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Dated: February 4, 2005.

**Kenneth C. Clayton,***Acting Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1463****RIN 0560-AH31****Tobacco Transition Assessments****AGENCY:** Commodity Credit Corporation, USDA.**ACTION:** Final rule.

**SUMMARY:** This rule provides regulations for the manner in which assessments are to be made on various domestic manufacturers or importers of tobacco products to fund the tobacco transition payment program as required by Title VI of the America Jobs Creation Act of 2004 (the 2004 Act).

**EFFECTIVE DATE:** February 9, 2005.**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Notice and Comment**

Section 642(b) of the 2004 Act (Pub. L. 108-357) requires that the regulations to implement Title VI of the 2004 Act are to be promulgated without regard to

the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notice and comment rulemaking and public participation in rulemaking. These regulations are thus issued as final.

**Background***General Overview*

Sections 611 through 613 of the 2004 Act repeal the marketing quota and acreage allotment (marketing quota) and price support loan programs for tobacco that are authorized by Title III of the Agricultural Adjustment Act of 1938 (the 1938 Act), and the Agricultural Act of 1949 (the 1949 Act), effective at the end of the 2004 marketing year established for the respective kinds of tobacco that are subject to such quotas. The regulations used to administer the marketing quota program are codified at 7 CFR part 723 and the price support loan program regulations are codified at 7 CFR part 1464.

Sections 622 and 623 of the 2004 Act provide that eligible quota holders and tobacco producers will receive payments under the Tobacco Transition Payment Program (TTPP) in 10 equal installments in each of the 2005 through 2014 fiscal years. The regulations used to administer payments made under this program will be set forth in a separate rule.

*Assessment and Trust Fund*

Sections 625 through 627 of the 2004 Act provide for the establishment of assessments on certain domestic manufacturers and importers of tobacco products in order to fund the 10-year TTPP. The funds to be expended under this program are to be derived from a trust fund established by the 2004 Act. The trust fund is also to be used to pay for losses the Commodity Credit Corporation (CCC) incurs in disposing of tobacco it had acquired under the price support loan program and for costs

that CCC may incur by using private financial institutions in carrying out portions of the program. To fund the trust, section 625(b)(1) of the 2004 Act requires that "each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States" be subject to this assessment. The manner in which the assessments are to be levied is specified by the 2004 Act. Notably, assessments are levied on "each tobacco product manufacturer and tobacco product importer;" accordingly, no assessment is levied on an entity that imports, or sells domestically only un-manufactured tobacco.

Assessments are imposed during each of the fiscal years (FY) 2005 through 2014. The amount of such annual assessment is to be sufficient to cover the payments made to tobacco quota holders and tobacco producers and to cover other approved expenses made in that calendar year. For 2005, the percentage of these assessments to be collected from each such sector is as follows:

1. Cigarette manufacturers and importers—96.331 percent.
2. Cigar manufacturers and importers—2.783 percent.
3. Snuff manufacturers and importers—0.539 percent.
4. Roll-your-own tobacco manufacturers and importers—0.171 percent.
5. Chewing tobacco manufacturers and importers—0.111 percent.
6. Pipe tobacco manufacturers and importers—0.066 percent.

These percentages were established under section 625 of the 2004 Act by using calendar year 2003 data. The allocations by class for fiscal year 2005 were calculated by multiplying net tobacco products removed (both domestic and imported) by the maximum excise tax rate for each class of tobacco (see table 1 below).

TABLE 1.—CALCULATION OF INITIAL ASSESSMENTS FOR EACH CLASS OF TOBACCO UNDER SECTION 625(C)

| 2003 Calendar year          | Domestic<br>(# or lbs) <sup>1</sup> | Imports<br>(# or lbs) <sup>1</sup> | Total quantity<br>(# or lbs) <sup>1</sup> | Maximum tax<br>rate <sup>2</sup> | Estimated taxes<br>(total quantity<br>times tax rate) | Allocation<br>by class<br>(percent) |
|-----------------------------|-------------------------------------|------------------------------------|---|----------------------------------|---|-------------------------------------|
| Cigarettes: small (#) ..... | 377,241,580,953                     | 23,085,086,000                     | 400,326,666,953                           | \$19.50/thou ...                 | \$7,806,370,006                                       | 96.331                              |
| Cigarettes: large (#) ..... | 0                                   | 0                                  | 0   | \$40.95/thou ...                 | 0   | 0.000                               |
| Cigars: small (#) .....     | 2,301,972,488                       | 172,369,000                        | 2,474,341,488                             | \$1.828/thou ...                 | 4,523,096   | 0.056                               |
| Cigars: large (#) .....     | 4,018,523,214                       | 514,566,000                        | 4,533,089,214                             | \$48.75/thou ...                 | 220,988,099   | 2.727                               |
| Snuff (lbs) .....           | 74,700,715                          | 8,369                              | 74,709,084                                | \$0.585/lb .....                 | 43,704,814  | 0.539                               |
| Chewing tobacco (lbs) ..... | 45,906,067                          | 174,399                            | 46,080,466                                | \$.195/lb .....                  | 8,985,691   | 0.111                               |
| Pipe tobacco (lbs) .....    | 4,155,205                           | 698,086                            | 4,853,291                                 | \$1.0969/lb .....                | 5,323,575   | 0.066                               |
| Roll your own (lbs) .....   | 11,353,137                          | 1,254,008                          | 12,607,145                                | \$1.0969/lb .....                | 13,828,777  | 0.171                               |
| Total .....                 | .....                               | .....                              | .....                                     | .....                            | 8,103,724,058   | 100.000                             |

