

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	SMA Docket No. 04-0005
)	
Hereford, Texas, Factory,)	
)	Order Denying Petitioner's
Petitioner)	Appeal Petition

PROCEDURAL HISTORY

On October 1, 2002, the Commodity Credit Corporation, United States Department of Agriculture [hereinafter the CCC], announced beet sugar marketing allotment allocations for the 2002 crop. In early October 2002, American Crystal Sugar Company purchased a factory located in Hereford, Texas, from Imperial Sugar Company. On November 18, 2002, the CCC issued Release No. 1693.02 announcing revisions to the beet sugar marketing allotment allocations for the 2002 crop. These revisions included a transfer of the beet sugar marketing allotment allocation commensurate with the Hereford, Texas, factory production history from Holly Sugar Corporation, a subsidiary of Imperial Sugar Company, to American Crystal Sugar Company to reflect American Crystal Sugar Company's October 2002 purchase of the Hereford, Texas, factory.

On November 27, 2002, Southern Minnesota Beet Sugar Cooperative [hereinafter Petitioner¹] requested that the Executive Vice President, CCC [hereinafter the Executive Vice President], assign the beet sugar marketing allotment allocation commensurate with the Hereford, Texas, factory production history to all beet sugar processors on a pro rata basis. On January 28, 2003, the Executive Vice President issued a reconsidered determination denying Petitioner's November 27, 2002, request. Petitioner did not file a petition for review within 20 days after the Executive Vice President issued the reconsidered determination as required by Sugar Program regulations (7 C.F.R. pt. 1435) [hereinafter the Sugar Program Regulations] and the Rules of Practice Applicable to Appeals of Reconsidered Determinations Issued by the Executive Vice President, Commodity Credit Corporation, Under 7 U.S.C. §§ 1359dd and 1359ff [hereinafter the Rules of Practice].

On September 30, 2003, the CCC issued Release No. 0340 announcing the 2003 crop sugar marketing allotments and allocations. On October 10, 2003, Petitioner requested that the Executive Vice President issue a reconsidered determination reassigning that portion of American Crystal Sugar Company's beet sugar marketing allotment allocation, which was based upon American Crystal Sugar Company's October

¹The caption of this proceeding indicates that Hereford, Texas, Factory is the Petitioner; however, I conclude, based on a review of the filings in this proceeding, that the Petitioner is Southern Minnesota Beet Sugar Cooperative. Nonetheless, since most of the filings in this proceeding are captioned "In re: Hereford, Texas, Factory, Petitioner," I have retained that caption.

2002 purchase of the Hereford, Texas, factory, to all beet sugar processors on a pro rata basis. On March 1, 2004, Larry Walker, Director, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture, informed Petitioner that the CCC announcement transferring a portion of Holly Sugar Corporation's beet sugar marketing allotment allocation to American Crystal Sugar Company, had been issued on November 18, 2002, and Petitioner's October 10, 2003, request for a reconsidered determination was late-filed and could not be accepted.

On March 22, 2004, Petitioner filed a Petition for Review seeking reassignment of the beet sugar marketing allotment allocation that the CCC allocated to American Crystal Sugar Company based upon American Crystal Sugar Company's purchase of the Hereford, Texas, factory. Petitioner filed the Petition for Review pursuant to the Agricultural Adjustment Act of 1938, as amended by section 1403 of the Farm Security and Rural Investment Act of 2002 [hereinafter the Agricultural Adjustment Act of 1938]; the Sugar Program Regulations; and the Rules of Practice.

On April 12, 2004, the Executive Vice President filed: (1) an "Answer and Motion to Dismiss" in response to Petitioner's Petition for Review; (2) a certified copy of documents relating to Petitioner's requests for reconsideration; and (3) a list of "affected persons."²

²Rule 2(c) of the Rules of Practice defines an "affected person" as a sugar beet processor, other than the petitioner, affected by the Executive Vice President's determination and identified by the Executive Vice President as an affected person. Rule
(continued...)

