DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

Commodity Credit Corporation

7 CFR Parts 1463 and 1464

RIN 0560–AH30

Tobacco Transition Payment Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule provides regulations for the Tobacco Transition Payment Program (TTPP), as required by Title VI of the American Jobs Creation Act of 2004 (the 2004 Act), ending the tobacco marketing quota and price support loan programs. The TTPP will provide payments over a ten-year period to quota holders and producers of quota tobacco to help them make the transition from the federally-regulated program. This rule also removes from the Code of Federal Regulations obsolete tobacco program provisions at 7 CFR parts 723 and 1464.

DATES: *Effective Date:* This rule will be effective March 30, 2005, except for the removal of 7 CFR parts 723 and 1464, which will be effective November 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0514, 1400 Independence Ave., SW., Washington, DC 20250–0514. Phone: (202) 720–2715; e-mail: *ann.wortham@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 642(b) of the 2004 Act requires that these regulations 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 notices of proposed rulemaking and public participation in rulemaking. These regulations are thus issued as final.

Background

General Overview

Sections 611 through 613 of the American Jobs Creation Act of 2004 (Pub. L. 108–357; the 2004 Act) repeal the tobacco marketing quota and related price support programs authorized by Title III of the Agricultural Adjustment Act of 1938 (the 1938 Act) and the Agricultural Act of 1949. This action is effective at the end of the 2004 marketing years 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 621 through 624 of the 2004 Act provide for transitional payments to tobacco quota holders and producers. Eligible tobacco quota holders and producers will receive payments under this program in 10 installments in each of the 2005 through 2014 fiscal years (FYs). To the extent practical, the Commodity Credit Corporation (CCC) intends to make the FY 2005 payment between June and September of 2005, and subsequent payments during January of each FY.

Transition payments will be based on the Basic Quota Levels (BQLs) determined for each farm, and then for quota holders' ownership shares in the farm and producers' shares in the risk of producing quota tobacco on the farm during the years 2002, 2003 and 2004. For example, if a quota holder is the sole owner of a farm to which quota was assigned for the 2002 marketing year, the BQL established for that farm will also be the BQL for that quota holder. Similarly, if the quota holder has only a one-third ownership share in the farm, that quota holder's BQL will be one third of the BQL established for the farm.

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 TTPP. The regulations relating to the manner in which the assessment provisions of the 2004 Act are to be administered are set forth in 7 CFR part 1463 subpart A.

TTPP contract payments are made by CCC and have the same contractual sanctity as other CCC payments. Accordingly, while the source of the funding is primarily derived from assessments levied upon manufacturers and importers of tobacco products, the obligation arising from these contracts that accrues to CCC is the same as for any other CCC contract.

Eligible Quota Holders

Payments

Generally, this rule provides for payments to be made to persons who owned farms on October 22, 2004 for which tobacco quota was assigned for the 2004 marketing year. Payments to such persons, or quota holders, are based on the marketing quota assigned to the farm for the 2002 marketing year, as provided by 7 CFR part 723. The payment rate is $7 per pound of eligible quota, to be paid in equal installments over 10 years.

Generally, this rule also provides for payments to producers of quota tobacco. Overmarketings and undermarketings play a part in calculating burley and flue-cured producer BQL. They are both conditions that are the result of an action in one year that cause temporary quota adjustments the following year.

Overmarketings are tobacco pounds sold during a marketing year in excess of a farm's effective marketing quota for that year. The excess pounds of tobacco sold in one year are deducted from the next year's marketing quota for that farm.

Undermarketings for burley or flue-cured tobacco are tobacco that could have been sold during a marketing year but were not. There are two categories of undermarketings: actual and effective. Actual undermarketings are the pounds of tobacco by which the effective quota is more than the pounds of tobacco marketed during a marketing year. Effective undermarketings are the smaller of the actual undermarketings or the sum of the previous year's basic quota on the farm plus pounds that were temporarily transferred to that farm for the previous year.

The BQL calculation must consider in what year these over/under pounds were originally assigned to a farm because under the former tobacco program marketing quotas were adjusted each year by a national factor determined by CCC to account for changes in supply and demand. Because payments are to be based on 2002 quota levels, the quotas for each year must be adjusted to the 2002 level. For example, undermarketings that are carried forward from 2002 to 2003 are pounds that were already at the 2002 level. Therefore, in calculating 2003 BQL these 2002 undermarketings are deducted from the 2003 marketings; the BQL factor is applied to the remaining 2003 marketings to bring them to the 2002 level; and then the 2002 undermarketings are added back into the process. The adjustment process is more fully described in the Eligible

Quota Producers section of this Preamble.

The 2004 Act specifically addresses the situation where permanent transfers of tobacco-marketing quota were initiated prior to October 22, 2004, but not completed as of that date. Accordingly, in the case of the incomplete transfer of an entire farm, where the quota distribution has not been agreed upon, CCC has determined that the eligible tobacco quota holder will be considered to be the person contractually bound to purchase the entire farm. Similarly, the 2004 Act provides that where there was in existence on October 21, 2004, an agreement for the permanent transfer of the tobacco quota, but the transfer was not completed by October 21, 2004, the owner of the farm to which the tobacco quota was to be transferred will be considered to be the eligible tobacco quota holder.

If a written agreement was initiated before October 22, 2004 for the purchase of all or a portion of a farm, the transition payment will be disbursed as specified in the agreement so long as the resulting distribution is consistent with the 2004 Act. If a written agreement was initiated before October 22, 2004 for the purchase of all or a portion of a farm and the agreement specified the distribution of the farm's tobacco quota and the parties to the agreement do not concur about the manner in which such quota would be assigned to the different portions of the farm, payments will be made in a fair and equitable manner as determined by CCC taking into account any incomplete permanent transfer of such quota. Where there was a sale of part of the farm not yet completed by October 22, 2004, CCC will divide the disputed quota taking into account the ratio of cropland on the unsold portion of the farm to the cropland on the portion of the farm subject to the purchase contract.

Disputes

In the event there is a dispute regarding the determination of which persons are eligible quota holders on a farm, no payment to any quota holder on that farm will be made until all parties have agreed or until all administrative appeals have been exhausted. Also, if a farm is determined eligible for a permanent tobacco quota and all or part of that farm is sold after October 22, 2004, the tobacco quota attributed to the owner of the farm as of October 22, 2004 cannot be transferred for purposes of determining a TTPP payment. In addition, consistent with the manner in which CCC administers other commodity programs, a person who holds a life-estate interest in a farm with a tobacco quota will be considered the owner of the farm in determining who is an eligible tobacco quota holder. A person with a remainder interest, any other contingent interest, or any equitable interest as a creditor or otherwise in such farm or marketing quota will not be considered to be an owner of the farm for purposes of determining a TTPP payment. If such a person believes that a private sales transaction did not take into account these statutory and regulatory provisions, a private resolution of such a dispute must be undertaken by the parties to the contract; neither FSA nor CCC will participate in the resolution of such matter.

There may have been transfers of farms that were not reported to FSA, or incomplete transfers of tobacco quotas and farms as of October 22, 2004. Accordingly, in order to ensure that only persons who meet the requirements of the 2004 Act receive a TTPP payment, and to reduce debt collection efforts with respect to persons who improperly represented their eligibility status to CCC, CCC will require program participants to make certain representations regarding whether the tobacco quota or their farm had been transferred to another person.

