

108TH CONGRESS
1ST SESSION

H. R. 1566

To replace the existing Federal price support and quota programs for flue-cured and burley tobacco with a licensing program designed to assist the actual producers of flue-cured and burley tobacco, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2003

Mr. COBLE introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To replace the existing Federal price support and quota programs for flue-cured and burley tobacco with a licensing program designed to assist the actual producers of flue-cured and burley tobacco, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Phase III Implementation Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and Purpose.

TITLE I—TOBACCO PRODUCTION LICENSES

Sec. 101. Definitions of historic tobacco producer and licensed tobacco producer.
Sec. 102. National estimate of tobacco production levels.
Sec. 103. National tobacco marketing factor.
Sec. 104. Issuance of tobacco production licenses.
Sec. 105. Annual authorized tobacco production under tobacco production licenses.
Sec. 106. Termination of flue-cured and burley quota programs.
Sec. 107. Program Referenda.
Sec. 108. Effective date.

TITLE II—TOBACCO COST OF PRODUCTION SUPPORT

Sec. 201. Tobacco Cost of Production Calculation.
Sec. 202. Effective date.

1 SEC. 2. FINDINGS AND PURPOSE.

2 (a) FINDINGS.—Congress finds the following:
3 (1) Tobacco production is conducted extensively
4 in a number of States and generates significant in-
5 come in local communities in these States, which
6 have historically relied on such production for eco-
7 nomic vitality.
8 (2) Tobacco products manufactured from to-
9 bacco grown in these States are transported in inter-
10 state commerce.
11 (3) Domestic trends affecting tobacco produc-
12 tion have had a disproportionately harsh impact on
13 small family farms and on their communities.
14 (4) The Federal tobacco program has become
15 inefficient and has operated to keep a significant
16 portion of tobacco production rights in the hands of

1 individuals who are not directly involved in tobacco
2 production.

3 (5) The continuation of a Federal tobacco sup-
4 ply management program is in the best interests of
5 family farm operations that seek to continue to
6 produce tobacco leaf.

7 (6) Any efforts to assist flue-cured and burley
8 tobacco growers in making a transition to a stable
9 future economic environment must include mod-
10 ernization of the Federal tobacco program.

11 (b) PURPOSE.—It is the purpose of this Act to mod-
12 ernize the Federal supply management program for flue-
13 cured and burley tobacco producers by shifting tobacco
14 leaf production rights into the hands of active flue-cured
15 and burley tobacco growers.

16 **TITLE I—TOBACCO PRODUCTION
17 LICENSES**

18 **SEC. 101. DEFINITIONS OF HISTORIC TOBACCO PRODUCER
19 AND LICENSED TOBACCO PRODUCER.**

20 In this title:

21 (1) The term “historic tobacco producer”
22 means an owner, operator, landlord, tenant, or
23 sharecropper who bore, individually or collectively,
24 the risk of producing a crop of flue-cured or burley
25 tobacco on a farm for the 2003 crop year.

10 SEC. 102. NATIONAL ESTIMATE OF TOBACCO PRODUCTION

11 **LEVELS.**

12 (a) ANNUAL CALCULATION.—

6 (A) the aggregate of quantities of flue-
7 cured or burley tobacco that domestic manufac-
8 turers of cigarettes estimate the manufacturers
9 intend to purchase on the United States auction
10 markets or from producers during the mar-
11 keting year, as compiled and determined under
12 subsection (b);

13 (B) the average annual quantity of flue-
14 cured or burley tobacco exported from the
15 United States during the 3 marketing years im-
16 mediately preceding the marketing year for
17 which the determination is being made; and

18 (C) the quantity, if any, of flue-cured or
19 burley tobacco that the Secretary, in the discre-
20 tion of the Secretary, determines is necessary to
21 increase or decrease the inventories of the pro-
22 ducer-owned cooperative marketing associations
23 that have entered into loan agreements with the
24 Commodity Credit Corporation to make price
25 support available to producers of flue-cured or

1 burley tobacco to establish or maintain such in-
2 ventories, in the aggregate, at the reserve sup-
3 ply level for flue-cured or burley tobacco.

