Rules and Regulations

Federal Register
Vol. 56, No. 130
Monday, July 8, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1530

Sugar To Be Re-exported in Refined Form, Sugar To Be Re-exported in Sugar Containing Products, and Sugar for Production of Polyhydric Alcohol

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: On October 9, 1990, the Department of Agriculture promulgated an interim rule (55 FR 41487) to renew and revise three programs—"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 Production of Polyhydric Alcohol" (7 CFR 1530.300 et seq.)—that were in effect under the prior sugar import quota. The interim rule amended the previous regulations governing these programs primarily in order to conform the regulations to the provisions of the Harmonized Tariff Schedule of the United States (HTS), as modified by Presidential Proclamation No. 6179 of September 13, 1990 (55 FR 38293) which converted the former absolute quota into a tariff-rate quota, but also to provide additional safeguards in the administration of these programs, to update or clarify former provisions, and to consolidate in one part of the CFR all of the regulations governing the programs referred to above.

Interested persons were initially provided 30 days to submit written comments concerning the interim rule, and this period was extended for an additional 30 days. This final rule addressed the comments received in response to the interim rule and makes several modifications of the regulations.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Cleveland Marsh, Team Leader, Import Quota Programs, Foreign Agricultural Service, Room 6095, South Building, U.S. Department of Agriculture, Washington, DC 20250; telephone number: 202–447–2916.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." It has been determined that the provisions of this final rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

The Administrator, Foreign Agricultural Service (FAS), certifies that this final rule will not have a significant economic impact on a substantial number of small entities. There are not a substantial number of small entities which participate in these programs. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601). It has been determined by an environmental evaluation that this action will not have any significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this interim rule.

The paperwork and recordkeeping requirements imposed by this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. OMB has assigned approval number 0551–0015 for this information collection.

Public reporting burden for this collection of information is estimated to average 68 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0015), Washington, DC 20503.

These programs are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background

Presidential Proclamation No. 6179 of September 13, 1990, 55 FR 38293, converted the U.S. sugar import quota into a tariff-rate quota, effective October 1, 1990. This Proclamation provided for raw cane sugar described in subheading 1701.11.02 of the Harmonized Tariff Schedule of the United States (HTS) to be imported subject to the lower duty rates (or duty free) of the tariff-rate quota, and exempt from the quota limitations otherwise applicable to sugars imported at such lower duty rates: *Provided* That such sugar is used only 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 is re-exported in refined form or in sugar containing products: Provided further, That duties paid at the higher duty rates are not refunded, as drawback, on the basis, or as a result, of the exportation of such polyhydric alcohol, refined sugar or sugar containing products. In response to Proclamation No. 6179, the Secretary of Agriculture promulgated an interim rule on October 9, 1990 (55 FR 41487) to amend the regulations governing three programs that were in effect under the former absolute import quota: Sugar to be Re-exported in Refined Form, Sugar to be Re-exported in Sugar Containing Products, and Sugar for Production of Polyhydric Alcohol.

Interested persons were provided 60 days to submit written comments concerning the interim rule. All comments, and portions of comments, received in response to the interim rule are addressed in this final rule as follows:

Subpart A—Sugar To Be Re-exported in Refined Form

(a) *Comment:* One comment was received that the definitions of "Notice of Transfer" in §§ 1530.100(n) and 1530.200(n) should be amended to change the word "delivery" to "shipment" in order to eliminate an argued inconsistency between these definitions and those for "Date of Transfer" in §§ 1530.100(e) and 1530.200(f) resulting in confusion in the determination of the date of transfer.

Response: The date of transfer as defined in §§ 1530.100(e) and 1530.200(f) is used by the Licensing Authority in determining whether a refiner has complied with the time limit under §§ 1530.102(b), 1530.106(b), and 1530.204(b) for transferring sugar to a manufacturer and whether a manufacturer has complied with the time limit under § 1530.202(b) for exporting sugar containing products. For such purposes, sugar is considered to have been transferred as of the date of shipment by the refiner. The Notice of Transfer, by contrast, is documentation, signed by both the refiner and the manufacturer, attesting to the actual delivery of transferred sugar to the manufacturer. The programs require that sugar is in fact delivered, and compliance cannot be assured unless the sugar is actually received by the manufacturer. Accordingly, the distinction between shipment and delivery in the two definitions is necessary. FAS has determined that no change in these definitions is warranted.

(b) *Comment:* Several similar comments were intended to relieve refiners from any responsibility for claims for drawback of higher tier duties with respect to sugar transferred to a manufacturer of sugar containing products by deleting the phrase "or any sugar containing product manufactured with the use of such transferred sugar" from various provisions of the regulations. One such comment proposed deleting the phrase from § 1530.101(a)(5)(iii), which requires that an applicant for a license certify that it will not request credit on the license for the exportation or transfer of any refined sugar, if the exportation of such refined sugar or any sugar containing product manufactured with the use of such transferred sugar has resulted in, or has been used as the basis of a claim by the licensee or any other person for, a refund, as drawback, or any second tier duties paid on the importation of any sugars, syrups or molasses. Another comment requested that the phrase be deleted from § 1530.102(d), which generally requires that a licensed refiner reserve all rights, if any, to claim drawback refunds with respect to the exportation or transfer of refined sugar under this program and prohibits credits on a license if any refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS is claimed or received on the basis, or as a result, of the exportation of such refined sugar or any sugar containing products manufactured with the use of such transferred sugar. Another comment proposed deleting the phrase from § 1530.105(c) which requires a licensee to provide a written notification to the Licensing Authority whenever the licensee knows or has reason to know that any claim has been made, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar or of sugar containing products produced from sugar transferred by the licensee.

Response: FAS agrees that a refiner should not be held responsible for drawback claims made by a manufacturer who holds a polyhydric alcohol or sugar containing products license, if the refiner has done nothing to aid or assist the making of such drawback claims. However, FAS has been informed by the U.S. Customs Service that pursuant to 19 CFR 191.65 a manufacturer would not be permitted to claim drawback of duties paid on imported sugar that is subsequently refined, transferred, and incorporated in other products without a certificate of delivery provided by a refiner. Thus, a refiner can prevent such drawback claims by refusing to provide the necessary documentation and can take such additional precautions as it deems necessary when negotiating the terms of its contractual relationships with manufacturers. The Licensing Authority does not intend to enforce these provisions against refiners in instances of fraudulent claims by a manufacturer without any participation of a refiner. Therefore, FAS does not agree to these changes.

(c) *Comment:* Several additional comments were also intended to relieve refiners from any responsibility with respect to drawback claims by persons not acting as agents of the refiners.

Comment: One such comment proposed that the phrase "acting as agent for the licensee" should be inserted after the word "person" in § 1530.105(a)(1)(vi), which requires that the licensee's certification of export include "the entry number of a claim, if any, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in (the second tier subheadings of the tariff-rate quota) on the basis, or as a result, of the exportation of the refined sugar and the amount of such refund* * *."