This rule provides that if a person who is not the tobacco quota holder for a farm, as identified in FSA records, submits a TTPP contract or other written claim to CCC before May 31, 2005, no payments will be made with respect to such farm until CCC has determined the eligibility status of each claimant and any other person who may be eligible to receive the payment. This 60-day period is intended to provide an opportunity for anyone who should have reported to FSA under 7 CFR part 723, but did not (1) claim ownership in a farm or tobacco quota or; (2) transfer ownership of a farm or tobacco quota. If a contract or written claim is submitted to CCC after May 31, 2005, and either, the first TTPP payment is made to the tobacco quota holder identified in FSA records, or collected by CCC of FSA by administrative offset or other action, additional payments will not be made on the subject TTPP contract until CCC can determine the status of the competing claimants. The rule also provides that if a contract or other written claim is provided to CCC by May 31, 2005 by two or more persons for the same tobacco quota used to calculate a TTPP payment, no payment will be issued until CCC determines the eligibility status of each claimant. Therefore, in anticipation of disputes concerning assignment of a farm marketing quota for purposes of determining the TTPP payment, any person who intends to enter into a TTPP contract is advised to visit the USDA service center in the county where the farm is located to make corrections or changes to records that relate to the farm.

Quota Holder Assignments and Successor in Interest Contracts

Any quota holder may assign the payment to another party, using the correct CCC form, so long as the consideration for the assignment is greater than or equal to the discounted value based on the discount rate established by CCC, except that special provision will be made for assignments between immediate family members and persons who purchased a tobacco marketing quota prior to October 22, 2004 and, in accordance with 7 CFR part 723, placed the quota on anther person's farm, prior to such date, with consent of the owner. The discount rate will be established by CCC at the prime rate plus two percentage points rounded to the nearest whole number.

Any quota holder may execute a successor in interest contract for their TTPP payments, except the 2005 payment, by using the correct CCC form, and subject to the following conditions: (1) The quota holder must not be subject to the payment offset provisions of the Debt Collection Improvement Act of 1996 as a result of a debt to any agency of the United States; (2) Consideration for the succession to TTPP payments must be greater than or equal to the discounted value of the remaining payment stream based on the discount rate established by CCC, except that special provision will be made for assignments between immediate family members and persons who purchased a tobacco marketing quota prior to October 22, 2004 and, in accordance with 7 CFR part 723, placed the quota on anther person's farm, prior to such date, with consent of the owner; and (3) For payments to be issued the following January for the 2006 and successive year payments, the successor must file a successor in interest contract no later than November 1 of the preceding year.

Once it has been determined that a tobacco quota holder is eligible for a payment under this rule, and CCC has executed a TTPP contract with such quota holder, the person may sell all or a portion of his farm and still receive the TTPP payments. CCC will not execute a TTPP contract with a person who was the buyer of the farm in a transaction that took place after October 22, 2004 unless the seller who had previously been determined by CCC to be an eligible quota holder has executed a successor in interest contract, using the correct CCC form, in which the seller transfers all rights and obligations to the successor party, as approved by CCC.

Eligible Quota Producers

Generally, this rule provides for payments to persons who produced a crop or part of a crop of tobacco subject to a marketing quota in one or more of the 2002, 2003, and 2004-crop years. The Secretary will establish a base quota level (BQL) for each producer based on the 2002 marketing year effective quota produced on the farm each of the years 2002, 2003 and 2004. Marketing quota temporarily leased to a farm under disaster conditions will not be included in the receiving farm producer's BQL. The total payment of $3 per pound of eligible quota is to be paid at a rate of ⅓ that rate, or $1 per pound, for each of the years 2002, 2003 and 2004 in which the producer shared in the risk of producing the quota tobacco.

Where two or more persons shared in the risk of producing the same quota pound (for flue-cured and burley tobaccos only—effective undermarketings) the pound shall not be included in the producer's BQL for the year the effective undermarketing was suffered. Effective undermarketings are carried forward from the year suffered to the farm's next established marketing quota. These pounds were not factored when determining the national basic quota for the applicable year under 7 CFR part 723.

Actual undermarketings (flue-cured and burley tobacco only) that were not allowed to be carried forward to the farm's next established quota may be included in the producer's BQL where suffered to the extent the pounds were considered planted as defined under this subpart.

For burley tobacco, effective undermarketing pounds that were reduced under 7 CFR 723.206(c) in the 2004 marketing year will be included in the 2003 marketing year producer's BQL to the extent the quota was considered planted as defined under this subpart during the 2003 marketing year.

Overmarketings (flue-cured and burley only) exist when a farm markets in excess of the farm's effective quota established under 7 CFR part 723 and are deducted from the farm's next established marketing quota. To the extent the farm marketed penalty-free, these quota pounds will be included in the producer's BQL for the year in which the pounds were actually marketed, except in the 2004 marketing year. Overmarketings will be excluded from the 2004 marketing year producer's BQL because these pounds were not deducted from the farm's next established marketing quota.

For flue-cured and burley farms that temporarily leased quota pounds from the farm during the marketing year under disaster conditions these pounds will be included in the transferring farm's producer BQL and reduced from the receiving farm's producer BQL for the applicable year.

For tobaccos other than flue-cured and burley, marketing quotas were established under 7 CFR part 723 in acreage allotments. The acreage allotments will be converted to poundage quotas for purposes of determining the producer's BQL. In order to convert 2002 basic allotments established under 7 CFR part 723 to poundage quotas the allotment established will be multiplied by the farm's three-year average yield for the 2001, 2002 and 2003 crop years.

For all tobaccos for which temporary transfers of marketing quota were allowed under 7 CFR part 723 the producer's BQL will be adjusted to consider these pounds. An upward adjustment will be made to the receiving farm producer's BQL and a downward adjustment will be made to the transferring farm producer's BQL for each applicable year.

In order to calculate the producer's BQL for 2003 and 2004 marketing years, the BQL must be converted to the equivalent of the 2002 effective quota (flue-cured and burley) or the 2002 basic quota (tobaccos other than flue-cured and burley) level. This conversion will reverse the national marketing quota adjustments made by the Secretary for each applicable year. For this reason each producer's BQL for 2003 and 2004 will be broken down between basic quota pounds (adjusted annually by the Secretary) and effective undermarketing pounds (pounds for which two or more persons may have been at risk). Basic quota pounds will be adjusted using the BQL adjustment factor for the applicable kind of tobacco as shown in Table 1. The adjustment factor was determined for 2003 by dividing one by the national factor determined by FSA under 7 CFR part 723 for 2003 and, for 2004 by dividing one by the product of the national factor for 2003 times the national factor for 2004. The BQL factor, when applied to the 2003 or 2004 basic quota, will equate those years' basic quotas to the 2002 basic quota level. Effective undermarketings in the 2003 marketing year will not be adjusted because they were carried forward from the 2002 marketing year at the 2002 basic quota level. Effective undermarketings for the 2004 marketing year will be adjusted to the 2002 basic quota level using the 2003 adjustment factor shown in Table 1. These pounds were adjusted in 2003 from the 2002 level and will be factored to the 2002 basic quota level.

For burley farms where temporary transfers (not including disaster transfers) were approved, the receiving farm will be apportioned undermarketing pound history by dividing the transferring farm's prior year undermarketing pounds by the transferring farm's effective quota (before any temporary transfers) to determine a factor for apportionment of undermarketing pounds.

The receiving farm's share of undermarketing pounds will be determined by multiplying the transferring farm's apportionment factor by the receiving farms pounds leased from the transferring farm. The result will be subtracted from the total pounds leased into the receiving farm so the applicable BQL adjustment factor (Table 1) can be applied. The adjusted undermarketings leased to the receiving farm will be added to the receiving farm producer's BQL and subtracted from the transferring farm producer's BQL.

