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October 20, 2006

BY FACSIMILE (202) 720-9105

Ms. Theresa Lasseter
Executive Vice-President
Commodities Credit Corporation
Stop 0501
1400 Independence Avenue SW
Washington, D.C. 20250-0501

Dear Mr. Little:

Please be advised that this firm represents South Louisiana Sugars Cooperative, Inc. (SLSC). The Cooperative has determined that its raw sugar allotment was substantially reduced by the USDA per the publication dated October 2006 and that the allotment was reallocated among existing sugar producers in Louisiana. Please this letter document SLSC's objection to the reallocation inasmuch as the Cooperative feels that the reallocation was done outside of regulatory authority under Section 359 of the Agricultural Adjustment Act.

SLSC requests reconsideration of the reallocation inasmuch as we feel that the allotment should have remained with SLSC inasmuch as growers who have shifted their patronage away from SLSC have not requested that their allocations be transferred nor has SLSC consented to any such transfer.

This request for reconsideration reserves all other rights which may be available to SLSC which they may have regarding an appeal to the Secretary pursuant to the Agricultural Adjustment Act as well as other remedies which may be available.

Should you care to discuss the matter, please do not hesitate to contact me. I remain, with best wishes.

Very truly yours,

CHRISTOPHER H. RIVIERE
CHRISTOPHER H. RIVIERE *(cdg)*

CHR/cds

cc: Roddy Hulett
Wilbert Waguespack

Received
2/27/07

**UNITED STATES DEPARTMENT OF AGRICULTURE
DEPARTMENT OF DAIRY AND SWEETENERS**

**IN RE:
SOUTH LOUISIANA SUGARS COOPERATIVE**

**MEMORANDUM SETTING FORTH THE POSITION
OF SOUTH LOUISIANA SUGARS COOPERATIVE**

TO: Mr Daniel Colacicco
Group Director, Dairy and Sweeteners Analysis
United States Department of Agriculture
1400 Independence Avenue, SW
Stop 0516
Washington, D.C. 20250-0516

Please accept this Memorandum as setting forth the position of South Louisiana Sugars Cooperative ("SLSC") with regards to the unilateral transfer of cane sugar allotments/allocations held by SLSC. This Memorandum is a follow up to our October 18, 2006 letter, a copy of which is attached for your convenience. (Exhibit A, Letter of October 18, 2006)

BACKGROUND

As background information, SLSC is a cooperative marketing association resulting from the 2001 merger of three Louisiana sugar mills owned by Caldwell Sugars Co-op, Inc., Glenwood Cooperative, Inc., and St. James Sugars Cooperative Inc. For the crop years of 2002 and 2003 all three mills were operated by SLSC, however, in the subsequent years financial considerations and constraints forced the closure of the Caldwell Sugars mill and Glenwood mill.

Sparked by the closure of the Glenwood mill several growers petitioned the Commodities Credit Corporation (“CCC”) for transfer of their respective allotments to mills in competition with SLSC. SLSC intervened in those proceedings and opposed the transfer because the growers in question had entered into marketing agreements with SLSC. The agreements made those growers contractually obligated to deliver sugarcane produced on their farms to SLSC.

On July 13, 2003, the CCC issued its decision granting the growers the transfer that they had requested. The CCC relied on the provisions of the Section 395f(c)(8) of the Agricultural Adjustment Act of 1938 as amended which provides for transfers of allotments in the event a mill is closed. The CCC ruled, however, the obligations of the growers pursuant to their marketing agreements was unaffected by the requested transfers. SLSC requested reconsideration of the decision and on October 10, 2003 the CCC affirmed its decision stating that:

While CCC is denying the Cooperative’s request for reconsideration of CCC’s July 17, 2003 determination, in light of the erroneous assumption of the Growers that CCC’s July 17, 2003 determination preempts other contractual obligations of the Growers, CCC will allow the Growers until October 24, 2003 to weigh the consequences of their requests. Unless notified in writing prior to October 24, 2003, CCC will consider the transfer of the Growers’ allocation, to the processors designated by the Growers to be final.

Except as set forth in the immediately preceding paragraph, **CCC will not, under section 359f of the Agricultural Adjustment Act of 1938, accept petitions to transfer sugar cane allocations to a new processor once harvest begins.**
Emphasis added.

(Agency Certified Record, pp.256 - 258) This decision was appealed to the Secretary of Agriculture. After extensive briefing on the issues the decision was upheld and the appeal

dismissed by Victor W. Palmer, Administrative Law Judge. *In Re Aysen Bros., Inc., et al*, SMA Docket No. 04-0001, and *In Re Rene Clause, and Sons, Inc., et al*, SMA Docket No. 04-0002.

For SLSC the outcome of this dispute was bittersweet. Granted the growers who partitioned for transfer from SLSC to other mills were allowed to do so but, however, SLSC was assured that no other transfers would be allowed after the start of the 2003 harvest. This assurance provided a foundation for future business planning and investment. When harvest began for the crop year 2003 SLSC held sufficient allotments to remain competitive and profitable in the Louisiana sugar industry.

