

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

fair and equitable manner that adequately reflects producers' production histories.

(2) Arbitration

(A) In general

Any dispute between a processor and a producer, or group of producers, with respect to the sharing of the allocation to the processor shall be resolved through arbitration by the Secretary on the request of either party.

(B) Period

The arbitration shall, to the maximum extent practicable, be—

- (i) commenced not more than 45 days after the request; and
- (ii) completed not more than 60 days after the request.

(b) Sugar beet processing facility closures

(1) In general

If a sugar beet processing facility is closed and the sugar beet growers that previously delivered beets to the facility elect to deliver their beets to another processing company, the growers may petition the Secretary to modify allocations under this subpart to allow the delivery.

(2) Increased allocation for processing company

The Secretary may increase the allocation to the processing company to which the growers elect to deliver their sugar beets, with the approval of the processing company, to a level that does not exceed the processing capacity of the processing company, to accommodate the change in deliveries.

(3) Decreased allocation for closed company

The increased allocation shall be deducted from the allocation to the company that owned the processing facility that has been closed and the remaining allocation shall be unaffected.

(4) Timing

The determinations of the Secretary on the issues raised by the petition shall be made within 60 days after the filing of the petition.

(c) Proportionate shares of certain allotments

(1) Definition of seed

(A) In general

In this subsection, the term "seed" means only those varieties of seed that are dedicated to the production of sugarcane from which is produced sugar for human consumption.

(B) Exclusion

The term "seed" does not include seed of a high-fiber cane variety dedicated to other uses, as determined by the Secretary.

(2) In general

(A) States affected

In any case in which a State allotment is established under section 1359cc(f) of this title and there are in excess of 250 sugarcane producers in the State (other than Puerto

Rico), the Secretary shall make a determination under subparagraph (B).

(B) Determination

The Secretary shall determine, for each State allotment described in subparagraph (A), whether the production of sugarcane, in the absence of proportionate shares, will be greater than the quantity needed to enable processors to fill the allotment and provide a normal carryover inventory of sugar.

(3) Establishment of proportionate shares

If the Secretary determines under paragraph (2) that the quantity of sugar produced from sugarcane produced by producers in the area covered by a State allotment for a crop year will be in excess of the quantity needed to enable processors to fill the allotment for the crop year and provide a normal carryover inventory of sugar, the Secretary shall establish a proportionate share for each sugarcane-producing farm that limits the acreage of sugarcane that may be harvested on the farm for sugar or seed during the crop year the allotment is in effect as provided in this subsection. Each such proportionate share shall be subject to adjustment under paragraph (8) and section 1359cc(g) of this title.

(4) Method of determining

For purposes of determining proportionate shares for any crop of sugarcane:

(A) The Secretary shall establish the State's per-acre yield goal for a crop of sugarcane at a level (not less than the average per-acre yield in the State for the 2 highest years from among the 1999, 2000, and 2001 crop years, as determined by the Secretary) that will ensure an adequate net return per pound to producers in the State, taking into consideration any available production research data that the Secretary considers relevant.

(B) The Secretary shall adjust the per-acre yield goal by the average recovery rate of sugar produced from sugarcane by processors in the State.

(C) The Secretary shall convert the State allotment for the crop year involved into a State acreage allotment for the crop by dividing the State allotment by the per-acre yield goal for the State, as established under subparagraph (A) and as further adjusted under subparagraph (B).

(D) The Secretary shall establish a uniform reduction percentage for the crop by dividing the State acreage allotment, as determined for the crop under subparagraph (C), by the sum of all adjusted acreage bases in the State, as determined by the Secretary.

(E) The uniform reduction percentage for the crop, as determined under subparagraph (D), shall be applied to the acreage base for each sugarcane-producing farm in the State to determine the farm's proportionate share of sugarcane acreage that may be harvested for sugar or seed.

(5) Acreage base

For purposes of this subsection, the acreage base for each sugarcane-producing farm shall be determined by the Secretary, as follows:

(A) The acreage base for any farm shall be the number of acres that is equal to the average of the acreage planted and considered planted for harvest for sugar or seed on the farm in the 2 highest of the 1999, 2000, and 2001 crop years.

(B) Acreage planted to sugarcane that producers on a farm were unable to harvest to sugarcane for sugar or seed because of drought, flood, other natural disaster, or other condition beyond the control of the producers may be considered as harvested for the production of sugar or seed for purposes of this paragraph.

