

Proposed Rules

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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

RIN 0551-AA65

The Sugar Re-Export Program, the Sugar-Containing Products Re-Export Program, and the Polyhydric Alcohol Program

AGENCY: Foreign Agricultural Service (FAS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), Additional U.S. Note 6, which authorizes entry of raw cane sugar under subheading 1701.11.20 of the HTS for the production of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, or to be refined and re-exported in refined form or in sugar-containing products, or to be substituted for domestically produced raw cane sugar that has been or will be exported. The proposed rule would totally revise the current regulation at 7 CFR part 1530, effective February 12, 1999.

DATES: Comments should be received on or before March 22, 2005 to be assured of consideration.

ADDRESSES: Comments should be sent to the Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250-1021. All comments received will be available for public inspection in room 5531.

FOR FURTHER INFORMATION CONTACT: Ron Lord, Acting Director, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, by e-mail at Ronald.Lord@usda.gov, telephone at 202-720-2916, or fax at 202-720-0876.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

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 rule will have a significant favorable economic impact on small businesses participating in the program. Participation is voluntary. Direct and indirect costs are likely to be very small as a percentage of revenue and in terms of absolute costs. The regulatory requirements affect large and small businesses equally. The program's benefits should significantly improve the price competitiveness of exporters of sugar and sugar-containing products, and lower the cost of producing polyhydric alcohols.

Executive Order 12988

This rule has been reviewed under Executive Order 12988. The provisions of this rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

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.

Unfunded Mandates Reform Act (Pub. L. 104-4)

Public Law 104-4 requires consultation with State and local officials and Indian tribal governments. This rule does not impose an unfunded mandate or any other requirement on State, local, or tribal governments. Accordingly, these programs are not subject to the provisions of the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule would 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.

Government Paperwork Elimination Act

FAS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Background

The proposed rule at 7 CFR 1530 would revise the current regulation in effect since February 12, 1999, to improve program administration and reflect changes in the sugar sector. The Refined Sugar Re-export Program, the Sugar-containing Products Re-export Program, and the Polyhydric Alcohol Program permit licensed participants to purchase sugar on the world market for either export or use in the production of certain polyhydric alcohols. The raw equivalent of the program sugar exported or used may be replaced by raw cane sugar imported under HTS subheading 1701.11.20.

The programs administered under 7 CFR 1530 were established in 1982 when U.S. raw sugar imports were brought under import quota restriction. The programs were intended to assist the U.S. cane sugar refining industry to remain competitive in world markets and maintain refining volume in light of a shrinking domestic market. The regulations governing these programs were revised, consolidated, and reissued on February 12, 1999. The reissued rule required documentation agreements between FAS and licensees to facilitate program administration and oversight. Presently, 4 refiners, over 200 manufacturers, and 17 polyhydric alcohol producers are licensed to participate in the programs under this part.

Recent developments, including consolidation in the refining industry and the re-imposition of domestic marketing allotments, have altered

trading conditions applicable to sugar. On May 1, 2003, FAS published in the **Federal Register** (68 FR 23230) an Advance Notice of Proposed Rulemaking (ANPR) seeking public comments on a number of issues related to the administration of the sugar re-export programs. By incorporating changes that received favorable public comment, the proposed rule would:

- Prohibit refiners from claiming program credits for exports of domestically produced sugar that has not been reported to the Farm Service Agency as having been marketed during periods when marketing allotments are in effect. This prohibition would prevent the circumvention of domestic marketing allotments.
- Allow the transfer of export credits between refined sugar re-export licenses. This would allow a refiner that has not exported program sugar to purchase credits from a refiner that has, in order to import raw cane sugar.
- Allow polyhydric alcohol producers to purchase sugar to their specifications from refiners, without regard to polarity. The current regulation limits polyhydric producers to the purchase of sugar having a polarity of 99.5 degrees or more, which is higher than necessary for the production of some polyhydric alcohols.
- Allow holders of refined sugar re-export licenses to hold sugar-containing product re-export licenses. Multiple licenses would not increase the refiner's overall license limit of credits and charges.
- Allow third-party exports. License holders, however, would be required to pre-register third-party exporters on their licenses and provide for the third-party export transactions in their documentation agreements.
- Allow toll refining. Licensed manufacturers of sugar-containing products would be allowed to buy raw cane sugar on the world market and pay a licensed refiner to enter it into the United States and refine it to contract specifications.