<sup>1</sup> Source: Alcohol and Tobacco Tax and Trade Bureau; National Revenue Center; December 2003 Monthly Statistical Release Re-issued August 19, 2004; Report Symbol TTB S 5200-12-2003 [www.ttb.gov/tobacco/stats/index.htm](http://www.ttb.gov/tobacco/stats/index.htm).

<sup>2</sup> Source: Alcohol and Tobacco Tax and Trade Bureau; Tax and Fee Rate [www.ttb.gov/alcohol/info/atftaxes.htm](http://www.ttb.gov/alcohol/info/atftaxes.htm).

Section 625(c)(2) of the 2004 Act requires the Secretary to periodically adjust these percentages as changes occur in the marketplace. Beginning in FY 2006, it is CCC's intention to adjust the class percentages annually by using this same methodology to ascertain changes in the volume of sales of each class.

#### Market Shares and Base Period

Section 625(b)(1) of the 2004 Act provides that in each of the FY's 2005 through 2014, CCC will impose assessments "on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States during that fiscal year." The 2004 Act provides that for each such entity, within each of the six specified sectors, the Secretary must establish individual assessments by determining a statutorily prescribed "market share" for each manufacturer and importer. This market share is defined by section 625(a)(3) of the 2004 Act as the entity's share of the "class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product during the base period for a fiscal year\* \* \*." The "base period" is defined in section 625(a)(1) as the "one-year period ending the June 30 before the beginning of a fiscal year." For FY 2005 that would be July 1, 2003 through June 30, 2004 and an entity's FY 2005 market share would be its share of the sale of a class of tobacco products from July 1, 2003 through June 30, 2004.

Section 625(f) provides that the determination of the amount of a quarterly assessment owed by an entity will be based upon its prior quarterly period sales. Thus, as payments made by an entity cover a calendar year period, the first quarterly payment that is due on March 31, 2005 will be

determined by using the October 1, 2004 through December 31, 2004 market share of the entity within each of the six product sectors. Accordingly, the use of the 2004 Act's "market share" and "base period," are effectively limited to being used to determine the division of the national assessment among the six previously listed sectors.

In order to establish these market shares, section 625(h)(1) provides that each manufacturer and importer of tobacco products must submit "a certified copy of each of the returns or forms described by paragraph (2) that are required to be filed with a Federal agency on the same date that those returns or forms are filed, or required to be filed, with the agency." Section 625(h)(2) provides that these returns and forms "are those that relate to, "(A) the removal of tobacco products into domestic commerce (as defined by section 5702 of the Internal Revenue Code of 1986); and (B) the payment of the taxes imposed under charter [sic] 52 of the Internal Revenue Code of 1986, including AFT [sic] Form 5000.24 and United States Customs Form 7501 under currently applicable regulations." With respect to the information provided to the Department of the Treasury, data to develop a market share would be obtained from sources such as TTB Form 5000.24, which is required to be filed monthly. To the extent amended forms are filed, CCC would incorporate those changes to the extent it deemed practicable, taking into consideration when the amended form was submitted. With respect to imports of tobacco products, CCC intends to use information provided to the Department of the Treasury and the Department of Homeland Security when the product enters the United States.

At the current time, this information would be of the type submitted monthly on TTB Form 5220.6, ATF Form 5210.5,

TTB Form 5000.24, TTB Form 5620.8 and Customs and Border Protection Form 7501. Because the name and identification of these and other forms may change over time, CCC will provide actual notice to domestic manufacturers and importers of tobacco products of those forms from which information could be obtained for purposes of compliance with this subpart. Due to the need to obtain this information as soon as possible for use in FY 2005, CCC will provide actual notice to those entities who have received a permit, as identified below, from the Department of the Treasury since October 1, 2004 in order to obtain information regarding their October 1 through December 31, 2004 marketings. To the extent that future submissions to the Department of the Treasury and the Department of Homeland Security may be combined with that needed for the administration of the 2004 Act, CCC will attempt to obtain the information from the two agencies without the need to obtain the same information from tobacco manufacturers and tobacco product importers.

#### Quarterly Assessments

Section 625(b)(1) of the 2004 Act requires that CCC " \* \* \* impose quarterly assessments during each of fiscal years 2005 through 2014, \* \* \* on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States during that fiscal year."

Section 625(b)(2) further provides that: "Beginning with the calendar quarter ending on December 31 of each of fiscal years 2005 through 2014, the assessment payments over each four-calendar quarter period shall be sufficient to cover—

(A) The contract payments made under sections 622 and 623 during that period; and

(B) Other expenditures from the Tobacco Trust Fund made during the base quarter periods corresponding to the four calendar quarters of that period."

