

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AH53

Sugar Program Definitions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Credit Corporation (CCC) is soliciting comments and views on whether to revise the regulations at 7 CFR part 1435 for the purpose of regulating the marketing of sugar derived from imported beet thick juice.

DATES: Comments on this rule must be submitted by November 7, 2006 to be assured consideration.

ADDRESSES: CCC invites interested persons to submit comments on this advanced notice of proposed rule. Comments may be submitted by any of the following methods:

E-mail: Send comments to sugar@wdc.usda.gov.

Mail: Submit comments to: Director, Dairy and Sweeteners Analysis Group (DSAG), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0516, 1400 Independence Avenue, SW., Washington, DC 20250-0516.

Fax: Submit comments by facsimile transmission to (202) 690-1480.

Hand Delivery or Courier: Deliver comments to the above address.

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, DSAG, FSA, USDA, Room 3752-S South Building, Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. A copy of this advanced notice of proposed rule is available on the DSAG Web site at

<http://www.fsa.usda.gov/ao/epas/dsa.htm>.

FOR FURTHER INFORMATION CONTACT:

Barbara Fecso at (202) 720-4146, or via e-mail at barbara.fecso@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Generally, the Department of Homeland Security, Customs and Border Protection (Customs) is responsible for implementation of those statutes that regulate the importation of items into the United States, including the importation of sugar and sugar containing products. Included in these responsibilities is the collection of duties on sugar and sugar containing products. In contrast, the Department of Agriculture's (USDA) Commodity Credit Corporation (CCC) is responsible for the implementation of domestic programs that regulate the marketing of sugar derived from sugar beets and sugarcane under the Agricultural Adjustment Act of 1938 (the 1938 Act). While Customs and USDA both engage in activities with respect to sugar and sugar containing products, the definitions used by both agencies are not the same in all respects. As discussed more fully below, some parties believe that USDA should revise the manner in which these provisions of the 1938 Act are administered, primarily to foreclose what they perceive to be inequities that result, in part, from the differences in the treatment of a product generally referred to as "thick juice." "Thick juice" as used in this document refers to a product that is derived from sugar beets by concentrating purified sugar beet juice through evaporation prior to the crystallization phase in the production of refined sugar from sugar beets. Ultimately, "thick juice" is further refined and is, in most cases, refined to a point that it is considered refined sugar, for example, sugar of the type purchased in the grocery store for table use.

Thick juice is not the only imported sugar product defined differently by USDA and Customs. Cane syrup and molasses are analogous products to beet thick juice but these products are produced during sugarcane processing.

Imported cane syrup and molasses yield about 30,000 tons of refined sugar per year, compared to about 35,000 tons of refined sugar from imported sugar beet thick juice.

With respect to the importation of Canadian thick juice at entry into the United States for purposes of levying applicable duties, Customs does not consider this product sugar and, therefore, it is subject to a duty of 0.00 cents per pound under 1702.90.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Likewise, Customs also does not consider imported cane syrups and cane molasses products sugar and, therefore, applies a duty of 0.00 cents per pound under 1703.10.3000 of the HTSUS. Also subject to a duty of 0.00 cents are sugar beets imported into the United States under 1212.91.0000 of the HTSUS. Conversely, sugar, which does not include thick juice, cane syrup, or molasses imported from Canada, or elsewhere (other than Mexico), that exceeds the "duty free" quantity allocated to each country each year by the United States is subject to a duty of 16.669 cents per pound under 1701.99.5000 of the HTSUS. Each year (on a fiscal year basis) the United States specifies the quantity of sugar that may enter the United States from each country at a "duty free," or a substantially reduced duty, consistent with the obligations of the United States under World Trade Organization (WTO) commitments, and obligations under regional agreements, such as the North American Free Trade Agreement (NAFTA), or bilateral trade agreements. Those quantities that enter at no duty, or the reduced duty, are referred to as "in quota" quantities and other entries above those quantities are referred to as "out of quota" amounts.

The Farm Security and Rural Investment Act of 2002 amended the 1938 Act to provide for a very strict marketing regime that would be in place for each of the 2002 through 2007 crop years. See 7 U.S.C. 1359aa *et seq.* Under this regime, processors of sugar beets and sugarcane are limited in the amount of sugar that they may market for human consumption, without the imposition of a penalty, based upon formulae in the 1938 Act. With respect to cane sugar, only sugar derived from domestically produced sugarcane is subject to these provisions. Any cane sugar that enters

the United States as either "in quota" or "out of quota" sugar is, clearly, not domestically produced and hence, not subject to these provisions.

Conversely, sugar derived from imported sugar beets is subject to such restrictions. This differentiation in treatment is required by section 359b(b)(1) of the 1938 Act which provides, in part, that: "By the beginning of each crop year, the Secretary shall establish for that crop year appropriate allotments under section 359c for the marketing by processors of sugar processed from sugar beets and from domestically produced sugarcane * * * 7 U.S.C. 1359bb(b)(1).