In addition, the proposed rule would create a new class of licenses for entities that produce ingredients from sugar for the food industry. The license would be issued under the refined sugar re-export program and would allow the purchase of program sugar from refiners. Such ingredients could be sold only to holders of sugar-containing product re-export licenses. Holders of the new license would neither be able to import raw cane sugar nor export program

sugar or sugar-containing products for program credits. This new class of license would be called a "Class B Refined Sugar Re-export Program license" to differentiate it from the regular refiner's license which is called a "Class A Refined Sugar Re-export Program license."

The proposed rule would require licensees to provide independent laboratory verification of the sugar content of products transferred and/or exported upon request of the Licensing Authority.

The Department invites comments on all aspects of the proposed rule including those described above.

List of Subjects in 7 CFR Part 1530

Polyhydric alcohol, Raw and refined sugar, Re-exports.

Proposed Rule

Accordingly, for the reasons described in the preamble, 7 CFR part 1530—the Refined Sugar Re-export Program, the Sugar-containing Products Re-export Program, and the Polyhydric Alcohol Program, is proposed to be 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.

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

§ 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. These provisions authorize FAS to license refiners to enter raw cane sugar under the HTS subheading 1701.11.20 unrestricted by the quantitative limit established for the raw sugar tariff-rate quota or the requirements of certificates for quota eligibility provided for in 15 CFR part 2011, as long as an equivalent quantity of sugar regulated by the program is either exported or used in the production of certain polyhydric alcohols. Stocks of sugar blocked by domestic marketing allotments are disqualified from participation in the programs of this part. All refined sugar (whether derived from sugar beets or sugarcane) marketed in the United States may qualify as program sugar.

§ 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 direct or limit the business decisions of the other(s) regarding program transactions under this part.

Bond or letter of credit means an insurance agreement pledging surety for the entry of raw sugar or the transfer of program sugar.

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 owns and operates a facility within the U.S. Customs Territory that adds value to a manufacturer's product or produces a product for export by a manufacturer using the manufacturer's program sugar.

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

Date of export means the date program sugar is 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 program sugar is transferred from one licensee to another 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 documents that the licensee shall obtain and maintain on file before said licensee requests from FAS a license balance update.

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 a product to a country outside the U.S. Customs Territory, or to a restricted foreign trade zone.

Ingredient producer means a person who owns and operates a facility within the U.S. Customs Territory that uses program sugar to make specified ingredients.

Licensing Authority means a person designated by the Deputy Administrator, International Trade Policy, Foreign Agricultural Service, USDA.

Manufacturer means a person who makes, or orders others to make, sugar-containing products within the U.S. Customs Territory.

Notice of Transfer means a document recording the transfer of a quantity of program sugar from one licensee to another licensee that is dated and signed by both parties.

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

Polyhydric alcohol producer means a person who owns and operates a facility within the U.S. Customs Territory that produces (other than by distillation) polyhydric alcohols, other than polyhydric alcohols for use as a substitute for sugar in human food consumption.

Program sugar means sugar that has been charged or credited to the license of a program participant in conformity with the provisions of this part.

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

Refiner means any person who owns and operates a facility 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 normally marketed by refiners, that is produced using program sugar, or to which program sugar has been added as an ingredient.

Specified ingredient means any product, other than those normally marketed by refiners, that is produced using program sugar and sold exclusively to manufacturers per their contract specifications.

Third-party exporter means a person who purchases and exports program sugar or sugar-containing products from a licensed refiner or manufacturer.

Transfer means the transfer of program sugar from one license to another license subject to a Notice of Transfer.

Unique number means a number established by a licensee for the purpose of tracking each program transaction and for identifying the specific file maintained by the licensee containing all supporting documentation for the program transaction.

