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January 6, 2003

The Honorable Ann Veneman
Secretary, U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 3086-S, Stop 0501
Washington, DC 20250-0501

Attention: Mr. James R. Little, Administrator
Farm Service Agency
Executive Vice President, CCC

Dear Mr. Little:

On behalf of Cargill, Inc. (hereinafter "Cargill"), Cargill hereby requests a determination that its sugar processing factory in Dayton, Ohio is a sugar beet processor as defined by 7 C.F.R. Subpart A, Sec. 1435.2 (67 Fed. Reg. 54926, 54930) and that it is entitled to an allocation of marketing allotments to beet processors pursuant to the provisions of 7 C.F.R. Sec. 1435.307(a)(3)(i) and Sec. 1435.308(c) (67 Fed. Reg. 54926, 54934 and 54935). Attached as Exhibit A is Cargill's application for a conditional allocation, which is incorporated herein by reference.

Facts

Cargill, Inc. is a Delaware corporation, which is headquartered in Wayzata, Minnesota. The North American Sweetener Division of Cargill operates a sugar-processing factory in Dayton, Ohio, which was completed in September 2000. Since then, it has processed liquid molasses into saccharine products for human consumption, consisting of or containing sucrose or invert sugar, edible molasses, edible cane syrup and liquid sugar, which is sold in the domestic markets. Cargill has entered into a conditional purchase agreement with sugar beet growers of the Southern Minnesota Beet Sugar Cooperative (hereinafter "SMBSC") for the applicable allotment year and has entered into a conditional tolling agreement with SMBSC, to transform its sugar beets into a beet thick juice. This beet thick juice will then be stored on Cargill's account at SMBSC's Renville facility and subsequently transported to Cargill's Dayton facility where it will be processed into liquid sugar and molasses. These products are marketed in the United States.

Applicable Laws and Regulations

In 7 C.F.R. Subpart A, Sec. 1435.2 (67 Fed. Reg. 54926, 54930), a "sugar beet processor" is defined as: "Sugar beet processor means a person who commercially produces sugar, directly or

indirectly from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year." Based on the above facts, it is Cargill's position that it does meet the criteria in the definition of a "sugar beet processor" and is entitled as a "new entrant" to an allocation of 1.25% of the sum of all beet processors' weighted average sugar production.

7 C.F.R. Subpart A, Sec. 1435.308(c) (67 Fed. Reg. 54926, 54935) provides "New entrants, not acquiring existing facilities, may apply to the Executive Vice President, CCC, for an allocation.

(1) Applicants must demonstrate their ability to process, produce and market sugar for the applicable crop year.

(2) CCC will consider adverse effects of the allocation upon existing processors and producers."

Cargill submits that the definition of beet sugar processor does not require that it own all aspects of the sugar production and processing. As long as it owns the sugar beets, processes it into beet thick juice in a viable processing facility and processes the beet thick juice at its factory into sucrose products, it qualifies as a "beet sugar processor".

Cargill's product is "sugar". See, 7 C.F.R. Sec. 1435.2 (67 Fed. Reg. 54926, 54929) where "sugar" is defined as "…any grade or type of saccharine product processed directly or indirectly from sugar cane and sugar beets (including sugar produced from sugar beet or sugar cane molasses), produced for human consumption and consisting of, or containing sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup and liquid sugar." Upon the completion of construction of its sugar processing factory in September 2000, Cargill has manufactured sugar cane molasses into products containing sucrose or invert sugar, edible molasses, edible cane syrup and liquid sugar.

Moreover, the product from which these sucrose products are to be derived is an intermediate beet sugar product, "thick juice". It is "in process sugar" as defined in 7 C.F.R. Sec. 1435.2 (67 Fed. Reg. 54926, 54930).

Furthermore, Cargill submits that its processing facility is a new "sugar factory" that satisfies the requirements of 7 C.F.R. Subpart D, Sec. 1435.307(a)(3)(i) (67 Fed. Reg. 54926, 54934) which requires a "new entrant" to be a "sugar factory" that was opened "during the 1996 through 2000 crop year". As noted earlier, the Dayton facility completed construction in September 2000 and began operation in October 2000. Under the provisions of 7 C.F.R. Sec. 1435.2 (67 Fed. Reg. 54926, 54929), the "crop year" means "the period from October 1 through September 30, inclusive, and is identified by the year in which the crop year begins. For example, the 2002 crop year begins on October 1, 2002." Hence, the 2000 crop year would have begun on October 1, 2000 and would have expired on September 30, 2001. Cargill completed

construction of its Dayton factory in the year 2000 and began to process molasses and sugar by the 2000 crop year, therefore, Cargill qualifies under the criteria established for a "new factory" and is entitled to an allocation of the beet allotment of 1.25% of the sum of all beet processors' weighted average sugar production. 7 C.F.R. Subpart A, Sec. 1435.307(A)(3)(i) (67 Fed. Reg. 54934) provides "a beet processor's weighted average sugar production shall be adjusted by the following, as CCC determines: . . . Increased 1.25% of the sum of all beet processors' weighted average sugar production for the opening a sugar factory during the 1996 through 2000 crop years."

The provisions of 7 C.F.R. Sec. 1435.308(c) (67 Fed. Reg. 54926, 54935) anticipate a "new entrant" that is not already a beet processor, but is a new third party that builds a facility by providing that "New entrants not acquiring existing facilities may apply to the Executive Vice President of the CCC for an allocation". In reading the regulations of 7 C.F.R. Part 1435 as a whole, it is submitted that the provisions of Sec. 1435.307 <u>supra</u>, is the applicable regulation, which controls the Executive Vice President of CCC's determination of the allocation.

Therefore, "New entrants" not acquiring existing facilities, which is the case for Cargill, would receive the same allocation as an existing beet processing company which added a new facility and opened the sugar factory during the 1996-2000 crop years, i.e., 1.25%.

The above interpretation is in keeping with the Supreme Court's rules of administrative law construction. See <u>Chevron, USA, Inc. v. Natural Resources Defense Council</u>, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed. 2nd 694 (1983). ("First, is always the question whether Congress has directly spoken to the precise issue. If the intent of Congress is clear, that is the end of the matter…".) <u>United States v. Mead Corporation</u>, 533 U.S. 218, 121 S.Ct. 2164 (2001). ("When Congress has explicitly left a gap for an agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation.")

Under Section 1435.308(c)(1) and (2), <u>supra</u>, the Executive Vice President, CCC, must determine that an applicant has demonstrably proven its ability to process, produce and market sugar for the applicable crop year, and, secondly, "consider adverse effects of the allocation upon existing processors and producers".

First, Cargill has demonstrated through conditional agreements with SMBSC and SMBSC's sugar processing facility that it has the ability to produce, the ability to process intermediate sugar, the ability to process the intermediate sugar into sugar and the ability to market the sugar.

Secondly, as to the adverse affects upon the existing beet processors, Cargill submits that the existing processors and producers will not be adversely affected because (a) the allocation to the Pacific Northwest Sugar Company (a/k/a Washington Sugar Company), which is presently inoperative, can be utilized to fulfill Cargill's initial allocation; (b) due to the nature of a universal allocation, the assignment of an allocation to a new entrant impacts each processor on a pro rata basis and amounts to a *de minimus* reduction in each processor's allocation (see 7 C.F.R. Subpart A Section 1435.308(c)(5) (67 Fed. 54926, 54935)); and (c) the Secretary has the authority to review annually the allocations to determine whether processors will be able to market their

allocations and may reassign deficits on or by May 1 of each marketing year. See 7 C.F.R. Subpart A Section 1435.309 (67 Fed. 54926, 54935).

Further, Cargill submits a denial of Cargill's application would be arbitrary, capricious and a denial of due process. The beet processors that opened and operated beet sugar factories during this period of time, and those beet processors that reopen a factory that previously produced beet sugar from sugar beets and sugar beet molasses, are eligible for allocations. Although Cargill is a totally "new entrant", it is nevertheless entitled to the same treatment.

Moreover, to refuse to grant a new entrant status to Cargill would violate the spirit and the provisions of the laws and regulations, which created the allotment program. See Chevron, USA, Inc. v. Natural Resources Defense Council, supra. These regulations provide for a 50,000 short ton raw value allocation for new entrant cane processors to be taken pro rata from the overall cane allotment and provide for an allocation of 1.25% from the overall beet allotment for new factories opened during the 1998 through 2000 crop years. Cargill submits that the laws and regulations anticipated the creation of "new entrants" that did not purchase an existing facility. Therefore, a denial would be an arbitrary action which protects new entrants that purchase existing facilities but penalizes a new entrant that built a new facility and thereby denies Cargill due process. See Reno v. Flores, 507 U.S. 292, 113 S.Ct. 1439 (1993). ("An agency rule would be arbitrary and capricious if…its decision…is so implausible that it could not be ascribed to a difference in view…").

Conclusion

Cargill submits this request and asks that the Executive Vice President, CCC make an expeditious determination of its status in order that it may proceed to operate its sugar factory during this allotment year and compete with other beet processors similarly situated. Otherwise, it will be denied equal treatment with other similarly situated beet processors and will incur losses and damages as a result of unreasonable delay. Also, such results would frustrate Congressional intent.

Respectfully submitted,

Joel C. Williams, Jr.
Powell, Goldstein, Frazer & Murphy LLP
On behalf of Cargill, Inc.

Attachment
624289 v2

EXHIBIT A

Cargill, Inc.'s Application for a Conditional Allocation of Beet Sugar

1. Name of processing company: **North American Sweetener Division, Cargill, Inc., a Delaware corporation with its principal place of business at 15407 McGinty Road West, Wayzata, Minnesota 55391**

2. Type of sugar crop to be processed: **Beet thick juice**

3. Sources of crop (where, who, #farms, acres): **Southern Minnesota Beet Sugar Cooperative, 83550 County Road 21, Renville, Minnesota 56284; 119,000 acres; 588 farmers; conditional purchase agreement in place with SMBSC for beets; conditional tolling agreement in place with SMBSC to process Cargill's beets into thick juice**

4. Location of factory: **3201 Needmore Road, Dayton, Ohio 45414**

5. Summary of factory material balances (daily capacity and seasonal usage), including crop input and expected sugar and byproduct production for first 5 years: **Input 627,000 pounds liquid molasses or beet thick juice (361,000 pounds dry basis); daily output 500,000 pounds liquid sucrose (327,500 pounds dry basis); operating at 24/7 year round; byproduct 20,000 tons molasses annually**

6. Summary of transportation and marketing plan: **Transport of thick juice by rail or truck/commercial carriers from Renville, Minnesota to Dayton, Ohio; liquid sucrose products processed from thick juice will be sold to industrial sweetener customers in the Ohio Valley marketing area; liquid sucrose products will be transported by truck/commercial carriers**

7. Amount of requested allocation for each of first 5 years: **80,000 short tons raw value annually**

Matthew Kling

North American Sweeteners Division

Cargill, Inc.

Wayzata, Minnesota

952-742-2032

Joel C. Williams

Powell, Goldstein, Frazer & Murphy LLP

191 Peachtree Street, NE, 16th Floor

Atlanta, GA 30303

404-572-6893

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February 28, 2003

Mr. Joel C. Williams, Jr.
Powell, Goldstein, Frazer & Murphy LLP
191 Peachtree Street, NE, 16th Floor
Atlanta, Georgia 30303

Dear Mr. Williams:

On behalf of Secretary Veneman, thank you for your letter of January 6, 2003, requesting a determination that the Cargill, Inc., (Cargill) sugar factory in Dayton, Ohio, is a sugar beet processor entitled to an allocation of the beet sugar marketing allotment. The Secretary has asked me to respond to your letter because it concerns sugar marketing allocations.

We regret to inform you that the Commodity Credit Corporation (CCC) has determined that mere ownership of the Dayton sugar factory does not make Cargill a sugar beet processor entitled to an allocation of the beet sugar marketing allotment. The Dayton factory has, in the past, operated as a cane refiner by processing cane sugar syrup into consumable sugar. CCC appreciates the fact that Cargill has been reporting to CCC in that capacity for many months. Upon a request by the Southern Minnesota Beet Sugar Cooperative (SMBSC), CCC previously determined that beet thick juice is sugar, eligible to be pledged as collateral for CCC sugar loans, and subject to a beet processor's sugar marketing allocation when marketed. Thus, under the present arrangement, the Dayton factory would process sugar and not sugar beets or sugar beet molasses, as required by the definition of sugar beet processor in the regulation governing the sugar program at
7 CFR 1435.2.

An allocation for Cargill, as a new entrant that wants to begin processing sugar beets after the enactment of the (2002 Act), is governed by section 359d(b)(2)(H) of the Agricultural Adjustment Act of 1938 Act, amended (1938 Act). CCC must assign an allocation to a new entrant that begins processing beets after the enactment of the 2002 Act that provides a fair and equitable distribution of the allocations for beet sugar and then reduce the allocations to existing beet processors accordingly. CCC has determined that Cargill is not entitled to an allocation under the proposed arrangement.

Cargill cannot become a new entrant sugar beet processor by purchasing beets from SMBSC and tolling the beets through SMBSC's Renville factory. CCC has determined that such an arrangement would be circumvention of the sugar beet processor allocation formula in the section 359d(b)(2) 1938 Act. Any

processor whose factory capacity was constrained by sugar marketing allotments could make such an arrangement, which would totally undermine the sugar marketing allocation formula in section 359d(b)(2)

and disrupt the operation of the sugar program. Thus, a new entrant cannot use a factory that contributed to an existing processor's production history and allocation to generate a new allocation.

We regret that we cannot be more positive. As we have noted, if Cargill bought the beets from the farmers and had them processed in a new facility, or paid to have the beets processed at another facility, CCC would view the arrangement differently. We will continue to work with you to determine exactly how CCC's requirements fit your situation.

You may request a reconsideration of this decision by filing a written request with James R. Little, Executive Vice President, CCC, 1400 Independence Ave, SW, Washington, D.C., 20250-0501, detailing the basis of the request, within 10 days of this letter.

Sincerely,

Daniel Colacicco
Director
Dairy and Sweeteners Analysis Group

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March 10, 2003

The Honorable Ann Veneman
Secretary, U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 3086-S, Stop 0501
Washington, DC 20250-0501

Attention: Mr. James R. Little, Administrator
Farm Service Agency
Executive Vice President, CCC

Dear Mr. Little:

Cargill, Inc. ("Cargill"), hereby requests that the Commodity Credit Corporation ("CCC") reconsider its February 28, 2003 decision that Cargill is not entitled to an allocation of the beet sugar marketing allotment. The CCC's decision is based on a misunderstanding of the facts regarding the relationship between Cargill and the farmers of the Southern Minnesota Beet Sugar Cooperative ("SMBSC"), and the processing arrangement between SMBSC and Cargill to produce sugar. The decision also runs contrary to Congress' intent in the Farm Security and Rural Investment Act of 2002, (Pub. L. No. 107-171, 116 Stat. 134) ("2002 Act") to encourage the development of new sugar processing facilities.

Cargill respectfully submits that it is a sugar beet processor as defined by 7 C.F.R. § 1435.2 (2002), 67 Fed. Reg. 54926, 54930 (2002) and is entitled to an allocation of marketing allotments to beet processors pursuant to the provisions of 7 C.F.R. § 1435.308(c), 67 Fed. Reg. 54926, 54934 and 54935.