Section 625(d)(1) of the 2004 Act further provides that "The notice for a quarterly period shall be provided not later than 30 days before the date payment is due under paragraph (3)."

Section 625(d)(3) provides:

"(A) Collection Date.—Assessments shall be collected at the end of each calendar year quarter, except that the Secretary shall ensure that the final assessment due under this section is collected not later than September 30, 2014.

(B) Base Period Quarter.—The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter."

The 2004 Act contains several provisions that give contradictory direction to CCC. For example, while section 625(b)(1) provides that CCC " \* \* \* shall impose quarterly assessments during each of the fiscal years 2005 through 2014," section 625(b)(2) directs that assessments be collected " \* \* \* over each four calendar quarter period," which CCC interprets as being each quarter beginning on January 1, 2005 through December 31, 2014, except that the final payment is accelerated to September 30, 2014 by section 625(d)(3)(B). Similarly, section 625(d)(1) states that notification of payments owed by an entity is to be made "not later than 30 days before the date payment is due under paragraph (3)." Section 625(d)(3)(A) contains the special rule for moving December 31, 2014 assessments to September 30, 2014, but subparagraph (B) provides "The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter." Thus, this provision of 625(d)(3)(B) to use a method of collection where a quarterly payment is to "correspond" to the prior quarter runs counter to the use of the "market share" and "base period" provisions of the 2004 Act. Accordingly, with respect to section 625(d)(3)(B), CCC interprets this provision to mean that an entity's required payment is to be adjusted quarterly by determining an entity's share of a tobacco product sector based upon the prior 3 month marketings of the entity. Such an interpretation also means that an entity entering the tobacco market for the first time at any time during a quarterly

payment period will be treated in the same manner as all other entities.

After reviewing this provision of the 2004 Act in the context of all of Title VI of the 2004 Act, CCC has determined the intent of the statutory scheme established by section 625 of the 2004 Act is that CCC is to levy assessments in amounts needed to fund the Tobacco Trust Fund (TTF) with sufficient amounts to cover expenses incurred in each of the 2005 through 2014 calendar years, with payment due to CCC at the end of each calendar year quarter.

Thus, the first quarterly payment is due to CCC on March 31, 2005 and the 40th, and final payment otherwise due to CCC on December 31, 2014, is accelerated to September 30, 2014. While section 625(b)(2) refers to the collection of assessments at the end of a calendar year quarter for expenditures occurred in that quarter, section 625(c)(3) allows CCC to adjust any assessment to be collected in a fiscal year to cover expenditures " \* \* \* as the Secretary determines to be necessary to carry out this subtitle during that fiscal year."

Accordingly, in order to allow for a more uniform and predictable assessment rate so that entities paying the assessment can make timely business decisions, CCC will levy four quarterly assessments in each of the 2005 through 2014 calendar years with payment due on March 31, June 30, September 30, and December 31 of each calendar year. But, as required by the 2004 Act, the December 31, 2014 payment will be due on September 30, 2014. Accordingly, this 40th quarter payment will be determined by using the same adjusted market share data of an entity that was used to determine the 39th quarter payment. To the extent practicable, each of the four quarterly assessments for a calendar year will be one-fourth of the estimated costs of the total expenditures for that calendar year, but CCC may adjust each of the amounts due each quarter to account for unanticipated savings or increased outlays.

#### *Entities Subject to Payment of the Assessment*

In order to collect these assessments, this rule provides that those domestic manufacturers and importers of tobacco products who must pay an assessment are those that, during the fiscal year, are required to have a permit from the Department of the Treasury as provided in 27 CFR parts 40.61 and 40.62 for manufacturers and 27 CFR parts 275.190 and 275.191 for importers. Since all domestic manufacturers and importers of tobacco products must have such a

permit, use of this requirement will provide a readily identifiable process that imposes no additional burden on these entities.

Generally, for FY 2005, the assessment for an individual company would be determined by:

1. Taking the total calendar year 2005 expenditures CCC estimates it will incur and dividing that amount among the various classes of tobacco pursuant to the percentages specified above.

2. Taking that dollar amount for each class and dividing it among each entity in that class based on the entity's adjusted market share each quarter. With respect to the first calendar year quarterly payment that is due March 31, 2005, CCC would calculate an individual entity's required payment based upon the entity's adjusted market share as determined as of the " \* \* \* quarter that ended at the end of the preceding calendar year quarter," which would be the October 1 through December 31, 2004 time frame. With respect to the payment due on June 30, 2005, the market share would be adjusted to reflect marketings between January 1, 2005 and March 31, 2005.

