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(d) Any domestic manufacturer or importer of tobacco products aggrieved by a determination made by CCC under this subpart may seek review of the determination upon the exhaustion of the administrative remedies provided by this part in the United States District Court for the District of Columbia, or for the district in which such importer or manufacturer has its principal place of business.

Subpart B—Tobacco Transition Payment Program

SOURCE: 70 FR 17159, Apr. 4, 2005, unless otherwise noted.

§ 1463.100 General.

(a) The Commodity Credit Corporation (CCC) will make payments to tobacco quota holders and tobacco producers as provided in this subpart with respect to farms for which a tobacco marketing quota had been established by the Farm Service Agency (FSA). To be eligible for a payment, such person must meet all provisions of this part; submit to CCC an application provided by CCC to enter into a contract for payment; and submit other information as may be required by CCC. Payments will be made by CCC annually over a 10-year period.

(b) As provided in this part, a tobacco quota holder or tobacco producer who is not the subject of an outstanding claim established by the United States may, under the terms and conditions established by CCC and with the prior approval of CCC, enter into a successor in interest contract with another person or entity. Upon approval by CCC, all rights and obligations of the quota holder or producer, with respect to payments made by CCC under this part, will be terminated and transferred to the successor party.

(c) As provided in this part, a tobacco quota holder or tobacco producer who may, under the terms and conditions established by CCC, and with the prior approval of CCC, may assign the right to receive a payment to be made under this part by executing an assignment as provided in §1463.111.

(d) Notwithstanding any other provision of this chapter, the provisions of 7 CFR parts 723 and 1464 shall not be applicable to the 2005 and subsequent crops and the 2005 and subsequent marketing years.

§ 1463.101 Administration.

(a) The program will be administered under the general supervision of the Executive Vice President, CCC, and shall be carried out by FSA State and county committees (State and county committees).

(b) State and county committees and their representatives and employees have no authority to modify or waive provisions of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this subpart; or

(2) Require a county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, or designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee. Further, the Executive Vice-President, CCC, or designee, may modify any deadline in this subpart to the extent doing so is determined to be appropriate and consistent with the purposes of the program.

(e) A representative of CCC may execute a contract for a transition payment only under the terms and conditions of this part, and as determined and announced by the Executive Vice President, CCC. Any contract that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, is null and void and shall not be considered to be a contract between CCC and any person executing the contract.

§ 1463.102 Definitions.

The definitions in this section shall apply for all purposes of administering
the Tobacco Transition Payment Program (TTPP) authorized by this subpart.

"Act" means the Fair and Equitable Tobacco Reform Act of 2004.

"Actual marketings" means tobacco that was disposed of in raw or processed form by voluntary or involuntary sale, barter, or exchange, or by gift between living persons.

"Actual undermarketings" means the amount by which the effective quota is more than the amount of tobacco marketed.

"Assignee" means the person designated by a tobacco quota holder or tobacco producer on the correct CCC form to receive a payment to be made by CCC under this subpart.

"Assignor" means the owner of a farm, or a producer on a farm, who has been determined by CCC to be eligible for a payment under this subpart and who has elected to assign to another person on the correct CCC form, the payment to be made by CCC under this subpart.

"Average production yield" means, for each kind of tobacco, other than burley (type 31) and flue-cured (types 11–14), the average of the production of a kind of tobacco in a county, on a per-acre basis, for the 2001, 2002, and 2003 crop years. For quota holders only, if no records are available to provide the average yield, the average yield will be the production yield established by the National Agricultural Statistical Service of the Department of Agriculture (NASS) for the 2002 marketing year for the applicable kind of tobacco.

"Basic allotment" means the factored allotment plus or minus permanent adjustments.

"Basic quota" means the factored quota plus permanent adjustments.

"Base Quota Level (BQL)" means the payment pounds as determined under this subpart.

"Calendar year" means the twelve-months from January 1 through December 31.