Facts

Cargill, Inc. is a Delaware corporation, which is headquartered in Wayzata, Minnesota. The North American Sweetener Division of Cargill operates a sugar-processing factory in Dayton, Ohio, which was completed in September 2000. Since then, it has processed beet thick juice and liquid molasses into saccharine products for human consumption, consisting of or containing sucrose or invert sugar, edible molasses, edible cane syrup and liquid sugar, which is sold in the domestic markets.

Cargill intends to purchase sugar beets for processing in the 2002 allotment year directly from sugar beet growers who are also members of SMBSC. In addition, Cargill will enter into a conditional tolling agreement with SMBSC to transform Cargill's sugar beets into a beet thick juice. SMBSC plans to perform these services using processing capacity it added to its existing plant in 2001 and 2002, ***and which was not used to calculate SMBSC's sugar marketing allotment for 2002.*** Once SMBSC has completed the initial phase of the refining process, it will store Cargill's thick juice on Cargill's account at SMBSC's Renville facility and subsequently permit the transportation of the thick juice to Cargill's Dayton facility where Cargill will complete the refining process to produce liquid sugar and molasses. The final products will be marketed in the United States.

Applicable Laws and Regulations

I. 7 C.F.R. § 1435.2 (2002), 67 Fed. Reg. 54926, 54930 (2002), Sugar Beet Processor.

A "sugar beet processor" is defined as "[A] person who commercially produces sugar, directly or indirectly from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year." Cargill submits that it meets each of the specified criteria and should be considered a sugar beet processor that is eligible to apply as a new entrant under 7 C.F.R. § 1435.308(c), 67 Fed. Reg. 54926, 54935 (2002).

A. Cargill is a commercial producer of sugar from sugar beets.

Cargill is a commercial producer of "sugar". See 7 C.F.R. § 1435.2, 67 Fed. Reg. at 54929 where "sugar" is defined as "…any grade or type of saccharine product processed directly or indirectly from sugar cane and sugar beets (including sugar produced from sugar beet or sugar cane molasses), produced for human consumption and consisting of, or containing sucrose or invert sugar, including raw sugar, refined crystalline sugar, edible molasses, edible cane syrup and liquid sugar." Since the completion of its Dayton sugar-processing factory in September 2000, Cargill has manufactured sugar cane molasses and beet thick juice into products containing sucrose or invert sugar, edible molasses, edible syrups and liquid sugar. Moreover, the product from which these sucrose products are to be derived is an

intermediate beet sugar product, “thick juice”. It is “in process sugar” as defined in 7 C.F.R. § 1435.2, 67 Fed. Reg. at 54930.

Furthermore, under Cargill’s arrangement with SMBSC, Cargill must be considered a processor of sugar beets. As stated above, Cargill will own the beets and effectively lease SMBSC’s additional capacity to perform the first phase of the refining process. At no time during SMBSC’s handling of Cargill’s beets will the beets or the beet thick juice be the property of SMBSC. Consequently, SMBSC could not pledge the thick juice as collateral for CCC sugar loans and it would not be subject to SMBSC’s marketing allotment. The operations of Cargill’s Dayton factory are merely the last stage in the process of refining Cargill’s sugar beets, thus making Cargill a direct processor of sugar from sugar beets.

B. Through its arrangement with SMBSC, Cargill has a viable processing facility.

Cargill argues that when considered together, SMBSC’s processing plant and Cargill’s Dayton facility form a viable new sugar beet processing facility. The regulations do not require the entire processing function to be conducted at a single location, nor do they require the applicant for an allotment to own all aspects of sugar production and processing. The CCC acknowledged this possibility in its February 28, 2003 decision when it stated that “if Cargill bought the beets from the farmers and had them processed in a new facility, or paid to have the beets processed at another facility, CCC would view the arrangement differently.” In fact, that is exactly what Cargill has done. Cargill will purchase beets directly from the farmers of the SMBSC in September 2003, contract with the SMBSC to use SMBSC’s ***additional capacity*** to initiate the refining process, and arrange to complete the refining process at its Dayton facility. Because Cargill will utilize SMBSC capacity that was added in 2001 and 2002, and not used to calculate SMBSC’s 2002 allotment, CCC should view Cargill’s use of this capacity as akin to using a new facility as contemplated by the CCC in its February decision.

The concept of using two separate facilities to perform the refining process is not new to the CCC. In 1994 the CCC allocated 20,746 short tons to Savannah Foods based on a tolling agreement between Savannah Foods and Michigan Sugar. In that instance, Savannah Foods owned a beet molasses desugarization facility (a.k.a. ADSEP) and Michigan Sugar owned a separate and unconnected beet sugar processing factory. Through an agreement with the Michigan Sugar Company, Savannah Foods purchased beet molasses from various beet processors; extracted sugar syrup from the molasses in its ADSEP facility; and then used Michigan’s beet processing facility to manufacture the sugar syrup into refined sugar. The USDA recognized this arrangement, awarded Savannah Foods a marketing allotment, and properly charged the sales against Savannah Foods’ allocation. Cargill now asks for the same consideration and outcome in the present case.

C. Cargill has access to a supply of sugar beets for the allotment year.

Cargill’s arrangement with SMBSC’s farmers provides Cargill with a ready supply of beets for the 2002 allotment year. It should be noted that contrary to the assumption made by the CCC in its February 28, 2003 decision, the beets Cargill intends to purchase from the farmers will be the sole property of Cargill and not of SMBSC.

II. 7 C.F.R. § 1435.308(c), 67 Fed. Reg. at 54935, Transfer of allocation, new entrant

Under Section 1435.308(c), a new entrant is entitled to “an allocation for beet sugar…that provides a fair and equitable distribution of the allocations for beet sugar.” (2002 Act at 196).

A "new entrant is defined in statute as "an individual or entity that does not have an allocation of beet sugar under this part," and who "starts processing sugar beets after the date of enactment of this subparagraph." Id. The provisions of 7 C.F.R. § 1435.308(c), 67 Fed. Reg. at 54935 permit a new entrant to apply for an allocation and require it to "demonstrate [its] ability to process, produce, and market sugar for the applicable crop year." (7 C.F.R. § 1435.308(c)(1)). Although the regulations allow the CCC to "consider the adverse effects of the allocation upon existing processors and producers," (7 C.F.R. § 1435.308(c)(2)) the law clearly states that the CCC "shall" assign an allocation and reduce the allocations for beet sugar of all other processors on a pro rata basis to reflect the new allocation. (2002 Act at 191).

A. Cargill qualifies as a new entrant.

Cargill submits that the CCC should consider it a new entrant and assign Cargill an allocation for beet sugar. First, although Cargill completed its sugar factory in 2000, it did not apply for nor does it have an allocation of beet sugar. Second, Cargill will not begin processing sugar beets until later this year, several months after enactment of the 2002 Act. Third, through its conditional agreements with SMBSC's farmers and SMBSC's sugar processing facility, Cargill will have the ability to produce intermediate sugar from sugar beets, the ability to refine that intermediate sugar into sugar, and the ability to market the sugar. Consequently, Cargill must be considered a new entrant.

B. A new allocation for Cargill will not adversely affect existing processors.

Cargill submits that the existing processors and producers will not be adversely affected because: (a) the allocation to the Pacific Northwest Sugar Company (a/k/a Washington Sugar Company), which is presently inoperative, can be utilized to fulfill Cargill's initial allocation; (b) due to the nature of a universal allocation, the assignment of an allocation to a new entrant impacts each processor on a pro rata basis and amounts to a *de minimus* reduction in each processor's allocation (See 7 C.F.R. § 1435.308(c)(5), 67 Fed. Reg. at 54935); and (c) the Secretary has the authority to review annually the allocations to determine whether processors will be able to market their allocations and may reassign deficits on or by May 1 of each marketing year. (See 7 C.F.R. § 1435.309, 67 Fed. Reg. at 54935).

C. Congress intended to encourage new processing capacity

Cargill argues that a fair and equitable allocation for Cargill would be an amount equal to the amount set forth in 7 C.F.R. § 1435.307(a)(3)(i), 67 Fed. Reg. at 54934. Under that section, "a beet processor's weighted average sugar production shall be . . . [i]ncreased 1.25% of the sum of all beet processors' weighted average sugar production for the opening of a sugar factory during the 1996 through 2000 crop years." Cargill argues that through this provision and the new entrant provision of section 1435.308, Congress intended to reward those who built processing facilities between 1996 and 2000 and to encourage others to develop new processing capacity after the enactment of the 2002 Act. Cargill completed construction of its Dayton factory in the year 2000 and began to process molasses and sugar during the 2000 crop year. It intends to enter agreements to purchase beets from SMBSC farmers and initiate the refining process through SMBSC in September 2003 before the end of the 2002 crop year. Just as the regulations reward a beet processor who opened a sugar factory during the 1996 through 2000 crop years by increasing its allocation, so should the CCC reward Cargill for opening a new sugar factory.

In the face of these facts, any decision to deny Cargill's application would be in direct contravention of the law and could be viewed as arbitrary and capricious and a denial of due process. Such a decision against Cargill would violate the spirit and the provisions of the laws and regulations, which created the allotment program. See Chevron, USA, Inc. v. Natural Resources Defense Council, supra. The laws and regulations setting forth the allotment program clearly anticipated the creation of "new entrants" that did

not purchase an existing facility. Therefore, a denial would be an arbitrary action that protects new entrants that purchase existing facilities but penalizes a new entrant that built a new facility and thereby denies Cargill due process. See Reno v. Flores, 507 U.S. 292, 113 S.Ct. 1439 (1993) (stating "An agency rule would be arbitrary and capricious if…its decision…is so implausible that it could not be ascribed to a difference in view…").

Conclusion

Cargill respectfully submits this request and asks that the Executive Vice President, CCC reconsider his earlier decision and award Cargill a marketing allotment. Cargill further requests that the Executive Vice President act expeditiously to ensure that farmers plant enough beets in April 2003 to supply Cargill with beets for the 2002 allotment year. Any undue delay in considering this request will effectively deny Cargill equal treatment with other similarly situated beet processors and cause Cargill to incur unnecessary losses and damages. Finally, to assist with the consideration of this request, Cargill also requests an opportunity to meet with the Executive Vice President or his representative as early as possible.

Respectfully submitted,

David C. Quam
Powell, Goldstein, Frazer & Murphy LLP
On behalf of Cargill, Inc.

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Hearing of the Commodity Credit Corporation

regarding

2003-Crop Year Beet Sugar Marketing Allocations

Statement of Cargill, Incorporated

presented by

Daniel R. Pearson
Assistant Vice President, Public Affairs
Cargill, Incorporated

Washington, DC
June 16, 2003

Mr. Chairman, I am Dan Pearson, assistant vice president of public affairs for Cargill, Incorporated. Cargill appreciates the opportunity to appear at this hearing to explain why we are requesting a beet sugar marketing allocation as a new entrant.

Cargill built a new sugar production facility at Dayton, Ohio that became operational in September 2000. That facility has processed feedstocks from a variety of sources including: thick juice produced by U.S. beet growers; cane juice produced by U.S. cane growers; and molasses originating in other countries. The plant has switched freely back and forth among feedstocks based on economics as reflected in an open domestic marketplace.

The sugar marketing allocation system incorporated into the 2002 farm bill (Farm Security and Rural Investment Act of 2002) has had a materially adverse effect on our Dayton facility. Suddenly, instead of being able to obtain feedstocks in an open marketplace, the new sugar program restricted domestic supplies of sugar feedstocks. The net effect has been to increase the attractiveness of offshore molasses as the most viable feedstock for the Dayton facility. This not only has severely curtailed our feedstock options and increased our input costs, but it also may result in greater feedstock imports than otherwise would be the case.

I want to emphasize that Cargill was not involved in the farm bill sugar debate. In keeping with our long-held free trade philosophy, our view is that market forces do a better job than marketing allocations set by the government in guiding production, marketing and investment decisions in agriculture, including the sugar sector.

However, upon reviewing the amended law and regulations, we realized that the need to accommodate companies such as ours had been explicitly provided for in the "new entrant" provisions. If we wish to continue serving our customers effectively under this new set of rules, we really have no choice other than to seek a marketing allocation. Thus, we now are requesting a marketing allocation for refined beet sugar. Having such an allocation will enable Cargill to run the Dayton facility in a relatively flexible and efficient manner.

To qualify as a new entrant we must demonstrate our ability to process, produce and market sugar. We have done all of that. We have arranged to purchase sugar beets from growers in the Southern Minnesota Beet Sugar Cooperative (SMBSC). Those beets will be toll-processed into thick juice at SMBSC's Renville facility. Back haul of otherwise empty tank cars will allow cost-effective transport of the thick juice to the Dayton facility. At no time will the beet thick juice be the property of Southern Minn. We will process our thick juice into refined sugar that will be marketed by Cargill.

Permit me to summarize the legal issues involved in this request. The farm bill says the CCC shall assign an allocation to a "new entrant," which is defined as "an . . . entity that does not have an allocation of beet sugar," and who "starts processing sugar beets after the date of enactment of this [Act]." The regulations straightforwardly define a "sugar beet processor" as "[A] person who commercially produces sugar directly or indirectly from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year."

The regulations do not require a new entrant to conduct the entire processing function at a single location, nor must a new entrant own all facilities used in producing sugar beets or processing sugar. There is a 1994 precedent for splitting the processing of sugar between facilities owned by two different companies and then marketing it under the allocation system. That situation involved extracting sugar syrup from beet molasses by Savannah Foods (Adsep) and then toll-processing that syrup into sugar at Michigan Sugar's beet sugar processing plant in Fremont, Ohio. A similar arrangement will exist between Cargill and SMBSC.

Cargill meets the above requirements. It will contract for production of beets; it has viable processing capacity divided between two facilities, one of which it owns and one through which it tolls; it will

produce sugar from thick juice; and it will market the refined sugar. Thus, Cargill qualifies for a beet sugar marketing allocation as a new entrant.

Although some may wonder if it might not be possible for other firms to qualify for beet sugar marketing allocations as new entrants, this seems improbable. First, the regulations do not apply new-entrant status to firms "acquiring existing facilities." Second, Cargill's unique circumstances are unlikely to be replicated by others. Cargill invested millions of dollars to build the Dayton facility, which is one of the newest sugar factories in the United States. If other firms choose to make similar new investments and also can arrange a supply of sugar beets, then they also would qualify for marketing allocations. Such decisions should stand on their own economics. In Cargill's case, the new farm bill has reduced our flexibility to the point that the economics of running a stand-alone sugar processing facility have become rather challenging. Third, it would be reasonable for the CCC to deny any possible requests by existing allocation holders who propose restructuring or splitting their existing operations in order to obtain additional marketing allocations as new entrants.

Let me conclude by saying that one consequence of the marketing allocation system, perhaps unintended, has been to encourage greater integration within the U.S. sugar industry. For Cargill, this has meant collaborating closely with our fellow Minnesotans at SMBSC. We greatly value the relationship with Southern Minn and believe our two organizations have built a foundation that will enable us to work together successfully over many years.

Cargill looks forward to a prompt affirmative decision by the CCC in response to our request. Thank you again for the opportunity to present our views.

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Additional testimony from **Daniel R. Pearson**
Assistant Vice President, Public Affairs
Cargill, Incorporated

June 23, 2003

Mr. James R. Little
Administrator
Farm Service Agency
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Room 3986 South
Washington, DC 20250-0501

Attention: Ms. Barbara Fecso
Dairy and Sweeteners Analysis Group
Economic Policy and Analysis Staff
Farm Service Agency
Stop 0516

Dear Mr. Little:

The following is in response to questions raised at the public hearing on June 16, 2003 regarding Cargill's request to receive an allocation of the beet sugar marketing allotment.

