

**§ 1463.103**

*Permanent quota adjustments* means adjustments made by FSA under part 723 of this title for:

- (1) Old farm adjustments from reserve;
- (2) Pounds of quota transferred to the farm from the eminent domain pool;
- (3) Pounds of quota transferred to or from the farm by sale; or
- (4) Pounds of forfeited quota.

*Secretary* means the Secretary of the United States Department of Agriculture.

*Share in the risk of production* means having a direct financial interest in the successful production of a crop of tobacco through ownership of a direct share in the actual proceeds derived from the marketing of the crop, which share is conditional upon the success of that marketing.

*Successor party* means the means the person who has assumed all rights and obligations of a quota holder or tobacco producer arising under this part by executing a TTPP contract.

*Temporary quota adjustments* means adjustments made by FSA under part 723 of this title for:

- (1) Effective undermarketings;
- (2) Overmarketings from any prior year;
- (3) Reapportioned quota from quota released from farms in the eminent domain pool;
- (4) Quota transferred by lease or by owner, for all kinds of tobacco except flue-cured and cigar tobacco; except for flue-cured disaster lease;
- (5) Violations of the provisions of part 723 of this title and part 1464 of this chapter.

*Tobacco* means the following kinds of tobacco: Burley tobacco (type 31); cigar-filler and cigar binder tobacco (types 42, 43, 44, 53, 54, and 55); dark air-cured tobacco (types 35 and 36), fire-cured tobacco (types 21, 22 and 23); flue-cured tobacco (types 11, 12, 13 and 14); and Virginia sun-cured tobacco (type 37).

*TTPP effective quota* means effective quota plus or minus temporary adjustments because of disaster lease and transfer and before adjustment to the 2002 level for establishment of BQL.

*United States* includes any agency and instrumentality thereof.

**7 CFR Ch. XIV (1-1-10 Edition)**

**§ 1463.103 Eligible quota holder.**

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible quota holder, as defined in §1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title, the controlled substance provisions of part 718 of this title, and the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible quota holder.

**§ 1463.104 Eligible tobacco producer.**

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible tobacco producer, as defined in §1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title and the controlled substance provisions of part 718 of this title shall be applicable to payments made under this part to an eligible tobacco producer. However, the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible tobacco producer.

(c) For purposes of determining if an eligible tobacco producer has shared in the risk of producing a crop in the 2002, 2003, or 2004 crop years, CCC will consider evidence presented by a producer that includes, but is not limited to: written leases; contracts for the purchase of tobacco; crop insurance documents; or receipts for the purchase of items used in the production of tobacco.

**§ 1463.105 Base quota levels for eligible quota holders.**

(a) The BQL is determined separately for each kind of tobacco for each farm for which a 2004 basic marketing year quota was established under part 723 of this title. Any marketing quota assigned by FSA to a new farm in 2003 or 2004, other than through transfer from another farm, shall not be considered when determining the BQL.

(b) For burley tobacco quota holders BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The 2004 basic quota, multiplied by the BQL adjustment factor 1.071295. (NOTE: The factor adjusts the 2004 basic quota to the 2002 basic quota level.)

(2) Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owners.)

(c) For flue-cured tobacco quota holders the BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The 2004 basic quota, multiplied by the BQL adjustment factor 1.23457. (NOTE: The factor adjusts the 2004 basic quota to the 2002 level.)

(2) Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owner.)

(d) For quota holders of all other kinds of tobacco the BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

(1) Farm BQL. The basic allotment established for the farm in 2002 multiplied by the county average production yield. The following NASS yields are to be used for any county without production:

- (i) Fire-cured (type 21)—1746 lbs.
- (ii) Fire-cured (types 22-23)—2676 lbs.
- (iii) Dark Air-cured (types 35-36)—2475 lbs.
- (iv) Virginia Sun-cured (type 37)—1502 lbs.
- (v) Cigar Filler/Binder (types 42-44, 54, 55)—2230 lbs.

(2) Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owner.)

(e)(1) CCC will divide the BQL for the farm between the parties to the agreement as CCC determines to be fair and equitable, taking into consideration the proportionate amounts of cropland sold, if:

(i) On or before October 22, 2004, the owner of a farm had entered into an

agreement for the sale of all or a portion of a farm for which a farm marketing quota was established for the 2004 marketing year; and

(ii) Such agreement had not been fulfilled or terminated prior to that date; and

(iii) The parties to the agreement are unable to agree to the disposition of the contract payment to be made with respect to the farm.

(2) If, on or before October 22, 2004, the owner of a farm had entered into an agreement for the permanent transfer of all or a portion of a tobacco marketing quota and the transfer had not been completed by such date, the owner of the farm to which such quota was to be transferred shall be considered to be the owner of the marketing quota for the purposes of this subpart. The BQL's for the transferring farm and the receiving farm will be adjusted to reflect this transfer.

(f) Any tobacco marketing quota preserved under part 1410 of this chapter as the result of the enrollment of a farm in the Conservation Reserve Program shall be included in the determination of the BQL of the farm.

#### § 1463.106 Base quota levels for eligible tobacco producers.

(a) BQL is determined separately, for each of the years 2002, 2003 and 2004, for each kind of tobacco and for each farm for which a 2002 farm marketing quota had been established under part 723 of this title.

(b) The BQL for producers of burley tobacco is established as follows:

(1) The 2002-crop year BQL for burley producers is the 2002 effective quota pounds actually marketed, adjusted for disaster lease and transfer, and considered-planted undermarketings and overmarketings. The BQL is then multiplied by the producer's share in the 2002 crop to determine the producer's 2002 BQL. The adjustments for disaster lease and transfer and considered-planted undermarketings and overmarketings are made as follows:

(i) Disaster-leased pounds are added to the marketings of the transferring farm and deducted from the marketings of the receiving farm;

(ii) Considered-planted pounds are added to the farm's actual marketings,