

UNITED STATES BEET SUGAR ASSOCIATION

1156 FIFTEENTH STREET, N. W.  
WASHINGTON, D.C. 20005

(202) 296-4820

JAMES W. JOHNSON  
PRESIDENT

January 9, 2007

Director, Dairy and Sweeteners Analysis Group  
Farm Service Agency  
United States Department of Agriculture  
1400 Independence Avenue, S.W., Stop 0516  
Washington, D.C. 20250-0516

Re: Comments on the Proposed Rule Amending 7 CFR 1435.309(b)

Dear Sir/Madam:

These comments are submitted on behalf of this nation's sugarbeet growers and beet sugar processors in response to the rule proposed by the Commodity Credit Corporation ("CCC") as published in the *Federal Register* dated November 13, 2006. The proposed rule would amend 7 CFR 1435.309(b) by codifying broad discretionary authority of the CCC to conduct the reassignment of sugar marketing allocations.

The memberships of the United States Beet Sugar Association and the American Sugarbeet Growers Association wish to express their opposition to the proposed rule. The proposed rule is not consistent with the provisions of, and deprives the beet sugar processors of the flexibility contemplated by, the 2002 Farm Bill. We believe that it was the intent of Congress that any reassignment of sugar marketing allocations should be made on the same pro-rata basis that the marketing allocations were originally assigned, after adjustment for those beet sugar processors who are unable to fulfill their initial allocation. In other words, the reallocation should be based upon objective criteria, not the subjective determination of the CCC.

Section 359e of the 2002 Farm Bill provides that the Secretary shall determine from time to time whether any processor will be unable to fulfill its marketing allocation for a given year. This determination is to be based on current inventories, estimated production, expected marketings and other pertinent facts. These are objective determinations to be made based on facts available to the Secretary. That is what has been done in the past. The proposed rule is a dramatic departure from the historic CCC approach that was summarized in a prior CCC rulemaking procedure as follows:

Specifically, CCC calculates a processor's available crop-year supply as its beginning stocks, plus production and purchased over-allocation sugar, less sales of over-allocation sugar, and desired ending stocks (generally zero). *Federal Register* Vol.69, No. 176, p.55061 (Sept. 13, 2004) (emphasis added).

In cases where the Secretary determines that a beet sugar processor will be unable to fully utilize its marketing allocation, the law provides that the Secretary shall “reassign the estimated quantity of the deficit to the allotments of other sugar beet processors, depending upon the capacity of each other processor to fill the portion of the deficit to be assigned to it...” 7 CFR 1435.309(d)(1) clarifies that this reassignment is to be made on a pro-rata basis, with the proportions presumably based upon the relative portion of the beet sugar allotment assigned to each processor. This is in fact how prior reassignments have been handled by the CCC.

There is absolutely nothing in the language of the 2002 Farm Bill (or for that matter, in the current regulations promulgated thereunder or the historic application thereof) that implies that the CCC is to exercise discretion in making a reassignment. The 2002 Farm Bill is intended to be objective and transparent to the industry. Each beet sugar processor is entitled to its pro-rata share of the beet sugar allotment as set forth in the 2002 Farm Bill. Likewise, each beet sugar processor is also entitled to its pro-rata share of any allocation to be reassigned due to a deficit by another processor, at least to the extent that it has sugar available to sell. The CCC should not be permitted to advantage or disadvantage one beet sugar processor relative to another such processor. The discretion contemplated by the proposed rule would allow the CCC to do just that.

In the written background to the proposed rule, the CCC indicates that the rule would “correct a situation where reassignment, contrary to its objective, fails to add sugar to the market in the current year and increases the sugar supply beyond the allotment in the following year.” The language of the 2002 Farm Bill does not indicate that this objective was being sought by Congress. Rather, the 2002 Farm Bill contemplates that beet sugar processors will have the latitude to fulfill their marketing allocations as they may determine. This includes the ability of processors to engage in processor to processor transactions as well as transfers to third parties. The 2002 Farm Bill does not presuppose a certain type of transaction or limit the transactions among various parties. The proposed rule would deprive beet sugar processors of the flexibility provided by the 2002 Farm Bill and would permit the CCC to exercise a level of discretion that was never contemplated.