ONE: What is the potential production of the refined beet sugar to be marketed in crop year 2002 – 2003 and in the crop year 2003 – 2004?

ANSWER: Through September 30, 2003, Cargill expects to have the ability to market 20,000 tons of refined sugar. For the crop year beginning October 1, 2003 and ending September 30, 2004, Cargill will have sufficient quantities of refined sugar to market 80,000 tons.

Cargill notes that at no time during the hearing did any of the people speaking in opposition to our request raise objection to the size of the allocation we have requested. Various arguments were offered to explain why they oppose granting an allocation. By inference, however, if the Commodity Credit Corporation does decide to grant an allocation to Cargill, 80,000 tons appears to be a non-controversial number.

The opposing statements argued against the granting of our request in various ways. Assertions were made to the effect that such action would reduce the market shares of existing allocation holders and, hence, reduce their revenues. It also was alleged that those drafting the farm bill, which appears to have included representatives of the sugar industry, had not intended that companies such as Cargill should be able to qualify as new entrants for the purposes of receiving beet sugar marketing allocations. However, these issues are not material to the decision the CCC must make. It is clear that the law does not consider the purpose of the beet sugar allocation system to be the maintenance of a closed shop. Rather, the law mandates that the CCC shall grant an allocation to a new entrant meeting the applicable criteria. We believe Cargill has met all applicable criteria and should be granted a marketing allocation for refined beet sugar.

Although there is no minimum-maximum allocation prescribed for a "new entrant" sugar beet processor, a grant of 80,000 tons is supported by statutory interpretation of the laws and regulations and by the facts. Cargill submits that reasonable statutory construction would utilize the provisions of the minimum allocation that is mandated for a previously closed beet factory that is purchased by a third party and is reopened. Under the provisions 7 U.S.C. § 1359dd(b)(2)(H)(ii), Congress mandated that the Secretary shall ". . . assign an allocation for beet sugar to the new entrant that is not less than the greater of 1.67% of the total of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years . . . or 1,500,000 hundredweights." Please note that the Secretary must grant "not less than 1.67%". Cargill requested a quantity that approximates this minimum figure.

The Agency's grant of 80,000 tons to Cargill would meet the Supreme Court's standard for a reasonable agency action because it relies on a congressional determination of the appropriate marketing allocation to be given to a similarly situated company: a closed beet factory that is reopened by a "new entrant" third party. It is entirely reasonable for the Agency to utilize as a model for a "new entrant" beet processor the marketing allocation that Congress deemed reasonable for a similar entity in a related section of the same statute. Such a decision would not run counter to the evidence before the Agency and it is not so implausible that it could not be

ascribed to a difference of view. Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co., 463 U.S. 29, 43 (1983). Moreover, such an interpretation would be consistent with the long-standing canon of statutory construction that different sections of the same statute must be construed together. Hellmich v. Hellman, 276 U.S. 233 (1928); International Mercantile Marine Co. v. Loew, 93 f.2d 663 (2nd Cir. 1938). Indeed, courts have held that when a regulation is silent on a specific issue, the agency "must look to the statutory language and to other regulations" and may decide to apply "principles similar to those illustrated in the [other] regulation." Prairie States Life Insurance Co. v. United States, 828 F.2d 1222, 1232 (8th Cir 1987).

Moreover, the requested amount is less than 2% of the total beet sugar allocation for the 2002 crop year of 4,708,341 tons. Eighty thousand tons is modest, indeed, compared to the 523,391-ton increase in the total allotment for beet sugar that has been implemented over the course of this marketing year, an increase of 12.5 percent. External factors, such as the vagaries of weather and uncertainties regarding sugar consumption trends, can and do have large effects on the size of the Overall Allotment Quantity (OAQ). These factors lead to natural fluctuations in the marketing of domestic sugar that dwarf Cargill's 80,000-ton allocation request.

Finally, an 80,000-ton allocation would be smaller than all but one of the marketing allocations held by existing beet sugar processors. It also is substantially less than the 120,000-ton allocation that was granted to the non-operating Pacific Northwest Sugar Company.

TWO: Whether Cargill's Dayton facility processed any beet thick juice prior to the enactment.

ANSWER: Cargill produced refined sugar from beet thick juice only after the enactment of the Farm Security and Rural Investment Act of 2002 (P.L. 107-171, 116 Stat. 134).

THREE: Whether the peanut allotment and tobacco allotment programs support Cargill's contention that "a viable processing facility" may be bifurcated into two separate facilities, one that it owns and one though which it tolls.

ANSWER: Yes, other allotment programs, such as those pertaining to tobacco and peanuts, allow third parties to perform toll-processing services for the allotment holder. This lends probative weight to a decision by the CCC in favor of Cargill's bifurcation of the processing facility and the utilization of a toll-processing arrangement for part of it.

In reviewing the regulations promulgated by the USDA with regard to "eligible producers" for the peanut and tobacco programs, the holders of either peanut or tobacco marketing allotments may engage third parties to perform certain processing services prior to the marketing of the finished product. For example, in the peanut program, 7 C.F.R. §§ 1446.201 and 1446.502 of the regulations allow an eligible producer to engage the services of a "handler" who shells, crushes or otherwise mills program peanuts and holds them for marketing by the marketing association comprised of eligible producers. Also see, 4 C.F.R. §§ 1464.2(2)(i) and (ii) and 1464.7 which set forth the requirements of an eligible producer of tobacco. A review of these provisions also reveals that the CCC allows tobacco producers to hire a third party to perform certain

preparations and storage services of the tobacco, including the auction of the allotment holder's tobacco.

Moreover, a decision by the Executive Vice President of the CCC that Cargill is a beet sugar processor, even though there is a bifurcation of viable processing facilities, also is supported by the facts:

(1) The additional capacity of Southern Minnesota Beet Sugar Cooperative's Renville facility that will be used by Cargill under the toll-processing agreement is "new capacity". USDA did not use SMBSC's additional slicing capacity to calculate its 2002 allocation.

(2) As referenced in Cargill's statement of June 16, the Savannah Adsep operation set a precedent for the bifurcation of sugar processing activities under a market allocation regime.

(3) Opponents of Cargill's request asserted at the hearing that a company could qualify for a beet sugar marketing allocation only if it owns a plant that slices sugar beets. We believe this is not correct. The law grants allocations for the marketing of refined beet sugar, not allocations for the slicing of sugar beets. The toll processing of sugar beets at SMBSC's plant will produce beet thick juice owned by Cargill. That juice will not be marketed. Once it is refined, the resulting sugar will be marketed by Cargill and those sales will count against Cargill's marketing allocation, not against Southern Minnesota's.

In conclusion, Cargill submits that it meets the eligibility criteria to receive a beet sugar marketing allocation. The regulations straightforwardly define a "sugar beet processor" as "[A] person who commercially produces sugar directly or indirectly from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year." Although some opponents of Cargill's request stated at the hearing that granting a marketing allocation to Cargill would amount to "circumvention" of the farm bill's sugar provisions, the opposite is true. Granting the request would not circumvent the law; rather, it would fulfill the law.

Cargill appreciates USDA's efforts to consider this request in a thorough and timely manner. We stand ready to answer any additional questions and look forward to an expeditious and positive response.

Sincerely,

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United States Department of Agriculture

Commodity Credit Corporation

Public Hearing

2003-Crop Year Beet Sugar Marketing Allocations

Washington, D. C.
June 16, 2003

Statement

of

John Richmond
President and Chief Executive Officer
Southern Minnesota Beet Sugar Cooperative
Renville, Minnesota

Mr. Chairman:

I am John Richmond, President and CEO of the Southern Minnesota Beet Sugar Cooperative ("SMBSC") of Renville, Minnesota.

Cargill Request

We support the request of Cargill for a beet sugar marketing allotment allocation and we believe that Cargill qualifies as a new entrant under the terms of the 2002 Farm Bill.

Like most others in our industry, SMBSC generally supported the re-imposition of an allotment system in the 2002 legislation as a way to add some consistency to the marketplace. However, we never believed that new entrants should be excluded from the business. Cargill made a major investment to build its modern sugar factory in Dayton, Ohio, in reliance on the "freedom to farm" policy of the 1996 Act. The decision in the 2002 law to return to the allotment approach now in place is a major policy reversal. Processors need the opportunity for a fair transition from one policy to the other. Use of the new entrant provision to accommodate the Cargill plant in Ohio would be both fair and consistent with the law.

In considering the effect of such a decision on other processors and on producers, the CCC should be mindful of the fact that this will have a positive benefit for producers, who will have another outlet for the sale of their crops.

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Mr. James R. Little
Executive Vice President
Commodity Credit Corporation

U.S. Department of Agriculture
Washington, D. C. 20250
Attn: Ms. Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA

Submission for the Record, CCC 2003-Crop Year Beet Sugar Marketing Allocations Hearing, June 16, 2003

Dear Mr. Little:

I am the President and Chief Executive Officer of the Southern Minnesota Beet Sugar Cooperative (SMBSC) of Renville, Minnesota.

In the CCC hearing on 2003-crop year allocations held on June 16, 2003, at USDA in Washington, some statements raised the question whether the Cargill request for an allocation is just a circumvention of Southern Minnesota's allocation limit.

Cargill's request for an allocation is certainly not a circumvention of anything. It may be a business transaction that others in the industry did not have in mind at the time the 2002 Act was under consideration, but it is perfectly permissible under the law. The "Farm Bill" was enacted primarily for farmers. If Cargill gets an allocation, the farmers who own SMBSC, or any other group of growers, could choose to sell part of their crop to Cargill instead of their current processor. That is the farmers' right. The purchaser would engage a third party to perform some of the necessary processing on a contract basis. That is the purchaser's right. The allotment is a limit on the marketing of sugar, not on the production or processing of beets. Use of the word "circumvention" is completely inappropriate here and simply conjures up unrelated controversies regarding imports and customs disputes.

This proposal does not seek to create any new allotment "from thin air." The total national beet allotment would not change. If Cargill is granted an allocation of the allotment, the allocations of all others will be reduced, including that of SMBSC. ANY new entrant would have the same effect -- that of reducing the allocations pro rata of all other processors while not increasing the overall total of sugar marketed. That is what the 2002 Act seeks to accomplish. Those who oppose this proposal must, in reality, be opposed to ANY new entrant.

Contrary to one of the statements in the hearing record, it makes no difference whether beet thick juice is loan eligible or not. In the proposal, the beets would be owned by Cargill. The thick juice produced from those beets would be owned by Cargill. The granulated sugar produced by Cargill from its thick juice would be marketed, and at that point an allotment allocation would be needed.

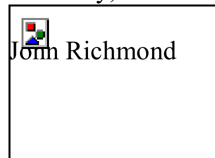
USDA's regulations say that the CCC will consider adverse effects upon existing processors and producers in granting a new entrant allocation. At the June 16 hearing, quite naturally, processors and producers said that the effects on them of granting this requested allocation would be very adverse. In fact, its effect on producers in the SMBSC growing area would be very positive by giving them another outlet for their crop. Its effect on SMBSC would be very positive by enabling us to make greater use of our new plant. Its effect on other producers and processors would be exceedingly small, simply given the obvious mathematics of the overall situation.

USDA announced on October 1, 2002, total beet sugar allocations of 4,184,950 tons. On January 15, 2003, USDA increased this by 271,750 tons. On May 19, 2003, USDA increased it again, this time by 251,641 tons. In this context, an 80,000-ton allocation to a new entrant would have a very modest impact when spread across all other processors. The 80,000 tons requested by Cargill is only about 30% of either of those adjustments made by the USDA this marketing year - 15% of the total crop year 2002 to date adjustments made by the USDA. That would hardly be considered excessive.

The Cargill new entrant request meets the requirements of the law. It would have a very beneficial impact on producers in our area and on our cooperative, while having only a slight effect on the rest of the industry. It is being considered in an open, public process and is not a circumvention of any kind. We think you should grant the request.

Thank you for considering our views.

Sincerely,



John Richmond

John A. Richmond
President & CEO
Southern Minnesota Beet Sugar Cooperative
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Sugar, 100% pure and natural, only 15 calories per teaspoon.
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United States Department of Agriculture
Commodity Credit Corporation

Public Hearing

2003-Crop Year Beet Sugar Marketing Allocations

Washington, D. C.
June 16, 2003

Statement
of

Neil Rudeen
Sugar Beet Producer
Renville County, Minnesota

Mr. Chairman:

My name is Neil Rudeen. I am a sugar beet producer in Renville County, Minnesota. My family operates a farm north of Bird Island, Minnesota, on which we grow corn, soybeans, sugar beets and other row crops.

I am one of the 585 farmer/owners of the Southern Minnesota Beet Sugar Cooperative (SMBSC). In 1997, we authorized the expansion of our factory, relying upon the provisions of the 1995 farm legislation, often called the "Freedom to Farm Act". The allotments and allocations of the 2002 Farm Bill will make recapture of the investment that we approved (approximately 100 million dollars) nearly impossible.

One opportunity for us has arisen. Cargill has indicated that they want to buy some of our sugarbeets; then utilize our facility, on a toll basis, to slice those beets and to purify and concentrate the juice to make it ready for crystallization. We need this toll revenue, generated by way of additional processing throughput, to help us meet our financial commitments.

While it is true that the 2002 Farm Bill was intended to stabilize supply through the allotment system, I cannot believe it was meant to put us out of business (utilizing, in our case, three of our worst production years for determining allocation). I also cannot believe it was meant to keep out new entrants, particularly when they clearly meet all the requirements for getting an allocation as spelled out by Congress.

Approving the Cargill request will help a significant number of producers. I am one of those producers and I urge a positive decision.

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Statement of Domestic Sugar Cane Growers

June 13, 2003

Ms. Barbara Fecso
Dairy and Sweeteners Analysis Group
Economic Policy and Analysis Staff
Farm Service Agency
U.S. Department of Agriculture
1400 Independence Ave., SW
STOP 0516
Washington, DC 20250-0516

RE: Commodity Credit Corporation 2003-Crop Year Beet Sugar Marketing Allocations; Notice of Public Hearing on June 16, 2003

Dear Ms. Fecso:

We are providing this written statement in lieu of an oral statement regarding the application of Cargill, Inc. (Cargill) for a new entrant beet sugar marketing allocation for the 2003 crop year, in response to the notice published in the Federal Register on June 5, 2003. We believe that this application raises fundamental issues about the administration of the flexible marketing allotments for sugar administered by the USDA, and the potential circumvention of the allotments. We appreciate the opportunity to comment on a few of these important issues.

When Congress passed and the President signed the Farm Security and Rural Investment Act of 2002, the sugar marketing allotment provisions of the Agricultural Adjustment Act of 1938 were amended to accommodate “new entrant” processors so that they might obtain processing allotments. Congress wisely provided that these new entrant allotments may only be granted under narrowly specified circumstances, so as to prevent the circumvention of the allotments.

In fact, the specific circumstances under which Congress provided for the granting of allotments differ substantially between allotments for sugar derived from sugarcane and sugar derived from sugar beets. Thus, we submit that procedures and precedents established in the implementation of the cane sugar allotments and beet sugar allotments need not be binding on one another. We urge that any precedents established in this matter not be binding on the administration of the cane sugar marketing allotments.

However, because the Cargill application raises issues that are fundamental to the integrity and administration of the underlying marketing allotment program, and other USDA programs, we felt compelled to submit these comments for your consideration.

At the present time we are opposed to the granting of an allotment to Cargill as proposed in its application to USDA. Our understanding of the status of the applicant is that as of today there is no sugar beet processing facility owned and operated by Cargill. Rather, Cargill proposes to toll sugar beets through

the facility already owned and operated by the Southern Minnesota Beet Sugar Cooperative (Southern Minnesota).