SLSC's potential was not realized, however, because several growers, not parties to the proceedings above, whose crops were allocated by the CCC to be delivered to SLSC, unilaterally and without seeking formal transfer of their allocations, began diverting cane crops to mills in competition with SLSC, including Lafourche Sugars, Corp., Cora-Texas Mfg. Co., Raceland Raw Sugars (M.A. Patout and Son, Ltd.) and Lula Westfield, L.L.C. A detailed listing of each said growers is attached to this letter. (Exhibit B, List of Growers) This illegal diversion has taken place over the last several crop years and has been disastrous to the business of SLSC.

The effect of these unlawful transfers can clearly be seen in the Final Fiscal Year 2006 Overall Beet/Cane Allotments and Allocations and the Fiscal Year 2007 Overall Beet/Cane Allotments and Allocations. SLSC has suffered a serious reduction in its sugar allotment while the mills illegally receiving cane that is allotted to SLSC have all seen increases.

LAW AND ARGUMENT

The Agricultural Adjustment Act of 1938 as amended by the Farm Security and Rural Adjustment Act of 2002 provides the positive law on the transfer of a grower's allotment. The Act allows the allotments to be transferred: (1) if the mill holding the allotments is closed, (2) if ^{Sec 359 f(c)(8)} the mill holding the allotments sells all or a portion of its assets, and (3) by consent of all parties ^{Sec 359 d(b)(1)(F)} ^{Sec 359 g(d)} involved. *See* 7 U.S.C. 1359aa *et seq.*

The growers who have diverted cane in derogation of SLSC's allotments have not petitioned the USDA for a transfer of those allotments and certainly SLSC has not consented to any such change. Since there was no mill closing or assets sales affecting SLSC's allotments in the last two crop years, the only possible basis for transfer of the growers allotments to a competing mill is set forth in 7 U.S.C. 1359gg (d)(1) which states:

A producer in a proportionate share State, **upon written consent** from all crop-share owners (or the representative of the crop-share owners of a farm, **and from the processing company holding the applicable allocation for such shares**, may deliver sugarcane to another processing company if the additional delivery, when combined with such other processing company's existing deliveries, does not exceed the processing capacity of the company. Emphasis added.

SLSC feels that the CCC has allowed the listed growers to transfer their allotments held by SLSC to competing mills in violation of the law and to the detriment of SLSC. The October 10, 2003 decision of the CCC provided that no further petitions for transfer allotments due to closing of mills would be considered after the start of the harvest of the 2003 crop. Additionally the law clearly provides that, absent a mill closing or asset sale, transfers will be

allowed only by consent. The CCC has ignored its previous decision and the law in allowing the growers to transfer their allotments to competing mills without penalty.

It may be argued that the domestic sugar production was not sufficient to support the domestic needs in the relevant years and, therefore, USDA and the CCC is not obligated to enforce the allotment provisions cited above. However, accepting this position would constitute unlawfully selective and arbitrary enforcement of the allotment laws. Specifically, after two years of devastating tropical storms, in 2003, with domestic sugar production being greatly reduced, the USDA and the CCC still required SLSC and Raceland Raw Sugars (M. A. Patout and Son, Ltd.,) to enter into over allotment - under allotment transactions for the sale of raw sugar produced by Raceland Raw Sugars from cane tolled by SLSC, during the capacity upgrades of SLSC's mill. Choosing to enforce the allotment laws in 2003 but refusing to do the same in 2005 and 2006, where each year saw a short fall in domestic sugar production, is clearly unlawful, arbitrary and amounts to a violation of SLSC's constitutional and due process rights.

CONCLUSION

SLSC has a right to retain the allocations that have been illegally transferred by the growers and accepted by the competing mills. The law charges the USDA and the CCC with the responsibility of administering the sugar allotment program and, as such, it is the responsibility and the duty of the CCC to take appropriate action to remedy this situation, including: (1) revising the Fiscal Year 2007 Overall Beet/Cane Allotments and Allocations; (2) mandating that the subject growers, listed herein, properly deliver their crop according to the allotments held by



United States
Department of
Agriculture

APR 06 2007

Farm and Foreign
Agricultural
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Farm Service
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Mr. Christopher H. Riviere
McCulla House
103 West Third Street
P.O. Box 670
Thibodaux, Louisiana 70302-0670

RE: South Louisiana Sugars Cooperative Reconsideration Request of October 20, 2006

Dear Mr. Riviere:

This is in response to your October 20, 2006 letter requesting reconsideration of our September 28, 2006 reassignment of allocation among Louisiana sugarcane processors, and the supporting information in your February 27, 2007, "Memorandum Setting Forth the Position of South Louisiana Sugars Cooperative" (SLSC). Pursuant to 7 CFR Part 1435.319, SLSC had 10 days from the September 28, 2006, news release, which announced the determination of allocations, to request a reconsideration. Even though SLSC missed this deadline, we will address your concerns.

Position Summary of South Louisiana Sugars Cooperative, Inc.:

SLSC objects to Commodity Credit Corporation's (CCC's) reassignment of the SLSC allocation to other mills in its final Fiscal Year (FY) 2006 and initial FY07 reassignment, both dated September 28, 2006. SLSC maintains that our reassignments diverted cane away from SLSC without SLSC's permission, as required by the law.