4 (b) MANUFACTURER PURCHASE ESTIMATES.—Not
5 later than December 1 of each calendar year with respect
6 to flue-cured tobacco, and January 15 of each calendar
7 year with respect to burley tobacco, each domestic manu-
8 facturer of cigarettes shall submit to the Secretary of Ag-
9 riculture a statement, by kind, of the quantity of flue-
10 cured tobacco and burley tobacco that the manufacturer
11 intends to purchase, directly or indirectly, on the United
12 States auction markets or from licensed tobacco producers
13 during the next marketing year.

14 (c) FAILURE TO SUBMIT, OR UNDER-PURCHASE OF,
15 PURCHASE INTENTIONS.—

16 (1) A domestic manufacturer of cigarettes shall
17 be subject to the penalty under paragraph (2) if
18 such manufacturer fails to—

19 (A) submit to the Secretary of Agriculture
20 purchase intentions as required under sub-
21 section (b) for a marketing year, but subse-
22 quently purchases tobacco on the United States
23 auction markets or from licensed tobacco pro-
24 ducers during that marketing year, or

15 (A) twice the per pound assessment (as de-
16 termined under Section 106A or 106B of the
17 Agricultural Act of 1949 (7 U.S.C. 1445–1 or
18 1445–2)) for the kind of tobacco involved; by

19 (B) the quantity—

20 (i) of purchases described in para-
21 graph (1)(A); or

22 (ii) by which the purchases by such
23 manufacturer described in paragraph
24 (1)(B) are less than ninety percent of the
25 quantity of intended purchases of such

1 kind of tobacco (as that quantity may be
2 reduced under paragraph (3)).

16 (d) ENFORCEMENT.—The Secretary of Agriculture
17 may enforce subsection (c) in the courts of the United
18 States.

19 (e) RESERVE SUPPLY LEVEL.—

20 (1) The reserve supply level for flue-cured to-
21 bacco under subparagraph (a)(3)(C) shall be the
22 greater of—

23 (A) 60,000,000 pounds (farm sales
24 weight); or

1 (B) 10 percent of the national estimate for
2 flue-cured tobacco for the marketing year im-
3 mediately preceding the marketing year for
4 which the level is being determined (or for the
5 2004 crop of flue-cured tobacco, 10 percent of
6 the national marketing quota for the 2003 mar-
7 keting year).

11 (A) 50,000,000 pounds (farm sales
12 weight); or

13 (B) 15 percent of the national estimate for
14 burley tobacco for the marketing year imme-
15 diately preceding the marketing year for which
16 the level is being determined (or for the 2004
17 crop of burley tobacco, 15 percent of the na-
18 tional marketing quota for the 2003 marketing
19 year).

20 SEC. 103. NATIONAL TOBACCO MARKETING FACTOR.

21 (a) 2004 CROP.—For the 2004 crop, the national
22 marketing factor for flue-cured or burley tobacco shall be
23 the ratio of the national estimate determined under section
24 102(a) to the national marketing quota for the 2003 mar-
25 keting year.

1 (b) SUBSEQUENT CROPS.—For the 2005 and subse-
2 quent crops, the national marketing factor for flue-cured
3 or burley tobacco for a crop year shall be the ratio of—

4 (1) the national estimate determined under sec-
5 tion 102(a); to

6 (2) the sum of the quantity of flue-cured or
7 burley tobacco that is authorized to be produced
8 pursuant to a tobacco production license for the im-
9 mediately preceding year for all farms for which to-
10 bacco production licenses will be determined for such
11 succeeding marketing year.

12 **SEC. 104. ISSUANCE OF TOBACCO PRODUCTION LICENSES.**

13 (a) INITIAL ISSUANCE TO HISTORIC TOBACCO PRO-
14 DUCERS.—

15 (1) ISSUANCE.—

16 (A) ISSUANCE REQUIRED.—As soon as
17 practicable after the date of the enactment of
18 this Act, the Secretary of Agriculture shall
19 issue to each historic tobacco producer a to-
20 bacco production license for the purpose of en-
21 suring sufficient production of flue-cured and
22 burley tobacco to satisfy the national estimate
23 determined under section 102.