The governing statute recognizes in several respects that the beet allotment granted to a beet processor is attributable to individual factories owned by a processor (e.g. section 359d(b)(2)(I) of the Agricultural Adjustment Act of 1938). It is well worth noting that Southern Minnesota already has a beet sugar marketing allotment of more than 300,000 tons based on the production history and capacity of its factory in Renville, Minnesota.

Cargill's application attempts to sweep aside Congress' carefully constructed formula for the granting of allotments, and "harvest" the excess processing capacity that already exists in Southern Minnesota's factory. Under the law, Southern Minnesota cannot get an allotment allocation attributable to this excess capacity. Nor can Cargill apparently qualify for an allotment based on its current operations. Cargill's application appears to be nothing more than a cynical attempt to circumvent the allotments by generating a new beet allotment allocation based on Southern Minnesota's excess capacity by simply contracting with Southern Minnesota to process Cargill's beets.

It is also worth noting that under its proposal, "Cargill's beets" are apparently nothing more than the beets grown by Southern Minnesota's cooperative farmer-members. These beets will be processed through Southern Minnesota's facilities. In effect, Cargill proposes to create 80,000 tons of allotment from thin air to cover the same Southern Minnesota sugar, processed from the same Southern Minnesota beets, through the same Southern Minnesota facility that is ineligible for an allotment in its own right.

Under this scheme there is no objective measure by which Cargill can be considered a "processor" for purposes of the allotment program. Cargill alleges that it is "a totally 'new entrant'", but proposes to garner an allocation based on a pre-existing beet processing facility to which an allocation is already attributable. While Cargill submits that "the definition of beet sugar processor does not require that it own all aspects of the sugar production and processing", under its application Cargill would own *none* of the aspects of the eligible sugar production and processing. Southern Minnesota would own all of it, in light of the fact that the thick beet juice that is the product of its Renville facility is loan eligible sugar that is already subject to the marketing allotments.

If USDA were to grant Cargill a beet allotment based on this application, we agree that it would be a circumvention of the sugar beet processor allocation formula in section 359(b)(2) of the 1938 Act. Any processor whose factory capacity was constrained by sugar marketing allotments could make such an arrangement, which would totally undermine the sugar marketing allocation formula in section 359(b)(2) and disrupt the operation of the sugar program.

In addition, the granting of Cargill's application and its designation as a "processor" raises serious questions about other sugar programs operated by USDA. For example, it may imply that simply by tolling raw cane sugar through a sugar refinery an entity could claim to be a "refiner" eligible for a refined sugar re-export license. It likely raises similarly fundamental issues for a wide array of USDA programs.

A similar issue has been addressed for many years in the context of producers in the basic commodity programs for wheat, feed grains, cotton and rice administered by USDA. Under these programs, a landowner-producer eligible for certain farm program loans and other benefits can rent the farm to another producer. USDA has appropriately established a series of safeguards to ensure that program bases and benefits are not artificially inflated under such rental arrangements. The renting producer or the landowner may be eligible for the benefits associated with the farm, but the base on which those benefits are determined remains the same. Under the scheme proposed in Cargill's application, such

longstanding types of safeguards would be called into question by sanctioning the inflation of allotments based on the capacity of Southern Minnesota's processing facility.

As we pointed out in our testimony on a recent application for new entrant cane sugar marketing allotments, we urge that any applicant for an allocation also meet the many regulatory requirements a processor must meet to be eligible for the sugar loan program. These requirements act as evidence of a processor's viability, and include:

- A processor is eligible for loans only if it has agreed to all of the terms and conditions in the applicable USDA loan application, and has executed a note and security agreement, and storage agreement with the Commodity Credit Corporation (7 CFR 1435.102(b)).
- All sugar pledged as collateral must be derived from that of eligible producers, *processed and owned by the eligible processor*, stored in a CCC-approved warehouse, and meet minimum quality requirements (7 CFR 1435.102(c) and (d), *emphasis added*).
- A processor receiving a loan must meet the minimum grower payment requirements for the crop year (7 CFR 1435.104).
- The processor must certify to CCC that the processor intends to share its allocation among its producers fairly and equitably, and in a manner reflecting each producer's production history (7 CFR 1435.310).

It must be recognized that the allocation of allotments is a zero sum game. The granting of any new allotment by definition reduces the allotment available to existing beet sugar processors and producers that are mature, on-going business concerns.

If several applicants were to be granted allocations based on tolling arrangements designed to circumvent the allotments by harvesting existing processors' excess processing capacity, it would set a dangerous precedent and create great uncertainty and instability in the market for sugar in the United States. Preventing such uncertainty and instability was one of the primary reasons that Congress enacted marketing allotments for sugar in the 2002 farm bill.

Based on the facts as we know them, we believe that by any objective analysis this applicant fails every test for a "processor" eligible for an allotment allocation specified by Congress and the Department in the authorizing statute and the implementing regulations. The granting of an allotment allocation based on such a venture should be denied.

Thank you for your consideration of these comments. If you have any questions or desire any additional information, please do not hesitate to contact us.

Sincerely,

Carolyn Cheney
Washington Representative, Sugar Cane Growers Cooperative of Florida

Donald Wallace
Vice President, American Sugar Cane League, Inc.

Dalton Yancey
Washington Representative

Florida, Texas and Hawaii Sugar Growers

Attachment: Contact Information Sheet

CONTACT INFORMATION

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June 13, 2003

The honorable Ann Veneman
Secretary, U.S. Department of Agriculture
1400 Independence Avenue SW
Room 3086-S, Stop 0501
Washington, DC 20250-0501

Attention: Mr. James R. Little, Administrator
Farm Service Agency
Executive Vice President, CCC

Dear Mr. Little:

As President's of the eight Beet Grower Associations located in Colorado, Montana, Nebraska and Wyoming, delivering beets to the Western Sugar Cooperative, we are writing to voice our objection to any additional allocations as outlined in the Federal Register on Thursday, June 5, 2003.

Cargill is certainly not a processor of either sugar beets or sugar cane. This is strictly an end run around the Farm Bill, which would allow a few growers to produce more beets to the detriment of many. If a beet sugar plant or a cane refinery and Cargill wish to make arrangements for supplying thick juice for Cargill's Dayton facility that is fine, but the production should be considered the participating sugar producer's and accounted for in their allocation.

The Farm Bill is working very well and should be allowed to continue to do so. However, if Cargill's proposal is approved anyone and everyone could become a processor without owning a beet sugar plant or a cane refinery and undermine the balance created in the current Farm Bill.

In the case of Pacific Northwest, they were granted an allocation based on information they supplied. To the best of our knowledge they are not producing any sugar and cannot fill the allocation they currently have.

We strongly urge the department to stand firm on its original ruling in both of these cases.

Thank you for your consideration,

David Blach, President
Colorado Beet Growers Association
10547 County Road 33, Yuma, CO

Richard Riess, President
NEBCO Beet Growers Association
Box 15, Brule, NE

Richard Benzel, President
Big Horn County Growers Association
Route 2, Box 1090, Hardin, MT

Gregory Lackman, President
Mountain States Beet Growers Assn of Montana
HC 73, P.O. Box 715, Hysham, MT

Nick Lapeseotes, President
Nebraska Beet Growers Association
Box 423, Bridgeport, NE

Dan Laursen, President
Big Horn Basin Beet Growers Association
478 Road 8, RR 1, Powell, WY

David Hinman, President
Platte Valley Wyobraska Beet
Growers Association
62 South Ferguson, Wheatland, WY

Keith Ockinga
Wheatland Sugar Beet Growers Association
604 Ayers Rd
Wheatland, WY

****

My name is Frank Bush. I am Vice-President of Sales and Marketing for the Western Sugar Cooperative, headquartered in Denver, Colorado. Western Sugar is a grower-owned cooperative with 1,200 member shareholders in the four-state area of Nebraska, Colorado, Montana, and Wyoming.

Our shareholders have subscribed approximately 130,000 acres of sugarbeets which are produced in rotation with corn, wheat, barley, and dry edible beans.

Western Sugar supports the CCC's denial of the new entrant petition by Cargill, Inc. We believe that if Cargill were to be granted new entrant status as petitioned, the proposed arrangement would be a circumvention of the processor allocation formula, would undermine the marketing allocation formula, and totally disrupt the operation of the sugar program, a program which is currently working well.

Western Sugar Cooperative began it's business operations on May 1st, 2002. It's shareholders have committed to significant financial risk in this undertaking. Their decisions to undertake this risk were influenced, in large part, by the sugar processor marketing allocation formula. We believe that the circumvention of this formula, as proposed by the petitioner, violates both the spirit and the rule of the formula, as well as it's intent, and would unfairly increase the already high level of risk to Western Sugar's member shareholders.

Thank you.

****

Testimony of Ralph C. Burton

Cargill Response

My name is Ralph Burton. I am President and CEO of The Amalgamated Sugar Company LLC and President of Snake River Sugar Company, a cooperative with approximately 1,200 grower/owners. Our cooperative was formed over six years ago by growers investing heavily for their future. Sugarbeets and sugar are an integral and important segment of their farming livelihood. To accomplish this herculean effort of securing ownership of a sugar processing company, significant personal and cooperative debt was incurred and much of that debt remains.

It does not require much effort to recall the events of just a short time ago when sugar prices dropped to unprecedented lows. CCC sugar loans were forfeited leaving the CCC with copious amounts of sugar to deal with. We do no care to repeat that page of history.

The Farm Security and Rural Investment Act of 2002 (Farm Bill) includes provisions for marketing allocations. The sugarbeet producers and processors, collectively, labored long and hard to develop an allocation formula that reflected the input of all parties. Ample opportunity was given to present all of the facts to be considered as modification of the historical data. Consensus was reached, but not without compromise and some pain.

In the case of Snake River, and its processing company, Amalgamated Sugar, their 2002 crop base allocation, absent redistribution of Pacific Northwest's allocation of the 8,663,000 tons OAQ, would be approximately 18,500,000 hundredweight. In an average year, to fill that allocation, Snake River members should grow about 218,000 acres of sugarbeets which is about 97% of all acres subscribed and paid for by its members. Snake River Sugar Company's grower/owners accepted this reduction because they understood that all parties had to compromise. I see no reason why allocations should be further decreased while Southern Minnesota growers increase production and sell thick juice to Cargill.

The allocation process as currently administered by the USDA has been successful and resulted in:

Reduction or elimination of CCC inventory of sugar.

1. Prices for processors and producers that seem to be stable and reasonable.
2. The security of the sugarbeet farm and the sugar it supplies to the American people is preserved which was the objective of the Farm Bill as manifested by its title "The Farm Security and Rural Investment Act of 2002".

The current Farm Bill is not very old, and we are picking at it like vultures. To change the rules after the game has started is not acceptable. We knew what we had to do going in. We all made planting plans, capital expenditures and other decisions, etc. based on our understanding of the rules. To honor the appeal is to turn away from those who have followed the rules, in favor of those who would manipulate what Congress clearly intended.

Increased allocations for some come at the expense of all others. We had that "cat fight" (pardon the expression) when the allocation formula was developed. Following the decision, we all made our plans accordingly. I would urge the USDA to remain steadfast in their interpretation of the Farm Bill, and allow the allocation process to mature, and to continue to manage the sugar program in such a manner that the security of the family farm is not compromised.

Thank you.

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Testimony of Perry Meuleman

Cargill Response

My name is Perry Meuleman. I am President of the Idaho Sugarbeet Growers Association. We are part of the Snake River Sugar Company, a grower-owned cooperative. I am speaking on behalf of these 1100 farmers who grow over 220,000 acres of sugarbeets.

From my perspective, the farm economy is not very healthy. Growers are struggling. Many are staying in farming only by systematically eroding away personal equity. That is because commodity prices do not always cover the costs of production – let alone provide a return on assets. This is the case with most of the crops grown in my area. We are losing many smaller family farms that are not able to survive under these circumstances. I consider that a tragedy for our communities and nation, as well as these individual families.

Our Association and Industry worked hard to help improve the new Farm Bill. We sought to make it more accurately reflect the real world we are producing and marketing in. With the passing of the Farm Bill, proper implementation of its sugar marketing allocations has helped return the profitability to growing sugarbeets. Prices have recovered to reasonable levels,. Stability has returned to the marketplace.

We continue to face issues that threaten the operation of the sugar program under the new Farm Bill. NAFTA, and the Administration's initiatives to negotiate more regional trade agreements, pose threats to our existing marketing allocations. New marketing schemes designed to circumvent the allocation formula in the Farm Bill pose further threats.

There is no new sugar demand being created. If this appeal is approved, our beet acreage will have to be reduced, or our costs for storage will have to increase. Neither option is acceptable – especially if they are the result of an effort to circumvent the allocation formula existing in law.

We support the USDA's conclusion that Cargill's "...arrangement would be circumvention of the sugarbeet processor allocation formula" and that this would "...disrupt the operation of the sugar program." It seems to us the Congressional intent of the allocation process and "new factory" determination is being manipulated.

A new entrant can not use a factory that contributed to an existing processor's production history and allocation to generate a new allocation. Please support the USDA's ruling and deny the appeal before you.

I. Reduction or elimination of CCC inventory of sugar.

II. Prices for processors and producers that seem to be stable and reasonable.

III. The security of the sugarbeet farm and the sugar it supplies to the American people is preserved which was the objective of the Farm Bill as manifested by its title "The Farm Security and Rural Investment Act of 2002".

The current Farm Bill is not very old, and we are picking at it like vultures. To change the rules after the game has started is not acceptable. We knew what we had to do going in. We all made planting plans, capital expenditures and other decisions, etc. based on our understanding of the rules. To honor the appeal is to turn away from those who have followed the rules, in favor of those who would manipulate what Congress clearly intended.

Increased allocations for some come at the expense of all others. We had that "cat fight" (pardon the expression) when the allocation formula was developed. Following the decision, we all made our plans accordingly. I would urge the USDA to remain steadfast in their interpretation of the Farm Bill, and allow the allocation process to mature, and to continue to manage the sugar program in such a manner that the security of the family farm is not compromised.

Thank you.

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Good morning, my name is Mark Flegenheimer and I am the President and CEO of Michigan Sugar Company -- a grower owned cooperative. On behalf of our 1,000 grower/owners and 1,350 employees, I appreciate the opportunity to comment on Cargill's application for a beet sugar allotment as a new entrant.

In February of 2002, 1,000 growers banded together to buy Michigan Sugar Company from Imperial Sugar Company which had recently emerged from bankruptcy. The growers borrowed a substantial amount of money to buy Michigan Sugar. This purchase saved a large portion of the beet sugar industry in Michigan. In order to repay our loans as well as the growers individual loans, Michigan Sugar must maintain its throughput and growers must maintain their acreage. If Cargill's application were to be approved it would have a material and significant impact on our growers as well as their cooperative.

Last year, Michigan's initial allotment was just under 5,000,000 cwt. --- with the reassignment of Pacific Northwest's allotment our quantity increased to nearly 5,300,000 cwt.. These initial allocations would have blocked a significant amount of our 2002/03 production. If Cargill's request were granted it would require Michigan Sugar Company to withhold an additional 100,000 cwt. from the market. This would reduce our revenues by nearly $2.8 million. Although de minimus for Cargill, this is a significant amount of revenue --- especially for a new enterprise.

If we had not been reassigned a portion of PNW's allotment our revenues would have been reduced by nearly $8.5 million. Cargill's assertion that existing processors would not be adversely affected by granting PNW's allocation to Cargill is simply not true.