§ 1530.102 Nature of the license.

(a) A license issued by the Licensing Authority allows a person to participate in the programs under this part according to the terms and conditions of the license.

(b) The license authorizes a special account at FAS for monitoring imports, transfers and exports, and in the case of polyhydric alcohol producers, usage. FAS adds to the account balance "charges" for imports (entries) and transfers received from other licensees and subtracts from the balance "credits" for exports and transfers to other licensees, and in the case of polyhydric alcohol producers, usage.

(c) A Class A license under the Refined Sugar Re-export Program permits the holder to:

- (1) Enter raw cane sugar under subheading 1701.11.20 of the HTS;
- (2) Transfer program sugar;
- (3) Receive transfers of program sugar; and

(4) Export program sugar.

(d) A Class B license under the Refined Sugar Re-export Program permits the holder to:

- (1) Receive transfers of program sugar; and

(2) Transfer specified ingredients to holders of Sugar-containing Products Re-export Program licenses.

(e) A license under the Sugar-containing Products Re-export Program permits the holder to:

- (1) Receive transfers of program sugar from holders of Class A licenses and specified ingredients from holders of Class B licenses described in paragraphs (c) and (d) of this section;

(2) Export an equivalent quantity of program sugar as an ingredient in sugar-containing products; and

(3) Import raw cane sugar and take delivery of an equivalent quantity of program sugar by Notice of Transfer under the terms of a toll refining contract with a licensed refiner. Imports must be charged to the refiner's license.

(f) A license under the Polyhydric Alcohol Program permits the holder to:

- (1) Receive transfers of program sugar; and

(2) Use an equivalent quantity of program sugar in the production of certain polyhydric alcohols.

§ 1530.103 Persons eligible to apply for licenses.

(a) Any refiner may apply for a Class A license to participate in the Refined Sugar Re-export Program.

(b) Any ingredient producer may apply for a Class B license to participate in the Refined Sugar Re-export Program.

(c) Any manufacturer may apply for a license to participate in the Sugar-containing Products Re-export Program.

(d) Any polyhydric alcohol producer may apply for a license to participate in the Polyhydric Alcohol Program.

(e) No one person, nor any two or more affiliated persons, may apply for or hold more than one license of any kind under this part.

(f) Notwithstanding paragraph (e) of this section, any person holding a Class A Refined Sugar Re-export Program license may hold one or more licenses under paragraph (c) of this section, as long as the combined license balance limit for all licenses held by that person does not exceed 50,000 metric tons, raw value.

(g) The Licensing Authority may permit the holder of a license to assign the use of the license to another person upon receiving a written request from the holder accompanied by the written concurrence of the person to whom the license will be assigned.

§ 1530.104 License application procedures and the documentation agreement.

(a) A person may request a license by submitting a written application to the Licensing Authority that includes:

(1) The applicant's name and address, and the name(s) and address(es) of any affiliated person(s), who may use the license;

(2) The address where the applicant will maintain the records required under § 1530.108;

(3) The address(es) of the facility(ies), which will refine program sugar, produce specified ingredients, manufacture sugar-containing products, including those of any co-packer(s), or produce polyhydric alcohols;

(4) In the case of a product marketed by refiners or ingredient producers, the polarity of the product and the formula proposed by the refiner or ingredient producer for calculating the program sugar in the product;

(5) In the case of a sugar-containing product, the percentage of program sugar (100 degrees polarity) on a dry weight basis in the product;

(6) In the case of polyhydric alcohol, the quantity of program sugar used to produce a certain volume of polyhydric alcohol; and

(7) A statement disclosing any associations or relationships relevant for

determining whether or not an affiliation exists between the applicant and any other licensee under this part. The statement shall describe any interlocking directorships, joint management structures, ownership interests, and family connections that may exist with other licensees, and it shall explain the use of any shared facilities, equipment, or employees. In the case of a relevant association or relationship, the statement shall explain the degree of control or influence that the other licensee(s) may have on the business decisions of the applicant. If there are no such associations, the application shall include the following statement: "No associations or relationships exist with other licensees under the regulations at 7 CFR part 1530 that are relevant for making a determination regarding affiliation."

