

(g) Adjustment of marketing allotments**(1) Adjustments****(A) In general**

Subject to subparagraph (B), the Secretary shall, based on reestimates under section 1359bb(a)(3) of this title, adjust upward or downward marketing allotments in a fair and equitable manner, as the Secretary determines appropriate, to reflect changes in estimated sugar consumption, stocks, production, or imports.

(B) Limitation

In carrying out subparagraph (A), the Secretary may not reduce the overall allotment quantity to a quantity of less than 85 percent of the estimated quantity of sugar for domestic human consumption for the crop year.

(2) Allocation to processors

In the case of any increase or decrease in an allotment, each allocation to a processor of the allotment under section 1359dd of this title, and each proportionate share established with respect to the allotment under section 1359ff(c) of this title, shall be increased or decreased by the same percentage that the allotment is increased or decreased.

(3) Carry-over of reductions

Whenever a marketing allotment for a crop year is required to be reduced during the crop year under this subsection, if, at the time of the reduction, the quantity of sugar marketed exceeds the processor's reduced allocation, the allocation of an allotment next established for the processor shall be reduced by the quantity of the excess sugar marketed.

(Feb. 16, 1938, ch. 30, title III, § 359c, as added Pub. L. 107-171, title I, § 1403, May 13, 2002, 116 Stat. 189; amended Pub. L. 110-234, title I, § 1403(c), May 22, 2008, 122 Stat. 983; Pub. L. 110-246, § 4(a), title I, § 1403(c), June 18, 2008, 122 Stat. 1664, 1712.)

Editorial Notes**CODIFICATION**

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 1359cc, act Feb. 16, 1938, ch. 30, title III, § 359c, as added Pub. L. 101-624, title IX, § 902, Nov. 28, 1990, 104 Stat. 3481; amended Pub. L. 102-237, title I, § 111(e), Dec. 13, 1991, 105 Stat. 1832, related to establishment of marketing allotments, prior to the general amendment of this subpart by Pub. L. 107-171.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-246, § 1403(c)(1), added subsec. (b) and struck out former subsec. (b) which related to: in par. (1), establishment of the overall allotment quantity by deducting from the sum of the estimated sugar consumption and reasonable carryover stocks for the crop year 1,532,000 short tons, raw value, and carry-in stocks of sugar, including sugar in Commodity Credit Corporation inventory; and in par. (2), adjustment of overall allotment quantity to avoid the forfeiture of sugar to the Commodity Credit Corporation.

Subsec. (d)(2). Pub. L. 110-246, § 1403(c)(2), inserted “or in-process beet sugar” before period at end.

Subsec. (g)(1). Pub. L. 110-246, § 1403(c)(3), substituted “Adjustments” for “In general” in par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, substituted “Subject to subparagraph (B), the Secretary” for “The Secretary”, and added subpar. (B).

Subsec. (h). Pub. L. 110-246, § 1403(c)(4), struck out subsec. (h). Prior to amendment, text read as follows: “Whenever the Secretary estimates or reestimates under section 1359bb(a) of this title, or has reason to believe, that imports of sugars, syrups or molasses for human consumption or to be used for the extraction of sugar for human consumption, whether under a tariff-rate quota or in excess or outside of a tariff-rate quota, will exceed 1,532,000 short tons (raw value equivalent) (excluding any imports attributable to reassignment under paragraph (1)(D) or (2)(C) of section 1359ee(b) of this title), and that the imports would lead to a reduction of the overall allotment quantity, the Secretary shall suspend the marketing allotments established under this section until such time as the imports have been restricted, eliminated, or reduced to or below the level of 1,532,000 short tons (raw value equivalent).”

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

§ 1359dd. Allocation of marketing allotments**(a) Allocation to processors**

Whenever marketing allotments are established for a crop year under section 1359cc of this title, in order to afford all interested persons an equitable opportunity to market sugar under an allotment, the Secretary shall allocate each such allotment among the processors covered by the allotment.