#### *Notification of Information*

Section 625(d) of the 2004 Act provides that each domestic manufacturer and importer of tobacco products will be given actual notice, not later than 30 calendar days prior to the date payment of each quarterly assessment is due to CCC, of certain determinations made under the 2004 Act. These determinations relate to:

1. The total combined assessment for all domestic manufacturers and importers of tobacco products, which is referred to as the "national assessment" in the rule;

2. The total assessment for each class of tobacco product;

3. Any adjustments that have been made to the percentage allocation of the gross volume of tobacco products among classes of tobacco products;

4. Any adjustment to the national assessment due to changes of CCC expenditures during the fiscal year;

5. The volume of gross sales for each class of tobacco made by the domestic manufacturer or importer of tobacco products that was used in determining the market share of such entity;

6. The total volume of gross sales of the applicable class of tobacco products that was used in determining the market share of domestic manufacturer and importers of tobacco products;

7. The domestic manufacturers' and importers' of tobacco products market share of the applicable class of tobacco product; and

8. The market share of each domestic manufacturer and importers of tobacco products.

In reviewing the notification of information provision with officials of the Department of the Treasury, it has been determined that the disclosure of market share information on an entity to another party, item 8, would be in violation of 26 U.S.C. 6103. That provision of the Internal Revenue Code precludes the disclosure by the United States Government of information obtained from a tax return or other form to a third party. Accordingly, the notifications provided by this rule will not include disclosure of an entity's market share to any third party.

In addition to the first seven items noted above, the notification that CCC will provide to domestic manufacturers and importers of tobacco products will also include:

1. The manner in which assessments are to be remitted to CCC; and

2. Identification of those Department of the Treasury and Department of Homeland Security forms filed by the domestic manufacturer and importer of tobacco products that must also be filed with CCC.

#### *Appeals*

Notice of appeal rights will be provided when applicable. Section 625(i) of the 2004 Act sets forth specific times by which CCC must resolve certain administrative appeals that arise with respect to the levy of assessments. Accordingly, the administrative review procedure set forth in this rule provides that for those appeals in which the appellant disputes the amount of the assessments CCC will, within 30 business days of receipt of the notice of the appeal, determine if a revision should be made. If a decision has not been made within 30 business days, for purposes of seeking judicial review, the appellant will have been deemed to have exhausted all administrative remedies. The administrative procedure established by this rule provides for the opportunity for a hearing, if requested by the appellant, and also provides for the appeal of other determinations arising under the act that are not subject to the 30-day appeal process.

#### *Analysis of Benefits and Costs*

This rule was determined to be economically significant by the Office of Management and Budget under Executive Order 12866. Thus, an analysis of the benefits and costs of this rule has been performed by the Agency. This analysis is available from Misty Jones at (202) 720-7413 or at <http://www.fsa.usda.gov/tobacco/>. A summary

of the estimated impacts of this rule are as follows:

#### *Tobacco Market Prices*

The price tobacco manufacturers pay for domestic tobacco is higher than that for imported tobacco. This is largely due to the price support program for domestic tobacco which established a higher minimum price for U.S. product. The elimination of the tobacco price support is expected to move domestic tobacco market prices toward the lower market price of imported tobacco.

Academic research suggests that tobacco market prices may decline 25 percent or more from their levels under the previous program. However, over the longer term, tobacco producers are expected to benefit from reduced production costs from elimination of quota rent, increased production as domestic leaf will compete more effectively with imports, more competitiveness in the export market, and economy of scale as farms consolidate into larger and more efficient units. Also, elimination of tobacco marketing quotas will result in a loss of income to quota owners because owning a tobacco quota allows a person to market tobacco in the higher-price domestic market and, therefore, it has an intrinsic value.

#### *CCC Stocks*

Lower domestic market tobacco prices may cause a reduction in the value of CCC tobacco stocks which are collateral for CCC nonrecourse marketing loans. If tobacco prices fall below the loan value of tobacco pledged as collateral, CCC could lose a significant amount of money. Compensating tobacco producers, quota holders, and CCC is viewed as an equitable remedy for the loss of future tobacco income and the potentially diminished value of loan collateral. The assessments collected from tobacco importers and manufacturers will fund the payments for quota holders and tobacco producers and will also compensate CCC for any losses associated with tobacco loan stocks.

#### *Payments to Holders and Producers*

CCC will enter into a contract with each tobacco quota holder or producer to compensate them for terminating quotas and price support. Assessments on manufacturers and importers of tobacco products will finance the payments. As provided in this rule the total payments due an eligible tobacco quota holder is \$7 per pound multiplied by the pounds of basic quota at the 2002 quota level. Total payments due a tobacco producer is, in the case of flue-

cured and burley tobacco, \$3 per pound of effective quota for the 2002 marketing year and, for other kinds of tobacco, \$3 per pound of the allotment for 2002, times the average annual yield per acre produced in the 2001, 2002, and 2003 crop years. Total transition payments are estimated at \$9.6 billion based on known payment rates per pound and 2002 acreage/poundage quotas. Reimbursable expenses incurred by CCC and financial institutions related to assessments and payments are expected to be about \$540 million.