SLSC claims that allocations can only be transferred from a mill holding an allotment when the mill is closed, the mill sells a portion or all its assets, or through a voluntary transfer, which requires permission from the mill losing the allocation (Sec. 359f(c)(8), Sec. 359d(b)(1)(F) and Sec. 359g(d) of the Agricultural Adjustment Act of 1939, as amended, respectively). Since none of these actions have occurred, SLSC concludes that the transfers of allocation in the CCC reassignment announcements were in violation of the law.

SLSC also maintains that the allocation transfers in the reassignment announcements were inconsistent with an earlier CCC decision that clearly stated that CCC would not accept allocation transfers from an earlier mill closing once harvest began in 2003.

SLSC also asserts that a failure by CCC to enforce the 3 allocation transfer provisions cited above, in years when domestic production was insufficient, would be unlawfully

selective and arbitrary. SLSC claims that in a similar year when domestic production was insufficient to satisfy domestic sugar demand, CCC required an overallocation sale between SLSC, which had more sugarcane than it could process, and Raceland, which had surplus processing capacity. Specifically, when SLSC was unable to utilize all its allocation due to the closing of its Glenwood mill (March 2004), CCC required that Raceland purchase SLSC's excess production and sell it as overallocation sugar – meaning it would not be charged against Raceland's allocation when sold.

CCC's Decision:

Your request for reconsideration is denied because the request was not submitted in accordance with the time period stated within the regulation. However, if the request had been timely, it would have been denied for two reasons. Our first difference lies in the critical distinction between a "reassignment" and a "permanent transfer" of allocation. CCC, in its September 28, 2006 news release, performed the former and not the latter, which would have required the allocation transfer actions noted above.

In its September 28, 2006 news release, CCC noted a deficit in cane supply and, as a result, 375,000 tons of FY07 cane sugar allotment was "reassigned" to imports. Sec. 359e of the Agricultural Adjustment Act of 1938, as amended, explicitly defines the sequence in which allocation reassignment is to occur when a processor or sector is unable to fill its allocation or allotment. With respect to cane sugar, if a sugarcane processor is unable to use its allocation during the crop year, the Secretary of Agriculture will first reassign the sugarcane processor's deficit allocation to processors within its state who have the capacity to fill the allocation assigned to it. If allocation deficit still exists after this move, it will be reassigned first to sugarcane processors in other cane states, then to CCC's sugar inventory, and then to imports.

Based on SLSC's 2006 crop production forecast, it was determined that SLSC could only supply 59,900 short tons, raw value (STRV) toward its initial 120,091 STRV allocation for this crop year. In accordance with the law, CCC first reassigned 2,730 STRV to other sugarcane processors within Louisiana. Since 57,461 STRV would still be unused by SLSC, 1,246 was reassigned to Rio Grande Valley in Texas, the only sugarcane processor short on allocation. Given that CCC carried zero inventory, SLSC's balance, 56,215 STRV, was reassigned to imports. As you can see, CCC strictly adhered to the sequence of reassignment outlined in the law.

The reassignment process, as described in Section 359e, does not require SLSC's approval in reassigning its unused allocation to other mills. Since CCC only reassigned allocation, and did not permanently transfer it, its action is not inconsistent with CCC's statement that put an end to growers' transfers after the 2003 deadline for allocation transfers after the earlier mill closing.

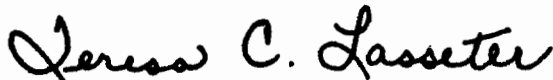
Christopher H. Riviere

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Our recommendation that SLSC handle its limited processing capacity problem in FY04 with an overallocation sale to Raceland is unrelated to the current issue. When SLSC asked our opinion, CCC recommended the overallocation procedure as a way to ensure that the SLSC/Raceland deal would have the allocation needed to sell the resulting sugar production. Raceland could have processed the cane it purchased from SLSC and taken the risk that CCC would have reassigned its surplus allocation from Louisiana mills that could not fulfill their allocations. However, in this arrangement, Raceland would not have been assured of obtaining enough allocation to sell all the sugar made from SLSC's sugarcane.

I regret that I cannot provide the answer you want to hear. Please bear in mind that a sugarcane grower's allegiance to the mill which holds his or her allocation, the originating mill, will lessen in times when the state allocation exceeds the expected state sugar supply---as is the case now. Mills will naturally pursue sugarcane in order to optimally use their plant capacity because they feel assured that they will secure enough allocation to market the increase. When the reverse occurs and state production exceeds state allocation, growers who left their originating mill, without obtaining a permanent transfer of allocation, may be turned away from their most recent mill.

Sincerely,



Teresa C. Lasseter
Executive Vice President
Commodity Credit Corporation

FSA/EPAS/B.Fecso/202-720-4146/alm/3-30-07/S:EPAS/DSA/Allotments/FY2007
Allotments/FY07 Letters/Riviere reassign of SLSC allocation 3.docMarch 30,2007/EPAS
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