Response: FAS disagrees with this proposed change. A licensee, as a party to a drawback contract with the U.S. Customs Service, is in a position to control the making of drawback claims (which would require proof that the sugar had been refined in the United States) and is required by § 1530.102(d) to reserve all rights, if any, to claim drawback refunds with respect to the exportation of refined sugar under this program. Moreover, the reporting of this information is needed by FAS in order to coordinate with the U.S. Customs Service in monitoring compliance with the requirements of additional U.S. note 3(c) to chapter 17 of the HTS. Accordingly, FAS expects licensed refiners to supply such information even if the drawback claims are made by persons not standing in the legal relationship of agent of the refiner.

Comment: Another comment was proposed that § 1530.105(a)(1)(vii) be amended to add, after the word "received", the phrase "by licensee or its agent." This provision requires that the certification of export include "a statement that the sugar has been exported from the customs territory of the United States, that the licensee has reserved all rights to claim drawback refunds, and that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in (the second tier subheadings of the tariff-rate quota) has been or will be claimed or received on the basis, or as a result, of the exportation of the refined sugar."

Response: FAS rejects this proposed change for the reasons given in the response to the previous comment.

Comment: A further comment proposed inserting in § 1530.105(c), after the word "person," the words "as agent for the licensee" and deleting the phrase "or sugar containing products produced from sugars transferred from the licensee to a manufacturer, under the provisions of subpart B of this part." This section provides as follows:

(c) Notice of drawback claims. Whenever the licensee knows or has reason to know that any claim has been made, by the

licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1702.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar under this program or of sugar containing products produced from sugar transferred from the licensee to a manufacturer, under the provisions of subpart B of this part, the licensee shall within 5 business days provide a written notification to the Licensing Authority. This notification shall include the following information, if known or reasonably believed to be true by the licensee: * * *.

Response: This requirement applies only if the refiner knows or has reason to know of a drawback claim for the refund of second tier duties. If such a claim is made by a manufacturer of sugar containing products or by any other person not acting as the agent of the refiner, the refiner is obligated to report the claim only if the refiner has actual knowledge of the claim or has reason to know of it. FAS anticipates that these circumstances will exist if a refiner participates in preparing or furnishing information or documentation needed to complete the drawback claim. Accordingly, FAS rejects these proposed changes.

Comment: Yet another comment proposed inserting the phrase "as agent for the licensee" after the word "person" in § 1530.109(a)(7), which requires that a licensee retain records of "any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups or molasses described in * * * (the HTS subheadings subject to the tariff-rate quota) on the basis, or as a result, of the exportation of the refined sugar (exported under the provisions of this program) and the amount of any such refund paid."

Response: Once again, FAS believes that a refiner is in a position to control the making of drawback claims against the refiner's drawback contract and should retain records of such claims regardless whether the person making the claims stands in the legal relationship of agent to the refiner. Of course, if claims were made pursuant to the refiner's drawback contract by an unrelated third party using fraudulent documentation and without any knowledge or assistance by the refiner, FAS would not expect the refiner to possess or retain records of such claims.

(d) *Comment:* One comment proposed that, after the "United States," the phrase "by the licensee or its agent" be inserted in § 1530.107(d) which provides that the Licensing Authority may revoke any credit previously made to a license if it is determined that sugar exported under this program is "re-exported or returned to the customs territory of the United States without having undergone a substantial transformation."

Response: FAS rejects this proposed change. In order for this program to operate properly, FAS must be assured that the refined sugar exported and credited to a license will not be re-entered into U.S. customs territory. Any person attempting to re-enter goods that had previously been exported from the United States would need to rely on the cooperation of the manufacturer and exporter in order to complete the re-entry process under 19 CFR 10.1. Accordingly, a licensee and its agent are normally in a position to prevent the return to the United States, by third parties, of refined sugar exported under this program.

(e) *Comment:* Five comments were received which requested that §§ 1530.102(b) and 1530.106(b) be amended to change from 45 days to 90 days the time limit refiners have to transfer sugar to manufacturers of sugar containing products. All the comments referred to the administrative and scheduling burdens that would be imposed on refiners by limiting the time they have to transfer sugar to manufacturers to 45 days.

Response: The 45-day limit applicable to such transfers was originally established as part of a compression to within 1 year of the overall time frame for manufacturers to receive refined sugar (45 days), manufacture and export sugar containing products (180 days), and claim drawback (90 days). The compressed overall time frame was intended to facilitate timely processing by the U.S. Customs Service of suspended entries and monitoring by both FAS and Customs of compliance with the conditions established in additional U.S. note 3(c) to chapter 17 of the HTS. After several months of tariff-rate quota administration, FAS and the U.S. Customs Service are now satisfied that the level of cooperation and monitoring mechanisms are such that imports can be tracked sufficiently to assure program compliance. For example, FAS is altered to imports of high duty sugar within hours of an importation. The time frame does not need to be so tight; accordingly, FAS agrees to this change.

(f) *Comment:* One comment was received that § 1530.105(b) should be changed to allow 180 days for the filing of drawback claims.

Response: These regulations do not address the time limit for filing drawback claims, a subject which falls under the jurisdiction of the U.S. Customs Service. Therefore, FAS has determined that this change is not appropriate.

(g) *Comment:* One comment was received that § 1530.102(c) should be changed to enable the Licensing Authority to increase the maximum quantity of sugar which may be brought into the United States under a given license by up to an additional 50,000 metric tons, based on the prior history and demonstrable need of the licensee.

Response: Section 1530.112 authorizes the Licensing Authority to temporarily increase the maximum amount of a license, if such modification is necessary or appropriate under unusual, unforeseen or extraordinary circumstances and will not frustrate the purposes of the program and if compliance with the relevant provisions of HTS subheading 1701.11.02 and additional U.S. note 3 is established to the Licensing Authority's satisfaction. This provision is sufficient to increase the size of the license if necessary. Therefore, FAS has determined that this proposed change is not necessary.

(h) *Comment:* One comment proposed deleting the phrase "provided that such actions are taken in the name of the licensee" from § 1530.102(f), based on the manner in which normal business operations occur. The commentor stated that typically a refiner's customer, acting as agent for the refiner for purposes of the program, makes the export and is the exporter of record. The agency relationship is confirmed in writing and the agent certifies to the Licensing Authority that the sugar is exported.

Response: FAS agrees to this change.

(i) *Comment:* Several comments were received about § 1530.103, which provides for bond requirements. Specifically those comments were:

Comment: One comment was received that the last line in § 1530.103(e) should be deleted and replaced with the phrase "which the licensee is authorized to import under the license." The commentor believed that the existing language would cover all sugars imported, in the aggregate, whether or not the charge for any imported sugar had been offset by a credit for transferred or exported sugar.

