

Background

Title IX of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), which was enacted on November 28, 1990, amended the 1938 Act to provide for the establishment, under certain circumstances, of marketing allotments for sugar and CF for fiscal years 1992 through 1996. Section 111 of the Food, Agriculture, Conservation, and Trade Amendments Act of 1991, which was enacted on December 13, 1991, amended several portions of the 1938 Act's marketing allotment provisions. Pub. L. 102-535, Certain Producers of Sugarcane, Provision for Equitable Treatment, which was enacted on October 27, 1992, further amended provisions pertaining to penalties for producers in Louisiana who harvest acreage in excess of proportionate shares. The Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66), which was enacted on August 10, 1993, amended section 359b of the 1938 Act by:

- (1) Extending the marketing allotment provisions through fiscal year 1998,
- (2) Allowing a processor of sugar beets or sugarcane to market sugar in excess of allocation in order to facilitate the exportation of such sugar,
- (3) No longer counting sugar under loan as sugar marketed, and
- (4) Imposing a civil penalty only if a processor knowingly violates its marketing allocation limit.

Summary of Comments

An interim rule to implement the 1938 Act's provisions for sugar marketing allotments was published July 6, 1993 (58 FR 36120) and an interim rule to implement the appeal regulations was published August 6, 1993 (58 FR 41995). Fifteen comments were received from interested persons regarding the interim regulations: four from cane industry trade associations, one from an independent sugarcane grower, three from sugar beet processing companies, two from farm bureaus, one from a sugar beet grower organization, one from a beet sugar trade association, one from a corn refining company, one signed by three members of Congress, and one from a State Commissioner of Agriculture.

Discussion of Comments

1. There were 10 comments addressing the 3-factor criteria used to establish the percentage factors for splitting the overall marketing allotment between the cane and beet sectors.

Eight comments dealt with the weights assigned each of the criteria. Four commenters wanted past

marketings to be the predominant or only criterion used to establish the percentage factors. Their recommendations for weighting past marketings ranged from 66 1/3 percent to 100 percent. Three commenters endorsed CCC's use of equal weights for all three criteria. One commenter called for flexibility in setting weights.

One commenter suggested that, when establishing the percentage factors, the Secretary not use the past marketing histories of defunct processors.

One commenter urged flexibility in the definition of "processing capacity" in times of drought. It was suggested that processing capacity be defined as the greater of:

- (1) The maximum production during the 1985-1989 crop year period, or
- (2) The maximum production during the immediately preceding five crop years.

The 1938 Act requires the use of the three-factor criteria for determining the percentage factors for overall beet and cane sugar allotments (7 CFR 1435.511), State cane sugar allotments (7 CFR 1435.512), and beet and cane processor marketing allotment allocations (7 CFR 1435.513). In each of these CFR sections, the regulations state: "Each of the three criteria * * * will be weighted equally, or as deemed appropriate by CCC for each year allotments are in effect."

CCC reaffirms its position that equal weighting for the three factors is generally appropriate for purposes of the marketing allotment statute, unless a different weighting is determined to be more appropriate for a particular fiscal year in light of the circumstances existing at such time. Equal weights were assigned to each of the three factors when allotments were instituted in FY 1993. An evaluation of the comments made and the effects of the FY 1993 allotments, and the experience gained during the administration of the allotments, confirms that such flexibility is necessary in order to avoid imposing disproportionate negative effects on a few processors, while having no effect on other processors that have also expanded production since the base period, or resulting in increased prices considerably more than necessary to achieve the objectives of the no cost price support program for sugar beets and sugarcane. CCC must carefully evaluate the weighting of the three factors in order to achieve the statutory goals of fairness, efficiency and equity in allocating market shares and to avoid causing excessive prices for consumers and industrial users of sugar. Moreover, in the abstract, it cannot be determined that differing

weights would be appropriate under the conditions existing in each year in which the allotments might be imposed.

CCC also believes the definition of "processing capacity" should be retained. Qualifying the definition for drought opens up arguments for other crop problems, such as premature freezes, hurricane damage, flooding, disease problems, and so forth, and would require complicated determinations of relative degree of damage. Finally, the 1938 Act explicitly states that the percentage factors for establishing the overall beet and cane sugar allotments shall consider marketings of sugar during the 1985 through 1989 time period. Therefore, past marketings of recently defunct processors must be included in the calculations. Thus, the 3-factor criteria specified in the interim rule are adopted without change.

2. Nine comments were received concerning the treatment of sugar pledged for price-support loans when allotments were in effect.

The commenters were critical of defining marketing to include the pledging and repledging of sugar. These concerns were addressed by the Omnibus Budget Reconciliation Act of 1993, which amended the previous statute so that only loan forfeitures and sales may count against allocations.

Thus, §§ 1435.510, 1435.513, and 1435.528 are revised accordingly. Also, § 1435.513 is revised to require that a sale between processors to enable the purchasing processor to fulfill its allocation be reported to CCC within a week of the date of such sale. The interim rule had required that such sale be reported within 2 days. This earlier requirement resulted in an undue paperwork burden.

3. There were seven comments concerning allocations of the marketing allotments. Three comments concerned the reassignment of deficits. One commenter suggested that CCC set a specific timetable for assessing the need to reassign deficits and make the timetable known to the industry in advance. One commenter recommended reassignment of deficits after 20 days, and another after 30 days.

CCC acknowledges the need for prompt reassignment of deficits relative to marketing allocations, so as not to short the market. However, it is also important to allow deficit companies reasonable time to purchase sugar and fill the deficit. When allotments were announced during fiscal year 1993, the first reassignments were made 26 days later and related only to the cane sector. The next reassignments, which related to both the cane and beet sectors,