On April 22, 2004, American Crystal Sugar Company filed a “Notice of Intervention and Answer of Intervenor American Crystal Sugar Company.” On May 5, 2004, Petitioner filed a motion for summary judgment and a response to the Executive Vice President’s motion to dismiss. On December 23, 2004, the Executive Vice President filed a brief in support of the Executive Vice President’s Answer and Motion to Dismiss. On December 27, 2004, American Crystal Sugar Company filed a brief in support of the Executive Vice President’s Answer and Motion to Dismiss. On January 18, 2005, Petitioner filed a brief in response to the Executive Vice President’s December 23, 2004, brief and American Crystal Sugar Company’s December 27, 2004, brief.

On February 7, 2005, Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] issued an Order of Dismissal [hereinafter Initial Order] dismissing Petitioner’s Petition for Review as time-barred. On March 4, 2005, Petitioner appealed to the Judicial Officer. On March 14, 2005, the Executive Vice President filed a response in opposition to Petitioner’s appeal petition, and on April 4, 2005, American Crystal Sugar Company filed a response in opposition to Petitioner’s appeal petition. On April 13, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

²(...continued)

5(a) of the Rules of Practice requires that any answer filed by the Executive Vice President shall be accompanied by the names and addresses of affected persons.

Based upon a careful consideration of the record, I agree with the ALJ's February 7, 2005, Initial Order. Therefore, except for minor modifications, I adopt the ALJ's Initial Order as the Order Denying Petitioner's Appeal Petition. Additional conclusions by the Judicial Officer follow the ALJ's discussion, as restated. Exhibits from the certified copy of the documents relating to Petitioner's requests for reconsideration, which the Executive Vice President filed on April 12, 2004, are designated by "AR."

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

....

CHAPTER 35—AGRICULTURAL ADJUSTMENT ACT OF 1938

....

SUBPART VII—FLEXIBLE MARKETING ALLOTMENTS FOR SUGAR

....

§ 1359dd. Allocation of marketing allotments

(a) Allocation to processors

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

(b) Hearing and notice

.....

(2) Beet sugar

.....

(G) Sale of factories of a processor to another processor**(i) In general**

Subject to subparagraphs (E) and (F), if 1 or more factories of a processor of beet sugar (but not all of the assets of the processor) are sold to another processor of beet sugar during a crop year, the Secretary shall assign a pro rata portion of the allocation of the seller to the allocation of the buyer to reflect the historical contribution of the production of the sold factory or factories to the total allocation of the seller.

(ii) Application of allocation

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

(I) during the remainder of the crop year during which the sale described in clause (i) occurs (referred to in this subparagraph as the “initial crop year”); and

(II) each subsequent crop year (referred in this subparagraph as a “subsequent crop year”), subject to clause (iii).

(iii) Subsequent crop years**(I) In general**

The assignment of the allocation under clause (i) shall apply during each subsequent crop year unless the acquired factory or factories continue in operation for less than the initial crop year and the first subsequent crop year.

(II) Reassignment

If the acquired factory or factories do not continue in operation for the complete initial crop year and the first subsequent crop year, the Secretary shall reassign the temporary allocation to other processors of beet sugar on a pro rata basis.

7 U.S.C. § 1359dd(a), (b)(2)(G)(i)-(iii) (Supp. III 2003).

7 C.F.R.:

TITLE 7—AGRICULTURE

....

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

....

**CHAPTER XIV—COMMODITY CREDIT CORPORATION,
DEPARTMENT OF AGRICULTURE**

....

PART 1435—SUGAR PROGRAM

....

Subpart D—Flexible Marketing Allotments For Sugar

....

§ 1435.319 Appeals and arbitration.

(a) A person adversely affected by any determination made under this subpart may request reconsideration by filing a written request with the Executive Vice President, CCC, detailing the basis of the request within 10 days of such determination. Such a request must be submitted at: Executive Vice President, CCC, Stop 0501, 1400 Independence Ave., SW, Washington, DC 20250-0501.

(b) For issues arising under §§ 359d, 359f(b) and (c), and 359(i) of the Agricultural Adjustment Act of 1938, as amended, after completion of the process in paragraph (a) of this section, a person adversely affected by a reconsidered determination may appeal such determination by filing a written notice of appeal within 20 days of the issuance of the reconsidered determination with the Hearing Clerk, USDA. The notice of appeal must be submitted at: Hearing Clerk, USDA, Room 1081, South Building, 1400 Independence Ave., SW., Washington, DC, 20250-9200. Any hearing conducted under this paragraph shall be by the Judicial Officer.