We feel that Mr. Colacicco's letter of February 28, 2003 denying Cargill's request does apply the law correctly and we fully concur with the USDA's decision on this matter.

Thank you.

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STATEMENT OF JAMES HORVATH
AMERICAN CRYSTAL SUGAR COMPANY
on

THE PETITION OF CARGILL, INC.

June 16, 2003

I appreciate having the opportunity to submit our testimony today on the petition of Cargill, Inc., for reconsideration of the decision by the Commodity Credit Corporation to deny Cargill's application for the assignment of an allocation of the crop year 2003 beet sugar flexible allotment as a "new entrant".

I am speaking on behalf of not only my own company but the seven other companies who signed the written statement I am also submitting to you for the record.

Our group includes cooperatives and companies that represent over 90 percent of the U.S. beet sugar industry. We process sugarbeets produced in California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, and Wyoming. As a group, we have over 9,000 employees, and our combined payroll exceeds $180,000,000 annually. Our combined revenues last year were over 2.2 billion dollars. We provide processing services for over 8,000 sugar beet farmers

We oppose Cargill's petition because we believe the facts provided by Cargill show that Cargill is neither a sugar beet processor nor a new entrant into the beet processing industry.

Cargill should not be considered a sugar beet processor because the only activity Cargill would engage in under its proposal is to refine thick beet juice—a product that is sugar for the purposes of the farm bill programs—into refined sugar. This is not substantially different than processing granulated sugar into liquid sugar—it does not change the total amount of sugar produced, only the form. All of the work involved in processing sugar beets—that is, collecting, storing, slicing and processing the sugar beets into thick beet juice—would be done by Southern Minnesota Beet Sugar Cooperative, a company that already has been assigned an allocation under the flexible allotment program.

Cargill cannot be considered a new entrant into the processing industry because it does not plan to create any new capacity for the processing of sugar beets. As noted above, all it will do is perform the step of transforming Southern Minnesota's thick beet juice to refined sugar.

If Cargill is granted a new entrant allocation, all of our businesses will be adversely affected.

Granting new entrant status to a company is a "zero sum game" with respect to every processor's allocations. Conceptually, that means that any benefit Cargill gets will be taken from the benefits the rest of the processors get from the program. Cargill cannot get an allocation without hurting someone else's allocation. And, what we are talking about in this case, since Cargill is seeking an 80,000 ton annual allocation, is a concomitant reduction in every other company's allocation of roughly two percent. The combined reductions in everyone else's allocations involve losses of sales revenue well in excess of $100 million during the remainder of the 2002 Farm Bill.

And, it is not a "game" It is the livelihoods of the 8,000 farmers and 9,000 employees that our companies represent. It is our companies' financial stability that is at stake here.

The beet sugar industry has gone through severe economic stress in recent years. The industry knew that the restrictive flexible allotment system Congress included in the 2002 Farm Bill was necessary, but we also faced the grim realization that we would have to reduce our marketings and profit margins to the bare minimum to survive until prices turned around. And, our companies put together their financing plans based on our common understanding (as stated by the USDA in 2002) of what our shares would be under the flexible allotment program.

So, yes, given our thin margins and financing plans, reducing our allocations by even as little as two percent (or two or three times that amount if other potential copycat applications for allocation adjustments are counted) will put us in serious financial stress. While the representatives of individual companies can address the specific adverse effects they will suffer, let us also point out here that the tonnage we lose will be marginal tonnage that does not have fixed costs attached to it, only variable costs. This is our highest profit tonnage we will be losing.

While Cargill casually refers to the reduction in each company's allocation as "de minimus," we beg to disagree. That two percent might be a de minimus amount to a large corporation like Cargill, but it is very important to the 8,000 sugarbeet growers that we process for.

In sum, our group believes that Cargill clearly has no case for receiving a new entrant allocation, and such an allocation would seriously harm our companies and the sugar program. I urge the CCC to deny the petition for reconsideration. Thank you.

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Testimony
Before Commodity Credit Corporation
Public Hearing Regarding: "New Entrant's Beet Sugar Allocation Request"
June 16, 2003

Good morning. My name is David H. Roche. I am the President and Chief Executive Officer of Minn-Dak Farmers Cooperative, Wahpeton, North Dakota.

Minn-Dak is a small sugarbeet processor owned by 488 North Dakota and Minnesota sugarbeet farmers. We plant, harvest and process a little over 100,000 acres of sugarbeets. We produce on average about 600 million pounds (321,000 STRV) of refined beet sugar annually generating

nearly $160 million of total revenue. We employ more than 500 people during the course of the year with a payroll cost of about $12.7 million.

I am here to voice our strong support for the position of the USDA in denying the petition from Cargill, Inc. for an allocation of the beet sugar marketing allotment.

Minn-Dak views the Cargill request as a blatantly transparent effort to circumvent the intent of the USDA regulations regarding allotments and allocations as well as the underlying farm bill legislation.

Last November Cargill announced a marketing alliance with Southern Minnesota Beet Sugar Cooperative whereby Cargill will market Southern Minnesota's beet sugar production. In our opinion, their current request for additional allocation is a clear circumvention of the regulations and a concept, if approved, which could be implemented by every beet processor in the United States. If that were to occur it would effectively destroy key elements of the sugar provisions in the farm bill.

We vigorously disagree with the Cargill contention that "existing processors will not be adversely affected…". Beet sugar allotment allocated to Cargill will come from each of the current legitimate processors of sugarbeets. At October 1, 2002, Minn-Dak prospectively had significant quantities of blocked sugar stocks. We addressed that situation within the regulations and encourage the department to continue to enforce those regulations and monitor the integrity of the program. I am here to tell you: What Cargill views as a "*de minimus*" reduction in our allocation would have a significant and long lasting effect on our farmer shareholders as well as upon Minn-Dak's economic integrity.

David H. Roche
President, Minn-Dak Farmers Cooperative
7525 Red River Road
Wahpeton, ND 58075
701-671-1315

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Testimony
Before Commodity Credit Corporation
Public Hearing Regarding: "New Entrant's Beet Sugar Allocation Request"
June 16, 2003

Good morning. My name is Victor Krabbenhoft. I am sugarbeet grower from Moorhead, Minnesota. I grow 385 acres of sugarbeets along with corn, soybeans and wheat. I am a member of the American Sugarbeet Growers Association and am the Chairman of the Board of Directors of Minn-Dak Farmers Cooperative, Wahpeton, North Dakota.

I am here to register my strong opposition to the Cargill, Inc. request for a beet sugar allocation as a new processor. The shareholders of Minn-Dak Farmers Cooperative will experience significant economic cost if our allocation is taken away and given to Cargill, Inc., a multi-billion dollar international corporation. Cargill is not a sugarbeet processor. Their scheme of having Southern Minnesota's sugarbeet growers contract with them rather than Southern Minnesota sure seems like a circumvention of the USDA regulations governing the sugar provisions of the farm bill. It

does not sound like there have been any additional acres of beets planted in Southern Minnesota nor have new growers contracted to grow sugarbeets. The mere designation of beets as belonging to Cargill does not sound like what was intended by Congress when they provided for new processors to be granted an allocation.

My cooperative was concluding a significant factory expansion during the years 1997 through 2000. Our factory did not produce up to its enhanced capacity during parts of the period from 1998 through 2000 and therefore, our allocation does not always allow for the marketing of all of our production. We are addressing that allocation shortfall in accordance with your regulations and believe a circumvention of USDA regulations is not in the best interest of our industry.

Thank you for the opportunity to express our views.

Victor Krabbenhoft
Chairman, Minn-Dak Farmers Cooperative
7525 Red River Road
Wahpeton, ND 58075
701-671-1314

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SUGARBEET PROCESSORS STATEMENT

on

THE PETITION OF CARGILL, INC., FOR RECONSIDERATION OF CCC'S DECISION TO DENY ITS REQUEST FOR A NEW ENTRANT ALLOCATION UNDER THE BEET SUGAR FLEXIBLE ALLTOMENT PROGRAM

June 23, 2003

We appreciate having the opportunity to submit this statement of our position on the petition of Cargill, Inc. ("Cargill"), for reconsideration of the decision by the Commodity Credit Corporation ("CCC") to deny Cargill's application for the assignment of an allocation of the crop year 2003 beet sugar flexible allotment as a "new entrant".

SUMMARY

We oppose Cargill's petition because we believe the facts provided by Cargill show that Cargill is neither a sugar beet processor nor a new entrant into the beet processing industry.

The 2002 Farm Bill provides that beet sugar marketing allocations can only be assigned to sugarbeet processors (and this is true even though the allocations are marketing allocations, not processing allocations).

Cargill simply is not a sugar beet processor. The only activity Cargill would engage in under its proposal would be to refine thick beet juice—a product that is sugar for the purposes of the farm bill programs—into refined sugar. This is not substantially different than processing granulated sugar into liquid sugar—it does not change the total amount of sugar produced, only the form. All of the work involved in processing sugar beets—that is, collecting, storing, slicing and processing the sugar beets into thick beet juice—would be done by Southern Minnesota Beet Sugar Cooperative, a company that already has been assigned an allocation under the flexible allotment program.

Cargill also fails to meet the specific requirement in the regulations that, to be considered a "processor", an entity must produce sugar from beets and have a viable sugarbeet processing facility. Under Cargill's proposed arrangement with Southern Minnesota, all processing of sugarbeets into beet sugar would be done by Southern Minnesota, not Cargill, and at Southern Minnesota's Renville processing facility, not at Cargill's Dayton facility.

Even in CCC's tobacco program, a new entrant grower must own or operate his or her own farm, and own or have access to his or her own equipment to market tobacco under the program.

If Cargill is granted a new entrant allocation, all of our businesses will be adversely affected.

From the Department's perspective, Cargill's proposal is horrible policy. It will circumvent the 2002 Farm Bill sugar program, and allow Southern Minnesota to achieve indirectly what it cannot achieve directly—that is, an increased allocation of flexible allotment for the sugarbeets produced by its growers contrary to the rules of the program.

Thus, we strongly urge the Vice President of the CCC to deny Cargill's request for reconsideration.

BACKGROUND

a.

The group signing this statement includes cooperatives and companies that represent over 90 percent of the U.S. beet sugar industry. We process sugarbeets produced in California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, and Wyoming. As a group, we have over 9,000 employees, and our combined payroll exceeds $180,000,000 annually. Our combined revenues last year were over 2.2 billion dollars. We provide processing services for over 8,000 sugar beet farmers.

Clearly, then, we can say that we are speaking for an overwhelming majority of the industry when we say that we strongly oppose the Cargill proposal.

b.

The 2002 Farm Bill provision (section 359d(b)(2)(H)) relating to new entrants into the beet processing industry is simple and straightforward. It states that "if any individual or entity that does not have an allocation of beet sugar . . . starts processing sugar beets after the date of enactment of this subparagraph . . . 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; and (II) reduce the allocations for beet sugar of all other processors on a pro rata basis to reflect the new allocation" (emphasis added).

The CCC regulations implementing the 2002 Farm Bill define "sugar beet processor" as "a person who commercially produces sugar, directly or indirectly, from sugar beets (including sugar produced from sugar beet molasses), has a viable processing facility, and a supply of sugar beets for the applicable allotment year" (emphasis added).

There are a couple of key points in this cited language of the 2002 Farm Bill and the regulations: (1) the language states that the person that wishes to be a new entrant must start processing sugar beets into sugar and must have a viable processing facility; and (2) the 2002 Farm Bill makes the new entrant process what

some call a "zero sum game", that is, for any allocation assigned to the new entrant, it must be taken from processors already in the sugar program.

c.

Cargill built a plant in Dayton, Ohio, in 2000, that up to now has been used primarily for the processing of imported sugarcane molasses and syrup. Notwithstanding the plant's history as a cane sugar producer, Cargill has applied for a new entrant marketing allocation as a sugarbeet processor in January of this year.

CCC gave due consideration to the application, but denied it on February 28. CCC's denial letter stated that Cargill, under its proposal, would not fit the definition of "sugar beet processor" in the program regulations; and, more importantly, CCC stated that Cargill's arrangement would be a "circumvention" of the sugar beet processor allocation formula under the sugar program

WHY THE CARGILL PETITION SHOULD BE DENIED

Cargill Is Not A Sugarbeet Processor Nor A New Entrant

We agree totally with the CCC that Cargill is not in fact a new sugar beet processor or a new entrant into the processing industry.

In spite of the fancy words and strained logic, Cargill's proposition that it should be treated as a new processor in the sugar beet processing industry simply does not wash. Cargill's operation, by its own admission, is not creating a lick of new beet processing capacity and won't come within one hundred miles of any sugarbeet that needs slicing. Rather, Cargill will only manufacture refined sugar from the thick beet juice produced in the Renville plant of Southern Minnesota, an existing processor. And, the CCC has already determined—at the request of Southern Minnesota—as a general rule that thick beet juice is a form of sugar itself, the marketing of which should count against the allocation of whoever produces it.

Cargill's Dayton operation of refining thick beet juice into refined sugar is not substantially different than processing granulated sugar into liquid sugar—it does not change the total amount of sugar produced, only the form. All of the work involved in processing sugar beets into sugar—that is, collecting, storing, slicing and processing the sugar beets into thick beet juice—would be done by Southern Minnesota Beet Sugar Cooperative, a company that already has been assigned an allocation under the flexible allotment program.

Thus, Cargill's Dayton plant, while it might produce many valuable sugar products, is not producing sugar from sugarbeets, nor is it a facility for the processing of sugarbeets, or even for the processing of intermediate sugarbeet products or in-process sugar. As such, Cargill cannot meet the definition of "processor" in the regulations.

We realize that the allocations are marketing allocations, not processing allocations. However, trying to draw an analogy to the other marketing quota programs under the Agricultural Adjustment Act of 1938 does not help Cargill. The regulations governing the tobacco program, 7 C.F.R. 723.207(b), state that, in order for a new tobacco grower to receive the tobacco version of a marketing allocation, he or she must own or operate a tobacco-production facility, that is a tobacco farm, and own or have readily available adequate equipment and other facilities of production necessary to the production of tobacco on the farm. This is conceptually similar to the requirement in the definition of "sugarbeet processor" that the entity must own or operate a viable processing facility.

In addition, the argument that the allocations are for marketing not processing can go only so far. We should keep in mind that what the sugar program and similar commodity programs are ultimately about is restraining production so that it doesn't exceed market demand. The programs cannot easily get at the production problem directly, so the programs attack it from the marketing side. Nonetheless, given what these programs hope to achieve, it makes eminent to insist that program participants be producers—or in the case of sugar—processors.

In sum, the 2002 Farm Bill is clear; a company must establish that it is a sugarbeet processor to receive the beet sugar marketing allocation. Companies like Cargill that only market sugar (or in the case of its Dayton plant convert raw cane sugar or thick beet juice into refined sugar products, and market those products) without processing the sugarbeets from which it is derived cannot participate in the 2002 Farm Bill allocations. If Cargill wishes to be a new entrant, it should build a sugarbeet processing plant. Otherwise, if it needs feed stocks for its Dayton plant, it can acquire raw cane sugar or thick beet juice from the companies that do process sugar cane or sugarbeets.

Cargill's Proposal Would Circumvent The Program

We also agree with the CCC that Cargill's proposed allocation would circumvent the sugar program. "Circumvention" is a strong word, but CCC hit the nail on the head when it used that term. As CCC said in the letter, Cargill "cannot use a factory that contributed to an existing processor's production history and allocation to generate a new allocation."