(b) Hearing and notice**(1) Cane sugar****(A) In general**

The Secretary shall make allocations for cane sugar after a hearing, if requested by the affected sugarcane processors and growers, and on such notice as the Secretary by regulation may prescribe, in such manner and in such quantities as to provide a fair, efficient, and equitable distribution of the allocations under this paragraph. Each such allocation shall be subject to adjustment under section 1359cc(g) of this title.

(B) Multiple processor States

Except as provided in subparagraphs (C) and (D), the Secretary shall allocate the allotment for cane sugar among multiple cane sugar processors in a single State based on—

(i) past marketings of sugar, based on the average of the 2 highest years of production of raw cane sugar from among the 1996 through 2000 crops;

(ii) the ability of processors to market sugar covered by that portion of the allotment allocated for the crop year; and

(iii) past processings of sugar from sugarcane, based on the average of the 3 highest years of production during the 1996 through 2000 crop years.

(C) Talisman processing facility

In the case of allotments under subparagraph (B) attributable to the operations of the Talisman processing facility before May 13, 2002, the Secretary shall allocate the allotment among processors in the State under subparagraph (A) in accordance with the agreements of March 25 and 26, 1999, between the affected processors and the Secretary of the Interior.

(D) Proportionate share States

In the case of States subject to section 1359ff(c) of this title, the Secretary shall allocate the allotment for cane sugar among multiple cane sugar processors in a single State based on—

- (i) past marketings of sugar, based on the average of the 2 highest years of production of raw cane sugar from among the 1997 through 2001 crop years;
- (ii) the ability of processors to market sugar covered by that portion of the allotments allocated for the crop year; and
- (iii) past processings of sugar from sugarcane, based on the average of the 2 highest crop years of crop production during the 1997 through 2001 crop years.

(E) New entrants**(i) In general**

Notwithstanding subparagraphs (B) and (D), the Secretary, on application of any processor that begins processing sugarcane on or after May 13, 2002, and after a hearing (if requested by the affected sugarcane processors and growers) and on such notice as the Secretary by regulation may prescribe, may provide the processor with an allocation that provides a fair, efficient and equitable distribution of the allocations from the allotment for the State in which the processor is located.

(ii) Proportionate share States

In the case of proportionate share States, the Secretary shall establish proportionate shares in a quantity sufficient to produce the sugarcane required to satisfy the allocations.

(iii) Limitations

The allotment for a new processor under this subparagraph shall not exceed—

- (I) in the case of the first crop year of operation of a new processor, 50,000 short tons (raw value); and
- (II) in the case of each subsequent crop year of operation of the new processor, a quantity established by the Secretary in accordance with this subparagraph and the criteria described in subparagraph (B) or (D), as applicable.

(iv) New entrant States**(I) In general**

Notwithstanding subparagraphs (A) and (C) of section 1359cc(e)(3) of this title, to accommodate an allocation under clause (i) to a new processor located in a new entrant mainland State, the Secretary shall provide the new entrant mainland State with an allotment.

(II) Effect on other allotments

The allotment to any new entrant mainland State shall be subtracted, on a pro rata basis, from the allotments otherwise allotted to each mainland State under section 1359cc(e)(3) of this title.

(v) Adverse effects

Before providing an initial processor allocation or State allotment to a new entrant processor or a new entrant State under this subparagraph, the Secretary shall take into consideration any adverse effects that the provision of the allocation or allotment may have on existing cane processors and producers in mainland States.

(vi) Ability to market

Consistent with section 1359cc of this title and this section, any processor allocation or State allotment made to a new entrant processor or to a new entrant State under this subparagraph shall be provided only after the applicant processor, or the applicable processors in the State, have demonstrated the ability to process, produce, and market (including the transfer or delivery of the raw cane sugar to a refinery for further processing or marketing) raw cane sugar for the crop year for which the allotment is applicable.

(vii) Prohibition

Not more than 1 processor allocation provided under this subparagraph may be applicable to any individual sugar processing facility.

(F) Transfer of ownership

If a sugarcane processor is sold or otherwise transferred to another owner or is closed as part of an affiliated corporate group processing consolidation, the Secretary shall transfer the allotment allocation for the processor to the purchaser, new owner, successor in interest, or any remaining processor of an affiliated entity, as applicable, of the processor.