(6) Violation

(A) In general

Whenever proportionate shares are in effect in a State for a crop of sugarcane, producers on a farm shall not knowingly harvest, or allow to be harvested, for sugar or seed an acreage of sugarcane in excess of the farm's proportionate share for the crop year, or otherwise violate proportionate share regulations issued by the Secretary under section 1359hh(a) of this title.

(B) Determination of violation

No producer shall be considered to have violated subparagraph (A) unless the processor of the sugarcane harvested by such producer from acreage in excess of the proportionate share of the farm markets an amount of sugar that exceeds the allocation of such processor for a crop year.

(C) Civil penalty

Any producer on a farm who violates subparagraph (A) by knowingly harvesting, or allowing to be harvested, an acreage of sugarcane for sugar in excess of the farm's proportionate share shall be liable to the Commodity Credit Corporation for a civil penalty equal to one and one-half times the United States market value of the quantity of sugar that is marketed by the processor of such sugarcane in excess of the allocation of such processor for the crop year. The Secretary shall prorate penalties imposed under this subparagraph in a fair and equitable manner among all the producers of sugarcane harvested from excess acreage that is acquired by such processor.

(7) Waiver

Notwithstanding the preceding subparagraph, the Secretary may authorize the county and State committees established under section 590h(b) of title 16 to waive or modify deadlines and other proportionate share requirements in cases in which lateness or failure to meet the other requirements does not affect adversely the operation of proportionate shares.

(8) Adjustments

Whenever the Secretary determines that, because of a natural disaster or other condition beyond the control of producers that adversely affects a crop of sugarcane subject to proportionate shares, the amount of sugar from sugarcane produced by producers subject to the

proportionate shares will not be sufficient to enable processors in the State to meet the State's cane sugar allotment and provide a normal carryover inventory of sugar, the Secretary may uniformly allow producers to harvest an amount of sugarcane in excess of their proportionate share, or suspend proportionate shares entirely, as necessary to enable processors to meet the State allotment and provide a normal carryover inventory of sugar.

(Feb. 16, 1938, ch. 30, title III, §359f, as added Pub. L. 107-171, title I, §1403, May 13, 2002, 116 Stat. 198; amended Pub. L. 110-234, title I, §1403(f), May 22, 2008, 122 Stat. 986; Pub. L. 110-246, §4(a), title I, §1403(f), June 18, 2008, 122 Stat. 1664, 1714; Pub. L. 113-79, title I, §1609(a), Feb. 7, 2014, 128 Stat. 709.)

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 1359ff, act Feb. 16, 1938, ch. 30, title III, §359f, as added Pub. L. 101-624, title IX, §902, Nov. 28, 1990, 104 Stat. 3484; amended Pub. L. 102-237, title I, §111(h), Dec. 13, 1991, 105 Stat. 1834; Pub. L. 102-535, Oct. 27, 1992, 106 Stat. 3526, related to provisions applicable to producers, prior to the general amendment of this subpart by Pub. L. 107-171.

AMENDMENTS

2014—Subsec. (c)(1)(B). Pub. L. 113-79 inserted period at end.

2008—Subsec. (c). Pub. L. 110-246, §1403(f), added par. (1), redesignated former pars. (1) to (7) as (2) to (8), respectively, in par. (3), substituted “paragraph (2)” for “paragraph (1)”, “quantity of sugar produced from sugarcane” for “quantity of sugarcane”, and “paragraph (8)” for “paragraph (7)”, in par. (6)(C), substituted “acreage of sugarcane for sugar” for “acreage of sugarcane”, in par. (8), substituted “the amount of sugar from sugarcane” for “the amount of sugarcane”, and struck out former par. (8) which related to petition to modify allocations to allow delivery to another sugarcane processing company if a processing facility was closed and the growers that had delivered sugarcane to the facility prior to closure had elected to deliver their sugarcane to another company.

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.

§ 1359gg. Special rules

(a) Transfer of acreage base history

(1) Transfer authorized

For the purpose of establishing proportionate shares for sugarcane farms under section 1359ff(c) of this title, the Secretary, on application of any producer, with the written consent of all owners of a farm, may transfer the acreage base history of the farm to any other parcels of land of the applicant.