24 (B) EXCEPTION.—The Secretary shall not
25 issue a tobacco production license to an historic

1 tobacco producer with respect to flue-cured or
2 burley tobacco if the historic tobacco producer
3 does not certify to the Secretary that such pro-
4 ducer intends to produce such type of tobacco
5 during the 2004 crop year.

6 (2) TOBACCO PRODUCTION HISTORY.—

7 (A) The tobacco production license issued
8 to an historic tobacco producer under para-
9 graph (1) shall specify the tobacco production
10 history of the producer for each type of tobacco
11 for each county in which the producer bore, in-
12 dividually or collectively, the risk of producing
13 a crop of tobacco on a farm in the county for
14 the 2003 crop year.

15 (B) In the case of an historic tobacco pro-
16 ducer who bore 100 percent of the risk of pro-
17 ducing a type of tobacco on a farm for the
18 2003 crop year, the tobacco production history
19 of the historic tobacco producer for that type of
20 tobacco in a county shall be equal to the 2003
21 marketing and effective quota of that type to-
22 bacco produced by the producer in the county
23 for commercial use during the 2003 crop year.

24 (C) In the case of an historic tobacco pro-
25 ducer who bore less than 100 percent of the

1 risk of production, the Secretary of Agriculture
2 shall adjust the tobacco production history to
3 reflect the percentage of risk that was borne by
4 the producer.

5 (D) The Secretary of Agriculture shall au-
6 thorize a production level under each tobacco
7 production license for the 2004 crop determined
8 by multiplying the tobacco production history
9 by the national marketing factor for the 2004
10 crop.

1 or shared in the risk of producing a crop of that
2 type of tobacco for the 2003 crop year. The option
3 to make this election shall be provided only once.

4 (b) SUBSEQUENT ISSUANCE.—

5 (1) IN GENERAL.—If a tobacco production li-
6 cense is surrendered or revoked, the Secretary of
7 Agriculture shall transfer the license and the cor-
8 responding tobacco production history to beginning
9 tobacco producers or licensed tobacco producers in
10 the following order of preference:

11 (A) Producers in the same county as the
12 county in which the tobacco production history
13 was derived.

14 (B) Producers in the same State.

15 (C) Producers in counties in other States
16 in which licensed tobacco producers are oper-
17 ating.

18 (2) RESERVATION FOR BEGINNING PRO-
19 DUCERS.—In all instances specified in subparagraphs
20 (A), (B), and (C) of paragraph (1), the Sec-
21 retary shall reserve for beginning tobacco producers
22 at least five percent of the tobacco production his-
23 tory surrendered or revoked under this section.

24 (3) PRODUCERS WHO FORGO TOBACCO PRODUC-
25 TION LICENSE.—The tobacco production history of

1 an historic tobacco producer who does not certify to
2 the Secretary that such producer intends to produce
3 such type of tobacco during the 2004 crop year shall
4 also be available to the Secretary for distribution as
5 provided in paragraph (1).

6 (c) LIMITATIONS ON USE OF LICENSE.—

7 (1) IN GENERAL.—A tobacco production license
8 specifying a particular type of tobacco and the coun-
9 ty in which that type of tobacco may be grown may
10 not be used as the basis to grow a different type of
11 tobacco or to grow that type of tobacco in a different
12 county.

13 (2) REVOCATION.—Any use of a tobacco pro-
14 duction license contrary to this subsection shall re-
15 sult in the revocation of the license.

16 (d) LIMITATIONS ON SALE, LEASE, OR TRANSFER OF
17 LICENSE.—

18 (1) SALE PROHIBITED.—A tobacco production
19 license and the corresponding tobacco production
20 history may not be sold or leased.

21 (2) TRANSFER UNDER LIMITED CIR-
22 CUMSTANCES.—A licensed tobacco producer may not
23 transfer a tobacco production license and the cor-
24 responding tobacco production history unless—

1 (A) in the case of a licensed tobacco pro-
2 ducer who is in a partnership, the transfer is
3 among the partners; or

4 (B) in the case of a licensed tobacco pro-
5 ducer who is an individual, the transfer is made
6 to the spouse, parent, brother, sister, or natural
7 or adopted child of the licensed tobacco pro-
8 ducer.