(2) Beet sugar**(A) In general**

Except as otherwise provided in this paragraph and sections 1359cc(g), 1359ee(b), and 1359ff(b) of this title, the Secretary shall make allocations for beet sugar among beet sugar processors for each crop year that allotments are in effect on the basis of the adjusted weighted average quantity of beet sugar produced by the processors for each of the 1998 through 2000 crop years, as determined under this paragraph.

(B) Quantity

The quantity of an allocation made for a beet sugar processor for a crop year under subparagraph (A) shall bear the same ratio to the quantity of allocations made for all beet sugar processors for the crop year as the adjusted weighted average quantity of beet sugar produced by the processor (as determined under subparagraphs (C) and (D))

bears to the total of the adjusted weighted average quantities of beet sugar produced by all processors (as so determined).

(C) Weighted average quantity

Subject to subparagraph (D), the weighted quantity of beet sugar produced by a beet sugar processor during each of the 1998 through 2000 crop years shall be (as determined by the Secretary)—

(i) in the case of the 1998 crop year, 25 percent of the quantity of beet sugar produced by the processor during the crop year;

(ii) in the case of the 1999 crop year, 35 percent of the quantity of beet sugar produced by the processor during the crop year; and

(iii) in the case of the 2000 crop year, 40 percent of the quantity of beet sugar produced by the processor (including any quantity of sugar received from the Commodity Credit Corporation) during the crop year.

(D) Adjustments

(i) In general

The Secretary shall adjust the weighted average quantity of beet sugar produced by a beet sugar processor during the 1998 through 2000 crop years under subparagraph (C) if the Secretary determines that the processor—

(I) during the 1996 through 2000 crop years, opened a sugar beet processing factory;

(II) during the 1998 through 2000 crop years, closed a sugar beet processing factory;

(III) during the 1998 through 2000 crop years, constructed a molasses desugarization facility; or

(IV) during the 1998 through 2000 crop years, suffered substantial quality losses on sugar beets stored during any such crop year.

(ii) Quantity

The quantity of beet sugar produced by a beet sugar processor under subparagraph (C) shall be—

(I) in the case of a processor that opened a sugar beet processing factory, increased by 1.25 percent of the total of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph) for each sugar beet processing factory that is opened by the processor;

(II) in the case of a processor that closed a sugar beet processing factory, decreased by 1.25 percent of the total of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph) for each sugar beet processing factory that is closed by the processor;

(III) in the case of a processor that constructed a molasses desugarization

facility, increased by 0.25 percent of the total of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph) for each molasses desugarization facility that is constructed by the processor; and

(IV) in the case of a processor that suffered substantial quality losses on stored sugar beets, increased by 1.25 percent of the total of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years (without consideration of any adjustment under this subparagraph).

(E) Permanent termination of operations of a processor

If a processor of beet sugar has been dissolved, liquidated in a bankruptcy proceeding, or otherwise has permanently terminated operations (other than in conjunction with a sale or other disposition of the processor or the assets of the processor), the Secretary shall—

(i) eliminate the allocation of the processor provided under this section; and

(ii) distribute the allocation to other beet sugar processors on a pro rata basis.

(F) Sale of all assets of a processor to another processor

If a processor of beet sugar (or all of the assets of the processor) is sold to another processor of beet sugar, the Secretary shall transfer the allocation of the seller to the buyer unless the allocation has been distributed to other sugar beet processors under subparagraph (E).

(G) Sale of factories of a processor to another processor

(i) Effect of sale

Subject to subparagraphs (E) and (F), if 1 or more factories of a processor of beet sugar (but not all of the assets of the processor) are sold to another processor of beet sugar during a crop year, the Secretary shall assign a pro rata portion of the allocation of the seller to the allocation of the buyer to reflect the historical contribution of the production of the sold 1 or more factories to the total allocation of the seller, unless the buyer and the seller have agreed upon the transfer of a different portion of the allocation of the seller, in which case, the Secretary shall transfer that portion agreed upon by the buyer and seller.

(ii) Application of allocation

The assignment of the allocation under clause (i) shall apply—

(I) during the remainder of the crop year for which the sale described in clause (i) occurs; and

(II) during each subsequent crop year.