(b) The applicant shall propose a documentation agreement for auditing program transactions. Charges and credits to the license balance will be made only for transactions covered by the agreement. A representative list of program transactions follows:

- (1) Entry of raw cane sugar (refiners only);
- (2) Transfer of program sugar or specified ingredients;
- (3) Direct export of program sugar or sugar-containing products to:

- (i) Mexico;
- (ii) Canada;
- (iii) A restricted foreign trade zone;
- (iv) U.S. military exchanges; or
- (v) All other destinations.

- (4) Third-party exports of program sugar or sugar-containing products to:

- (i) Mexico;
- (ii) Canada;
- (iii) A restricted foreign trade zone;
- (iv) U.S. military exchanges; or
- (v) All other destinations.

- (5) Use of program sugar (polyhydric alcohol producers only).

(c) For each transaction that is proposed, the applicant shall provide to the Licensing Authority sample documents corroborating the transaction.

(1) Commercial documents are suitable for confirming the sale, transit, and use of program sugar and sugar-containing products within the U.S. Customs Territory.

(2) Official documents generated by the U.S., Canadian, or Mexican governments are necessary to confirm the entry of raw cane sugar and the export of program sugar and sugar-containing products.

(3) Signed Notices of Transfer confirm the transfer of program sugar between license holders.

(4) Export transactions also require documenting the name(s) of carrier(s)

and vessel(s), the numbers of containers, and the contact information of agents, consignees, and foreign purchasers.

(5) Exports of program sugar to Mexico shall be declared as U.S. re-export program sugar upon entry into Mexico.

(d) The applicant shall register third-party exporters by providing their names and contact information in the documentation agreement.

(e) The Licensing Authority shall inspect the sample documents and notify the applicant if they are suitable for auditing transaction reports submitted under § 1530.107. If not, the Licensing Authority will notify the applicant and suggest alternative documentation.

(f) Once the Licensing Authority and the applicant agree upon a list of transactions and supporting documents, the applicant shall submit a notarized letter confirming the agreement and certifying that the documentation identified in the agreement will be kept on file, identifiable by a unique number, and available for inspection pursuant to § 1530.108, to support all charges and credits made pursuant to § 1530.107.

(g) If any of the information required by this section changes, the licensee shall promptly notify the Licensing Authority.

§ 1530.105 Terms and conditions governing program transactions.

(a) All refining, production of specified ingredients, manufacturing, and polyhydric alcohol production must be accomplished in the U.S. Customs Territory and within time frames and quantity limitations prescribed in this part. Sugar transferred, exported, or used as program sugar does not need to be the same physical sugar produced by refining raw sugar entered under subheading 1701.11.20 of the HTS.

(b) The holder of a Class A Refined Sugar Re-export Program license:

(1) May enter raw sugar or receive program sugar in anticipation of the export or transfer of an equivalent quantity of program sugar not to exceed the value of the bond or letter of credit, which must be established pursuant to § 1530.106 of this part.

(2) May export or transfer program sugar prior to the date that either an equivalent quantity of raw sugar is entered or that an equivalent quantity of program sugar is received by transfer.

(3) May receive credits for exports of program sugar made by a third-party exporter registered on the licensee's documentation agreement.

(4) May not carry a license balance for charges or credits of program sugar

exceeding 50,000 metric tons, raw value, at any time during the year.

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

(c) The holder of a Class B Refined Sugar Re-export Program license:

(1) May only transfer program sugar prior to the date that an equivalent quantity of program sugar is received.

(2) May not carry a license balance for credits of program sugar exceeding 3,000 short tons, refined value, at any time during the year.

(d) A holder of a Sugar-containing Products Re-export Program license:

(1) May receive a transfer of program sugar in anticipation of the export of an equivalent quantity of program sugar in a sugar-containing product not to exceed the value of the bond or letter of credit, which must be established pursuant to § 1530.106 of this part.

(2) May export program sugar in a sugar-containing product prior to the date that an equivalent quantity of program sugar is received by transfer.