#### *Costs to Manufacturers and Importers*

On August 18, 2004, there were 158 product manufacturers and 666 product importers providing data on tobacco product sales. Tobacco manufacturer and importer assessments are based on their shares of sales volume for 6 major tobacco product classes: cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, and roll-your-own tobacco. Product classes are measured in number of units of product or pounds of product, and each category is assigned a percentage of the market for that product class based on its pro rata share of the total sales of that product. Total assessments on cigarette manufacturers and importers during fiscal year 2005 are estimated at about \$975 million based on 2003 taxable removal of cigarettes of about 400 billion, or about 20 billion packs of 20 each. Thus, the assessment per pack of cigarettes will be around 4.8 cents. In order to cover their share of the product class's assessment, cigarette manufacturers and importers would likely raise the price of cigarettes by a similar amount.

Cigars' proportion of the fiscal year 2005 assessment is 2.783 percent, about \$28.2 million. This implies a price increase of about 0.4 cents per cigar based on 2003 removals of 7.0 billion units. Other products' share of the assessment in million dollars, and the implied increase in product price in cents per pound, in parenthesis, are: snuff—\$5.5 (7.3), chewing tobacco—\$1.1 (2.4), pipe tobacco—\$.7 (13.8), and roll-your-own—\$1.7 (13.8).

Manufacturers and importers are expected to pass most of these costs to consumers of tobacco products through small increases in sales prices, since demand tends to be much more inelastic than supply. Specific estimates of the supply elasticity are not available, however, most studies assume supply to be perfectly elastic. The additional burden of providing information on sales volume to CCC is deemed negligible inasmuch as these data are already provided to other government agencies.

### Impact on Consumers

Consumers are expected to pay marginally higher prices for tobacco products than they would in the absence of the assessments, as manufacturers pass on most of the cost of assessments through higher product sales prices. The recent national average retail price of cigarettes is calculated to be \$3.8066 per pack. A 4.8-cent-per-pack increase in the price would equate to a 1.3-percent rise in the retail price. Numerous studies have calculated the price elasticity of demand for cigarettes to be quite inelastic, ranging from a low of  $-0.4$  to a high of  $-0.75$ . The range of estimates for youth smoking is wider, ranging from 0 to  $-1.44$ . Based on these estimates, a 1-percent rise in the price of cigarettes would be expected to reduce overall consumption by 0.4 percent to 0.75 percent. However, among youth, the expected impact may range from no decline to as much as a 1.44-percent decline. Nonetheless, consumers, in aggregate, are not expected to significantly reduce consumption of tobacco products due to the expected increases in tobacco prices attributable to the assessments alone.

### Administrative Burden

CCC will likely incur modest additional staffing requirements associated with the ongoing administration of this assessment, however, automated processes will limit staff requirements somewhat. CCC loan operation net expenses will be paid by the assessments collected under these regulations. However, since the tobacco program has been administered at no-net-cost for years, these assessments are expected to have no significant impact on CCC loan operation expenses.

### Executive Order 12866

This final rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment was completed and is summarized after the background section explaining the rule.

### Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: 10.051—Commodity Loans and Loan Deficiency Programs.

### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC is required by 5 U.S.C. 553 or any other

law to publish a notice of proposed rulemaking for the subject matter of this rule.

### Environmental Review

Due to the brief time-frame FSA had to promulgate these regulations, sufficient time was not available to complete an environmental review prior to implementing this program. Therefore, an environmental assessment is being completed to consider the potential impacts of this proposed action on the human environment in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA at 7 CFR part 799. A copy of the draft environmental assessment will be available after completion for review upon request.

### Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. This rule preempts State laws that are inconsistent with its provisions, but the rule is not retroactive. Before any judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

### Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because neither the Secretary of Agriculture nor CCC is required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

### Small Business Regulatory Enforcement Fairness Act of 1996

Section 642(c) of the 2004 Act requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon the date of filing for

public inspection by the Office of the Federal Register.

### Paperwork Reduction Act

Section 642(b) of the 2004 Act requires that these regulations be promulgated and administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these provisions and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

### Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Because of the date that the regulations for this program are required to be published, the forms and other information collection activities required to be utilized by a person subject to this rule are not yet fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms required to be submitted under this rule may be submitted to CCC by mail or FAX.

### List of Subjects in 7 CFR Part 1463

Agriculture, Acreage allotments, Marketing quotas, Price support programs, Tobacco.

■ Accordingly, title 7 is amended by adding part 1463, as set forth below:

### PART 1463—2005–2014 TOBACCO TRANSITION PROGRAM

#### Subpart A—Tobacco Transition Assessments

|         |   |
|---------|---|
| Sec.    |   |
| 1463.1  | General.  |
| 1463.2  | Administration.   |
| 1463.3  | Definitions.  |
| 1463.4  | National assessment.  |
| 1463.5  | Division of national assessment among classes of tobacco.   |
| 1463.6  | Determination of persons liable for payment of assessments. |
| 1463.7  | Division of class assessment to individual entities.        |
| 1463.8  | Notification of assessments.                                |
| 1463.9  | Payment of assessments.                                     |
| 1463.10 | Civil penalties and criminal penalties.                     |
| 1463.11 | Appeals and judicial review.                                |

**Subpart B—[Reserved]**

**Authority:** 7 U.S.C. 714b and 714c; and Title VI of Pub. L. 108–357.

**Subpart A—Tobacco Transition Assessments****§ 1463.1 General.**

The Commodity Credit Corporation (CCC) will levy assessments from January 1, 2005 through September 30, 2014 on certain domestic manufacturers and importers of tobacco products as provided for in this subpart in order to fund the issuance of payments made under subpart B of this part and to fund other activities authorized by Title VI of the American Jobs Creation Act of 2004. The total amount of assessments that may be collected under this part shall not exceed \$10.140 billion.