Response: FAS intends that the bonding requirement be limited to the amount of sugar carried on the license at any particular point in time, and not, as is stated in the comment, the aggregate amount of sugar imported by the license. Section 1530.103(f) provides for releasing the bond requirement by an amount

corresponding to credits on the refiner's license. The Licensing Authority has never required a bond in excess of the amount of sugar imported (debited) on the license before exports or transfers (credits) occur. This will continue to be the practice. Moreover, the proposed language would appear to require a bond in an amount equal to 20¢ per pound times the maximum amount (in pounds) of the license. Therefore, FAS has determined that this change is not necessary or desirable.

Comment: One comment was received that § 1530.103(f) should be changed to read "Obligations under the bond will be released for the quantity of sugar credited to the license in accordance with § 1530.107." The commentor expressed the view that if the sugar is credited in accordance with the regulations, there should be no need to repeatedly get specific release from the Licensing Authority.

Response: Prior to implementation of the tariff-rate quota, FAS credited licenses upon receipt of proper certification and documentation of export. Presidential Proclamation No. 6179 created the additional condition that reexport licenses may not be credited for the exportation of any refined sugar, polyhydric alcohol, or sugar containing products if any second-tier duties are refunded, as drawback, on the basis of such exportation. Since exporters are allowed up to 90 days from the date of export to file such drawback claims, FAS will not be able to finally credit licenses until the 90-day period has expired and the Licensing Authority is satisfied that such drawback claims have not been made. However, FAS will amend § 1530.107—and will amend the corresponding provisions of §§ 1530.206(b) and 1530.306(b)—to allow the grant of a conditional credit to a license upon receipt of proper certification of export, prior to the expiration of the 90-day period, subject to final action to grant or deny the credit upon expiration of the 90-day period. A bond will not be released until a final credit has been entered on the license. Therefore, FAS has determined that the proposed change is not appropriate.

Comment: One comment was received proposing that in § 1530.103(g) the phrase "or if such a credit initially granted is subsequently revoked" should be deleted and in line 15, after the word "before", the words "the date of entry of the sugar or the last market day before" should be added. The commentor noted that the bond cannot be reinstated after it has been released and that this circumstance is already dealt with in § 1530.110 of the regulations.

Response: FAS recognises that once an obligation under a bond has been released it cannot be reinstated. However, as discussed above in response to the previous comment, the release of the bond is not automatic. There are circumstances where a claim against a bond could occur after the initial grant of a conditional credit to a license has been made but before the bond has been released. FAS has therefore determined that this change is not appropriate. FAS agrees with the second proposed change to add the phrase "the date of entry of the sugar or the last market day before" in line 15. It appears that this language was inadvertently omitted when the interim rule was published.

(j) *Comment:* One comment proposed amending § 1530.107(b) to provide that only a copy of the license is required to be submitted for purposes of crediting the license. The commentor noted that although the original license must be presented to the U.S. Customs Service for engrossing the quantity of imported sugar entered on the license, only a copy of the license must be sent to FAS. (See subsections (b) and (c) of § 1530.104.) The commentor further noted that none of the regulations specifically require the physical transfer of the original license after each importation and exportation and argued that the previous practice of FAS in requiring submission of the original license as engrossed by Customs in connection with each charge and credit was unduly burdensome. The commentor recommended that FAS accept copies of the license for all purposes related to maintaining license balances and acknowledge these receipts with copies of FAS's records.

Response: With the relaxation of the documentation requirements for proof of export discussed below, it is even more essential that FAS see the original license for debiting operations. Copies of documents too easily can hide tampering; if FAS does not examine the original license at least once in the import/export cycle it cannot be assured that all program requirements have been satisfied. In any event, by accepting copies of the license for purposes of crediting licenses, FAS has attempted to relieve some of the burden assumed by participants in the program. Accordingly, FAS has determined that this change is not desirable and rejects the proposed change.

(k) *Comment:* A comment was received that FAS should establish a computer network that would enable refiners to electronically transmit data on entries, transfers and exports for purposes of crediting and debiting licenses, with documentation to be mailed or telefaxed.

Response: FAS will actively explore this idea but for budgetary reasons is not able to implement such a system at this time.

(l) *Comment:* One comment was received that proposed deleting from § 1530.106(d) the phrase "as specified on the application for a license; however, the combined total of such transfers may not exceed the maximum license amount." There is no reference to this in § 1530.101, Application for a License.

Response: FAS agrees that there is no reference to transfers of sugar on the application for a license; however, the combined total of transfers and exports cannot exceed the maximum license amount. Therefore, FAS agrees to delete the words "as specified on the application for a license".

(m) *Comment:* One comment was received that in § 1530.107(a) the phrase "as of" should be changed to "on" and the words "when the licensee submits the information required by § 1530.104" should be deleted. Section 1530.107(a) provides:

> (a) Charges will be made to a license, effective as of the date of entry, for quantities of sugar (adjusted on the basis set forth in paragraph (c) of this section to determine raw value) entered under the license, when the licensee submits the information required by § 1530.104 or when the Licensing Authority otherwise determines that the licensee has made an entry under subheading 1701.11.02 of the HTS.

Response: In order for FAS to accurately track the import operations of licensees, it is necessary that the information specified in § 1530.104 be provided to the Licensing Authority. Therefore, FAS has determined that this change is not appropriate.

(n) *Comment:* One comment proposed that in § 1530.107 subsection (b)(2) should be changed to subsection (b)(3) and a new subsection (b)(2) should be inserted, to read as follows: "Quantities of refined sugar, adjusted pursuant to paragraph (c) of this section, for which a Notice of Transfer has been submitted to the Licensing Authority in accordance with § 1530.106 of this subpart."

Response: FAS inadvertently left transferred sugar out of the interim rule. FAS agrees to this change.

(o) *Comment:* One comment was received that in § 1530.109(d) the phrase "valueless sugar was lost or destroyed," should be deleted and the phrase "sugar was lost or destroyed or otherwise disposed of to render exportation or

transfer impossible or unnecessary," should be substituted in its place. The commentor noted that "valueless sugar" is not referred to elsewhere in subpart A.

Response: FAS agrees to this change in order that this language parallel that of § 1530.107(b)(2).

(p) *Comment:* One comment was received that deleting the reference in § 1530.109(d) to "drawback of duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS was not claimed or received on the basis, or as a result, of the exportation of the refined sugar". The commentor argued that it is impossible for records to "establish" that drawback was not claimed.

Response: While it may be true that the records required to be retained alone cannot establish that drawback of second tier duties was not claimed, such records can form part of the proof that such a drawback claim was or was not made. Therefore, FAS has determined that this change is not appropriate.