(iii) Use of other factories to fill allocation

If the assignment of the allocation under clause (i) to the buyer for the 1 or more

purchased factories cannot be filled by the production of the 1 or more purchased factories, the remainder of the allocation may be filled by beet sugar produced by the buyer from other factories of the buyer.

(H) New entrants starting production, re-opening, or acquiring an existing factory with production history

(i) Definition of new entrant

(I) In general

In this subparagraph, the term “new entrant” means an individual, corporation, or other entity that—

(aa) does not have an allocation of the beet sugar allotment under this subpart;

(bb) is not affiliated with any other individual, corporation, or entity that has an allocation of beet sugar under this subpart (referred to in this clause as a “third party”); and

(cc) will process sugar beets produced by sugar beet growers under contract with the new entrant for the production of sugar at the new or re-opened factory that is the basis for the new entrant allocation.

(II) Affiliation

For purposes of subclause (I)(bb), a new entrant and a third party shall be considered to be affiliated if—

(aa) the third party has an ownership interest in the new entrant;

(bb) the new entrant and the third party have owners in common;

(cc) the third party has the ability to exercise control over the new entrant by organizational rights, contractual rights, or any other means;

(dd) the third party has a contractual relationship with the new entrant by which the new entrant will make use of the facilities or assets of the third party; or

(ee) there are any other similar circumstances by which the Secretary determines that the new entrant and the third party are affiliated.

(ii) Allocation for a new entrant that has constructed a new factory or reopened a factory that was not operated since before 1998

If a new entrant constructs a new sugar beet processing factory, or acquires and re-opens a sugar beet processing factory that last processed sugar beets prior to the 1998 crop year and there is no allocation currently associated with the factory, the Secretary shall—

(I) assign an allocation for beet sugar to the new entrant that provides a fair and equitable distribution of the allocations for beet sugar so as to enable the new entrant to achieve a factory utilization rate comparable to the factory utilization rates of other similarly-situated processors; and

(II) reduce the allocations for beet sugar of all other processors on a pro rata basis to reflect the allocation to the new entrant.

(iii) Allocation for a new entrant that has acquired an existing factory with a production history

(I) In general

If a new entrant acquires an existing factory that has processed sugar beets from the 1998 or subsequent crop year and has a production history, on the mutual agreement of the new entrant and the company currently holding the allocation associated with the factory, the Secretary shall transfer to the new entrant a portion of the allocation of the current allocation holder to reflect the historical contribution of the production of the 1 or more sold factories to the total allocation of the current allocation holder, unless the new entrant and current allocation holder have agreed upon the transfer of a different portion of the allocation of the current allocation holder, in which case, the Secretary shall transfer that portion agreed upon by the new entrant and the current allocation holder.

(II) Prohibition

In the absence of a mutual agreement described in subclause (I), the new entrant shall be ineligible for a beet sugar allocation.

(iv) Appeals

Any decision made under this subsection may be appealed to the Secretary in accordance with section 1359ii of this title.

(Feb. 16, 1938, ch. 30, title III, §359d, as added Pub. L. 107-171, title I, §1403, May 13, 2002, 116 Stat. 191; amended Pub. L. 110-234, title I, §1403(d), May 22, 2008, 122 Stat. 984; Pub. L. 110-246, §4(a), title I, §1403(d), June 18, 2008, 122 Stat. 1664, 1712.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 1359dd, act Feb. 16, 1938, ch. 30, title III, §359d, as added Pub. L. 101-624, title IX, §902, Nov. 28, 1990, 104 Stat. 3483; amended Pub. L. 102-237, title I, §111(f), Dec. 13, 1991, 105 Stat. 1833, related to allocation of marketing allotments, prior to the general amendment of this subpart by Pub. L. 107-171.

AMENDMENTS

2008—Subsec. (b)(1)(F). Pub. L. 110-246, §1403(d)(1), substituted “If” for “Except as otherwise provided in section 1359ff(c)(8) of this title, if”.