**§ 1463.2 Administration.**

The provisions of this subpart will be administered under the general supervision of the Executive Vice President, CCC.

**§ 1463.3 Definitions.**

The definitions in this section shall apply for all purposes of administering the provisions of this subpart:

*Act* means Title VI of the America Jobs Creation Act of 2004 (Public Law 108–357).

*Adjusted market share* means the market share of a manufacturer of tobacco products or an importer of tobacco products adjusted to reflect such entity's share of a class of tobacco during the immediately preceding calendar year quarter. With respect to the 39th and 40th quarterly payments due on September 30, 2014, the adjusted market share will be the entity's share of a class of tobacco during the April 1–June 30, 2014 quarter.

*Base period* means the period July 1 through June 30 immediately preceding the beginning of a fiscal year.

*CCC's point of contact* means, for items physically sent to CCC, "Tobacco Division (TD), Farm Service Agency, United States Department of Agriculture (USDA), STOP 0514, Room 4080–S, 1400 Independence Avenue, SW., Washington, DC 20250–0514" unless otherwise specified by CCC through actual notice and, for all correspondence by email, *tob\_comments@wdc.usda.gov*.

*Calendar year* means the period January 1 through December 31.

*Class of tobacco* means each of the following types of tobacco and tobacco products: cigarettes; cigars; snuff; roll-your-own tobacco; chewing tobacco; and pipe tobacco.

*Domestic manufacturer of tobacco products* means an entity that is

required to obtain a permit from the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury with respect to the production of tobacco products under title 27 of the Code of Federal Regulations.

*Fiscal year* means the period October 1 through September 30.

*Gross domestic volume* means the volume of tobacco products removed, as defined by section 5702 of the Revenue Code, and not exempt from tax under chapter 52 of such code at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States.

*Importer of tobacco products* means an entity that is required to obtain a permit from the Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury with respect to the importation of tobacco products under title 27 of the Code of Federal Regulations.

*Market share* means the share of each domestic manufacturer and importer of a class of tobacco product, to the fourth decimal place, of the total volume of domestic sales of the class of tobacco product in a base period.

*National assessment* means the total amount of funding that CCC has determined to be necessary to collect in a year from domestic manufacturer and importer of tobacco products in order to reimburse CCC for expenditures that it will incur in the year for expenses incurred under sections 622 and 623 of the Act in making payments under subpart B of this part; losses sustained by CCC in the disposition of tobacco acquired under price support loan agreements as provided in section 641(c) of the Act; and costs incurred by CCC in the utilization of financial institutions in administering sections 622 and 623 of the Act.

*Revenue Code* means the Internal Revenue Code of 1986.

*Tobacco Trust Fund* means an account established for deposit of assessments collected under this subpart, plus interest that accrues on such assessments, to be used to implement this subpart.

**§ 1463.4 National assessment.**

Annually, CCC will make a determination of a national assessment in as far in advance of when the first assessment is due as CCC determines to be practicable. Based upon the amount of assessments received and expenditures incurred in a calendar year quarter, CCC may adjust the national assessment for one or more classes of tobacco established for a particular year with respect to succeeding calendar year quarters.

**§ 1463.5 Division of national assessment among classes of tobacco.**

(a) Except as provided in paragraph (b) of this section, the national assessment will be divided by CCC among each class of tobacco based upon CCC's determination of each class's share of the excise taxes paid. The value of the excise taxes paid for each class of tobacco will be based upon the reports filed by domestic manufacturers and importers of tobacco products with the Department of the Treasury and the Department of Homeland Security:

(b) For fiscal year 2005, the national assessment will be divided as follows:

- (1) Cigarettes, 96.331 percent;
- (2) Cigars, 2.783 percent;
- (3) Snuff, 0.539 percent;
- (4) Roll-your-own tobacco products, 0.171 percent;
- (5) Chewing tobacco, 0.111 percent;

and

- (6) Pipe tobacco, 0.066 percent.
- (c) For fiscal years 2006 through 2014, the division of the national assessment for each class of tobacco will be adjusted annually.

**§ 1463.6 Determination of persons liable for payment of assessments.**

(a) All domestic manufacturers and importers of tobacco products are required to pay to CCC their proportionate share of a calendar year's national assessment. Such entities are those that import or manufacture tobacco products in a calendar year and are required to report to the United States Department of the Treasury or to the Department of Homeland Security the removal of tobacco products into domestic commerce under the Revenue Code or are required to pay taxes under chapter 52 of such code.