(q) *Comment:* One comment was received that pursuant to § 1530.110(a) a refiner is subject to liquidated damages in an amount up to 3 times the difference between the No. 11 and No. 14 contract prices. Under the sugar containing products program (see § 1530.209(a)) and the polyhydric alcohol program (see § 1530.303(g)) licensees are only subject to liquidated damages of up to 1.5 times the difference between the No. 11 and No. 14 contract prices. The commentor proposed that liquidated damages should be imposed at the same rate for all licensees, preferably at a multiple of 1.5 times the price difference in each case.

Response: FAS agrees that the assessment of liquidated damages should be consistent across all three programs and, upon further review of this matter, believes that the multiplier should be discontinued. Accordingly, FAS will amend the regulations to establish the amount of liquidated damages at simply the difference between the Nos. 11 and 14 NYCSCE contracts times the amount of sugar involved in the violation. This change applies to §§ 1530.110(a), 1530.103(g), 1530.110(b), 1530.203(g), 1530.209 (a) and (b), 1530.303(g) and 1530.309 (a) and (b).

(r) *Comment:* One comment was received proposing that in § 1530.110(b) the word "the" in line 10 should be changed to "any" and, in line 15, after the word "person" the phrase "as agent for the licensee" should be added. Section 1530.110(b) currently provides, in relevant part, as follows:

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheading 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of *the* refined sugar, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other *person*, and if the bond has been released under § 1530.103, the Licensing Authority may hold the licensee liable for up to 3 times the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, 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 was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported. (Emphasis added.)

Response: Because of the substitutability of sugar, FAS agrees that the first change is appropriate as well as corresponding modifications to §§ 1530.209(b) and 1530.309(b). The experience of the Operation Bittersweet investigation reveals that even though there may be no legal agency relationship between a licensee and a person who has filed fraudulent drawback claims with respect to re-export sugar sold on the U.S. domestic market, it is appropriate that if a violation is detected, the Licensing Authority have the option of assessing liquidated damages. If the Licensing Authority were satisfied that a licensee had not participated in any manner in a fraudulent scheme to violate the provisions of these regulations or additional U.S. note 3 to chapter 17 of the HTS, this certainly would be taken into account in determining whether to assess liquidated damages. However, ultimately licensees are obligated to assure that, with respect to raw sugar entered at first tier duty rates, the exportation of corresponding refined sugar under the program does not result in the refund of second tier duties. Accordingly, FAS has determined that this change is not appropriate.

(s) *Comment*: One comment was received with respect to § 1530.110(c) that proposed deleting the word "other" and changing the word "the", in line 25, to "such". Section 1530.110(c) provides as follows:

(c) If at any time the Licensing Authority determines that a licensee has failed to comply with the requirements of this subpart, including the requirements of HTS subheading 1701.11.02 and of the relevant provisions of additional U.S. note 3, the Licensing Authority may, after notice to the licensee, suspend or revoke the license issued to the licensee under this program and may refuse to issue a license to that refiner. The Licensing Authority may suspend or revoke a license if claims are filed under 19 CFR part 191 for the refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar under this program or if any *other* claim under 19 CFR part 191 is denied on the basis that *the* refined sugar was not exported. (Emphasis added.)

Response: These changes serve to tighten the regulation and are therefore determined by FAS to be appropriate.

Subpart B—Sugar To Be Re-exported in Sugar Containing Products

(a) *Comment*: Twelve comments were received that the 180-day time limit in § 1530.202(b) for the manufacture and re-export of sugar containing products is insufficient from a business operational standpoint. Commentors requested that the former 18-month time limit be reinstated.

Response: FAS agrees to this change. FAS believes that newly established monitoring methods will enable the Licensing Authority to assure that program requirements will be met.

(b) *Comment*: One comment was received that the maximum license amount (10,000 short tons) in § 1530.202(c) should be reduced to 5,000 short tons to achieve tighter control over the amount of world price sugar entering the United States.

Response: While FAS agrees that a reduction in the license size would lessen the risk that sugar imported for purposes of this program would be diverted onto the domestic market, there will be sufficient controls in place to track license operations under these final regulations without restoring to reducing the license size. Therefore, FAS has determined that this change is not necessary.

(c) *Comment*: Two comments were received concerning the elimination from § 1530.202 of the direct import license, which previously permitted a manufacturer of sugar containing products to be an importer of re-export raw sugar and, thereby, to claim drawback where applicable. The commentors argued that this change leaves manufacturers totally subject to the license levels and "whims" of sugar refiners as to their ability to take in re-export raw sugar and complicates the procedure whereby sugar moves onto a refiner's license, then off the license

onto a manufacturer's license, then, off that license when the exportation occurs. Additionally, for sales to the Army and Air Force Exchange Service manufacturers have given them the drawback paper for their use in reducing the cost of the products they purchased, which may possibly put the manufacturers in a different competitive situation. The commentors proposed that FAS should return to the previous rules where sugar containing product manufacturers could be importers of record for re-export raw sugar.

Response: For program administration reasons, FAS has determined that licensees can no longer be allowed to directly import sugar for re-export. New conditions imposed by Presidential Proclamation No. 6179 require that FAS track not only imports and exports but also drawback claims. The elimination of direct import licenses makes the tasks of tracking sugar imports and drawback claims considerably easier due to the much small number of refiners than manufacturers participating in these programs. In addition, FAS has regularly and effectively dealt with the problem of entering sugar on a refiner's license, transferring that sugar to a manufacturer's license, and crediting the manufacturer's license when the sugar was exported in the form of sugar containing products. Finally, abolishing the direct import license puts all manufacturers on an equal competitive footing with respect to sales to military exchanges. Therefore, FAS has determined that this change is not appropriate.

(d) *Comment*: One comment was received concerning the requirements in §§ 1530.202(d) and 1530.205(a)(1)(viii) with respect to reserving drawback rights that the licensee should not be required to reserve drawback rights for each exportation debited on the license; rather, the reservation of drawback rights should be made once when the license is issued.

Response: Additional U.S. note 3 to chapter 17 of the HTS requires that credit not be granted on a license for the exportation of any sugar containing product if any duties imposed on the entry of sugar at the second tier rates of the tariff-rate quota are refunded, as drawback, on the basis, or as a result, of any such exportation. Since licensees under the Sugar to be Re-exported in Refined Form Program are required to reserve drawback rights with respect to sugar transferred to licensees under this program, ultimately manufacturers will acquire sugar duty drawback rights, if at all, only with respect to other imported sugar that has not been so transferred. Because most of the documentation submission requirements for proof of export are relaxed in this final rule, FAS has determined that it is necessary to require the licensee to reserve, and to certify to the reservation of, drawback rights with respect to each export of sugar containing products. Therefore, this change is inappropriate.

(e) *Comment*: Two comments were received that the time limit of 95 days from the date of transfer, in § 1530.203(g), for a licensee to qualify for a credit to its license and avoid a claim on its bond conflicts with the 180 days allowed for a licensee to manufacture and re-export transferred sugar.