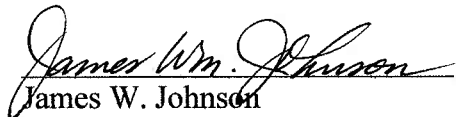
The CCC’s background information implies that the CCC intends to establish a minimum inventory carryover requirement. The discussion indicates that the CCC will presume that each beet sugar processor must retain 8% of its inventory to meet October delivery needs. Consequently, if a processor has inventory of less than 8%, the CCC will refuse to assign any portion of the reassigned allocation to that processor. Such a rule is not contemplated by the language of the 2002 Farm Bill. The proposed rule would set an arbitrary standard that may have no relevance to the production and marketing strategies of a particular processor. Each sugarbeet processor has unique production and delivery schedules with respect to which an arbitrary 8% carryover requirement may be inappropriate.

Furthermore, the proposed rule effectively deprives a beet sugar processor from fully utilizing the marketing allocation to which it is entitled under the 2002 Farm Bill. There is no minimum

inventory requirement imposed on the initial marketing allocation assigned to a processor. Likewise, there should be no such requirement for reassigned allocations. The stocks-to-use ratio used in setting the Overall Allotment Quantity already addresses the need for meeting the market's need for sugar. There is simply no reason to impose an additional 8% inventory carryover requirement.

We wish to formally state our organizations' opposition to the proposed rule for the reasons set forth above. We would encourage the CCC to follow what has been the historic practice of reassigning unused marketing allocations proportionately to those beet sugar processors that have available inventory. For further information concerning our position, please feel free to contact us.

Sincerely,



James W. Johnson  
President  
U.S. Beet Sugar Association  
1156 Fifteenth Street, N.W., Suite 1019  
Washington, DC 20005  
(202)296-4820



Luther A. Markwart  
Executive Vice President  
American Sugarbeet Growers Association  
1156 Fifteenth Street, N.W., Suite 1101  
Washington, DC 20005  
(202)833-2398

January 10, 2007

Director, Dairy Sweeteners Analysis Group  
Farm Service Agency  
US Department of Agriculture  
Stop 0516  
1400 Independence Ave, SW  
Washington, DC 20250-1480

Re: Comments on the Proposed Rule Amending 7 CFR 1435.309 (b)

Dear Sir/Madam:

These comments are submitted on behalf of the nation's sugar cane growers and processors in response to the request for comment on the subject proposed rule published in the *Federal Register* dated November 13, 2006.

We support timely and responsible reassignment of deficits when sugarcane processors are unable to market their full allocation for the crop year. We believe that the Commodity Credit Corporation (CCC) should have some reasonable discretion in reassigning deficits to ensure orderly marketing as intended under the statute. We are concerned, however, that the actual language of the proposed rule does not address these goals.

The proposed rule amends section 1435.309, paragraph (b). This paragraph covers the reporting of relevant information from sugar cane and sugar beet processors to CCC to assist CCC in determining a processor's ability to market its allocation. The language of the proposed rule does not seek to address this reporting; therefore, it does not belong in this paragraph. Further, there seems to be little connection or relevance between the lengthy "Background" explanation of the proposed rule and the actual proposed rule language.

We in the cane sugar industry stand ready and willing to work with the Department of Agriculture to improve the operation of the sugar marketing allotment program if needed. Unfortunately, we do not believe that this proposed rule would make progress in achieving that goal.

Sincerely,

Carolyn Cheney  
Sugar Cane Growers Coop of Florida

Jack Pettus  
American Sugar Cane League

Dalton Yancey  
Florida Sugar Cane League  
Hawaii Sugar Farmers  
Rio Grande Valley Sugar Growers