TABLE 1.—NATIONAL FACTORS AND BQL ADJUSTMENT FACTORS

Kind of Tobacco		2003	2004
Burley (type 31)	National Factor	.889	1.05
	BQL Adjustment Factor	[1] 1.124860	[2] 1.071295
Flue-Cured (types 11–14)	National Factor	.905	.895
	BQL Adjustment Factor	[1] 1.104970	[2] 1.234570
Fire-Cured (type 21)	National Factor	1.00	1.00
	BQL Adjustment Factor	[1] 1.00	[2] 1.00
Fire-Cured (types 22–23)	National Factor	1.02	1.03

TABLE 1.—NATIONAL FACTORS AND BQL ADJUSTMENT FACTORS—Continued

Kind of Tobacco		2003	2004
	BQL Adjustment Factor	[1].980392	[2].951837
Dark Air-Cured (types 35–36)	National Factor Factor	1.05	1.03
	BQL Adjustment	[1].952381	[2].924640
Va Sun-Cured (type 37)	National Factor	1.00	1.00
	BQL Adjustment Factor	[1] 1.00	[2] 1.00
Cigar Filler/Binder (types 42–44 and 54–55)	National Factor	1.12	.95
	BQL Adjustment Factor	[1].892900	[2].939800

[1] 2003 BQL adjustment factors were determined by dividing 1 by the 2003 national factor for the applicable kind of tobacco.
[2] 2004 BQL adjustment factors were determined by dividing 1 by the product of the 2003 national factor times the 2004 national factor for the applicable kind of tobacco.

Examples of BQL calculations are illustrated below.

Farm Example 1

Example 1 shows the BQL calculation for a single flue-cured producer for a farm that had no under-or over-marketings from a previous year, no temporary transfers (disaster), and marketed the entire effective quota for each of the years 2002, 2003 and 2004.

FARM EXAMPLE 1.—FLUE-CURED TOBACCO FARM

		2002	2003	2004
Basic Quota	+	1,000	905	810
Effective Undermarketings (previous year)	+	0	0	0
Overmarketings (previous year)	−	0	0	0
Lease Transfer To	+	0	0	0
Lease Transfer From	−	0	0	0
Effective Quota	=	1,000	905	810
Disaster Lease Transfer To	−	0	0	0
Disaster Lease Transfer From	+	0	0	0
TTPP Effective Quota (w/disaster leases)	=	1,000	905	810
Actual Marketings		1,000	905	810
Overmarketings		0	0	0
Actual Undermarketings		0	0	0
Effective Undermarketings		0	0	0
BQL Adjustment Factor	×	1.000000	1.104970	1.234570
Farm BQL	=	1,000	1,000	1,000
Producer Share	×	1.000	1.000	1.000
Total Payments	=	$1,000	$1,000	$1,000

Farm Example 2

Example 2 shows the BQL calculation for a single burley producer for a farm that had temporary transfers (not disaster) in 2002, 2003 and 2004. This farm did not have any under-or over-marketings from a previous year.

FARM EXAMPLE 2.—BURLEY TOBACCO FARM

		2002	2003	2004
Basic Quota	+	1,000	889	933
Effective Undermarketings (previous year)	+	0	0	0
Overmarketings (previous year)	−	0	0	0
Lease Transfer To	+	0	0	0
Lease Transfer From	−	500	500	500
Effective Quota	=	500	389	433
Disaster Lease Transfer To	−	0	0	0
Disaster Lease Transfer From	+	0	0	0
TTPP Effective Quota (w/disaster leases)	=	500	389	433
Actual Marketings		500	389	433
Overmarketings		0	0	0
Actual Undermarketings		0	0	0
Effective Undermarketings		0	0	0
BQL Adjustment Factor	×	1.000000	1.124860	1.071295
BQL	=	500	438	464
Producer share	×	1.000	1.000	1.000
Total Payments	=	$500	$438	$464

Farm Example 3:

Example 3 shows the BQL calculation for a single burley producer for a farm that had undermarketings from a previous year. In this example it is important to understand the separation of basic quota pounds from undermarketing pounds that are necessary in order to convert the 2003 or 2004 effective marketing quota to the applicable 2002 effective marketing quota level. As shown in this example the burley farm's basic quota for 2002 was 1,000 pounds and effective undermarketings (from 2001 marketing year) carried forward were 100 pounds. No temporary adjustments for leasing took place. The farm's 2002 effective quota was determined to be 1,100 pounds. The farm actually marketed 1,025 pounds which resulted in 75 pounds of actual undermarketings. Because the actual undermarketings are less than effective undermarketings brought forward from the 2001 marketing year all 75 pounds would be considered effective undermarketing in determining the farm's 2003 effective quota. Since the 75 pounds of effective undermarketings are included in both the 2002 and 2003 effective quota for the farm, the 75 pounds will be deducted from the producers BQL determined for 2002. In this case the producer's BQL for 2002 would be 1,025 pounds and the payment would be calculated as 1,025 pounds BQL multiplied by $1, or $1,025 for the producer with a 100-percent share in the 2002 crop.

In calculating the producer's BQL for the 2003 crop year the farm's marketing quota must be divided between basic quota pounds and undermarketings. This example shows the farm's basic quota was reduced from the 2002 marketing year (1,000 pounds) to the 2003 (889 pounds) marketing year. The farm has previous year effective undermarketings from 2002 (75 pounds). So that no pound is paid twice, the farm's actual marketings will be considered as the primary factor in determining the risk in production for the 2003 marketing year. Effective undermarketings will be deducted from the actual marketings so that the appropriate BQL adjustment factor from Table 1 can be applied to the basic quota. After adjusting the actual marketings to the 2002 effective quota level, the farm's adjusted marketing quota may, to the extent the quota was considered planted under this subpart, be adjusted upward to include the previous year effective undermarketing quota pounds in the producer's BQL.

The 2003 BQL calculation was performed as follows: 2002 effective undermarketings brought forward to 2003 marketing quota (75 pounds) are deducted from the farm's 2003 actual marketings (914 pounds). This is the necessary step to establish the farm's basic quota pounds so they can be adjusted to the 2002 basic quota level (839 pounds will be adjusted by the BQL adjustment factor of 1.12486 from Table 1). Once the 2002 basic quota level has been determined (944 pounds) the results must be adjusted to include the 2002 effective undermarketings (75 pounds). In this example the producer's BQL would be 1,019 pounds (944 pounds basic quota plus 75 pounds effective undermarketings) and the payment would be calculated as 1,019 pounds BQL multiplied by $1, or $1,019 for the producer with a 100-percent share in the 2003 crop.