Subsec. (b)(2)(G) to (I). Pub. L. 110-246, §1403(d)(2), added subpars. (G) and (H) and struck out former subpars. (G) to (I) which related to sale of factories of a processor to another processor, new entrants starting production or reopening factories after May 13, 2002,

and new entrants acquiring ongoing factories with production history during the period of the 1998 through 2000 crop years.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

§ 1359ee. Reassignment of deficits

(a) Estimates of deficits

At any time allotments are in effect under this subpart, the Secretary, from time to time, shall determine whether (in view of then-current inventories of sugar, the estimated production of sugar and expected marketings, and other pertinent factors) any processor of sugarcane will be unable to market the sugar covered by the portion of the State cane sugar allotment allocated to the processor and whether any processor of sugar beets will be unable to market sugar covered by the portion of the beet sugar allotment allocated to the processor.

(b) Reassignment of deficits

(1) Cane sugar

If the Secretary determines that any sugarcane processor who has been allocated a share of a State cane sugar allotment will be unable to market the processor's allocation of the State's allotment for the crop year—

(A) the Secretary first shall reassign the estimated quantity of the deficit to the allocations for other processors within that State, depending on the capacity of each other processor to fill the portion of the deficit to be assigned to it and taking into account the interests of producers served by the processors;

(B) if after the reassignments the deficit cannot be completely eliminated, the Secretary shall reassign the estimated quantity of the deficit proportionately to the allotments for other cane sugar States, depending on the capacity of each other State to fill the portion of the deficit to be assigned to it, with the reassigned quantity to each State to be allocated among processors in that State in proportion to the allocations of the processors;

(C) if after the reassignments the deficit cannot be completely eliminated, the Secretary shall reassign the estimated quantity of the deficit to the Commodity Credit Corporation and shall sell such quantity of sugar from inventories of the Corporation unless the Secretary determines that such sales would have a significant effect on the price of sugar; and

(D) if after the reassignments and sales, the deficit cannot be completely eliminated, the Secretary shall reassign the remainder to imports of raw cane sugar.

(2) Beet sugar

If the Secretary determines that a sugar beet processor who has been allocated a share of the beet sugar allotment will be unable to market that allocation—

(A) the Secretary first shall reassign the estimated quantity of the deficit to the allotments for other sugar beet processors, depending on the capacity of each other processor to fill the portion of the deficit to be assigned to it and taking into account the interests of producers served by the processors;

(B) if after the reassignments the deficit cannot be completely eliminated, the Secretary shall reassign the estimated quantity of the deficit to the Commodity Credit Corporation and shall sell such quantity of sugar from inventories of the Corporation unless the Secretary determines that such sales would have a significant effect on the price of sugar; and

(C) if after the reassignments and sales, the deficit cannot be completely eliminated, the Secretary shall reassign the remainder to imports of raw cane sugar.

(3) Corresponding increase

The allocation of each processor receiving a reassigned quantity of an allotment under this subsection for a crop year shall be increased to reflect the reassignment.

(Feb. 16, 1938, ch. 30, title III, §359e, as added Pub. L. 107-171, title I, §1403, May 13, 2002, 116 Stat. 197; amended Pub. L. 110-234, title I, §1403(e), May 22, 2008, 122 Stat. 986; Pub. L. 110-246, §4(a), title I, §1403(e), June 18, 2008, 122 Stat. 1664, 1714.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 1359ee, act Feb. 16, 1938, ch. 30, title III, §359e, as added Pub. L. 101-624, title IX, §902, Nov. 28, 1990, 104 Stat. 3484; amended Pub. L. 102-237, title I, §111(g), Dec. 13, 1991, 105 Stat. 1833, related to reassignment of sugar deficits, prior to the general amendment of this subpart by Pub. L. 107-171.

AMENDMENTS

2008—Subsec. (b)(1)(D), (2)(C). Pub. L. 110-246, §1403(e), inserted “of raw cane sugar” after “imports”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

§ 1359ff. Provisions applicable to producers

(a) Processor assurances

(1) In general

If allotments for a crop year are allocated to processors under section 1359dd of this title, the Secretary shall obtain from the processors such assurances as the Secretary considers adequate that the allocation will be shared among producers served by the processor in a