Response: FAS acknowledges that the 95-day time limit was in error. However, since the time limit for manufacturing and exporting sugar containing products is being extended to 18 months, this provision will be amended to provide for payment under the bond if a credit has not been granted within 95 days of the date of exportation of the sugar containing products or the last date on which such products should have been exported, whichever occurs first.

(f) *Comment:* Nine comments were received that in § 1530.204(b) the 45-day time limit for the transfer of sugar from a refiner to a manufacturer was too short from a business operational standpoint. Most commentors proposed that the time limit should be returned to 90 days, as in the previous regulation. One comment suggested a 120-day limit for transfer.

Response: FAS agrees to a 90-day time limit. Since transfers were made within 90 days under the previous program, it does not appear necessary to allow 120 days.

(g) *Comment:* Nine comments were received that the requirements for written certifications in § 1530.205(a) are acceptable. However, eighteen comments were received that the requirement in § 1530.205(a)(2) to submit an original, certified Customs Form 7512 would be an unusually costly and operationally burdensome requirement, and that the Customs Form 7512 is ill suited for use as a proof of export. It was also suggested that an audit procedure be substituted for the documentation requirements.

Response: After lengthy consultations between the Licensing Authority and the U.S. Customs Service and FAS Compliance Review staff, FAS has determined that an audit procedure can be established whereby licensees will be required to provide, for auditing purposes, documentation for specific credits to licenses as proof of export, upon demand of the Licensing Authority. This will allow FAS to eliminate the requirement that documentation accompany each export certification submitted to the Licensing Authority as currently provided for in § 1530.205 (a)(2) and (b). Section 1530.205 will be amended to delete the documentation requirement, and a corresponding change will be made to § 1530.105 of the regulations governing the program for Sugar to be Re-exported in Refined Form. In addition, §§ 1530.208 and 1530.109, with respect to record-keeping requirements, will be amended to clarify that the records previously required to be submitted to FAS in connection with each certification of export will be required to be kept by the licensee and provided to FAS upon demand of the Licensing Authority.

(h) *Comment:* Eleven comments were received that the 95-day time limit to obtain credit for an export, in § 1530.205(b), is too restrictive and that the time limit should be extended to 180 days. One comment suggested an extension to 270 days.

Response: With the change in § 1530.205(a)(2) discussed above, the submission of the certification in accordance with § 1530.205(a) can be achieved within the 95-day time limit provided for in § 1530.205(b). Therefore, FAS has determined that this change is not necessary.

(i) *Comment:* Two comments were received with respect to § 1530.208(c) that the retention of records for five years imposes an excessive burden on licensees; a three-year record retention time frame was proposed. Two commentors objected to the requirement to make records available for copying, rather than simple inspection, as unjustified considering the confidentiality of such records.

Response: The experience of Operation Bittersweet, in which civil litigation is still ongoing nearly six years after the investigations ended and almost eight years after the alleged violations occurred, dictates document retention for a minimum of five years. With respect to the confidentiality of business records, privileged or confidential commercial or financial information or trade secrets obtained from any person are exempted from the public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552). FAS document security procedures are fully adequate to maintain business confidentiality of any documents obtained from licensees. FAS has determined that this change is not appropriate.

(j) *Comment:* One comment was received that the term "other

appropriate official of the Federal Government" in § 1530.208(d) is too broad and should be limited to authorized officials of the Licensing Authority.

Response: Other officials would include only those who have a direct interest in either program administration or the investigation of possible regulatory violations. FAS has determined that no change is necessary.

Subpart C—Sugar for the Production of Polyhydric Alcohol

(a) *Comment:* Two comments were received with respect to § 1530.307, which prohibits the replacement of sugars used in the production of polyhydric alcohol, that since refiners do not have the facilities to segregate sugars and sugar is completely fungible, this requirement is not practicable.

Response: FAS agrees with the reasoning provided by the commentors, and therefore will change the phrase "must be", in the first sentence of § 1530.307, to "need not be" and change the phrase "shall not", in the second sentence, to "may".

List of Subjects in 7 CFR Part 1530

Imports, Sugar, International trade, Sugar containing products, Polyhydric alcohol, Re-export programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1530 is amended as set forth below.

PART 1530—[AMENDED]

1. Section 1530.102 is amended by revising paragraphs (b) and (f) to read as follows:

§ 1530.102 Issuance of a license.

* * * * *

(b) A quantity of refined sugar equivalent to the quantity of sugar, raw value, imported under a license, adjusted in accordance with § 1530.107 of this subpart, must be exported within 90 days of the date of entry of such sugar or must be transferred to a manufacturer within 90 days of the date of entry of such sugar.

* * * * *

(f) The licensee may utilize an agent to import, export or make transfers of sugar. The licensee must provide to the Licensing Authority a written authorization designating such person to act as an agent for the purpose of importing, exporting or transferring sugar. If the licensee uses an agent to export the refined sugar, the licensee shall notify the Licensing Authority in writing of the agent's identity, and the agent shall certify to the Licensing Authority in writing that the refined sugar has been exported from the customs territory of the United States.

* * * * *

2. Section 1530.103 is amended by revising paragraph (g) to read as follows:

§ 1530.103 Bond requirements.

* * * * *

(g) If the licensee fails to qualify for a credit to the license within 95 days of the date of export of corresponding sugar in an amount sufficient to offset the charge to the license for that corresponding sugar or if such a credit initially granted is subsequently revoked, payment will be made to the United States of America under the bond of a monetary amount equal to the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, 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 was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but was not, exported in timely compliance with the requirements of this subpart. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

3. Section 1530.105 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1530.105 Proof of export and notice of drawback claims.

(a) The licensee shall provide a written certification that he or she has exported a specified quantity of refined sugar. The certification shall include:

(1) The licensee's name, address, and license number;

(2) A description of the refined sugar exported, the polarity of such sugar, and its weight;

(3) An identification of the imported sugar to which the exported sugar corresponds, including the quantity and polarization of the imported sugar;

(4) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(5) The country of destination and foreign consignee;

(6) The entry number of a claim, if any, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the refined sugar and the amount of such refund; and

(7) A statement that the sugar has been exported from the customs territory of the United States, that the licensee has reserved all rights to claim drawback refunds, and that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the refined sugar.

(b) The certification must be submitted to the Licensing Authority within 95 days of the date of export. The Licensing Authority will not credit the license for sugar exported unless satisfactory and timely certification is received.

* * * * *

4. Section 1530.106 is amended by revising paragraphs (b) and (d) to read as follows:

§ 1530.106 Transfer of sugar.

* * * * *

(b) Refined sugar transferred under a license must be shipped by the licensee to the manufacturer within 90 days of the date of entry of the sugar entered under subheading 1701.11.02 of the HTS to which the refined sugar corresponds.