In calculating the producer's BQL for the 2004 crop year the farm's marketing quota at the 2002 effective quota level the farm's effective quota must be divided between basic quota pounds and undermarketings. This example shows the farm's basic quota was increased from the 2003 marketing year (889 pounds) to the 2004 (993 pounds) marketing year, however the adjustment was still less than the 2002 marketing year (1,000 pounds) established for the farm. The farm's effective undermarketings from 2003 (50 pounds) will be deducted from the farm's basic quota (933 pounds) in order to convert the basic quota pounds to the 2002 basic quota level (933 pounds will be adjusted by the BQL adjustment factor of 1.071295 in Table 1). Once the 2002 basic quota level has been determined (1,000 pounds) the results must be adjusted to include the 2003 effective undermarketings (50 pounds will be adjusted by the BQL adjustment factor of 1.12486 from Table 1 or 56 pounds). The producer's 2004 BQL would be 1,056 pounds (1,000 pounds basic quota plus 56 pounds effective undermarketings) and the payment would be calculated as 1,056 pounds BQL multiplied by $1 or $1,056 for the producer with a 100 percent share in the 2004 crop. Since 2004 effective undermarketings and overmarketings will not be considered in establishing future year marketing quotas (program was repealed beginning with the 2005 crop year by the 2004 Act) the actual undermarketings suffered will be paid to the producer at risk during 2004 crop year on the farm. Similarly, had this farm overproduced and marketed in excess of the 2004 effective quota penalty-free, those pounds would not be considered in calculating the producer's BQL for 2004 because they could not be deducted from the next established marketing quota for the farm.

FARM EXAMPLE 3.—BURLEY TOBACCO FARM

		2002	2003	2004
Basic Quota	+	1,000	899	933
Effective Undermarketings (previous year)	+	100	75	50
Overmarketings (previous year)	−	0	0	0
Lease Transfer To	+	0	0	0
Lease Transfer From	−	0	0	0
Effective Quota	−	1100	964	983
Disaster Lease Transfer To	−	0	0	0
Disaster Lease Transfer From	+	0	0	0
TTPP Effective Quota	−	1100	964	983
Actual Marketings		1025	914	983
Overmarketings		0	0	0
Actual Undermarketings		75	50	0
Effective Undermarketings		75	50	0
BQL Adjustment Factor	×		1.124860	1.071295
Farm BQL	=	1,025	1,019	1,056
Producer share	×	1.000	1.000	1.000
Total Payments	=	$1,025	$1,019	$1,056

Farm Example 4

Example 4 shows the BQL calculation for a single flue-cured producer for a farm that had a temporary transfer (disaster) each of the years 2002, 2003 and 2004. This farm did not have any under- or over-marketings from a previous year.

FARM EXAMPLE 4.—FLUE-CURED TOBACCO FARM

		2002	2003	2004
Basic Quota	+	1,000	905	810
Effective Undermarketings (previous year)	+	0	0	0
Overmarketings (previous year)	−	0	0	0
Effective Quota	=	0	0	0
Disaster Lease to	−	0	0	0
Disaster Lease from	+	1,000	905	810
TTPP Effective Quota (w/disaster leases)	=	1,000	905	810
Actual Marketings		0	0	0
Overmarketings		0	0	0
Actual Undermarketings		0	0	0
Effective Undermarketings		0	0	0
BQL Adjustment Factor	×	1.0000	1.104970	1.234570
Farm BQL	=	1,000	1,000	1,000
Producer share	x	1.000	1.000	1.000
Total Payments		$1,000	$1,000	$1,000

Farm Example 5

Example 5 shows the BQL calculation for a single dark air-cured producer for a farm that had a temporary transfer to the farm each of the years 2002, 2003 and 2004.

FARM EXAMPLE 5.—DARK AIR-CURED TOBACCO FARM

		2002	2003	2004
Basic Allotment (acres)	+	3.52	3.70	3.81
Temporary Leased to	+	1.00	1.00	1.00
Temporary Leased from	−	0	0	0
Effective Allotment (acres)	=	4.52	4.70	4.81
BQL Adjustment Factor	×	1.0000	1.0497	1.23457
Effective Allotment at the 2002 Level	=	4.52	4.48	4.45
Farm's 2001–03 Average Yield (lbs./acre)	×	3,037	3,037	3,037
TTPP Effective Quota (Farm's Allotment Converted to Pounds)	=	13,727	13,606	13,515
Farm BQL	=	13,727	13,606	13,515
Producer Share	×	1.000	1.000	1.000
Total Payments	=	$13,727	$13,606	$13,515

Multiple Producers on a Farm

The 2004 Act provides that when more than one producer shared in the risk of producing tobacco on a farm in one or more of the 2002, 2003, and 2004 crop years, the producer may divide the payment on the farm in such manner as is fair and equitable. The producer must divide the payment in the same manner as all other CCC farm program payments are made by taking into consideration the degree to which a producer was at risk in the production of the crop in each of those three years. Subject to the preceding adjustment to reflect each producer's share in the production of each of the three crop years, a producer who produced tobacco in one of those years will receive ⅓ of the payment determined for the producers on the farm; a producer who produced tobacco in two of those years will receive ⅔ of the payment; and a producer who produced tobacco in all three years will receive all of the payment.

Disputes

In the event there is a dispute regarding the determination of which persons are eligible quota producers on a farm, no payment to a quota producer on such farm will be made until all parties have agreed or until all administrative appeals have been exhausted.

Producer share information on the TTPP contract shall be obtained from FSA–578 reported shares. Producers may change share percentages; however all producers on the farm for the applicable year must agree with the division of quota shares, not to exceed 100 percent. If producers are unable to agree with the share percentages, no payments to a quota producer on such farm will be made until all administrative appeals have been exhausted.

Producer Assignments and Successor in Interest Contracts

Any producer may assign the payment to another party, using the correct CCC form, so long as the consideration for the assignment is greater than or equal to the discounted value using the discount rate established by the CCC, except that special provision will be made for assignments between immediate family members, and persons who purchased a tobacco marketing quota prior to October 22, 2004 and, in accordance with 7 CFR part 723, placed the quota on another person's farm, prior to such date, with consent of the owner. The discount rate established by CCC will be equal to the prime rate plus two percentage points, rounded to the nearest whole number (for .5 and above, the rate will be rounded up).

Any producer may execute a successor in interest contract (except that the producer may not execute a successor in interest contract for the 2005 TTPP payment) using the correct CCC form, so long as the consideration for the successor in interest contract is greater than or equal to the discounted value using the discount rate established by CCC, except that special provision will be made for successor in interest contracts between immediate family members and persons who purchased a tobacco marketing quota prior to October 22, 2004 and, in accordance with 7 CFR part 723, placed the quota on another person's farm, prior to such date, with consent of the owner. The discount rate established by USDA will be equal to the prime rate plus two percentage points, rounded to the nearest whole number (for .5 and above, round up). In order for a successor in interest contract to be effective for the successive year payments, the successor must file such contract no later than November 1 for such contract to be effective for the following year and successive year payments. In no case will CCC approve a successor in interest contract if the producer is indebted to any agency of the United States and would be subject to the offset of payment provisions of the Debt Collection Improvement Act of 1996.

Deadlines

In summary, this rule contains two important time periods: (1) The program enrollment period which begins on March 14, 2005 and ends on June 17, 2005; and (2) the 60-calendar-day period from March 30, 2005 to May 31, 2005, which is the time in which a person not identified in FSA records as a tobacco quota holder or tobacco producer on a specific farm may submit a written claim under the program.

Late-filed applications will be accepted. However, if a person makes application after June 17, 2005, that person will not receive the 2005 TTPP payment. For subsequent payments, late-filed applications must be filed by November 1 in order to receive payments January of the next year. Applicants will not be eligible to receive payments otherwise issued in previous years.