(b)(1) Such entities must provide to CCC's point of contact:

(i) Entity name; mailing address of the entity's principal place of business; an office or individual that CCC may contact for further information; an e-mail address and postal address at which they wish to receive notifications required by the Act to be made to them by CCC; and

(ii) On a monthly basis for each class of tobacco, the total amount of tobacco products, summarized by employer identification number or such other method as may be prescribed by CCC, that are required to be reported to the United States Department of the Treasury or to the Department of Homeland Security in each month beginning October 1, 2004, and ending September 30, 2014.

(2) The information required to be submitted to CCC under paragraph (b)(1) of this section must be submitted by:

(i) With respect to fiscal year 2005 activities occurring prior to February 10, 2005, by February 25, 2005; and

(ii) With respect to all other activities, on the same date the information was required to be submitted to the United States Department of the Treasury or to the Department of Homeland Security.

#### **§ 1463.7 Division of class assessment to individual entities.**

(a) In order to determine the assessment owed by an entity, that portion of the national assessment assigned to each class of tobacco will be further divided at the entity level. The amount of the assessment for each class of tobacco to be paid by each domestic manufacturer and importer of tobacco products will be determined by multiplying:

(1) With respect to each class of tobacco, the adjusted market share of such manufacturer or importer; by

(2) The total amount of the assessment for that class of tobacco for the calendar year quarter.

(b) For purposes of determining the volume of domestic sales of each class of tobacco and for each entity, such sales shall be based upon the reports filed by domestic manufacturers and importers of tobacco products with the Department of the Treasury and the Department of Homeland Security:

(1) For cigarettes and cigars, on the number of cigarettes and cigars reported on such reports;

(2) For all other classes of tobacco, on the number of pounds of those products.

(c) In determining the adjusted market share of each manufacturer or importer of a class of tobacco products, CCC will determine to the fourth decimal place an entity's share of excise taxes paid of that class of tobacco product during the immediately prior calendar year quarter.

#### **§ 1463.8 Notification of assessments.**

(a) Once CCC has determined a national assessment, CCC will collect that amount on a quarterly basis from all domestic manufacturers and importers of tobacco products subject to § 1463.5.

(b) 30 calendar days prior to the end of each calendar year quarter domestic manufacturers and importers of tobacco products will receive notification of:

(1) The national assessment;

(2) The percentage of the national assessment that has been allocated to each class of tobacco product and the total amount of assessments due from each such class;

(3) Any adjustments that have been from the prior fiscal year with respect to the allocation of the gross domestic volume determined for use in a fiscal year among the classes of tobacco products;

(4) An adjustment in the national assessment if CCC determines that the assessments imposed will result in insufficient funds due to changes in the amount of expenditures that CCC has determined will be made in a calendar year;

(5) The national volume of gross sales of each class of tobacco product that CCC has allocated to the domestic manufacturer or importer of tobacco products for the purpose of determining such entity's adjusted market share;

(6) The total volume of gross sales of each class of tobacco product that CCC has allocated to a class of tobacco product, within the gross domestic volume determined for use in a fiscal year, that was used for the purpose of determining a tobacco product manufacturer's or tobacco importer's adjusted market share;

(7) For that quarter, the adjusted market share of the domestic manufacturer or importer of tobacco products;

(8) The manner in which assessments are to be remitted to CCC; and

(9) Identification of those Department of the Treasury and Department of Homeland Security forms filed by the domestic manufacturer or importer of tobacco products that are used to calculate assessments.

#### **§ 1463.9 Payment of assessments.**

(a) Assessments under this subpart are imposed for the expenditures CCC has determined it will incur in the 2005 through 2014 calendar years. Except as provided in paragraph (c) of this section, payment of such assessments are due to CCC no later than the end of each calendar year quarter. If prior to 30 calendar days before the end of a calendar year quarter CCC has not notified an entity of the amount that is required to be remitted in that quarter, no interest will be assessed by CCC under paragraph (d) of this section until 30 calendar days have elapsed from the date CCC provided notification of the amount owed.

(b) Payments due under this subpart must be submitted to CCC by electronic fund transfer unless prior written approval has been obtained from CCC.

(c) The final two calendar year quarterly payments due to CCC under this part shall be due to CCC on September 30, 2014.

(d) Notwithstanding any other provision of this chapter, if CCC has not received payment of assessments determined to be owed at the end of a calendar year quarter, CCC will assess interest on such unpaid amount beginning on the first day of the calendar year quarter immediately

following the end of such prior quarter. Such interest will be at the rate CCC assesses on delinquent debts in accordance with part 1403 of this title.

(e) With respect to funds placed in escrow that are refunded to the domestic manufacturer or importer of tobacco products due to the resolution of an appeal, interest will be paid on such amount from the date of receipt by CCC until the date of the refund. Such interest rate will be at the rate charged by the U.S. Treasury for CCC's borrowing that is in effect on the date of receipt by CCC of such funds.

#### **§ 1463.10 Civil penalties and criminal penalties.**

(a) Any person who knowingly fails to provide information required to be filed under this subpart, or provides false information under this subpart, may be subject to the penalties prescribed in 15 U.S.C. 714m, 18 U.S.C. 1003, and such other civil and criminal statutes as the United States determines to be appropriate.