* * * * *

(d) The licensee may make transfers of refined sugar to more than one manufacturer; however, the combined total of such transfers may not exceed the maximum license amount.

* * * * *

5. Section 1530.107 is amended by revising paragraph (b) to read as follows:

§ 1530.107 Charges and credits to licenses.

* * * * *

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the requirements of this program, the Licensing Authority will credit a license for:

(1) Quantities of refined sugar, adjusted pursuant to paragraph (c) of this section, for which proof of export has been submitted in accordance with the provisions of § 1530.105 of this subpart, but such credit, if granted

conditionally, will become final only when the Licensing Authority is satisfied that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the refined sugar;

(2) Quantities of refined sugar, adjusted pursuant to paragraph (c) of this section, for which a Notice of Transfer has been submitted to the Licensing Authority in accordance with § 1530.106 of this subpart; and

(3) Quantities of sugar charged to the license which the Licensing Authority determines have been destroyed, lost in processing the sugar, or otherwise disposed of so as to render the exportation or transfer of a corresponding quantity of sugar impossible or unnecessary.

* * * * *

6. Section 1530.109 is amended by revising paragraphs (a) and (d) to read as follows:

§ 1530.109 Records.

(a) Each licensee requesting credit in accordance with § 1530.107(b) shall keep records to establish for all refined sugar exported under the provisions of this program:

(1) The quantity and identity of the sugar, raw value, entered under subheading 1701.11.02 of the HTS;

(2) The date or inclusive dates of processing (refining);

(3) The quantity and description of the articles produced, and their polarities;

(4) The quantity of sugar, refined basis, exported under the provisions of this subpart;

(5) The quantity of sugar, refined basis, transferred to a manufacturer under the provisions of this subpart, and the identity of such manufacturer;

(6) The country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to an original, certified U.S. Customs Service Form 7512, an original bill of lading or copy of a U.S. Customs Service Form 7511, and any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and

(7) Any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the refined sugar and the amount of any such refund paid.

* * * * *

(d) If, after inspection of the records, the Licensing Authority determines that such records are inadequate to establish that the imported sugar was refined by the licensee, sugar was lost or destroyed or otherwise disposed of to render exportation or transfer impossible or unnecessary, refined sugar was exported, drawback of duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS was not claimed or received on the basis, or as a result, of the exportation of the refined sugar, or any other requirement of this program was complied with, the Licensing Authority may revoke credits granted for the appropriate quantity of sugar.

7. Section 1530.110 is revised to read as follows:

§ 1530.110 Enforcement.

(a) If at any time after receiving the proof of export described in § 1530.105 of this subpart, the Licensing Authority determines that the export of a quantity of refined sugar corresponding to the quantity of sugar entered under the license did not occur, and if the bond has been released under § 1530.103, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, 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 was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but was not, exported. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of any refined sugar, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other person, and if the bond has been released under § 1530.103, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, 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 was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(c) If at any time the Licensing Authority determines that a licensee has failed to comply with the requirements of this subpart, including the requirements of HTS subheading 1701.11.02 and of the relevant provisions of additional U.S. note 3, the Licensing Authority may, after notice to the licensee, suspend or revoke the license issued to the licensee under this program and may refuse to issue a license to that refiner. The Licensing Authority may suspend or revoke a license if claims are filed under 19 CFR part 191 for the refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of refined sugar under this program or if any claim under 19 CFR part 191 is denied on the basis that such refined sugar was not exported.

8. Section 1530.202 is amended by revising paragraph (b) to read as follows:

§ 1530.202 Issuance of a license.

* * * * *

(b) A quantity of sugar equivalent to the quantity of sugar transferred under a license must be exported in a sugar containing product within 18 months of the date of transfer from the refiner. However, the Licensing Authority may credit a license for valueless sugar lost in normal product manufacture.

* * * * *

9. Section 1530.203 is amended by revising paragraph (g) to read as follows:

§ 1530.203 Bond requirements.

* * * * *

(g) If the licensee fails to qualify for a credit to the license within 95 days of the date of export of sugar containing products or the last date on which such products should have been exported, whichever occurs first, in an amount sufficient to offset the charge to the license for corresponding sugar, or if such a credit initially granted is subsequently revoked, payment will be made to the United States of America under the bond of a monetary amount equal to the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, 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 was required, whichever difference is greater, times the quantity of refined sugar, converted to raw value, that should have been, but was not, exported in the form of sugar containing products in timely compliance with the requirements of this subpart. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

10. Section 1530.204 is amended by revising paragraph (b) to read as follows:

§ 1530.204 Transfer of sugar.

* * * * *

(b) Refined sugar transferred under a license must be shipped by the refiner to the licensee within 90 days of the date of entry of the sugar entered under subheading 1701.11.02 of the HTS to which the refined sugar corresponds.

* * * * *

11. Section 1530.205 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1530.205 Proof of export.

(a) The licensee shall provide a written certification that he or she has exported a specified quantity of sugar in sugar containing products. The certification shall include:

(1) The licensee's name, address, and license number;

(2) The product description, the percentage of sugar in such product, and the total weight of sugar contained in the sugar containing product exported;

(3) The percentage of valueless sugar lost in normal product manufacture and the quantity of valueless sugar actually lost in the manufacture of the product exported;

(4) The date of export, the port or point from which exported, the bill of lading number(s), and an identification of the vessel or other export carrier and any agent used in connection with the export;

(5) The country of destination and foreign consignee;

(6) An identification of the transferred sugar which corresponds to the sugar exported in the sugar containing product, including the quantity of the transferred sugar;

(7) The entry number of a claim, if any, by the licensee or any other person for a refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the sugar containing product and the amount of such refund;

(8) A statement that the sugar containing products have been exported, that the licensee has reserved all rights to claim drawback refunds, and that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the sugar containing product.

(b) The certification must be submitted to the Licensing Authority within 95 days of the date of export. The Licensing Authority will not credit the license for sugar exported in sugar containing products unless satisfactory and timely certification is received.

* * * * *

12. Section 1530.206 is amended by revising paragraph (a) to read as follows:

§ 1530.206 Charges and credits to licenses.

* * * * *

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the requirements of this program, the Licensing Authority will credit a license for:

(1) Quantities of sugar in the sugar containing products for which proof of export has been submitted in accordance with the provisions of § 1530.205 of this subpart, but such credit, if granted conditionally, will become final only when the Licensing Authority is satisfied that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the sugar containing product; and

(2) Quantities of sugar charged to the license which the Licensing Authority determines have been destroyed, lost in the production process, or otherwise disposed of so as to render the use or exportation of a corresponding quantity of sugar in sugar containing products impossible or unnecessary.

* * * * *

13. Section 1530.208 is amended by revising paragraph (a) to read as follows:

§ 1530.208 Records.