We all know that Southern Minnesota already has an allocation that is fixed, one that it is chaffing under—the Southern Minnesota representatives at the June 16 hearing said so in so many words. But, if Southern Minnesota were to come to CCC and ask permission to buy more sugarbeets from the 585 farmers that own it than its allocation would allow and then use those beets to produce and market thick beet juice in excess of its allocation, it would most certainly be told no. However, if Southern Minnesota or its farmers get the profit they would make on these excess sugarbeets through collecting payments from Cargill, aren't Southern Minnesota and its farmers getting the same result as if Southern Minnesota had directly exceeded its allocation? Southern Minnesota and its farmers should not be allowed to get indirectly what they are forbidden by the law to get directly.

It should be mentioned, as well, that Southern Minnesota and Cargill do not have an arms' length relationship, at least in some respects. Last year, Cargill announced a marketing alliance with Southern Minnesota whereby Cargill will market Southern Minnesota's sugar production.

A Decision In Favor Of Cargill Will Have Substantial Adverse Effects On Other Processors And On The CCC

[NOTE: The CCC regulations, at 7 C.F.R. 1435.308(f)(2), require the CCC, in reviewing applications of entities for new entrant sugar marketing allocations, to "consider adverse effects of the allocation on existing processors and producers".]

We described this situation earlier as a "zero sum game". Conceptually, that means that any benefit Cargill gets will be taken from the benefits the rest of the processors get from the program. Cargill cannot get an allocation without hurting someone else's allocation. And, what we are talking about in this case, since Cargill is seeking an 80,000 ton annual allocation, is a concomitant reduction in every other company's allocation of roughly two percent. The combined reductions in allocations involve losses of sales revenue well in excess of $200 million during the remainder of the 2002 Farm Bill.

And, it is not a "game" It is the livelihoods of the 8,000 farmers and 9,000 employees that our companies represent. It is our companies' financial stability that is at stake here.

The beet sugar industry has gone through severe economic stress in recent years. The industry knew that the restrictive flexible allotment system Congress included in the 2002 Farm Bill was necessary, but we also faced the grim realization that we would have to reduce our marketings and profit margins to the bare minimum to survive until prices turned around. And, our companies put together their financing plans based on our common understanding (as stated by the USDA in 2002) of what our shares would be under the flexible allotment program.

So, yes, given our thin margins and financing plans, reducing our allocations by even as little as two percent (or two or three times that amount if other potential copycat applications for allocation adjustments are counted) will put us in serious financial stress. Let us also point out here that the tonnage we lose will

be marginal tonnage that does not have fixed costs attached to it, only variable costs. This is our highest profit tonnage we will be losing.

Further, we in the sugar production industry have to keep looking over our shoulders at what is happening with Mexico's access to the U.S. sugar market under NAFTA and what additional access might be granted to other countries in the many trade negotiations now ongoing. Increased imports down the road will reduce the flexible allotments even further and add to the pressure on our bottom lines.

So, although Cargill casually refers to the reduction in each company's allocation as "de minimus," we beg to disagree. That two percent might be a de minimus amount to a large corporation like Cargill, but it is very important to the 8,000 sugarbeet growers that we process for.

There is another adverse effect that will be caused by the Cargill plan, if it approved, that will adversely affect the CCC and its administration of the sugar program as well as beet processors. If Cargill and Southern Minnesota are allowed to effectively increase Southern Minnesota's allocation through what amounts to a paper transaction, what is to prevent other sugarbeet processors with excess capacity from doing the same with a willing partner like Cargill. In fact, it is our belief that it is both possible for this to happen and there is a good chance it will happen.

Further, it is not outlandish to think that some processors, just to protect their growers and their business, might even feel compelled to do so. If this happens, we could quickly have an "arms race" within the program where everyone acts to protect their interests. A couple of things would happen, neither of them good—first, these efforts to dramatically expand allocations would only result in major reductions in everyone's original allocations; and second, the program would be perceived by all concerned as one in which gaming it is an important part of participation. In short, the integrity of the program would be lost. That is not what Congress intended. Rather, Congress expects you, as the administrator of the program, to preserve the integrity of the program and make it work as planned.

No New Facts Or Arguments Have Been Presented

Cargill has already lost the battle on its petition once, the CCC having turned down its initial application for new entrant status. It is now asking you to reconsider that turn down. However, as a general rule, to get an administrative agency to grant reconsideration, a party must present new factual evidence or legal information and explain why such new information could not have been presented earlier. Here, Cargill's petition for reconsideration contains no relevant facts not already brought out in its original application; and the only novel legal arguments it makes are irrelevant to the matter before the CCC.

One new set of facts and arguments Cargill presents in its March 10 reconsideration petition has to do with the concept of using two separate facilities to produce sugar. However, we read CCC's concern about Cargill's application to be not about the number of facilities, but who owned and operated one of the facilities—Southern Minnesota's Renville plant—and whether that facility produced program sugar. CCC found that Southern Minnesota already had an allocation for that plant and the product it would produce for Cargill was thick beet juice, a form of sugar itself, which on being marketed should count against Southern Minnesota's allocation. Incidentally, it is also worth noting that the two plants that produced the sugar in the example provided by Cargill, Michigan Sugar and ADSEP, were, at the time, both subsidiaries of Savannah Foods, the holder of the beet sugar allocation.

Another new "fact" and argument Cargill presents in its reconsideration petition is that Southern Minnesota created new beet processing capacity in 2001 and 2002 and that, somehow, that new capacity is not subject to Southern Minnesota's currently-assigned allocation, and thus can be "rented out" to a new entrant. There simply is no basis in the 2002 Farm Bill or the implementing regulations for this dubious principle. Further, it ignores the fact that allocations are not based on capacity, but on weighted average shipments during the 1998 to 2000 crop years.

Cargill also refers in its March 10 petition to an intent of Congress to foster the entry of new processors into the industry. The truth is, however, that Congress never expressed any such intent in any of the

legislative history created during the course of the congressional debate on the sugar program in the 2002 Farm Bill. The only expression of congressional intent that specifically addressed beet sugar allocations was during the Senate floor debate on February 8, 2002. Senator Conrad, the sponsor with Senator Crapo of the beet allocation provisions, indicated those provisions were designed to provide predictability, fairness, and transparency to the allocation process, and that the provisions reflected a consensus within the beet processing industry. There was not a word in that floor speech about encouraging the entry of new processors into the industry; and we believe that, given our numbers, we can speak with certainty about the industry consensus—and there was no consensus about fostering the development of new capacity in an industry that had ample capacity already and was suffering from excessive supplies in relation to demand.

Further, to the extent one can adduce an intent of Congress from the language of the statute itself, it is the intent to allow for the restriction, as needed, of the production of beet sugar—through flexible marketing allotments and precisely defined allocations of the allotments. New allocations are hardly part and parcel of such an intent.

Also, Cargill tries to construct an argument based on a statement in CCC's February 28 denial letter that the situation might be different if Cargill paid to have the beets processed at another facility. It is our understanding that the statement simply refers to beets processed by a facility that does not already have an allocation, so as to avoid the "circumvention" problem.

CONCLUSION

We would like to supplement this statement with a legal analysis of Cargill's petition for reconsideration, which is attached hereto.

Finally, we believe that the situation here can be boiled down to this: Southern Minnesota wants to market more sugar but under the marketing allocation rules it cannot. Cargill wants an allocation but it can't qualify on its own under the marketing allocation rules. This proposal, then, is nothing more than a sham to circumvent the marketing allocation rules for the benefit of both. It should be denied.

Respectfully submitted,

The Amalgamated Sugar Company
American Crystal Sugar Company
Imperial Sugar Corporation (for itself and Holly Sugar Corporation)
Michigan Sugar Company
Minn-Dak Farmers Cooperative
Monitor Sugar Company
Western Sugar Cooperative

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June 23, 2003

ANALYSIS

of the Petition of Cargill, Inc. for Reconsideration of the CCC Decision to Deny Its Request for a New Entrant Allocation under the Beet Sugar Flexible Allotment Program

On March 10, 2003, Cargill, Inc., submitted to the U.S. Department of Agriculture a written request that the Commodity Credit Corporation ("CCC") reconsider its February 28, 2003, decision that Cargill is not entitled to "new entrant" allocations of the beet sugar marketing allotments under the 2002 Farm Bill. The CCC conducted a hearing on Cargill's request on June 16, 2003.

Cargill's March 10 request fails to make the case for granting reconsideration and the testimony at the June 16 hearing did not strengthen Cargill's position. Cargill cannot show that it is a sugarbeet processor, but the law requires that marketing allocations be assigned only to processors. And, if Cargill's proposal is approved, other sugarbeet processors and growers will be adversely affected. On the other hand, CCC's February 28 decision was reasonable, firmly anchored on the facts of the case, and necessary to ensure CCC's effective administration of the sugar program under the Farm Bill, and should be affirmed.

I. BACKGROUND

On January 6, 2003, Cargill submitted to the Department of Agriculture a request that it be given "new entrant" allocations of the beet sugar marketing allotments for the 2003 and succeeding crops.

The establishment of beet sugar marketing allocations are authorized under section 359d(b)(2)(H) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359dd(b)(2)(H)), as added by section 1403 of the Farm Security and Rural Investment Act of 2002 (the "2002 Farm Bill"), and CCC regulations (7 C.F.R. 1435.308(f)).

Among its provisions, the 1938 Act requires pro rata reductions in the allocations assigned to other sugarbeet processors to reflect any new entrant allocation (which reductions obviously would adversely affect those processors).

In addition, the CCC regulations implementing the Farm Bill sugar program specifically provide a three-pronged definition of "sugar beet processor," as follows: the entity must (1) commercially produce sugar, directly or indirectly, from sugar beets (including sugar produced from sugar cane molasses); (2) have a viable processing facility; and (3) have a supply of sugarbeets for the applicable allotment year (emphases added). 7 C.F.R. 1435.2.

Cargill's plan for receiving a new entrant allocation relies heavily on the participation of Southern Minnesota Sugar Beet Cooperative ("SMSBC"), an existing processor with an allocation already; Cargill will not itself process any sugar beets or sugar beet molasses under its plan.

By letter dated February 28, 2003, the CCC denied Cargill's request for a new entrant allocation. The letter stated that the CCC had determined that Cargill did not meet the requirements for being considered a sugarbeet processor; that Cargill's proposed scheme for becoming a new entrant processor would be a circumvention of the sugarbeet processor allocation formula; and that any processor whose factory capacity was constrained by sugar marketing allotments could make a similar arrangement, which would totally undermine the sugar marketing allocation formula and disrupt the operation of the sugar program.

The bases for Cargill's reconsideration request stated in its March 10 letter are that—

> (1) "CCC's decision is based on a misunderstanding of the facts regarding the relationship between Cargill and the farmers of the Southern Minnesota Beet Sugar Cooperative

(‘SMBSC’), and the processing arrangement between SMBSC and Cargill to produce sugar” (March 10 letter at 1). Cargill explains further that “contrary to the assumption made by the CCC in its February 28, 2003 decision, the beets Cargill intends to purchase from the farmers will be the sole property of Cargill, and not of SMBSC” (March 10 letter at 3); and

(2) “[t]he decision also runs contrary to Congress’ intent in the Farm Security and Rural Investment Act of 2002 . . . to encourage the development of new sugar processing facilities” (March 10 letter at 1).[1]

Cargill’s testimony at the hearing replicated the points made in its March 10 letter. There was, however, substantial testimony at the hearing from other sugarbeet processors with marketing allocations to the effect that granting Cargill new entrant status would adversely affect them. In that regard, among its provisions, 7 C.F.R. 1435.308(f) provides, in subparagraph (2), that the CCC, in reviewing applications of entities for new entrant sugar marketing allocations is to consider the adverse effects of a new entrant allocation upon existing processors and producers.

Another possible basis for granting Cargill’s reconsideration petition was discussed at the June 16, 2003, hearing on the petition. It is something along these lines: Even if Cargill will not perform processing functions itself (because it will hire SMBSC to do the work through a tolling arrangement), does it not still meet the legal qualifications for receiving a new entrant allocation?

This memorandum will address each the points raised by Cargill in its March 10 petition letter in support of reconsideration, but will begin the analysis by addressing the key issue in this case: Is Cargill a sugarbeet processor, thus qualifying it for new entrant status and allocation?

II. ANALYSES

A. Under The Terms Of Cargill’s Plan As Announced, Cargill Does Not Meet The Definition Of “Sugar Beet Processor”, And Thus Should Not Be Considered A New Entrant Processor

The bulk of Cargill’s March 10 request for reconsideration and its June 16 testimony restate or recast certain arguments Cargill made in its January 6 initial request for an allocation: that it meets the definition of “sugar beet processor” in the CCC regulations, and thus meets the conditions in the statute and regulations for the award of new entrant status. Those arguments failed when first advanced, and fail again as propounded now.

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[1] In its March 10 letter, Cargill also cites *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837 (1984), an important and often-quoted U.S. Supreme Court decision relating to the rules of statutory construction and the extent of administrative agencies’ discretion in implementing Federal statutes. While the purpose for which Cargill cited *Chevron* is unclear, it is nonetheless worth looking at that decision in this instance. The court in *Chevron* made clear that where a statute is silent on a particular issue the agency is to be given great latitude to fill the gap, *id*., at 843, and that agency decisions in the implementation of a legislative program, unless they are arbitrary, capricious, or manifestly contrary to the statute, are entitled to great deference by the courts, *id*. at 844. Thus understood, the *Chevron* doctrine will buttress the position of those opposed to Cargill’s petition for new entrant status. For example, opposition legal arguments will be able to rely on certain implementing regulations that fill gaps in the statute itself, confident that such rules are permissible exercises of administrative discretion under the *Chevron* doctrine. These include the regulation defining the term “sugar beet processor” (7 C.F.R. 1435.2), and the regulation requiring the CCC to consider the adverse effect on existing processors and producers of a new entrant allocation (7C.F.R. 1435.308(f)(2)). Further, under the *Chevron* doctrine, great deference should be given—by all concerned—to the extremely important findings in the CCC’s February 28 denial letter that Cargill’s proposed plan would be a circumvention of, and totally undermine, the sugarbeet processor allocation formula and disrupt the operation of the sugar program.

1. Cargill cannot meet the definition of "sugar beet processor"

The definition of "sugar beet processor," described in the introduction, has three elements or prongs to it. As explained below, Cargill cannot meet the first two prongs of the definition. By not being able to do so, it simply cannot apply for designation as a new entrant processor, because allocations can only be assigned to processors. Cargill might be a new entrant all right, but it simply isn't a processor.

a. Cargill will not "produce sugar from sugarbeets, directly or indirectly

The first prong of the three-prong definition of "sugar beet processor" in the regulation states that the entity must "commercially produce[] sugar, directly or indirectly, from sugar beets (including sugar beet molasses)". 7 C.F.R. 1435.2.

When the definition of "processor" refers to producing sugar "directly or indirectly" from sugarbeets, it is referring to one of two processes: (1) the slicing of sugarbeets, defusing sugar out of the sliced beets, and either concentrating the sugar syrup into thick beet juice or concentrating the syrup and extracting crystals from it; or (2) taking sugarbeet molasses (the byproduct of extracting crystals from syrup) and pulling sugar crystals from it. The first is direct processing of sugarbeets; and the second is the indirect method of doing so.

Under Cargill's proposed plan, it will not produce sugar from sugar beets, as described above. It will take a product that is already a form of sugar—thick beet juice—and refine it further into various sugar products. If it were to use molasses as its feedstock rather than thick beet juice, it might qualify under the first prong of the definition (as producing sugar indirectly from sugarbeets); but its plans do not indicate that is the case.

b. Cargill does not "have a viable processing facility"

The second prong of the three-prong definition of "sugar beet processor" in the regulation states that the entity must "have a viable processing facility". *Id*.