Refunds of Importer Assessments

This final rule also provides for a Subpart C—Miscellaneous Provisions, so that CCC may set forth regulations needed in the administration of tobacco-related activities. This subpart contains, at this time, one provision relating to the manner in which refunds relating to assessments paid in the 2004 and prior marketing years by importers of flue-cured and burley tobacco may be submitted. CCC has allowed refunds to be made under 7 CFR 1464.105. New 7 CFR 1463.201 provides that CCC will no longer accept requests for refunds after August 1, 2005 for flue-cured tobacco and November 1, 2005 for burley tobacco. This action is necessitated by the need to terminate the operation of the tobacco price support programs and to provide for the transfer of flue-cured and burley tobacco pledged as collateral for CCC price support loans to cooperative marketing associations as provided for in section 641 of the 2004 Act.

Removal of Previous Tobacco Program Regulations

Effective November 1, 2005, this rule also will remove 7 CFR parts 723 and 1464, which provide the regulations for the tobacco marketing quota and price support programs, because they will no longer be needed after the termination of the program, as required by the 2004 Act. Removal of the parts is delayed until November 1, 2005 to allow completion of program activities.

Clarification of Tobacco Transition Assessment Program Regulations

This rule makes several clarifications in the regulations governing the Tobacco Transition Assessments published February 10, 2005 (70 FR 7007). The definitions of *class of tobacco* and *market share* are revised for clarity; § 1463.7(c) is revised regarding the division of class assessment to individual entities; and § 1463.8(b) is revised regarding the notification of assessments.

As provided in § 1463.7(a), the amount of a quarterly assessment owed by a domestic manufacturer or importer of tobacco products that must be remitted to CCC by the end of such quarter is based upon the application of the manufacturer's or importer's adjusted market share (which is such entity's share of the market in the immediately preceding calendar year quarter) to the amount of the national assessment that has been allocated to one of the six specified tobacco product sectors under § 1463.5. The obligation of the manufacturer or importer to make the payment is determined by its actions in the quarter immediately preceding the quarter in which the payment is due. Accordingly, this amount must be remitted to CCC whether or not the manufacturer or importer is engaged in the removal of tobacco or tobacco products into commerce in the calendar year quarter in which it receives notification of the amount of assessment owed at the end of such quarter. Section 1463.7 has been revised by adding paragraph (f) to make this provision clearer.

Cost/Benefit Assessment

The 2004 Act addresses major changes in the market for tobacco and the structure of the tobacco industry in general. The 2004 Act repeals marketing quotas, acreage allotments and price support loan programs for tobacco.

Largely because of the CCC price support program, domestic tobacco is higher-priced than imported tobacco, and to maintain demand the domestic market has been isolated from cheaper imports. Over the past several years, import restrictions have been reduced and demand for domestic tobacco declined in favor of cheaper imports. Thus, to maintain a balance between supply and demand, formulas provided in the 1938 Act reduced the amount of tobacco that could be grown for the domestic market. Between 1997 and 2002 there was a 50-percent decline in marketing quotas. The continued decline of quotas cast doubt on the continued viability of the quota and price support system, and elicited nationwide support repeal of the statutory authority for the program and for compensation for the lost value of tobacco quotas.

The number of farms growing tobacco in the United States declined from 512,000 in 1954 to 56,977 in 2002. Besides quota reductions, the decline in farm numbers resulted from the lease and transfer of quota between farms, within counties and across county lines. Also, innovation and technology have reduced labor requirements and changed the economies of scale for tobacco farming in general.

CCC is required to dispose of accumulated tobacco loan stocks. Any losses associated with such disposition are to be covered through assessments against tobacco manufacturers and importers. While the total amount of CCC uncommitted stocks cannot be known with certainty before the conclusion of the marketing year, uncommitted stocks amounted to about 261 million pounds on December 31, 2004. The 2004 Act requires that a portion of the loan stocks of each kind of tobacco be disposed of by the associations, which have entered into loan agreements with the CCC, in an amount determined by dividing their no-net-cost accounts by the list price of the loan stocks. Any stocks not transferred to the associations will be sold by CCC. The total of payments to quota owners and producers is about $9.6 billion (discussed below), leaving approximately $540 million of the total $10.14 billion maximum allowed assessments available to cover CCC losses on loan stocks and other eligible expenses. CCC will determine the list price of the loan stocks based upon the approved grade loan rate for green weight tobacco. Then the amounts in the no-net-cost accounts will be divided by this price to determine the quantities to distribute to the associations.

The expected impacts on tobacco quota holders, producers, and production as a result of these regulations are pervasive. Elimination of the tobacco program leaves remaining producers with no government price support for future production. In the absence of price support, tobacco producers will be subject to lower prices and increased price volatility. Although actual results cannot be determined, it is reasonable to assume that credit to finance production may be more difficult to obtain, and farmers will be reluctant to produce tobacco without written contracts from tobacco manufacturers that, in order to mitigate price risk, clearly establish the quantity of tobacco to be purchased and the price to be paid. Contract production, already representing a large portion of U.S. tobacco production, will likely increase. In the short run, tobacco prices should fall and the number of producers will decline. Income from quota rental, which was about $325 million in the flue-cured producing area in 1997, will be altogether eliminated. However, considering that quota values have declined in anticipation of additional reductions or program elimination, the $7-per-pound rate in the Act is in the range of quota values estimated by several research colleges. Payments to quota owners, based upon known payment rates and applicable quota levels, are estimated at about $6.7 billion.

Tobacco producers eligible for payments under the 2004 Act are estimated to receive about $2.9 billion, based upon the specified payment rate and known quota amounts. However, it is possible that, as a result of the transition payments, tobacco producers and quota owners may not receive the remaining Phase II payments of about $2.6 billion. Phase II payments were established in July 1999 in the National Tobacco Grower Settlement Trust Agreement, which provided for payments of $5.15 billion over 12 years to compensate tobacco growers and quota holders for reductions in tobacco production and sales resulting from the Master Tobacco Settlement reached in November 1998. The Fair and Equitable Tobacco Reform Act does not refer to Phase II, and the ongoing litigation regarding the agreements does not involve the Federal Government. However, the Phase II agreement provides that if future agreements provide compensation to producers for quota reductions or losses in production, then there is to be a dollar-for-dollar offset against Phase II payments.

Producers remaining in tobacco production are likely to experience increased efficiencies as a result of the 2004 Act. Removal of location restrictions will facilitate consolidation into larger and more efficient operations, while quota rents will be eliminated. While tobacco prices are expected to fall by 25 percent or more in the short run, over the longer term U.S. tobacco production is expected to recover from its recent downward trend. With domestically grown tobacco becoming available at lower prices, there will be reduced incentives to import foreign tobacco and U.S.-origin tobacco will be more competitive in the world market. U.S. tobacco prices should begin to recover after a few years and those producers remaining in the sector should see U.S. tobacco area and production increase well above levels of recent years.

The impact of the tobacco transition payment program on U.S. cigarette consumption is expected to be minimal, but cigarette consumption is expected to continue to decline as smokers find it increasingly difficult to smoke and more restrictions are imposed on places where they can smoke. The transition payments will result in the collection of approximately $10.14 billion from tobacco manufacturers and importers over a 10-year period, or about $1.014 billion annually. Manufacturers and importers are expected to pass these costs on to consumers of tobacco products and increase sales prices. Tobacco product demand is much more inelastic than supply. The price elasticity of demand for cigarettes is between −0.4 and −0.75, meaning that a 1-percent rise in the price of cigarettes reduces consumption by an estimated 0.4 percent to 0.75 percent. The average retail price of cigarettes is $3.8066 per pack and a 4.8-cent-per-pack increase in the price would equate to a 1.3-percent rise in the retail price. Thus, consumers are not expected to reduce consumption of tobacco products considerably due to the expected increases in tobacco prices attributable to the tobacco transition payments.