(a) Each licensee requesting credit in accordance with § 1530.206(b) shall keep records to establish for all sugar containing products exported under the provisions of this program:

(1) The date or inclusive dates of manufacture;

(2) The quantity and identity of the sugar, refined basis, transferred to the licensee under the provisions of this subpart;

(3) The quantity and description of the articles manufactured;

(4) The quantity of sugar, refined basis, contained in the sugar containing products exported;

(5) The country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to an original, certified U.S. Customs Service Form 7512, an original bill of lading or copy of a U.S. Customs Service Form 7511, and any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and

(6) Any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.01, 1701.11.02, 1701.11.03, 1701.12.01, 1701.12.02, 1701.91.21, 1701.91.22, 1701.99.01, 1701.99.02, 1702.90.31, 1702.90.32, 1806.10.41, 1806.10.42, 2106.90.11 and 2106.90.12 of the HTS on the basis, or as a result, of the exportation of the sugar containing product and the amount of any such refund paid.

* * * * *

14. Section 1530.209 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1530.209 Enforcement.

(a) If at any time after receiving the proof of export described in § 1530.205 of this subpart, the Licensing Authority determines that the export of sugar in the form of sugar containing products corresponding to the quantity of sugar transferred under the license did not occur, and has not been otherwise disposed of or lost in the manufacturing process as valueless sugar, and if the bond has been released under § 1530.203, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of transfer of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported in sugar containing products. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of any sugar containing product, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other person, and if the bond has been released under § 1530.203, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, in effect on the last market day before the date of transfer of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the quantity of sugar, converted to raw value, that should have been, but was not, exported in sugar containing products. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

15. Section 1530.303 is amended by revising paragraph (g) to read as follows:

§ 1530.303 Bond requirements.

* * * * *

(g) If the licensee fails to qualify for a credit to the license within 95 days of the date of production of polyhydric alcohols in a quantity sufficient to offset the charge to the license for the imported sugar used for producing such polyhydric alcohols, or if such a credit initially granted is subsequently revoked, payment will be made to the United States of America under the bond of a monetary amount equal to the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, 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 production of polyhydric alcohol was required, whichever difference is greater, times the quantity of raw sugar that should have been, but was not, used in the production of polyhydric alcohol in timely compliance with the requirements of this subpart. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

16. Section 1530.306 is amended by revising paragraph (b) to read as follows:

§ 1530.306 Charges and credits to licenses.

* * * * *

(b) At the request of the licensee and upon satisfactory and timely proof that the licensee has complied with all of the requirements of this program, the Licensing Authority will credit a license for quantities of sugar for which a Certificate of Use has been submitted in accordance with the provisions of § 1530.305 of this subpart, but such credit, if granted conditionally, will become final only when the Licensing Authority is satisfied that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of the polyhydric alcohol.

* * * * *

17. Section 1530.307 is revised to read as follows:

§ 1530.307 Replacement of sugars; substitution of sugars.

The sugar used in the production of polyhydric alcohols under this program need not be the identical sugar imported under the license. The licensee may substitute other sugar for sugar imported under the license or replace such imported sugar with other sugar.

18. Section 1530.309 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1530.309 Enforcement.

(a) If at any time after receiving the proof of production of polyhydric alcohol described in § 1530.305 of this subpart, the Licensing Authority determines that the sugar entered under the license was not used for the sole purpose of producing (other than by distillation) polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption, and if the bond has been released under § 1530.303, the Licensing Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, 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 production of polyhydric alcohol was required, whichever difference is greater, times the quantity of sugar that should have been, but was not, used in such production of such polyhydric alcohol. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange, for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

(b) If at any time after receiving the licensee's certification that no refund, as drawback, of any duties paid on the importation of any sugars, syrups or molasses described in subheadings 1701.11.03, 1701.12.02, 1701.91.22, 1701.99.02, 1702.90.32, 1806.10.42, or 2106.90.12 of the HTS has been or will be claimed or received on the basis, or as a result, of the exportation of any polyhydric alcohol, the Licensing Authority determines that a refund of such customs duties has been claimed or received by the licensee or any other person, and if the bond has been released under § 1530.303, the Licensing

Authority may hold the licensee liable for the difference between the Number 11 contract price and the Number 14 contract price, per pound of raw sugar, 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 was required, whichever difference is greater, times the quantity of sugar used in the production of such polyhydric alcohol. In the event no Number 11 contract price or Number 14 contract price is reported by the New York Coffee, Sugar and Cocoa Exchange for the relevant market day, the Licensing Authority may estimate such price as he or she deems appropriate.

* * * * *

Signed at Washington, DC on May 29, 1991.

Duane Acker,

Administrator.

[FR Doc. 91–16133 Filed 7–5–91; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. 26385; Part 158(New)]

RIN 2120–AD87

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects errors which appeared in a final rule, published on May 29, 1991 (56 FR 24254) which adopted new regulations to establish a passenger facility charge program. This amendment corrects language in § 158.27 which inadvertently referenced a nonexisting paragraph. It also corrects the legal citation of the National Environmental Policy Act of 1969.

EFFECTIVE DATE: June 28, 1991.

FOR FURTHER INFORMATION CONTACT: Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3831.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 1991, the FAA published new regulations to establish a passenger facility charge program (56 FR 24254). The language in § 158.27(c)(4) contained a reference to paragraph (g) of this section. However, there is no paragraph (g) in that section. Earlier drafts of the rule included a paragraph (g) allowing the Administrator to request additional information if it were needed to evaluate an application. Since the Administrator has that authority without the provision, the paragraph was removed from the final rule. The reference remained inadvertently.

Section 158.29(b)(iv) contained a reference to the National Environmental Policy Act of 1969 (NEPA), 40 U.S.C. The U.S. Code cite used in that reference was in error. The cite should have been 42 U.S.C. 4321.

Need for Immediate Adoption

This amendment corrects errors and restores an agency regulation to its intended version. Because this action is a technical amendment, I find that good cause exists for making the amendment effective in less than 30 days to eliminate the possibility of misinterpretation of the intent of published agency regulations.

List of Subjects in 14 CFR Part 158

Air carriers, Airport, Air transportation, Passenger facility charge.

The Amendments

For the reasons set forth above, part 158 of the Federal Aviation Regulations (14 CFR part 158) is amended as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC's)

1. The authority citation for part 158 continues to read as follows:

Authority: 49 U.S.C. App. 1513 (as amended by the Aviation Safety and Capacity Expansion Act of 1990, Pub. L. 101–508, title II, subtitle B, November 5, 1990); 49 U.S.C. App. 2206 (as amended by the Aviation Safety and Capacity Expansion Act of 1990); 49 U.S.C. App. 2218; sections 9304(e) and 9307 of the Airport Noise and Capacity Act of 1990, Pub. L. 101–508, title IX, subtitle D.