Cargill, in its own submissions, suggests that the only way it can meet this second prong of the definition is to make use of SMBSC's processing facilities. Cargill's March 10 letter states (1) that "under Cargill's arrangement with SMBSC, Cargill must be considered a processor of sugar beets" (*id*. at 2); and (2) "Through its arrangement with SMBSC, Cargill has a viable processing facility" (*id*., at 2). (Emphases added.) Further, from its March 10 letter, it appears that Cargill conceives of the excess capacity of Southern Minnesota's Renville plant as something it can "rent" to meet this prong of the definition.

Thus, the question is, can Cargill meet the "have a viable processing facility" requirement by utilizing the excess capacity at SMBSC's processing facility?

Looking at the plain language of the definition and considering the meaning of the two key words in the phrase ("have" and "facility"), the answer has to be no.

When interpreting words in a statute or regulation, absent an indication to the contrary, the words are assumed to bear their ordinary, contemporary, common meaning. 2 AM. JUR. 2D *Statutes* § 124 (2000). Since the terms "have" and "facility" are words of common usage, not technical terms, and are not defined either in the statute or regulation, the most appropriate way to divine the precise meanings attributed to them is to look up the ordinary usage meanings of the words in a dictionary. This approach has been accepted by the courts. *United States v. Reid*, 206 Fed. Supp. 132, 138 (2002) ("the Supreme Court has on occasion resorted to dictionaries to define words that are not otherwise defined in a statute").

Turning to the dictionary, then, Black's definition of the word "have" states that the word "imports ownership, and has been defined to mean . . . 'to own'". BLACK'S LAW DICTIONARY 849 (rev. 4th ed. 1968). Using this common sense definition, the second prong of the definition of "sugar beet processor"

can be rephrased to mean "to own a viable processing facility". But, Cargill will not own the processing facility, SMBSC will.

Moving to the word "facility, Webster's definition indicates it means something more than just "capacity", as Cargill would propose. Webster's defines "facility" to mean "**a**: something that promotes the ease of any action, operations, transaction, or course of conduct—usu. used in plural (excellent *facilities* for graduate study) **b**: something (as a hospital, machinery, plumbing) that is built, constructed, installed, or established to perform some particular function, or to serve or facilitate some particular end (emphases added)". 1 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 813 (1993).

Under this understanding of the term "facility", Cargill's making use of SMBSC's extra capacity does not amount to the same as owning the something that is a processing facility. That, however, is precisely what Cargill proposes, and why it fails to meet this definitional requirement.

In short, under its plan, Cargill will not own any tangible thing that could be considered a processing facility, and thus does not "have a viable processing facility".

c. There are good policy reasons not to allow Cargill to "rent out" SMBSC's excess capacity to meet the ownership of a facility requirement

For strictly programmatic integrity reasons, the Department of Agriculture should not allow Cargill to evade the "processor" definitional standards by making use of SMBSC's excess capacity.

In administering other commodity programs under the Farm Bill, the CCC establishes acreage allotments or production bases for each participating farm. What that means is that not necessarily all the acreage on a farm can be used for production, only that portion within the allotment or base. The owner of the farm is not allowed to "rent out" the excess acreage to someone else—the allocation or allotment applies to the entire farm's acreage, whether in the base or out. To say otherwise would make a mockery of the program's farm acreage restrictions.

The same logic should apply to sugar marketing allocations and to SMBSC. That processor, the holder of a marketing allocation itself, cannot be allowed to "rent out" its excess capacity of the processing facility to allow another marketer of sugar to bootstrap itself into "processor" status.

As the CCC points out in its February 26 denial letter, allowing Cargill to use SMBSC's facilities will result in a circumvention of the program; and if this type of arrangement were to be approved, "[any] processor whose factory capacity was constrained by sugar marketing allotments could make such an arrangement, which would totally undermine the sugar marketing allocation formula . . . and disrupt the operation of the sugar program." Feb. 26 letter, at 1 and 2. Instead, CCC said, the rule must be that "a new entrant cannot use a factory that contributed to an existing processor's production history and allocation to generate a new allocation." Feb. 26 letter, at 2.[2]

2. Consideration of various possible processing and marketing arrangements allowable under the language of the 2002 Farm Bill does not resolve the issue in Cargill's favor

Section 359d(b)(2)(H) of the 1938 Act, in effect for the term of the 2002 Farm Bill, states that "if an individual or entity that does not have an allocation of beet sugar under this part (referred to in this

[2] One is reminded, at this point, of one of the normally iron-clad rules of farm program administration, that a program participant should not be allowed to achieve indirectly what it can't get directly. The effective result of Cargill's scheme will be to endow SMBSC and its farmers with additional allocation tonnage (and thus additional plantable acres for the growers) that they could not otherwise have the benefit of under the rules set out in 7 U.S.C. 139dd(b)(2) or 7 C.F.R. 1435.307 and 1435.308, a favoritism that cannot be allowed to take place.

paragraph as a ‘new entrant’) starts processing sugar beets after the date of enactment [of the 2002 Farm Bill] . . . the Secretary shall (I) assign an allocation for beet sugar to the new entrant . . . .” The statutory qualification, then, is action-oriented: the new entrant must begin processing beets.

However, under Cargill’s plan, the only way it can meet this requirement is to make extensive use of SMBSC’s processing activities. Thus, the question immediately arises as to whether the statute requires Cargill to process sugarbeets itself or can it hire someone else to perform this action? After all, it was suggested, under the tobacco and peanut programs (the other marketing allotment programs under the 1938 Act), allotment-holding farmers are allowed to “custom farm” the production of tobacco or peanuts; and it was said that the CCC does not care who does the producing, only who does the marketing.

Or, another way of putting the issue, one that was suggested at the hearing, is to imagine that there is a spectrum as to possible factual situations. On one end of the spectrum to the right is what is obviously permissible under the statute (that is, for the proposed new entrant to own and operate its own sugarbeet processing facility that handles 100 percent of the process of converting sugarbeets into refined sugar), and on the other end to the left is what is obviously not permissible (that is, the proposed new entrant does no more than refine sugar it purchases from a processor into various sugar products and markets those sugar products). Then, one should decide how far to the left along the spectrum can Cargill move and still qualify as a new entrant processor.

The most direct response to this framing of the issue is that it does not take account of a requirement in the regulations that the new entrant meet the definition of “sugar beet processor” (as discussed in paragraph 1 of this section), so that regardless of the answer to the spectrum question, Cargill cannot prevail unless it can establish that it meets such definition.

Also, parenthetically, it should be noted that, as the situation exists today, there is not a spectrum of varying fact situations among the operational processors with allocations. Rather, all nine of them directly process their own sugarbeets and run their own processing facilities. They all are on the far right end of the spectrum described above; only Cargill would head far to the left.

Having said that, the answer to the question is simple: Cargill can go along the spectrum by having much of the processing of sugarbeets into sugar done by its agent, SMBSC. However, if it does none of that work and has SMBSC do it all (as Cargill proposes), that goes too far along the spectrum. How different would that situation be from that of a cane sugar refiner? Under the Cargill plan, the product that SMBSC will deliver to its Dayton plant for Cargill’s further refinement into sugar products is thick beet juice, a form of sugar that can be placed under loan under the Federal sugar program; just as cane refiners receive raw cane sugar, which can be put under loan, from the sugarcane processors.

The problem for Cargill is that cane refiners are considered a step removed from being processors, and thus not eligible to participate in the program. So should be Cargill if it adheres to the plan it has announced.

3. Using the tobacco and peanut programs as analogies does not help Cargill either; it confirms that the definition of processor must be complied with

The tobacco and peanut programs are no help to Cargill here. Under both programs, regardless of who does the work to produce the product subject to the marketing allotment or quota, for a person to take advantage of the allotment or quota, he or she must own or operate the facility that produces the products, that is, the farm, since the allotment or quota runs with the farm. *See, e.g.*, 7 C.F.R. Part 723 Subpart B; 7 C.F.R. Part 729 Subpart B (2002).

Thus, the tobacco and peanut programs take us right back to the second prong of the definition of “sugar beet processor” in the sugar program regulations, which requires the possession of a viable processing facility, i.e. a sugar production facility that is the equivalent of a tobacco or peanut farm is that is the production facility for those products.

In addition, the tobacco program regulations set up specific requirements for new entrant status under that program that might shed some light on the situation here. The tobacco rules require, for most tobacco, that the new entrant own the farm to receive the allotment or quota. 7 C.F.R. 723.207(b)(2). Further, the new entrant must own, or have readily available, adequate equipment and any other facilities of production necessary to the production of tobacco on the farm. 7 C.F.R. 723.207(b)(3). For tobacco, then, the Department of Agriculture expects the new entrant to own the facility of production and either own or have access to production equipment. Applying such requirements to Cargill's situation, it could not meet them.

Then too, to obtain new entrant status, the applicant tobacco farmer must show that he or she has had experience in producing, harvesting, and marketing the kind of tobacco involved. 7 C.F.R. 723.207(b)(5). Since there is no similar requirement in the sugarbeet program rules, it suggests that the tobacco situation is not completely analogous to the sugarbeet situation and one might not want to rely too heavily on such an analogy to make its case for Cargill.

B. The Other New Arguments That Cargill Propounded In Its March 10 Request For Reconsideration Are Of No Avail To It

1. The CCC fully understood the proposed relationship between Cargill, and SMBSC and its farmers, in deciding against granting Cargill new entrant status

Cargill's reconsideration request states that the CCC does not understand that Cargill, not SMBSC, will own the beets that are tolled through SMBSC's Renville factory. However, CCC's February 26 denial letter indicates that CCC did understand that. The letter states that "Cargill cannot become a new entrant sugar beet processor by purchasing beets from SMBSC and tolling the beets through SMBSC's Renville factory" (emphases added). CCC letter, at 1.

Similarly, CCC obviously understood that Cargill would have SMSBC process its beets through a tolling arrangement, under which Cargill retained ownership of the beets and the products produced from the sugarbeet processing.

The only aspect of Cargill's arrangement with SMBSC covered in Cargill's reconsideration request that had not already been presented to CCC by Cargill in its January 6 letter is the averment that, under the arrangement, Cargill would make use of new processing capacity at SMBSC's Renville plant supposedly added to the existing plant in 2001 and 2002, and that this new capacity "was not used to calculate SMBSC's sugar marketing allotment [sic] in 2002' (March 10 letter at 1 and 2).

Cargill wrongly assumes, then, that production capacity and when capacity is created are meaningful matters in calculating beet sugar allocations under the 2002 Farm Bill. That, however, is not the case. Allocations are based on each sugarbeet processor's weighted average sugar production during the 1998 through 2000 crop years. 7 U.S.C. 1359dd(b)(2) (B); 7 C.F.R. 1435.307(a).

To state it another way, all of a sugarbeet processor production capacity is subject to the allocations issued to it, regardless of when the processor acquired or created it; and Cargill cannot claim that it is leasing a part of SMBSC's processing capacity that is not subject to marketing allocations. Were such logic to be true, why couldn't SMBSC itself petition to have new entrant status for its added capacity?

In addition, as noted in the discussion in section B above, reliance on SMBSC's excess capacity causes Cargill to fail to meet one of the requirements of the definition of a sugar beet processor—that the entity have a viable processing facility.

Finally, implicit in Cargill's arguments is the concept that, even though Cargill will rely heavily on the facilities of SMBSC, Cargill and SMBSC have an arms length relationship entitling Cargill to the assignment of a new allocation, totally separate from SMBSC's, notwithstanding Cargill's heavy reliance on SMBSC's facility. It must be noted in this regard that, last year, Cargill announced a marketing alliance with SMBSC whereby Cargill will market all of SMBSC's sugar production.

2. There is no legislative intent to encourage new companies to enter the sugarbeet processing industry

Cargill, in its March 10 petition for reconsideration, restates an argument made in its January 6 initial request that the language of the 2002 Farm Bill demonstrates an intent of Congress to encourage companies without beet sugar allocations to develop new processing capacity after the enactment of the 2002 Act, and that CCC's decision-making should accommodate such an intent. This argument does not hold water.

First of all, there not one word in the legislative history of the 2002 Farm Bill suggesting that Congress wanted to foster the establishment of new sugarbeet processing facilities.

The only legislative history on this matter of the beet sugar allocation formula consists of a February 8, 2002, statement made by Senator Conrad of North Dakota on the floor of the Senate during the debate on the 2002 Farm Bill. In that statement, Senator described the purposes of an amendment he and Senator Crapo were offering to establish the sugarbeet allocation formula (the amendment was adopted and signed into law as part of the Farm Bill).

Generally, Senator Conrad noted that the formula was designed to provide predictability, fairness, and transparency to the allocation process, and that it reflected a consensus within the beet processing industry. Specifically as to new entrants, he stated only that "[i]n addition, the formula allows for adjustments in the reallocation of beet sugar allotments for such industry events as the permanent termination of operations by a processor, the sale of a processor's assets to another processor, the entry of new processors, and so on." Feb. 8, 2002, CONGRESSIONAL RECORD, at S514. Nothing there suggests that Congress intended to foster the development of new sugarbeet processing faculties; it only says that Congress wanted to provide specific rules to govern a new entry or other "industry events" that might occur during the term of the Farm Bill.

To the extent one can adduce the intent of Congress from the language of the statute itself on this issue, Cargill comes up short again. The canons of legislative construction provide that, in trying to divine legislative intent from the language of a statute, all the sections in the statute *in pari materia* (i.e., relating to the same subject matter) should be read together. Doing so by looking at the totality of the Farm Bill provisions relating to the marketing of beet sugar, it is clear what Congress intended was allow for the restriction, as needed, of the production of beet sugar (through strict limitations involving marketing allotments and precisely defined allocations of the allotments enforced by severe civil penalties for violations), not for the expansion of production.

3. Cargill's new entrant allocation would be more than *de minimus*

Among Cargill's principal arguments as to why it should be able to use the new entrant rules is that to do so would not adverse affect existing processors because any allocation taken from the processors would be distributed pro rata and thus only be *de minimus* reductions.

Cargill, in its March 10 request for reconsideration, uses the term *de minimus* to invoke the legal doctrine of *de minimis non curat lex*, that is, the law is not concerned with trifles. (See, *e.g., Lewis v. Woods*, 848 F. 2d 649, 651 ((5th Cir. 1988), "de minimis, a phrase meaning so small or trifling that the law takes no account of it.")

To the processors who will be forced to lose allocations to supply Cargill with its proposed 80,000 ton annual allocation, such a characterization is insulting. Eighty thousand tons amount to roughly two percent of each processor's allocation. It is hard to imagine even a company as large and powerful as Cargill finding a loss of two percent of its annual income to be a mere trifle. To put it in more tangible terms, marketings of 80,000 tons annually during the remaining years of the farm bill come out to be well in excess of $100,000,000 in sales. Even in terms of Washington budgets, that cannot be considered a mere trifle.

4. Cargill's arguments relating to the number of facilities involved are immaterial

In its March 10 letter, Cargill argues that it should not be judged unfavorably for proposing a sugarbeet processing operation that would involve more than one facility, giving as an example a situation in 1994 involving Savannah Foods. And, it makes much of the statement in CCC's February 26 letter that the CCC would view Cargill's arrangement differently if Cargill had beets processed at another facility than SMBSC.