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 above.

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

The environmental impacts of this rule have been considered under 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 regulations for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and it was determined that the proposed action does not have the potential to significantly impact the quality of the human environment and, therefore, the rule is categorically excluded from further review under NEPA. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. This final 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).

Federal Assistance Program

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

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, Public Law 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 the program administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public do 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 the FSA in particular, to provide the public the option of either submitting information or transacting business electronically to the maximum extent possible. Because of the need to publish the regulations for this program quickly, the forms and other information collection activities required by participation in the TTPP are not yet fully implemented in a way that would allow the public to conduct business with FSA electronically. Accordingly, applications for this program may be submitted at the FSA county offices in person, by mail, or by facsimile.

List of Subjects

7 CFR Part 723

Acreage allotments, Cigarettes, Marketing quotas, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 1463

Agriculture, Agricultural commodities, Acreage allotments, Marketing quotas, Price support programs, Tobacco, Tobacco transition payments.

7 CFR Part 1464

Loan programs—tobacco, Price support programs—tobacco, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR chapters VII and XIV are amended as follows:

CHAPTER VII—FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 723—[REMOVED]

■ 1. Remove 7 CFR part 723.

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

PART 1463—2005–2014—TOBACCO TRANSITION PROGRAM

■ 2. The authority citation for part 1463 continues to read as follows:

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

Subpart A—Tobacco Transition Assessments

■ 3. In § 1463.3, revise the definitions for *class of tobacco* and *market share* to read as follows:

§ 1463.3 Definitions.

* * * * *

Class of tobacco means each of the following types of tobacco and tobacco products for which taxes are required to be paid for the removal of such into domestic commerce: cigarettes; cigars; snuff; roll-your-own tobacco; chewing tobacco; and pipe tobacco.

* * * * *

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 the base period. Such sales shall be determined by CCC by using the total volume of such class of tobacco product that is removed into domestic commerce in the base period.

* * * * *

■ 4. Amend § 1463.7 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 1463.7 Division of class assessment to individual entities.

* * * * *

(b) For purposes of determining the volume of domestic sales of each class of tobacco products and for each entity, such sales shall be based upon the reports filed by domestic manufacturers and importers of tobacco with the Department of Treasury and the Department of Homeland Security and shall correspond to the quantity of the tobacco product that is removed into domestic commerce by each such entity:

(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, except for cigars, 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. With respect to cigars, CCC will determine the adjusted market share for each manufacturer or importer of a class of tobacco products based on the number of such products removed into domestic commerce.

(d) The amount of a quarterly assessment owed by a domestic manufacturer or importer of tobacco products that must be remitted to CCC by the end of a calendar year quarter is based upon the application of the manufacturer's or importer's adjusted market share to the amount of the national assessment that has been allocated to one of the six specified tobacco product sectors under § 1463.5. As provided in § 1463.3, this adjusted market share is determined by the actions of such manufacturer or importer in a prior calendar year quarter. Accordingly, this amount must be remitted to CCC whether or not the manufacturer or importer is engaged in the removal of tobacco or tobacco products into commerce in the calendar year quarter in which it receives notification of the amount of assessment owed to CCC.

■ 5. Revise § 1463.8(b)(5) and (b)(6) to read as follows:

§ 1463.8 Notification of assessments.

* * * * *

(b) * * *

(5) The volume of gross sales of each class of tobacco that CCC has allocated to the domestic manufacturer or importer of tobacco products for the purposes of determining such entity's adjusted market share. The volume of gross sales of each class of tobacco allocated to such an entity shall correspond to the quantity of the tobacco product that is removed into domestic commerce by each such entity;

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

tobacco shall correspond to the total quantity of the tobacco product that is removed into domestic commerce.

* * * * *

■ 6. Amend part 1463 by adding Subparts B and C, to read as follows:

Subpart B—Tobacco Transition Payment Program

Subpart C—Miscellaneous Provisions

Subpart B—Tobacco Transition Payment Program

§ 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 production of a kind of tobacco in a county, 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 and 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 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 tobacco was produced, or considered planted, pursuant to a tobacco poundage quota or acreage allotment assigned to the farm for the 2002, 2003 or 2004 marketing years and who otherwise meets the requirements in § 1463.104.

Experimental tobacco means tobacco grown by or under the direction of a publicly-owned agricultural experiment station for experimental purposes.

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; grandparent 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 September 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 tobacco other than flue-cured, the period beginning October 1 of the current year and ending September 30 of the following year.

NASS means the National Agricultural 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 national 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 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.

§ 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, and includes only undermarketings that were not part of the farm's 2003 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.12486 has been applied to the overmarketed pounds.

(2) The 2003-crop year BQL for burley producers is the 2003 effective quota pounds actually marketed, adjusted for disaster lease and transfer and considered-planted undermarketings and overmarketings, as follows:

(i) Disaster leases are added to the marketings of the transferring farm and deducted from the marketings of receiving farm.

(ii) Considered-planted pounds are added to the farm's actual marketings, and includes only undermarketings that were not part of the farm's 2004 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.071295 has been applied to the overmarketed pounds.

(iv) After these adjustments the BQL is calculated as follows:

Step	Calculation
1	Subtract all 2002 undermarketings from the 2003 marketings, including undermarketings from the parent farm in any special tobacco combinations. Leased pounds are apportioned undermarketing history by dividing the transferring farm's undermarketings by the transferring farm's effective quota, before any temporary transfers, resulting in the percentage of undermarketings that were leased.
2	Multiply the 2003 marketings remaining after Step 1 times 1.12486 (the 2003-BQL adjustment factor).
3	Add the undermarketings that were subtracted in Step 1 to the sum of Step 2 to determine the farm 2003 BQL.
4	Multiply the sum from Step 3 times the producer's share in the 2003 crop to determine the producer's 2003 BQL.

(3) The 2004-crop year BQL for burley producers is the 2004 effective quota before disaster lease and transfer is calculated as follows:

Step	Calculation
1	Subtract all 2003 undermarketings from the 2004 effective quota, including undermarketings from the parent farm in any special tobacco combinations. Leased pounds are apportioned undermarketing history by dividing the transferring farm's undermarketings by the transferring farm's effective quota, before any temporary transfers, resulting in the percentage of undermarketings that were leased.
2	Multiply the 2004 effective quota remaining after Step 1 times 1.071295 (the 2004 BQL adjustment factor).
3	Multiply the undermarketings that were subtracted in Step 1 times 1.12486 (the 2003 BQL adjustment factor).
4	Add the effective quota from Step 2 to the undermarketings in Step 3 to determine the farm 2004 BQL.
5	Multiply the sum from Step 4 times the producer's share in the 2004 crop to determine the producer's 2004 BQL.

(c) The BQL for producers of flue-cured tobacco is established by year, as follows:

(1) The 2002-crop year BQL for flue-cured producers is the effective 2002 quota 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. Adjustments for disaster lease and transfer and considered-planted undermarketings and overmarketings are calculated 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, and include only undermarketings that were not part of the farm's 2003 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.10497 has been applied to the overmarketed pounds.

(2) The 2003-crop year BQL for flue-cured producers is the 2003 effective quota actually marketed, adjusted for disaster lease and transfer and considered-planted undermarketings and overmarketings, as follows:

(i) Disaster leases 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, and includes only undermarketings that were in not part of the farm's 2004 effective quota.

(iii) Pounds actually marketed as overmarketings and sold penalty-free are added to the farm BQL after the BQL adjustment factor of 1.23457 has been applied to the overmarketed pounds.