Taking into consideration the provisions of section 359b(b)(1), there is no basis, in the view of USDA, to subject sugar derived from imported cane syrup or molasses to the domestic sugar allotment provisions of that Act. Thus, although both imported sugarcane and sugar beet intermediary products are circumventing strict Federal regulatory control, the law gives USDA no discretion to regulate the imported cane intermediary products, cane syrup, and molasses.

With respect to sugar beets, CCC is currently administering this provision by treating the first sale of domestically produced thick juice as the point of the first marketing of sugar that is contained in this product. Accordingly, a U.S. entity that processes sugar beets to a point that thick juice is produced but elects to stop further processing of that product into refined sugar and, instead, sells that product to another entity has marketed sugar for the purposes of administering the domestic allotment provisions of the 1938 Act. Thus, this marketing is charged against the processor's allocation.

Similarly, CCC has viewed the first sale of sugar that is contained in thick juice produced by a Canadian processor as occurring when the product is sold in Canada to a buyer. To the extent that such product is further refined in Canada or in the United States, this thick juice, or the refined sugar made from it, has not been subject to provisions of the 1938 Act.

A portion of the domestic sugar industry has requested that CCC make the marketing of sugar produced from imported thick juice subject to the provisions of the 1938 Act that restrict the marketings of sugar by sugar beet processors. These interests make two arguments to support their position that such marketings of sugar derived from imported thick juice should be counted against an individual processor's marketing allocation: (1) Sugar

produced from imported sugar beets is charged against a processor's allocation, and (2) the sale of domestically-produced thick juice is charged against a processor's allocation.

Before proceeding to consideration of whether this proposal should be adopted, as adoption of this proposal will affect not only those entities who are currently importing thick juice into the United States but also all entities subject to marketing allotments, CCC is seeking information from interested parties on their views of the impacts of such action. CCC specifically seeks the views of these parties on the following issues:

1. Imported "thick juice" is a source of sugar in the United States and, thus, CCC reduces the Overall Allotment Quantity (OAQ) determined under the 1938 Act to account for this supply. If such imports were curtailed in total, CCC would increase the OAQ and divide the OAQ between the sugarcane and sugar beet sectors as provided in that Act; sugarcane processors, in aggregate, would receive 45.65 percent of this increase and sugar beet processors 54.35 percent. Is this a desirable result?

2. Is it equitable to regulate the sale of sugar derived from imported sugar beet thick juice, when USDA is prohibited, by statute, from regulating the sale of refined sugar derived from its cane counterparts, cane syrup, and cane molasses?

3. As opposed to a total curtailment of the importation of "thick juice," CCC believes that it is more likely that any entity that is currently engaged in such imports and further processing will avail themselves of the provisions of the 1938 Act that allow a new entrant to the market for sugar derived from sugar beets to obtain a marketing allocation based upon their actions in processing this product over the past several years. This means that the sugar beet sector's 54.35 percent of the OAQ would be distributed among a larger number of beet processors. Previously, CCC has denied an entity's request for an allocation under these new entrant provisions based upon the determination by CCC that the entity was not processing sugar beets or related products, but simply engaged in the further refinement of sugar. Is this a desirable result?

4. To the extent a rationale is developed by CCC, should CCC regulate the sale of sugar derived from imported sugar beet products, including thick juice, by considering these products to be a feedstock in the production of sugar and not a type of sugar as currently provided for in 7 CFR 1435.2? By

making this change, sugar derived from these imported products would be charged against the processor's allocation when the product is marketed. But, domestically-produced thick juice has been considered to be sugar for purposes of administration of the domestic sugar allotment program by CCC and not a feedstock.

Accordingly, is there a rational basis to consider imported thick juice to be a feedstock and to consider domestically-produced thick juice as sugar, and is such rationale consistent with the obligations of the United States under WTO and NAFTA commitments, specifically those WTO provisions dealing with issues of national treatment?

5. Should CCC redefine both domestically-produced and imported thick juice to be a feedstock in the production of sugar and not sugar for purposes of administering the 1938 Act? CCC believes, that under this approach, entities that further refine thick juice will avail themselves of the new entrant provisions of the domestic sugar allotment program in order to obtain a marketing allocation. This would likely diminish the marketing allocations of existing holders of marketing allocations because the quantity of domestic thick juice is significantly larger than the quantities of imported thick juice. Furthermore, this approach of changing the definition of domestically-produced thick juice from a type of sugar to a feedstock used in the production of sugar could be problematic in that CCC may need to adjust the marketing history of some of, or all of, those entities that produce refined beet sugar.

Signed in Washington, DC, on August 4, 2006.

Glen L. Keppy,

Acting Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-142270-05]

RIN 1545-BE90

Railroad Track Maintenance Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.