(b) In addition to an action that may be taken under paragraph (a) of this section, with respect to any person who knowingly fails to provide information required to be filed under this subpart, or that provides false information under this subpart, a person may be subject to assessment of a civil penalty by CCC. Such civil penalty will be imposed by CCC taking into account the severity of the action; whether the action is of a repetitive nature; and the disruption the action has caused with respect to other parties subject to this subpart. Any such civil penalty will not exceed two percent of the value of the kind of tobacco products manufactured or imported by such entity in the fiscal year in which the violation occurred.

#### **§ 1463.11 Appeals and judicial review.**

(a) An entity may appeal any adverse determination made under this subpart, including with respect to the amount of the assessment, by submitting a written statement that sets forth the basis of the dispute by submitting such a request to the Executive Vice President, CCC, at 1400 Independence Avenue, SW., Room 4080-S, Washington DC 20250-0514, within 30 business days of the date of receipt of the notification by CCC of its determination.

(b) The Executive Vice President shall assign a person to act as the hearing officer on behalf of CCC. The duty of the hearing officer will be to develop an administrative record that will provide the Executive Vice President, or a designee, with sufficient information to render a final determination on the matter in dispute. The hearing to be

conducted by the hearing officer will be an informal hearing at which the appellant may present oral and written evidence in support of the appellant's position. A copy of the rules of conduct that will be applicable to the proceeding will be provided to the appellant upon receipt of the appeal by CCC.

(c) With respect to any appeal filed under this section regarding an assessment imposed on a domestic manufacturer or importer of tobacco products, the rules of conduct will provide that within 30 calendar days of receiving the final submission of material by the appellant, CCC will render a final administrative decision. In the event CCC has not rendered a decision by such date, all administrative remedies available to the appellant shall be deemed to be exhausted.

(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—[Reserved]

Signed in Washington, DC on February 3, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05-2552 Filed 2-9-05; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002-NE-37-AD; Amendment 39-13962; AD 2005-03-06]

RIN 2120-AA64

#### **Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG (formerly Rolls-Royce plc), Model Tay 611-8, 620-15, 650-15, and 651-54 Turbofan Engines**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce Deutschland Ltd. & Co KG (RRD) (formerly Rolls-Royce plc) Model Tay 611-8, 620-15, 650-15, and 651-54

turbofan engines, with low pressure (LP) fuel tube, part number (P/N) JR33021A, installed. That AD currently requires initial and repetitive inspections of the LP fuel tubes. This AD requires the same inspections and adds a requirement to replace the fuel tube with a new design tube, as mandatory terminating action to the repetitive inspections. This AD results from the manufacturer introducing a new design fuel tube, which eliminates the unsafe condition. We are issuing this AD to prevent a dual-engine flameout due to fuel exhaustion, which could lead to forced landing and possible damage to the airplane.

**DATES:** This AD becomes effective March 17, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 17, 2005.

**ADDRESSES:** You can get the service bulletins identified in this AD from Rolls-Royce Deutschland Ltd. & Co KG, Eschenweg 11, D-15827 DAHLEWITZ, Germany; telephone 49 (0) 33-7086-1768; fax 49 (0) 33-7086-3356.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service bulletins, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238-7747; fax (781) 238-7199.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to RRD Model Tay 611-8, 620-15, 650-15, and 651-54 turbofan engines, with LP fuel tube, P/N JR33021A, installed. We published the proposed AD in the **Federal Register** on June 9, 2004 (69 FR 32285). That action proposed to require initial and repetitive inspections of LP fuel tubes, and replacement of the fuel tube with a new design tube as mandatory terminating action to the repetitive inspections. That proposed action results from the manufacturer

introducing a new design fuel tube, which eliminates the unsafe condition.

#### **Special Flight Permits Paragraph Removed**

Paragraph (g) of the current AD, AD 2003-05-04, contains a paragraph pertaining to special flight permits. Even though this final rule does not contain a similar paragraph, we have made no changes with regard to the use of special flight permits to operate the airplane to a repair facility to do the work required by this AD. In July 2002, we published a new part 39 that contains a general authority regarding special flight permits and airworthiness directives; see Docket No. FAA-2004-8460, Amendment 39-9474 (69 FR 47998, July 22, 2002). Thus, when we now supersede ADs we will not include a specific paragraph on special flight permits unless we want to limit the use of that general authority granted in section 39.23.

#### **Examining the AD Docket**

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

#### **Comments**

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

#### **Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

#### **Costs of Compliance**

There are about 1,300 RRD Model Tay 611-8, 620-15, 650-15, and 651-54 turbofan engines of the affected design in the worldwide fleet. We estimate that 1,206 engines installed on airplanes of U.S. registry would be affected by this AD. We also estimate that it will take about two work hours per engine to perform the tube inspection, and two work hours per engine to perform the tube replacement. The average labor rate is \$65 per work hour. Required parts will cost about \$1,300 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be \$1,720,000.

#### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,