As to the first argument, the question is not whether a processor can use more than one facility, but whether one processor can use another processor's facility to produce sugar from sugarbeets and still be considered a separate and district operation. Of course, the answer is no, as is explained in the discussion in section A above. Also, it should be noted that it is understood that, at the time cited in Cargill's example, Michigan Sugar and ADSEP both were subsidiaries of Savannah, which held the allocation.

As to the second argument, it is understood that CCC's statement relating to the use of another facility simply refers to beets processed by a facility that does not already have an allocation, so as to avoid the "circumvention" problem. Clearly, SMBSC would not qualify here.

III. THE OTHER PROCESSORS WILL SUFFER ADVERSE EFFECTS IF CARGILL'S PETITION FOR NEW ENTRANT ALLOCATIONS IS APPROVED

The CCC regulations, at 7 C.F.R. 1435.308(f)(2) require the CCC, in reviewing applications of entities for new entrant sugar marketing allocations, to "consider adverse effects of the allocation on existing processors and producers".

The new entrant process involves a "zero sum game" as to the allocations distributed among sugarbeet processors. Conceptually, that means that any benefit Cargill gets will be taken from the benefits the rest of the processors get from the program. Cargill cannot get an allocation without hurting someone else's allocation. And, since Cargill is seeking an 80,000 ton annual allocation, its new entrant allocation will cause a concomitant reduction in every other company's allocation of roughly two percent. The combined reductions in allocations involve losses of sales revenue well in excess of $200 million during the remainder of the 2002 Farm Bill.

And, it is not a "game" It is the livelihoods of the many farmers and employees that the sugarbeet processors with reduced allocations represent. It is those companies' financial stability that is at stake.

The beet sugar industry has gone through severe economic stress in recent years. The industry knew that the restrictive flexible allotment system Congress included in the 2002 Farm Bill was necessary, but it also faced the grim realization that it would have to reduce marketings and profit margins to the bare minimum to survive until prices turned around. And, the sugarbeet processors put together their financing plans based on their common understanding (as stated by the USDA in 2002) of what their shares would be under the flexible allotment program.

So, given the industry's thin margins and the processors' financing plans, reducing allocations by even as little as two percent (or two or three times that amount if other potential copycat applications for allocation adjustments are counted) will put many in the industry in serious financial stress. And, the

tonnage lost will be marginal tonnage that does not have fixed costs attached to it, only variable costs. It is the highest profit tonnage that will be lost.

Further, the sugar production industry has to keep looking over its shoulder at what is happening with Mexico's access to the U.S. sugar market under NAFTA and what additional access might be granted to other countries in the many trade negotiations now ongoing. Increased imports down the road will reduce the flexible allotments even further and add to the pressure on bottom lines.

So, although Cargill casually refers to the reduction in each company's allocation as "de minimus," that legal concept is inapplicable here.

There is another adverse effect that will be caused by the Cargill plan, if it approved, that will adversely affect the CCC and its administration of the sugar program as well as beet processors. If Cargill and Southern Minnesota are allowed to effectively increase Southern Minnesota's allocation through what amounts to a paper transaction, what is to prevent other sugarbeet processors with excess capacity from doing the same with a willing partner like Cargill? In fact, it is not only possible for this to happen but there is a good chance it will happen.

It is not outlandish to think that some processors, just to protect their growers and their business, might even feel compelled to do so. If this happens, we could quickly have an "arms race" within the program where everyone acts to protect their interests. A couple of things would happen, neither of them good—first, these efforts to dramatically expand allocations would only result in major reductions in everyone's original allocations; and second, the program would be perceived by all concerned as one in which gaming it is an important part of participation. In short, the integrity of the program would be lost. That is not what Congress intended. Rather, Congress expects you, as the administrator of the program, to preserve the integrity of the program and make it work as planned.

The CCC must take steps to minimize these severe adverse effects; but it is difficult to imagine a way of doing so that is only a half measure. The most effective way to preventing adverse effects on the sugarbeet processing industry and the CCC sugar program would be simply to affirm the February 28 denial of Cargill's application. Such a step should not be considered extreme, given the many legal reasons for which the CCC should deny the application, as discussed in parts I and II above; rather it is the most reasonable approach to take.

Respectfully submitted,
/s/ Phillip L. Fraas

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SUGARBEET GROWER ORGANIZATIONS STATEMENT

on

THE PETITION OF CARGILL, INC., FOR RECONSIDERATION OF THE DECISION TO DENY ITS REQUEST FOR A NEW ENTRANT ALLOCATION UNDER THE BEET SUGAR FLEXIBLE ALLTOMENT PROGRAM

June 23, 2003

We appreciate having the opportunity to submit this written testimony on the petition of Cargill, Inc. for reconsideration of the decision by the Commodity Credit Corporation (CCC) to deny Cargill's application for the assignment of an allocation of the crop year 2003 beet sugar flexible allotment as a "new entrant".

SUMMARY

We strongly oppose Cargill's petition because we believe Cargill does not have the ability under the law or the facts to obtain "new entrant" status; because granting this petition will adversely affect our sugarbeet production operations; and because granting this petition will circumvent and undermine the integrity of the sugarbeet program under the 2002 farm bill.

Sugarbeet growers suffered tremendously from low prices for years leading up to the enactment of the 2002 farm bill. Now, just as the program is beginning to work, we are being hit with this attempt to reduce our allocations for the benefit of Cargill, one of the biggest multi-national commodity companies in the world. We cannot stress too much that such a reduction will have a very negative effect on many of our growers.

Further, Cargill's plan would give the Southern Minnesota Beet Sugar Cooperative indirectly what it cannot achieve directly—an increased allocation for the beets produced by its growers contrary to the rules governing allocations. This clearly will circumvent the provisions of the farm bill sugar program and undermine everyone's faith in the program.

And, even though the allocations are marketing allocations, not processing allocations, Cargill still has to qualify as a sugarbeet processor to receive them, and it doesn't.

Thus, we urge the Vice President of the CCC to deny Cargill's request for reconsideration.

BACKGROUND

The group signing this statement includes organizations that represent over 90 percent of all sugarbeet producers in the United States. We grow beets in California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, Ohio, Utah, and Wyoming. Today, we present to you a united front—we all firmly oppose the petition.

THE CCC'S INITIAL DECISION WAS CORRECT

We agree totally with the CCC that Cargill is not in fact a new sugar beet processor, nor should it be treated as a "new entrant" under the farm bill.

CCC gave due consideration to Cargill's application, but denied it on February 28. CCC's denial letter stated that Cargill, under its proposal, would not fit the definition of "sugar beet processor" in the program regulations. CCC stressed that the Cargill Dayton plant would not be processing sugarbeets or beet molasses, but a form of beet sugar, thick beet juice (a product that is sugar for the purposes of the farm bill programs).

Further, under its proposal, the processing of thick beet juice would be the only activity Cargill would engage in on its own. The production of the juice itself—that is, the collecting, storing, slicing and processing of the sugar beets—would handled by Southern Minnesota, which already has been assigned an allocation under the flexible allotment program.

A DECISION IN FAVOR OF CARGILL WILL ADVERSELY AFFECT THOUSANDS OF GROWERS

The farm bill provisions on new entrant allocations provide that, if a new entrant allocation is awarded, the allocations of existing processors will be reduced accordingly. In short, granting of new entrant status is a

zero sum game under which every ton the new entrant gets is a ton taken from the rest of the processors. And, what we are talking about in this case, since Cargill is seeking an 80,000 ton annual allocation, is a concomitant reduction in every other company's allocation of roughly two percent.

Such a reduction in allocations will have a very direct adverse effect on the thousands of growers our organizations represent. Processor allocations under the sugarbeet flexible allotments program are, in a real sense, for the benefit of the growers since the whole program is designed to strengthen growers' markets for sugarbeets. Further, the allocations the processors receive under each annual allotment are effectively passed on to our growers, as the allocations tell growers what amounts of beets we can expect to get processed into marketable sugar each year.

That means that the two percent reduction our processors get hit with (or several times that amount if other pending applications for allocation adjustments are counted) will result in a comparable reduction in our beet marketings. This will be very harmful to many growers just beginning to recover from the low prices that plagued our industry prior to enactment of the 2002 farm bill. It is a simple fact that many growers have very thin margins and substantial farm debts to service, including debt incurred to invest in our processors.

In addition, to save some segments of the sugarbeet industry when it went through tough times in recent years, it was necessary for the growers to band together to acquire the processor operations. As a result, we growers now have large equity interests in our processors—over 90 percent of the processing industry is owned by cooperatives of growers. Thus, we have an added interest—as owners of the processors—in making sure that they do not lose their marketing allocations. In that regard, financing for processors to a large extent has been structured on the basis of the percentage of the allotment they anticipated receiving under the current farm bill allocation formula.

Growers also have to be concerned if Mexico should begin taking full advantage of the access to the U.S. sugar market it received under NAFTA and if additional access is granted to other countries in the many trade negotiations now ongoing. Increased imports down the road will reduce the flexible allotments, allocations, and planted acreage even further and add to the pressure on our bottom lines.

In short, our growers are under considerable stress already, which will only intensify if they are hit with another set of reductions to benefit Cargill. Those reductions are in no way "de minimus," as Cargill would have you believe.

THE CARGILL PROPOSAL CIRCUMVENTS THE SUGAR PROGRAM

We agree with the CCC's conclusion, in its February 28 initial denial of Cargill's application for new entrant status, that granting the application would allow for a "circumvention" of the beet sugar processor allocation formula under the farm bill.

As CCC said in the denial letter, Cargill "cannot use a factory that contributed to an existing processor's production history and allocation to generate a new allocation." Nor should Southern Minnesota be allowed to get indirectly that which it cannot get directly, i.e., authority for increased marketable throughput at its plant. To do so clearly would circumvent the allocation formula and render it meaningless. This in turn would undermine the integrity of the allocations process and everyone's trust in the sugar program. This should not be allowed to happen.

TO RECEIVE AN ALLOCATION, CARGILL MUST PROCESS BEETS AND HAVE A VIABLE PROCESSING FACILITY, BUT IT DOESN'T; THE TOBACCO PROGRAM CONTAINS ANALOGOUS REQUIREMENTS

At the June 16, 2002, hearing on the Cargill petition for reconsideration, there was discussion of the fact that the allocations are marketing allocations, not processing allocations, so that Cargill should not be penalized if it would not do all the processing of sugarbeets into the sugar it would market under the allocation it is requesting.

However, the 2002 farm bill is absolutely clear that marketing allocations only go to sugarbeet processors, not to marketers. Cargill's problem here is that, under its proposal, it would do no processing. By its own admission, it would hire Southern Minnesota to take the beets and do all the processing involved in producing thick beet juice from them. And, thick beet juice is a form of sugar on which processors can get loans (in fact, this rule was developed in response to an inquiry by one Southern Minnesota itself); so that once the thick beet juice is produced, the beet processing cycle will be completed. Cargill's activities at the Dayton plant to manufacture certain sugar products would not be part of the processing cycle.

Further, under the CCC regulations, to qualify as a processor, a company must have a "viable processing facility". Under this standard, Cargill cannot qualify because does not have a processing facility. The only facility it has—its Dayton plant—would not process beets into sugar; that would be done by Southern Minnesota at its Renville plant.

And, we understand that the regulations governing the award of marketing allocations to tobacco farmers require new entrants to show that they own or operate their own farms and own or have access to equipment needed to produce tobacco to get a marketing allocation. It would appear, then, that the tobacco program is similar to the sugar program in its requirement that a company must have a processing facility to get a beet sugar marketing allocation. Thus, to the extent that the tobacco program rules can be a guide, they too tell us Cargill does not qualify for marketing allocations.

OTHER CONSIDERATIONS

We believe that Cargill's new argument presented in its March 10 reconsideration petition having to do with the concept of using two separate facilities to produce sugar is irrelevant to the decision CCC has to make. The question is not whether a processor can use more than one facility, but whether one processor can use another processor's facility to produce sugar from sugarbeets and still be considered a separate and district operation. Clearly, it is inappropriate to bless such an arrangement with a new entrant allocation that is taken out of the hides of existing beet processors and growers.
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Also, Cargill, in its March 10 petition, suggests that Congress, in passing the 2002 farm bill, expressed its intent to foster the entry of new processors into the sugarbeet industry. Congress never voiced such an intent. On the contrary, Congress developed a new program to allow for restrictions on the sugarbeet industry to foster an improved market. The new program so far is having some success. Creating a new entrant loophole in the program to allow Cargill to get new entrant status can only serve to undermine the progress we have made.

CONCLUSION

We thank you for the opportunity to submit this statement and urge you to reject the Cargill petition for reconsideration.

Respectfully submitted,

Big Horn Basin Sugarbeet Growers Association
Big Horn County Sugarbeet Growers Association
California Beet Growers Association
Colorado Sugarbeet Growers Association
Elwyhee Sugarbeet Growers Association
Idaho Sugarbeet Growers Association
Michigan Sugar Company Growers Cooperative
Minn-Dak Farmers Cooperative
Monitor Sugarbeet Growers Association
Montana-Dakota Sugarbeet Growers Association
Mountain States Beet Growers Association of Montana
NEBCO Beet Growers Association

Nebraska Beet Growers Association
Nyssa-Nampa Beet Growers Association
Platte Valley Wyobraska Beet Growers Association
Red River Valley Sugarbeet Growers Association

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Mr. Joel Williams
Powell, Goldstein, Frazer, & Murphy LLP
191 Peachtree Street, NE, 16th Floor
Atlanta, Gerogia 30303

Dear Mr. Williams:

This is in response to your March 10, 2003, request for reconsideration of the Commodity Credit Corporation's (CCC) decision to deny Cargill, Inc. (Cargill) an allocation of the beet sugar marketing allotment. I have reconsidered the decision and, unfortunately, cannot find justification to overturn it.

Cargill's Dayton factory functioned as a cane refiner during the beet sugar production history period, the 1998 through 2000 crop years, and thus was not a sugar beet processor at any time during this period. Therefore, Cargill does not qualify as a sugar beet processor eligible for a 1.25 percent increase of the aggregate beet sugar production history by having opened a sugar beet processing factory during the 1998 through 2000 crop years.

Granting Cargill a "new entrant" allocation under the proposed arrangement with the Southern Minnesota Beet Sugar Cooperative (Southern Minnesota) is not consistent with the beet sugar allocation formula under the sugar marketing allotment program. Cargill is proposing to buy beets from Southern Minnesota growers and then pay Southern Minnesota to process the beets into thick juice which is considered sugar under Department of Agriculture's (USDA) sugar programs. However, this sugar would be marketed under Cargill's allocation, which would have to be taken proportionately from the allocations of existing sugar beet processors. In effect, sugar from Southern Minnesota beets processed in Southern Minnesota's factory would be marketed from allocation derived principally from non-Southern Minnesota processing companies. Southern Minnesota's share of the sugar marketing allocation is governed by the detailed beet sugar allocation formula in section 359d(b)(2) of the Agricultural Adjustment Act of 1938, as amended. The new entrant provision cannot be invoked to avoid the carefully crafted beet sugar allocation formula for existing sugar beet processors.

The Farm Security and Rural Investment Act of 2002 does make provision for new entrants to the industry. In fact, one application was approved for a cane processor investing in a new plant and production.

We regret that we cannot be more positive. You may appeal my determination within 20 days from the date of this letter with the Hearing Clerk, Office of the Administrative Law Judges, USDA, Room 1081-South Building, 1400 Independence Avenue, SW, Washington, DC, 20250-9200.

Sincerely,

James R. Little
Executive Vice President

cc: EPAS/3741-S OBPI./3702A

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