22 (5) LIFETIME TRANSFER.—A person that is eli-
23 gible to obtain a license under this section may at
24 any time transfer all or part of the license to the

1 person's spouse or direct descendants that are ac-
2 tively engaged in the production of tobacco.

3 (6) REVOCATION.—Any sale, lease, or transfer
4 of a tobacco production license or the corresponding
5 tobacco production history contrary to this sub-
6 section shall result in the revocation of the license.

7 (e) SURRENDER OR REVOCATION OF LICENSE FOR
8 NON-USE.—

9 (1) SURRENDER.—A licensed tobacco producer
10 may surrender a tobacco production license and the
11 corresponding tobacco production history to the Sec-
12 retary of Agriculture at any time.

13 (2) REVOCATION.—The Secretary of Agri-
14 culture shall revoke the tobacco production license
15 and the corresponding tobacco production history of
16 a licensed tobacco producer if the licensed tobacco
17 producer—

18 (A) fails to share, individually or collec-
19 tively, in 100 percent of the risk of producing
20 a crop of tobacco of the type specified in the to-
21 bacco production license for any year; or

22 (B) fails to produce at least 75 percent of
23 the quantity of that type of tobacco specified in
24 the tobacco production license for two out of
25 three years, unless that Secretary determines

1 the failure was due to damaging weather or re-
2 lated condition.

3 **SEC. 105. ANNUAL AUTHORIZED TOBACCO PRODUCTION**
4 **UNDER TOBACCO PRODUCTION LICENSES.**

5 (a) **NOTIFICATION OF LICENSED TOBACCO PRO-**
6 **DUCERS.**—As soon as practicable after preparing the na-
7 tional estimate required by section 102 for flue-cured or
8 burley tobacco for a marketing year, the Secretary of Agri-
9 culture shall notify each licensed tobacco producer of that
10 type of tobacco of the authorized quantity of tobacco that
11 the producer may produce in a county in the cor-
12 responding crop year under the tobacco production license.

13 (b) **DETERMINATION OF AUTHORIZED PRODUCTION**
14 **LEVELS.**—For the 2005 and subsequent marketing years,
15 the authorized tobacco production level for a licensed to-
16 bacco producer for flue-cured or burley tobacco in a county
17 for a crop year is equal to the product of—

18 (1) the production level authorized for such to-
19 bacco production license during the immediately pre-
20 ceding marketing year; and

21 (2) the national tobacco marketing factor for
22 that year determined by the Secretary of Agriculture
23 under section 103.

24 (c) **EXCESS PRODUCTION.**—Except as provided in
25 subsection (e), if a licensed tobacco producer harvests and

1 markets tobacco in excess of the quantity specified in the
2 producer's tobacco production license or any other person
3 produces tobacco without a tobacco production license, the
4 licensed tobacco producer or other person shall be liable
5 for a civil penalty up to an amount determined by multi-
6 pling—

7 (1) the quantity of tobacco involved in the viola-
8 tion; by

12 (d) ENFORCEMENT.—The Secretary of Agriculture
13 may enforce subsection (c) in the courts of the United
14 States.

15 (e) LIMITED AUTHORITY TO EXCEED LICENSE.—If
16 the Secretary determines that the actual production of
17 flue-cured or burley tobacco for a crop year will be less
18 than 80 percent of the production authorized under all li-
19 censes issued for that type of tobacco, the Secretary may
20 authorize a licensed tobacco producer of that type of to-
21 bacco to harvest and market tobacco in excess of the quan-
22 tity specified in the producer's tobacco production license.
23 The Secretary shall establish a mechanism under which
24 a licensed tobacco producer may apply for the authority
25 to exceed the quantity specified in the producer's license.