(3) May receive credits for exports of program sugar in a sugar-containing product made by a third-party exporter registered on the licensee's documentation agreement.

(4) May not carry a license balance for charges or credits of program sugar exceeding 10,000 short tons, refined value, at any time during the year.

(5) Shall export, not later than 18 months from the date of transfer of a quantity of program sugar, an equivalent quantity of program sugar as an ingredient in a sugar-containing product, if the transfer results in a positive license balance.

(e) A holder of a Polyhydric Alcohol Program license:

(1) May receive a transfer of program sugar in anticipation of the use of an equivalent quantity of program sugar in the production of certain polyhydric alcohols not to exceed the value of the bond or letter of credit, which must be established pursuant to § 1530.106 of this part.

(2) May use program sugar in the production of certain polyhydric alcohols prior to the date that an equivalent quantity of program sugar is received by transfer.

(3) May not carry a license balance for charges or credits of program sugar exceeding 10,000 short tons, refined value, at any time during the year.

(4) Shall use, not later than 18 months from the date of transfer of a quantity of program sugar, an equivalent quantity of program sugar in the production of

certain polyhydric alcohols, if the transfer results in a positive license balance.

(f) The Licensing Authority may impose such conditions, limitations or restrictions on program transactions at such time and in such manner as the Licensing Authority determines to be necessary or appropriate to prevent circumvention of the domestic sugar program.

§ 1530.106 Bonding requirements.

(a) A program participant must establish a bond or a letter of credit in favor of USDA prior to receiving program sugar in anticipation of its export or transfer, or in the case of polyhydric alcohol producers, its use. Such a condition exists whenever charges exceed credits, resulting in a positive license balance.

(b) Only the licensee may be the principal on the bond or letter of credit covering program sugar. The surety or sureties shall be among those listed by the Secretary of the Treasury as acceptable on Federal bonds.

(c) The bond or letter of credit shall cover entries or transfers made during the period of time specified in the bond (a term bond). The obligation under the bond or letter of credit shall be made effective no later than the date that the license balance becomes positive. If the bond is allowed to expire while the license balance is positive, the licensee shall be barred from entering or receiving transfers of program sugar until such time as the bond is renewed, or the licensee reports to FAS credits sufficient to reduce the license balance below zero.

(d) The amount of the bond or letter of credit shall be equal to 15 cents per pound of program sugar for any positive balance up to the maximum license limit establish by this part.

(e) 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 program sugar in an amount sufficient to offset the charge to the license for that corresponding program 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 Board of Trade) 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 the relevant prices, as he or she deems appropriate.

§ 1530.107 Reporting to FAS.

(a) All program transactions during the following calendar quarters shall be reported to FAS on or before the date indicated in order for the account balance to receive charges or credits:

- (1) January–March: June 30.
- (2) April–June: September 30.
- (3) July–September: December 31.
- (4) October–December: March 31.

(b) FAS shall provide licensees with reporting formats and methods that allow for the use of suitable information technologies.

(c) Reports shall be identified by the name and license number of the licensee and provide the following for all program transactions:

- (1) A unique number for the transaction.
- (2) The date of the transaction or use.
- (3) The quantity transacted adjusted to a dry weight basis.

(i) Refiner quantities shall be adjusted to raw value.

(A) For entries of raw cane sugar, refiners shall provide the initial and final polarization, and the final weight (when available).

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

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

(D) 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).

(ii) Ingredient producer, manufacturer, and polyhydric alcohol producer quantities shall be adjusted to 100 degrees polarity.

(4) The license number of the recipient of a transfer.

(5) The country of origin, if an entry, and final destination, if an export, using country codes designated by the Licensing Authority.

(6) In the case of program sugar exports to Mexico, the following signed statement: “The customer has provided written certification that the program sugar will be substantially transformed in Mexico, as defined by General Note 12 of the HTS.”