7 C.F.R. § 1435.319(a)-(b) (2004).

**ADMINISTRATIVE LAW JUDGE'S INITIAL ORDER
(AS RESTATED)**

Section 1435.319(b) of the Sugar Program Regulations (7 C.F.R. § 1435.319(b) (2004)) and Rule 3 of the Rules of Practice provide that any person adversely affected by a reconsidered determination of the Executive Vice President may appeal the reconsidered determination to an administrative law judge by filing a petition for review with the Hearing Clerk within 20 days after the issuance of the reconsidered determination. Petitioner had requested reconsideration of the determination it seeks to overturn in a letter dated November 27, 2002 (AR 10-12). On January 28, 2003, the Executive Vice President issued a reconsidered determination denying Petitioner's request and informing Petitioner of its right to appeal the reconsidered determination, as follows:

I reconsidered CCC's transfer of allocation commensurate with the Hereford factory's sugar production to the new owners but, unfortunately, cannot provide SMBSC any relief.

.....

You may appeal my reconsidered determination within 20 days from the date of this letter, with the Hearing Clerk, USDA, Room 1081-South Building, 1400 Independence Ave., SW, Washington, DC, 20250-9200.

AR 13-14. Petitioner failed to file a petition for review within 20 days after issuance of the Executive Vice President's January 28, 2003, reconsidered determination.

Petitioner contends it did not appeal the January 28, 2003, reconsidered determination because the Executive Vice President's determination "can only be considered a preliminary order . . ." and CCC was, at the time, "statutorily prohibited from granting any 'permanent' transfer of the Hereford related marketing allocation . . ." (Brief of Southern Minnesota Beet Sugar Cooperative in Response to the Briefs of the Commodity Credit Corporation and American Crystal Sugar Company Opposing Motion for Summary Judgment at 17). Petitioner's argument that its appeal of the Executive Vice President's January 28, 2003, reconsidered determination would have been premature since a 2-year operating requirement could still be met, ignores the fact that the CCC transferred the Hereford related beet sugar marketing allocation to American Crystal Sugar Company knowing that American Crystal Sugar Company never intended to operate the Hereford, Texas, factory. Petitioner's November 27, 2002, request for reconsideration establishes Petitioner had no illusion that the Hereford, Texas, factory would ever again operate stating: "The Hereford facility is not a factory. It is a former factory." (AR 11.) More importantly, the Executive Vice President agreed, responding in his January 28, 2003, reconsidered determination, as follows:

You note, as did CCC, that the Hereford factory cannot “continue” in operation because it was closed prior to the establishment of sugar marketing allotments. CCC determined, in the Hereford factory case, the acquired factory did not have to meet the 2-year operation requirement because it was closed and could not “continue” for any length of time.

AR 13. Therefore, the Executive Vice President made clear in the January 28, 2003, reconsidered determination, that the reconsidered determination was the Executive Vice President’s final word on the subject, and, if Petitioner wanted to continue to press its argument, it was required by the Sugar Program Regulations and the Rules of Practice to file a petition for review within 20 days after issuance of the reconsidered determination.

Petitioner states:

SMBSC did not seek an appeal of CCC’s January 28, 2003 Letter Order determination. Rather, SMBSC recognized that, in light of the governing statutory provision (*i.e.*, Section 1359dd(b)(2)(G)), an appeal of the CCC’s Letter Order determination at that time would be procedurally premature and subject to summary dismissal because it technically was still possible for ACS to comply with the two-year operating requirement in Section 1359dd(b)(2)(G) at the time an appeal was due. SMBSC therefore was required to wait for the CCC’s establishment of the 2003 crop year beet sugar allotment allocations to determine (i) whether ACS could satisfy the two-year operating requirement for the acquired Hereford factory under Section 1359dd(b)(2)(G), and (ii) whether the CCC would allow ACS to retain the Hereford beet sugar marketing allocation despite the fact that the Hereford factory was closed during the crop year of acquisition and did not operate.

Response of Southern Minnesota Beet Sugar Cooperative to the Commodity Credit Corporation’s Motion to Dismiss and Cross Motion of Southern Minnesota Beet Sugar Cooperative for Summary Judgment at 4.