"Claim" means any amount of money determined by any Federal agency to be owed by a tobacco quota holder or a tobacco producer to the United States, or any agency or instrumentality thereof, that has been the subject of a completed debt collection activity that is in compliance with the Debt Collection Improvement Act of 1996.

"Considered planted" means tobacco that was planted but failed to be produced as a result of a natural disaster, as determined by CCC.

"Contract" means a Tobacco Transition Payment Quota Holder Contract, a Tobacco Transition Payment Producer Contract, a Tobacco Transition Payment Quota Holder Successor In Interest Contract, or a Tobacco Transition Payment Producer Successor In Interest Contract.

"Contract payment" means a payment made under a contract entered into under this subpart.

"Dependent" means an offspring child who is under 18 years of age.

"Disaster lease" means, as approved by FSA, a written transfer by lease under certain natural disaster conditions of flue-cured or burley tobacco when the transferring farm has suffered a loss of production due to drought, excessive rain, hail, wind, tornado, or other natural disasters. A disaster transfer of flue-cured tobacco must have occurred after June 30 and on or before November 15. A disaster transfer of burley tobacco must have occurred after July 1 and on or before February 16 of the following calendar year.

"Effective allotment" means the basic farm allotment plus or minus temporary adjustments.

"Effective quota" means the current year farm marketing quota plus or minus any temporary quota adjustments.

"Effective undermarketings" means the smaller of the actual undermarketings or the sum of the previous year’s basic quota plus pounds of quota temporarily transferred to the farm for the previous year.

"Eligible quota holder" means only a person who, as of October 22, 2004, has either a fee simple interest or life estate interest in the farm for which FSA established a farm basic marketing quota for the 2004 marketing year. An eligible quota holder does not include any other person who: claims a lien, security interest or other similar equitable interest in the farm or in any personal asset of the owner of the farm or a producer on the farm; has a remainder interest or any other contingent interest
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in the farm or in any personal asset of
the owner of the farm or a producer on
the farm; or who may have caused any
such marketing quota to have been
transferred to the farm.

_Eligible tobacco producer_ means an
owner, operator, landlord, tenant, or
sharecropper who shared in the risk of
producing tobacco on a farm where to-
bacco was produced, or considered
planted, pursuant to a tobacco pound-
age quota or acreage allotment as-
signed to the farm for the 2002, 2003 or
2004 marketing years and who other-
wise meets the requirements in §1463.104.

_Experimental tobacco_ means tobacco
grown by or under the direction of a
publicly-owned agricultural exper-
iment station for experimental pur-
poses.

_Factored allotment_ means allotment
that has been factored to equate it to
the 2002 basic allotment level.

_Factored quota_ means quota that has
been factored to equate it to the 2002
basic quota level.

_Family member_ means a parent; grand-
parent or other direct lineal ancestor;
child or other direct lineal descendent;
spouse; or sibling of a tobacco quota
holder or tobacco producer.

_Farm_ means a farm as defined in part
718 of this title.

_Fiscal year_ means the twelve-month
period from October 1 through Sep-
tember 30.

_Marketing year_ means, for flue-cured
tobacco, the period beginning July 1 of
the current year and ending June 30 of
the following year. For kinds of to-
bacco other than flue-cured, the period
beginning October 1 of the current year
and ending September 30 of the fol-
owing year.

_NASS_ means the National Agricul-
tural Statistics Service of USDA.

_New farm_ means a farm for which a
basic marketing quota was established
for the 2003 or 2004 year from the na-
tional reserve that is set aside for such
purposes from the national marketing
quota established for the applicable
year for the kind of tobacco.

_Overmarketings_ means the pounds by
which the pounds marketed exceed the
effective farm marketing quota.

_Permanent quota adjustments_ means
adjustments made by FSA under part
723 of this title for:

(1) Old farm adjustments from re-
serve;

(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 Agri-
culture.

_Share in the risk of production_ means
having a direct financial interest in the
successful production of a crop of to-
bacco 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 to-
bacco 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 do-
main 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 adjust-
ments 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.