees shall immediately charge back erroneously claimed credits and promptly notify the Licensing Authority. Charge backs shall be as of the date of the erroneously claimed credit.

§ 1530.109 Records and documentation.

(a) Obtaining license credit requires that a licensee obtain and maintain in their possession the following records pertaining to a program transaction for thirty-six (36) months from the date of such program transaction:

(1) For entries:

(i) The U.S. Customs Service entry form; and

(ii) The laboratory polarity and weight out-turn tests used by the raw sugar seller and the refiner to adjust for polarity.

(2) For transfers: a notice of transfer.

(3) For use of sugar in the production of polyhydric alcohol: company accounts and records relating to the production of certain polyhydric alcohol and the use of sugar in such production, including the sugar content per unit of production and logs identifying total production.

(4) For exports:

(i) Sales invoice, purchase order, or sales contract identifying the consignee or foreign purchaser; and

(ii) on-board ocean-going or airway bill of lading; or where exports are to Canada or Mexico by rail or truck, the inland bill of lading and foreign country entry document; or where exports are to a foreign trade zone, U.S. Customs entry form. The Licensing Authority will maintain a list of acceptable Mexican or Canadian entry documents.

(b) Refiners shall retain, where feasible, the U.S. Customs Service Form 7512.

(c) The licensee shall, upon request, make the records covered by this section available for inspection and copying by the Licensing Authority, the Compliance Review Staff of the Foreign Agricultural Service, USDA, the Office of the Inspector General, USDA, or the Department of Justice.

§ 1530.110 Enforcement and penalties.

(a) The Licensing Authority will impose civil penalties for late reports, materially incorrect reports, exceeding a maximum license balance limit, or exceeding an applicable time-frame. The Licensing Authority may also revoke credits granted on a license.

(b) The Administrator of the Foreign Agricultural Service, USDA, may suspend or revoke a license. 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. Suspension or revocation of a license will apply to an individual human being as well as the corporation or other person who held the license, such that an individual may not simply form a new corporation or partnership and obtain a new license.

(c) The imposition of civil penalties is not exclusive, and licensees may be liable for criminal sanctions in the event that criminal statutes are violated.

(d) Reports not submitted in a timely manner will subject the licensee to civil penalties. The civil penalties for reports submitted after the proper filing date will be:

(1) Fifty (50) dollars, if the report is submitted within the first month after the applicable deadline; and

(2) If more than one month late, an additional fifty (50) dollars for each week after the end of the first month.

(e) Reports that are incorrect subject the licensee to civil penalties. The civil penalty for:

(1) Incorrect reports, where the error is not material, will be \$50.00;

(2) The first materially incorrect report submitted will be \$300.00; and

(3) Subsequent materially incorrect reports, where the prior materially incorrect submission occurred in the last 12 months, will be \$500.00.

(f) Exceeding license limits will subject licensees to loss of credit or civil penalties.

(1) Where license credits are greater than license charges by more than the maximum license balance limit, licensees shall forfeit credit in excess of the maximum license balance limit.

(2) Where license charges are greater than license credits by more than the license balance, licensees shall pay a civil penalty of 15 cents per pound.

(g) Not crediting a license against prior charges within the time limits set forth in §§ 1530.102 (c), (d) and (f) will subject the licensee to civil penalties of 15 cents per pound.

§ 1530.111 Administrative appeals.

(a) This section provides for administrative appeal of a determination by the Licensing Authority to revoke a credit on a license, or impose civil penalties. The decision on such appeal shall be made by the Director, Import Policies and Programs Division, Foreign Agricultural Service ("Director"), or his or her designee. Appeals for suspension and debarment will be governed by § 3017.515 of this title.

(b) 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. The appeal may be

filed in the office of the Director, or by mail with a postmark dated, not later than 30 days after the date of the Licensing Authority's determination. The licensee should submit a written argument in support of its position at the time it files its appeal. If the licensee does not make a timely appeal, any license credit revocation, civil penalty, or other proposed administrative determination will take effect in accordance with the Licensing Authority's determination. If the licensee seeks an informal hearing, it shall so request in its notice of appeal. The licensee may request that the informal hearing be scheduled within 30 days of the filing date of its notice of appeal.

(c)(1) Ordinarily, informal hearings will be held only at the request of the licensee. If no informal hearing is requested, the Director will make his or her determination on the basis of the written submission and any other available information. The hearing shall be held at the place and time determined by the Director, except that it shall be held within 30 days of the filing date of the notice of appeal if the licensee so requests.

(2) Hearings will be conducted by the Director in a manner as informal as practicable, consistent with the principles of fundamental fairness.

(3) The licensee may be represented by counsel.

(4) The licensee shall have a full opportunity to present any relevant evidence, documentary or testimonial, and to make arguments in support of its position. The Director may permit other individuals to present evidence at the hearing, and the licensee shall have an opportunity to question those witnesses.

(5) A verbatim transcript of the hearing may be made at the direction of the Director, or at the request of the licensee. If the licensee requests a transcript be made, it shall be responsible for arranging for a professional reporter and shall pay all attendant expenses.

(d) 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.

§ 1530.112 Waivers.

(a) 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 or export, may

temporarily increase the maximum license balance limit, may extend the period for submitting regularly scheduled reports and certifications, 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.

(b) Waivers of civil penalties will be disfavored and only issued under extraordinary circumstances.

§ 1530.113 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 control number. The Office of Management and Budget has approved the information collection requirements contained in this part in accordance with 44 U.S.C. chapter 35 and OMB number 0551-0015 has been assigned and will expire August 31, 1997.

Signed at Washington, DC on July 17, 1996.

Timothy J. Galvin,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 96-19521 Filed 8-5-96; 8:45 am]

BILLING CODE 3410-10-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 357

RIN 3064-AB08

Determination of Economically Depressed Regions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule and withdrawal of proposed rule.

SUMMARY: As part of the FDIC's systematic review of its regulations under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is amending its regulation on economically depressed regions to reflect changes in the marketplace, update and streamline the regulation, improve efficiency, and reduce unnecessary costs. The FDIC also is withdrawing a previous proposed amendment to the regulation which was published December 18, 1992.