(iv) After these adjustments the BQL is calculated as follows:

Step	Calculation
1	Subtract all 2002 undermarketings from the 2003 marketings, including undermarketings from the parent farm in any special tobacco combinations.
2	Multiply the 2003 marketings remaining after Step 1 times 1.10497 (the 2003 BQL adjustment factor).
3	Add the undermarketings that were subtracted in Step 1 to the sum of Step 2 to determine the farm 2003 BQL.
4	Multiply the sum from step 3 times the producer's share in the 2003 crop to determine the producer's 2003 BQL.

(3) The 2004-crop year BQL for flue-cured producers is the 2004 effective quota before disaster lease and transfer. The 2004 BQL is calculated as follows:

Step	Calculation
1	Subtract all 2003 undermarketings from the 2004 effective quota, including undermarketings from the parent farm in any special tobacco combinations.
2	Multiply the 2004 effective quota remaining after Step 1 times 1.23457 (the 2004 BQL adjustment factor).
3	Multiply the undermarketings that were subtracted in Step 1 times 1.10497 (the 2003 BQL adjustment factor).
4	Add the effective quota from Step 2 to the undermarketings in Step 3 to determine the farm 2004 BQL.
5	Multiply the sum from Step 4 times the producer's share in the 2004 crop to determine the producer's 2004 BQL.

(d) The BQL for producers of cigar filler and binder tobacco is established by years, as follows:

(1) The 2002-crop year BQL for cigar filler and binder tobaccos is calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2004 farm base pounds total.
2	Multiply any 2002 special tobacco combination acres times the 2002-equivalence factor of 1.000.
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2003 to get the 2002 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3 to get the 2004 farm BQL total.
5	Multiply the sum from Step 4 times the producer's share in the 2002 crop to get the producer 2002 BQL.

(2) The 2003-crop year BQL for cigar filler and binder tobaccos is calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2003 farm base pounds total.
2	Multiply any 2003 special tobacco combination acres times the 2003 BQL adjustment factor of 0.8929.
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2003 to get the 2003 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3 to get the 2003 farm BQL total.
5	Multiply the sum from Step 4 times the producer's share in the 2003 crop to get the producer 2003 BQL.

(3) The 2004-crop year BQL for cigar-filler and binder tobaccos is calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2004 farm base pounds total.
2	Multiply any 2004 special tobacco combination acres times the 2004 BQL adjustment factor of 0.9398.
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2004 to get the 2003 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3 to get the 2004 farm BQL total.
5	Multiply the sum from Step 4 times the producer's share in the 2004 crop to get the producer 2004 BQL.

(e) The BQL's for producers of all kinds of tobacco other than burley, flue-cured and cigar filler and binder, are established by year, as follows.

(1) The 2002-crop year BQL's for these kinds of tobaccos are calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2002 farm base pounds total.
2	Multiply any 2002 special tobacco combination acres times the farm's average yield for 2001, 2002, and 2003 to get the 2002 special tobacco combinations pounds total.
3	Add the sum from Step 1 to the sum from Step 2.
4	Multiply any 2002 acres leased to or from the farm times the farm's average yield for 2001, 2002, and 2003 to get the 2002 lease pounds total. Then, to the sum from either: (i) Step 3, add pounds leased to the farm to get the farm 2002 BQL total (ii)Step 3, subtract pounds leased from the farm to get the farm 2002 BQL total.
5	Multiply the result from Step 4 times the producer's share in the 2002 crop to get the producer 2002 BQL.

(2) The 2003-crop year BQL's for these kinds of tobaccos are calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2003 farm base pounds total.
2	Multiply any 2003 special tobacco combinations acres times the applicable 2003 BQL adjustment factor: (i) Fire-cured (type 21)—1.0000 (ii) Fire-cured (types 22–23)—.980392 (iii) Dark Air-cured (35–36)—.952381 (iv) Virginia Sun-cured (type 37) 1.0000
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2003 to get the 2003 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3.
5	Multiply any 2003 acres leased times the applicable 2003 BQL adjustment factor: (i) Fire-cured (type 21) 1.0000 (ii) Fire-cured (types 22–23)—.980392 (iii) Dark Air-cured (35–36)—.952381 (iv) Virginia Sun-cured (type 37) 1.0000
6	Multiply the sum from Step 5 times the farm's average yield for 2001, 2002, and 2003 to get the 2003 lease pounds total.
7	To the sum from Step 4 either: (i) Add pounds from Step 6 leased to the farm to get the farm 2003 BQL total (ii) Subtract pounds from Step 6 leased from the farm to get the farm 2003 BQL total.

Step	Calculation
8	Multiply the sum from Step 7 times the producer's share in the 2003 crop to get the producer 2003 BQL total.

(3) The 2004-crop year BQL's for these kinds of tobaccos are calculated as follows:

Step	Calculation
1	Multiply the 2002 farm's basic allotment times the farm's average yield for 2001, 2002, and 2003 to get the 2004 farm base pounds total.
2	Multiply any 2004 special tobacco combinations acres times the applicable 2004 BQL adjustment factor: (i) Fire-cured (type 21) 1.0000 (ii) Fire-cured (types 22–23)—.951837 (iii) Dark Air-cured (35–36)—.94264 (iv) Virginia Sun-cured (type 37) 1.0000
3	Multiply the sum from Step 2 times the farm's average yield for 2001, 2002, and 2003 to get the 2004 farm special tobacco combination pounds total.
4	Add the sum from Step 1 to the sum from Step 3.
5	Multiply any 2004 acres leased times the applicable 2004 BQL adjustment factor: (i) Fire-cured (type 21) 1.0000 (ii) Fire-cured (types 22–23)—.951837 (iii) Dark Air-cured (35–36)—.92464 (iv) Virginia Sun-cured (type 37) 1.0000
6	Multiply the sum from Step 5 times the farm's average yield for 2001, 2002, and 2003 to get the 2004 lease pounds total.
7	To the sum from Step 4 either: (i) Add pounds from Step 6 leased to the farm to get the farm 2004 BQL total (ii) Subtract pounds from Step 6 leased from the farm to get the farm 2004 BQL total.
8	Multiply the sum from Step 7 times the producer's share in the 2004 crop to get the producer 2004 BQL total.

§ 1463.107 Payment to eligible quota holders.

(a) The total amount of contract payments that may be made to an eligible quota holder shall be the product obtained by multiplying:

$7.00 per pound × the BQL for the quota holder as determined under § 1463.105 for each kind of tobacco

(b) During each of the fiscal years 2005 through 2014, CCC will make a payment to each eligible quota holder in an amount equal to 10 percent of the total amount due under a contract entered into under this subpart, except that in the case an application was filed after June 17, 2005, the applicant will receive only the TTPP payments that have not been made as of the date the contract is approved. However, in order for the contract participant to receive the 2005 TTPP payment an application to enter into a TTPP contract must be filed no later than June 17, 2005. CCC may, in its discretion, extend any deadline set forth in this paragraph. However, CCC will make the FY 2005 payment between June and September of 2005, and subsequent payments will be made in January, to the extent practicable, of each FY.

§ 1463.108 Payment to eligible tobacco producers.