But the CCC, the Executive Vice President, and Petitioner knew American Crystal Sugar Company was unable to comply with the 2-year operating requirement when, on January 28, 2003, the Executive Vice President issued his reconsidered determination. If section 359d(b)(2)(G)(iii)(II) of the Agricultural Adjustment of Act of 1938 (7 U.S.C. § 1359dd(b)(2)(G)(iii)(II)) could be said to apply, the Hereford, Texas, factory would have been required to continue in operation “for the complete initial crop year and the first subsequent crop year[.]” Inasmuch as the Hereford, Texas, factory was acquired in October 2002 and never operated in the 2002 crop year, it was impossible for the factory to have operated during the complete initial crop year. Therefore, American Crystal Sugar Company could not later meet the 2-year operation requirement. The very point of the reconsidered determination was that the acquired factory did not have to meet the 2-year operation requirement “because it was closed and could not ‘continue’ for any length of time” (AR 13).

In response to Petitioner’s second request for reconsideration of the transfer of the beet sugar marketing allotment allocation from Holly Sugar Corporation to American Crystal Sugar Company based upon American Crystal Sugar Company’s purchase of the Hereford, Texas, factory, the Director, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture, advised that Petitioner’s request could not be accepted stating:

Since your request for reconsideration is dated over 10 months from the announcement of the transfer, we must determine that the 10-day appeal

period under the regulation has expired and USDA cannot accept your request for reconsideration on this issue.

AR 24. Purportedly, Petitioner was seeking reconsideration of American Crystal Sugar Company's allocation of the 2003 crop beet sugar marketing allotment to the extent it included the transfer of the allocation share associated with the Hereford, Texas, factory. But the September 30, 2003, announcement in Release No. 0340 (AR 15-18), set forth the overall allotments for beet sugar and cane sugar and the individual allocations for processors for the 2003 crop. The September 30, 2003, announcement did not establish allocation shares or change the allocation shares of American Crystal Sugar Company, Holly Sugar Corporation, or any other beet sugar processor. The allocation shares remained the same as they were under Release No. 1693.02 issued on November 18, 2002 (AR 8-9). For that reason, the Director, Economic and Policy Analysis Staff, Farm Service Agency, United States Department of Agriculture, advised Petitioner that the 10-day period within which to request reconsideration of the determination Petitioner sought to challenge had long expired and the United States Department of Agriculture could not accept Petitioner's October 10, 2003, request for reconsideration.

This interpretation is consistent with section 1435.319(a) of the Sugar Program Regulations (7 C.F.R. § 1435.319(a) (2004)). Unquestionably, a request made on October 10, 2003, concerning a determination made on November 18, 2002, was untimely coming not within 10 days, as required, but more than 10 months following the determination.

In any event, Petitioner had obtained a reconsidered determination regarding the transfer of the beet sugar marketing allotment allocation from Holly Sugar Corporation to American Crystal Sugar Company based upon American Crystal Sugar Company's purchase of the Hereford, Texas, factory on January 28, 2003, and Petitioner failed to file a petition for review within 20 days as required by section 1435.319(b) of the Sugar Program Regulations (7 C.F.R. § 1435.319(b) (2004)) and Rule 3 of the Rules of Practice.

An administrative law judge has no jurisdiction under the Sugar Program Regulations or the Rules of Practice to consider a petition for review that is filed after the 20-day filing period. The Executive Vice President's January 28, 2003, reconsidered determination became final on February 17, 2003. Petitioner filed a Petition for Review with the Hearing Clerk on March 22, 2004, 1 year 1 month 5 days after the Executive Vice President's reconsidered determination became final. Therefore, the ALJ has no jurisdiction to consider Petitioner's Petition for Review.

This construction of the Rules of Practice is consistent with the construction of the Federal Rules of Appellate Procedure. Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure provides, as follows:

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case . . . the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after the judgment or order appealed from is entered.