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

(1) Holders of Class A Refined Sugar Re-export Program licenses or Sugar-containing Products Program Re-export licenses shall immediately notify the Licensing Authority and request that previously claimed credits be charged back upon discovery that exports were re-entered into the U.S. Customs Territory without substantial transformation, falsely declared, or made but did not satisfy regulatory requirements or the documentation agreement.

(2) Holders of Polyhydric Alcohol Program licenses shall immediately notify the Licensing Authority and promptly request that previously claimed credits be charged back upon discovery that the program sugar was not used for the production of certain polyhydric alcohols.

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

§ 1530.108 Records, certification, and documentation.

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

(b) The licensee shall request customers to provide annual written certification as required by § 1530.107(c)(6) and maintain the documentation for 5 years.

(c) Upon request, the licensee shall make the records described in the documentation agreement available for inspection and copying by the Licensing Authority; the Compliance Review Staff, FAS; the Inspector General, USDA; the U.S. Department of Justice; and/or any U.S. Government regulatory or investigative office.

(d) The Licensing Authority may request licensees to provide, at their expense, independent laboratory verification of the information provided under § 1530.104(a)(4) and (5) regarding the sugar content of articles transferred and exported.

§ 1530.109 Enforcement and penalties.

(a) Violation or disregard of the regulations under this part are cause for enforcement actions and penalties.

(b) The Licensing Authority may:

(1) Revoke credits from a license if the credits were unauthorized by the regulations under this part or undocumented, and the licensee does not voluntarily charge back the credits erroneously claimed.

(2) Temporarily suspend a license for non-compliance with the bonding requirements under § 1530.106.

(3) Recommend that the Administrator revoke a license, if the licensee has consistently provided false or misleading information under § 1530.107(d) of this part.

(c) The FAS Administrator 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.

§ 1530.110 Appeals of Licensing Authority's determinations.

(a) The licensee may appeal the Licensing Authority's determination to revoke credits by filing a written notice of appeal, signed by the licensee or the licensee's agent, with the Deputy Administrator, International Trade Policy, FAS, or his or her designee. The decision on such an appeal shall be made by the Deputy Administrator 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 Deputy Administrator 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 Deputy Administrator 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 arrange and pay for a professional reporter to provide a verbatim transcript of the hearing.

(e) The Deputy Administrator shall make the determination on appeal, and may affirm, reverse, modify, or remand the Licensing Authority's determination. The Deputy Administrator 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.

§ 1530.111 Non-punitive actions resulting in revocation, consolidation, and surrender of licenses.

(a) The Licensing Authority may revoke a license held by an ineligible party.

(b) The Licensing Authority may consolidate two or more licenses upon

determination that the persons holding the licenses are affiliated.

(c) A licensee may surrender a license when the sum of all credits is equal to or greater than the sum of all charges. The licensee may request the Licensing Authority to transfer any outstanding credits to another license holder.

§ 1530.112 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; may temporarily increase a maximum license limit for a period of up to 6 months to facilitate a tolling arrangement; and/or may extend the period for submitting regularly scheduled reports. The Licensing Authority may specify additional requirements or procedures in place of the requirements or procedures waived or modified.

§ 1530.113 Implementation.

Current licensees qualify under this rule which is effective [effective date of final rule].

§ 1530.114 Paperwork Reduction Act assigned number.

Licensees are not required to respond to requests for information unless the form for collecting information displays the currently valid Office of Management and Budget (OMB) control number 0551-0015. OMB has approved the information collection requirements contained in this part in accordance with 44 U.S.C. chapter 35.

Dated: January 12, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 05-1068 Filed 1-19-05; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2004-19911; Airspace Docket No. 04-ASO-20]

Proposed Establishment of Class E Airspace; Cocoa Beach Patrick AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposed to establish Class E4 airspace at Cocoa Beach Patrick AFB, FL. Class E4 airspace designated as an extension to

Class D airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish a Class E4 airspace extension that is 6.8 miles wide and extends 7.3 miles northeast of the airport. This airspace is currently being protected by Notice to Airmen.

DATES: Comments must be received on or before February 22, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2004-19911/ Airspace Docket No. 04-ASO-20, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Jeffrey U. Vincent, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those