(a) Subject to paragraph (b) of this section, the total amount of contract payments that may be made to an eligible tobacco producer shall be the product obtained by multiplying:

$3.00 per pound × the BQL for the producer determined under § 1463.106 for each kind of tobacco

(b) Payments to an eligible producer shall be equal to:

(1) For an eligible producer that produced tobacco that was marketed or considered by CCC as planted under a marketing quota in all of the 2002, 2003, and 2004 marketing years, 100 percent of the rate specified in paragraph (a) of this section;

(2) For an eligible producer that produced tobacco that was marketed or considered by CCC as planted under a marketing quota in any two of the 2002, 2003, and 2004 marketing years, 2/3 of the rate specified in paragraph (a) of this section; and

(3) For an eligible producer that produced tobacco that was marketed, or considered by CCC as planted under a marketing quota in any one of the 2002, 2003, and 2004 marketing years, 1/3 of the rate specified in paragraph (a) of this section.

(c) During each of the fiscal years 2005 through 2014, CCC will make a payment to each eligible producer in an amount equal to 10 percent of the total amount due under a contract entered into under this subpart except that in the case an application was filed after June 17, 2005, the applicant will receive only the TTPP payments that have not been made as of the date the contract is approved. However, in order for the contract participant to receive the 2005 TTPP payment, an application to enter into a TTPP contract must be filed no later than June 17, 2005. CCC may, in its discretion, extend any deadline set forth in this paragraph. However, CCC will make the FY 2005 payment between June and September of 2005, and subsequent payments will be made in January, to the extent practical, of each FY.

§ 1463.109 Contracts.

(a) CCC will enter into a contract with eligible tobacco quota holders and producers. To the extent a person has filed such a contract with CCC, but a final administrative decision has not been made with respect to such person's status as an eligible quota holder or tobacco producer prior to the final enrollment date, CCC will enter into such a contract only upon the issuance of a final determination of eligibility and the passing of any deadline for any administrative appeal under parts 780 and 11 of this title.

(b)(1) If contracts or other written claims are provided to CCC by June 3, 2005, by two or more persons with respect to the same tobacco BQL used to calculate a program payment, CCC will not issue such payment until CCC has determined the eligibility status of each claimant.

(2) If CCC has made a payment to a person after June 3, 2005, a person who is not an eligible holder or producer, as identified on FSA records, for such farm, or claims to be an eligible tobacco holder or producer and submits a contract or other written claim with CCC for the same quota used to issue the initial payment, CCC will issue no further payments for such farm until CCC has determined the eligibility status of each person who has submitted a contract or other written claim for such farm and the occurrence of the repayment of the initial payment made by CCC.

§ 1463.110 Misrepresentation and scheme or device.

A person must refund all payments received on all contracts entered into under this subpart, plus interest as determined in accordance with part 1403 of this chapter, and pay to CCC liquidated damages as specified in the contract, if CCC determines the person has:

(a) Erroneously represented any fact affecting a program determination made in accordance with this subpart;

(b) Adopted any scheme or device that tends to defeat the purpose of the program; or

(c) Made any fraudulent representation affecting a program determination made in accordance with this subpart.

§ 1463.111 Offsets and assignments.

(a) TTPP payments made to any person under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the tobacco quota, tobacco marketing allotment, or the farm for which a tobacco quota had been established under part 723 of this title by any creditor or any other person.

(b) The provisions of part 1404 of this title shall not apply to this part.

(c) A quota holder or tobacco producer who is eligible to receive a payment under this part may assign a payment, or a portion thereof, to be made under this part to another person using the correct CCC form. Such an assignment will become effective upon approval by CCC. In order to provide for the orderly issuance of payments under this part, CCC may limit, in its sole discretion, the number of assignments that may be made with respect to a contract.

(d)(1) CCC will establish, after consultation with the Department of the Treasury, a discount rate that reflects the value of any remaining payments due under this part if such payments were to be made as a lump sum payment in the current year. Unless there is consideration for such contract in an amount equal to or greater than the discounted value of the payments, subject to the assignment, based on the discount rate established for such payments by CCC, CCC will not approve any assignment other than to:

(i) A family member; or

(ii) A party who had purchased a tobacco marketing quota prior to October 22, 2004 and had placed the quota on a farm with the owner's consent prior to that date in the manner that had been prescribed by FSA under part 723 of this chapter.

(2) The discount rate established by CCC will be determined by adding 200 basis points to the prime lending rate, as determined by CCC. If this sum is a fraction of a number, CCC will round the discount rate to the nearest whole number. Rounding of a half percent will be to the next higher whole number.

(e) CCC will issue a payment to an assignee only to the extent and amount of payment that CCC would otherwise have issued to the quota holder or producer in the absence of the assignment. In accordance with part 1403 of this title, any claim owed by the assignor to the United States will be deducted from any payment made under this part prior to the issuance of the payment to the assignee.

(f) CCC will report to the Internal Revenue Service any payment assigned under this section as income earned by the assignor.

§ 1463.112 Successor in interest contracts.

(a) A quota holder or tobacco producer who is eligible to receive a payment under this part, and for whom a claim has not been established by the United States, may enter into a successor in interest contract with another party using the correct CCC form. Such successor in interest contract will become effective upon approval by CCC, and will not include the 2005 payment. Only one such successor in interest contract may be entered into by a quota holder or tobacco producer with respect to a farm for each kind of tobacco.

(b) Annually, CCC will establish, after consultation with the Department of the Treasury, a discount rate that reflects the value of any remaining payments due under this part if such payments were to be made as a lump sum payment in the current year. This discount rate will be determined as provided in § 1463.111(d)(2). Unless there is consideration for such contract in an amount equal to or greater than the discounted value of the payments, subject to the successor in interest or contract, based on the discount rate established for such payments by CCC, CCC will not approve any succession in interest contract other than to:

(1) A family member; or

(2) A party who had purchased a tobacco marketing quota prior to October 22, 2004 and had placed the quota on a farm with the owner's consent prior to that date in the manner that had been prescribed by FSA under part 723 of this chapter.

(c) CCC will issue a payment, except the 2005 payment, to a successor party only if such party is otherwise in compliance with all other applicable regulations, which includes for successors to producer contracts only the wetlands and highly erodible land provisions of part 12 of this chapter. In accordance with part 1403 of this title, any claim owed by the successor party to the United States will be deducted from any payment made under this part prior to the issuance of the payment to the successor party.

(d) CCC will report to the Internal Revenue Service any payment made under a successor in interest contract as income earned by the successor party.

§ 1463.113 Issuance of payments in event of death.

If a quota holder or tobacco producer who is eligible to receive a payment under this subpart dies, the right to receive payments shall be transferred to the estate of the quota holder or tobacco producer unless such person is survived by a spouse or one or more dependents, in which case the right to receive the payments shall be transferred to the surviving spouse.

§ 1463.114 Appeals.

A person may obtain reconsideration and review of any adverse determination made under this subpart in accordance with the appeal regulations found at parts 11 and 780 of this title.

Subpart C—Miscellaneous Provisions

§ 1463.201 Refunds of importer assessments.

Assessments paid on imported flue-cured or burley tobacco under sections 106A and 106B of the Agricultural Act of 1949 with respect to imports in the 2004 and prior marketing years may be refunded by CCC in accordance with the provisions of 7 CFR 1464.105 that were in effect prior to March 30, 2005, so long as such request for refunds are filed in accordance with such part no later than:

(a) August 1, 2005 for flue-cured tobacco; and

(b) November 1, 2005 for burley tobacco.

PART 1464—[REMOVED]

■ 7. Remove part 1464.

Signed at Washington, DC, March 29, 2005.

James R. Little,

Administrator, Farm Service Agency, and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 05–6455 Filed 3–30–05; 12:10 pm]

BILLING CODE 3410–05–U