As stated in *Eaton v. Jamrog*, 984 F.2d 760, 762 (6th Cir. 1993):

We have repeatedly held that compliance with Rule 4(a)(1) is a mandatory and jurisdictional prerequisite which this court may neither waive nor extend. *See, e.g., Baker v. Raulie*, 879 F.2d 1396, 1398 (6th Cir. 1989) (per curiam); *Myers v. Ace Hardware, Inc.*, 777 F.2d 1099, 1102 (6th Cir. 1985). So strictly has this rule been applied, that even a notice of appeal filed five minutes late has been deemed untimely. *Baker*, 879 F.2d at 1398.³

³*Accord Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 203 (1988) (stating since the court of appeals properly held petitioner's notice of appeal from the decision on the merits to be untimely filed, and since the time of an appeal is mandatory and jurisdictional, the court of appeals was without jurisdiction to review the decision on the merits); *Browder v. Director, Dep't of Corr. of Illinois*, 434 U.S. 257, 264 (1978) (stating under Fed. R. App. P. 4(a) and 28 U.S.C. § 2107, a notice of appeal in a civil case must be filed within 30 days of entry of the judgment or order from which the appeal is taken; this 30-day time limit is mandatory and jurisdictional), *rehearing denied*, 434 U.S. 1089 (1978); *Martinez v. Hoke*, 38 F.3d 655, 656 (2d Cir. 1994) (per curiam) (stating under the Federal Rules of Appellate Procedure, the time for filing an appeal is mandatory and jurisdictional and the court of appeals has no authority to extend time for filing); *Price v. Seydel*, 961 F.2d 1470, 1473 (9th Cir. 1992) (stating the filing of notice of appeal within the 30-day period specified in Fed. R. App. P. 4(a)(1) is mandatory and jurisdictional, and unless appellant's notice is timely, the appeal must be dismissed); *In re Eichelberger*, 943 F.2d 536, 540 (5th Cir. 1991) (stating Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal be filed with the clerk of the district court within 30 days after entry of the judgment; Rule 4(a)'s provisions are mandatory and jurisdictional); *Washington v. Bumgarner*, 882 F.2d 899, 900 (4th Cir. 1989) (stating the time limit in Fed. R. App. P. 4(a)(1) is mandatory and jurisdictional; failure to comply with Rule 4(a) requires dismissal of the appeal and the fact that appellant is incarcerated

(continued...)

The Rules of Practice do not provide for an extension of time (for good cause or excusable neglect) for filing a petition for review after the time for filing the petition for review has expired. Under the Federal Rules of Appellate Procedure, the district court, upon a showing of excusable neglect or good cause, may extend the time to file a notice of appeal upon a motion filed no later than 30 days after the expiration of the time otherwise provided in the rules for the filing of a notice of appeal.⁴ The absence of such a rule in the Rules of Practice emphasizes that no such jurisdiction has been granted to the administrative law judge to extend the time for filing a petition for review after the time for filing the petition for review has expired.

Moreover, the jurisdictional bar under the Rules of Practice, which precludes an administrative law judge from considering a petition for review that is filed after the time for filing the petition for review has expired, is consistent with the judicial construction of the Administrative Orders Review Act (“Hobbs Act”). As stated in *Illinois Cent. Gulf R.R. v. ICC*, 720 F.2d 958, 960 (7th Cir. 1983) (footnote omitted):

The Administrative Orders Review Act (“Hobbs Act”) requires a petition to review a final order of an administrative agency to be brought

³(...continued)

and proceeding pro se does not change the clear language of the Rule), *cert. denied*, 493 U.S. 1060 (1990); *Jerningham v. Humphreys*, 868 F.2d 846 (6th Cir. 1989) (Order) (stating the failure of an appellant to timely file a notice of appeal deprives an appellate court of jurisdiction; compliance with Rule 4(a) of the Federal Rules of Appellate Procedure is a mandatory and jurisdictional prerequisite which this court can neither waive nor extend).

⁴Fed. R. App. P. 4(a)(5).

within sixty days of the entry of the order. 28 U.S.C. § 2344 (1976). This sixty-day time limit is jurisdictional in nature and may not be enlarged by the courts. *Natural Resources Defense Council v. Nuclear Regulatory Commission*, 666 F.2d 595, 602 (D.C. Cir. 1981). The purpose of the time limit is to impart finality into the administrative process, thereby conserving administrative resources and protecting the reliance interests of those who might conform their conduct to the administrative regulations. *Id.* at 602.^[5]

Accordingly, Petitioner's Petition for Review must be dismissed, since it is too late for the matter to be further considered.

ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER

Petitioner requests in its Petition of Appeal to the Judicial Officer by Southern Minnesota Beet Sugar Cooperative [hereinafter Petitioner's Appeal Petition] that I "reinstate as not time-barred the appeal that [Petitioner] filed on March 22, 2004, challenging the announcement by the . . . CCC of beet sugar marketing allotment allocations to processors for crop year 2003" and issue a decision on the merits in Petitioner's favor (Petitioner's Appeal Pet. at 1).

I agree with the ALJ's Initial Order; therefore, I reject Petitioner's requests that I reinstate Petitioner's March 22, 2004, Petition for Review as not time-barred and issue a decision on the merits in Petitioner's favor.

⁵*Accord Jem Broadcasting Co. v. FCC*, 22 F.3d 320, 324-26 (D.C. Cir. 1994) (stating the court's baseline standard long has been that statutory limitations on petitions for review are jurisdictional in nature and appellant's petition filed after the 60-day limitation in the Hobbs Act will not be entertained); *Friends of Sierra R.R. v. ICC*, 881 F.2d 663, 666 (9th Cir. 1989) (stating the time limit in 28 U.S.C. § 2344 is jurisdictional), *cert. denied sub nom. Tuolumne Park & Recreation Dist. v. ICC*, 493 U.S. 1093 (1990).

On October 1, 2002, the CCC assigned to each beet sugar processor, including Holly Sugar Corporation, an allocation share of the beet sugar marketing allotment. Holly Sugar Corporation's allocation was based, in part, on the production history of the Hereford, Texas, factory. In early October 2002, Imperial Sugar Company sold the Hereford, Texas, factory to American Crystal Sugar Company. Based on this sale, the CCC announced, in Release No. 1693.02, dated November 18, 2002 (AR 8-9), the permanent reassignment to American Crystal Sugar Company of the portion of the Holly Sugar Corporation allocation that was based upon the production history of the Hereford, Texas, factory. Petitioner timely requested reconsideration of this November 18, 2002, reassignment of a share of the allocation from Holly Sugar Corporation to American Crystal Sugar Company. The Executive Vice President issued a reconsidered determination denying Petitioner's request on January 28, 2003. Petitioner did not file a timely petition for review of the Executive Vice President's January 28, 2003, reconsidered determination.

In Release 0340, dated September 30, 2003, the CCC announced the 2003 crop sugar marketing allotments and allocations (AR 15-18). Release No. 0340 set forth overall quantity allotments for beet sugar and cane sugar and the individual allocations for beet sugar processors and cane sugar processors for the 2003 crop. Release No. 0340 did not establish allocation shares or change the allocation shares of the beet sugar allotment for American Crystal Sugar Company, Holly Sugar Corporation, or any other beet sugar processor. American Crystal Sugar Company's and Holly Sugar Corporation's

allocation shares, as well as those of all other beet sugar processors, remained as they had been announced in Release No. 1693.02. Release No. 0340 only set forth the tonnage allocations calculated by multiplying each beet sugar processor's percentage allocation share times the overall beet sugar marketing allotment. Petitioner's October 10, 2003, request for a reconsidered determination of the reassignment of a share of the allocation from Holly Sugar Corporation to American Crystal Sugar Company can only relate to the CCC's November 18, 2002, announcement. Petitioner's October 10, 2003, request for a reconsidered determination of the November 18, 2002, announcement came far too late to be considered by the Executive Vice President. Moreover, Petitioner's Petition for Review was filed far too late to be considered by the ALJ; therefore, I must deny Petitioner's Appeal Petition seeking that I reinstate Petitioner's Petition for Review as not time-barred.

For the foregoing reasons, the following Order should be issued.

ORDER

1. The ALJ's February 7, 2005, order dismissing Petitioner's March 22, 2004, Petition for Review as time-barred, is affirmed.
2. Petitioner's Appeal Petition, filed March 4, 2005, is denied.

3. The Executive Vice President's January 28, 2003, reconsidered determination is the final decision in this proceeding.

Done at Washington, DC

February 2, 2006

William G. Jenson
Judicial Officer