2. Section 158.27(c)(4) is revised to read as follows:

§ 158.27 Review of applications.

* * * * *

(c) * * *

(4) Following review of the application and public comments, the Administrator issues a final decision approving or disapproving the application, in whole or in part, no later than 120 days after the application was received by the FAA Airports office.

* * * * *

3. Section 158.29(b)(1)(iv) is revised to read as follows:

§ 158.29 The Administrator's decision.

* * * * *

(b) * * *

(1) * * *

(iv) All applicable requirements pertaining to the ALP for the airport, airspace studies for the project, and the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 have been satisfied.

* * * * *

Issued in Washington, DC on June 28, 1991.

Donald P. Byrne,

Assistant Chief Counsel for Regulations and Enforcement, Office of the Chief Counsel.

[FR Doc. 91–15957 Filed 7–5–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Effect of Acquittals on Admissibility of Evidence in Parole Hearings

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Commission is removing a provision in its regulations that prohibited (with certain exceptions) consideration of charges upon which a prisoner was found not guilty after trial. The revised regulation substitutes a statement of general policy with respect to the use of such charges. The change reflects recent federal court decisions concerning the authority of a sentencing judge to consider the same type of evidence. The rule is intended to prevent certain situations in which the application of the prohibition has produced parole results inconsistent with the statutory criteria for parole at 18 U.S.C. 4206.

EFFECTIVE DATE: August 7, 1991.

FOR FURTHER INFORMATION CONTACT: Richard K. Preston, Attorney, Telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: At 44 FR 26548 (May 4, 1979), the Commission added to 28 CFR 2.19(c) a provision that prohibited it from considering, in any determination, charges upon which a prisoner was found not guilty after trial, unless reliable information was presented that was not introduced into evidence at that trial. In the years following the adoption of this regulation, the Commission found it necessary to add to two more exceptions, covering the situations in which the not guilty verdict was by reason of the prisoner's

mental condition, or was inconsistent with another jury verdict.

Notwithstanding these exceptions, the application of this provision has continued to result in situations in which the Commission is required grant a parole in the face of strong doubts as to whether parole fully meets the criteria at 18 U.S.C. 4206(a) (1976). In the meantime, following the implementation of the sentencing guideline system that took effect on November 1, 1987, several federal appellate courts have issued decisions upholding the authority of sentencing judges to consider charges that have resulted in not guilty verdicts. Although these decisions concern the application of the sentencing guidelines, they have obvious relevance to the parole guidelines. At present, nine federal circuits hold that a sentencing judge may consider a defendant's conduct despite an acquittal.

In consequence, the Commission decided that it could no longer justify granting paroles in adherence to a regulation or policy that requires it to ignore relevant evidence, on the ground that the same evidence failed to persuade a jury in a criminal trial to enter a verdict of guilty. The Commission published, at 56 FR 16269 (April 22, 1991), an interim rule permitting the use of charges that have resulted in an acquittal, provided certain standards are met. The public was invited to comment.

Under the standards set forth in the interim rule, the Commission would not override an acquittal unless it found that it could not adequately determine the prisoner's suitability for release on parole, or to remain on parole, without taking the evidence into account. The Commission would also have to be satisfied that it had an adequate quantity of evidence (*i.e.*, sufficient details, corroboration, etc.), that the prisoner had been given the opportunity to respond, and that the evidence met the preponderance standard. Accordingly, the new regulation requires the Commission to disregard evidence that has resulted in an acquittal only if other available evidence is deemed adequate to formulate a reliable and realistic assessment of the seriousness of the case and the probable risk that release would pose to the public welfare. The Commission must make the preliminary finding that it cannot perform its duty under the statute, 18 U.S.C. 4206(a), without consideration of the evidence in question, in order to look behind an acquittal.

Public Comment

The Commission received public comment from a prisoner who complained that the Commission's interim regulation erodes the finality of a court judgment, and that a "not guilty" verdict should mean not guilty by any standard, regardless of whether the standard to be applied is the "beyond a reasonable doubt" test or the "preponderance" test. Although the Commission understands a defendant's perspective that a verdict of acquittal ought to certify his innocence and put the charge forever behind him, the Commission must also point out that this is not a legally correct view. An acquittal only reflects the prosecution's failure to prove guilt "beyond a reasonable doubt," and leaves open the possibility that there is enough evidence, for a jury in a civil trial or a fact-finder in an administrative proceeding, to find that charge proved by a "preponderance of the evidence." *Standlee* v. *Rhay*, 557 F.2d 1303 (9th Cir. 1977). Thus, the public comment received by the Commission is not seen as propounding a sufficient objection to making the interim rule a final rule.

Implementation

The final regulation will govern the conduct of hearings conducted by the U.S. Parole Commission from its effective date forward. Any pending case not already decided under the interim rule that went into effect on April 22, 1991, may be remanded for a new hearing to consider any evidence made admissible by the revised regulation. However, a final decision may be reopened under 28 CFR 2.28(f) only if: (1) The subject of that determination has not been released on parole; and (2) a reopening is deemed necessary to prevent a clear miscarriage of justice.

Regulatory Flexibility Statement

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

28 CFR part 2 is amended is follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. In § 2.19 the last sentence of the introductory text of paragraph (c) and paragraphs (c) (1), (2), and (3), are revised, and paragraph (c)(4) and concluding text to paragraph (c) are added to read as follows:

§ 2.19 Information considered.

* * * * *

(c) * * * If the Commission is given evidence of criminal behavior that has been the subject of an acquittal in a federal, state, or local court, the Commission may consider that evidence if:

(1) The Commission finds that it cannot adequately determine the prisoner's suitability for release on parole, or to remain on parole, unless the evidence is taken into account;

(2) The Commission is satisfied that the record before it is adequate notwithstanding the acquittal;

(3) The prisoner has been given the opportunity to respond to the evidence before the Commission; and

(4) The evidence before the Commission meets the preponderance standard.

In any other case, the Commission shall defer to the trial jury. Offense behavior in Category 5 or above shall presumptively support a finding under paragraph (c)(1) of this section.

* * * * *

Dated: June 11, 1991.

Carol Pavilack Getty,

Chairman, Parole Commission.

[FR Doc. 91-16116 Filed 7-5-91; 8:45 am]

BILLING CODE 4410-01-M

---

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners: Distinguishing Between "Simple Couriers" and "Transporters" in Illegal Drug Cases

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission amends its guidelines at 28 CFR 2.20 in order to make a distinction, in its definition of a "peripheral role" in drug offenses, between simple couriers of drugs hired on an *ad hoc* basis, and professional "transporters" hired on a regular basis to carry large shipments of heroin, cocaine, marijuana, and other illicit drugs. The rule prevents professional transporters of illicit drugs from receiving the guideline reduction which the Commission intended to apply to individuals who are more aptly described as simple couriers. Professional transporters of large