1 **SEC. 106. TERMINATION OF FLUE-CURED AND BURLEY**2 **QUOTA PROGRAMS.**

3 Section 312 of the Agricultural Adjustment Act of
4 1938 (7 U.S.C. 1312) is amended by adding after sub-
5 section (c):

6 “(d) INAPPLICABILITY TO 2004 AND SUBSEQUENT
7 CROP YEARS OF BURLEY AND FLUE-CURED TOBACCO.—
8 The provisions of this section and sections 317 and 319
9 of this Act are not applicable to 2004 and subsequent crop
10 years of burley and flue-cured tobacco.”.

11 **SEC. 107. PROGRAM REFERENDA.**

12 (a) INITIAL REFERENDUM.—

13 (1) REFERENDUM REQUIRED.—Within sixty
14 days after the enactment of this Act, the Secretary
15 shall conduct a referendum, by type of tobacco,
16 among the licensees engaged in the production of
17 flue-cured or burley tobacco to determine whether
18 the licensees engaged in the production of that kind
19 of tobacco are in favor of continuing the operation
20 of the program established under this Act with re-
21 spect to that kind of tobacco.

22 (2) PROCESS AND RESULTS.—If more than one-
23 half of the licensees voting in a referendum con-
24 ducted under paragraph (1) with respect to flue-
25 cured or burley tobacco oppose the continuation of
26 the program, the Secretary shall announce the result

1 and shall conduct a second referendum with respect
2 to that kind of tobacco one year later. If more than
3 one-half of the licensees voting in the second ref-
4 erendum also oppose the continuation of the pro-
5 gram, the Secretary shall announce the result and
6 the program shall cease to be in effect for that kind
7 of tobacco.

8 (b) SUBSEQUENT REFERENDA.—

9 (1) REFERENDUM INITIATED BY SECRETARY.—
10 The Secretary may conduct subsequent referenda
11 from time to time as the Secretary considers appro-
12 priate to determine whether producers are in favor
13 of continuing the program established under this
14 Act, the use of licenses, limitations on license trans-
15 fer, or any other aspect of the program.

16 (2) REFERENDUM INITIATED BY LICENSEES.—
17 If at least one-third of the licensees engaged in the
18 production of flue-cured or burley tobacco request a
19 referendum under this subsection, the Secretary
20 shall conduct a referendum among the licensees en-
21 gaged in the production of that kind of tobacco to
22 determine whether the licensees are in favor of con-
23 tinuing the operation of the program established
24 under this Act with respect to that kind of tobacco.

13 SEC. 108. EFFECTIVE DATE.

14 This title and the amendments made by this title
15 shall apply with respect to the 2004 and subsequent flue-
16 cured and burley tobacco crops.

17 **TITLE II—TOBACCO COST OF** 18 **PRODUCTION SUPPORT**

19 SEC. 201. TOBACCO COST OF PRODUCTION CALCULATION.

20 (a) ADJUSTMENT TO FLUE-CURED AND BURLEY To-
21 BACCO SUPPORT LEVELS.—Section 106 of the Agricul-
22 tural Act of 1949 (7 U.S.C. 1445) is amended by adding
23 at the end thereof the following:

24 "(h) SPECIAL SUPPORT LEVEL.—

1 “(1) SUPPORT RATE; APPLICABILITY.—Not-
2 withstanding the foregoing provisions of this section,
3 for the 2004 and each subsequent crop of flue-cured
4 and burley tobacco for which tobacco production li-
5 censes are in effect or have not been disapproved by
6 producers under title I of the Phase III Implemen-
7 tation Act, the support level shall be the level in cents
8 per pound equal to the cost of production.

9 “(2) COST OF PRODUCTION BASIS.—For pur-
10 poses of paragraph (1), the cost of production for to-
11 bacco producers shall include items representing
12 general, variable costs of producing tobacco, as de-
13 termined by the Secretary, but shall not include the
14 cost of land, risk, overhead, management, adminis-
15 tration of production licenses, marketing contribu-
16 tions or assessments, and other costs not directly re-
17 lated to the production of tobacco.”.

18 (b) AMENDMENT TO QUOTA TOBACCO DEFINI-
19 TION.—

20 (1) Section 106A(a)(7) of the Agricultural Act
21 of 1949 (7 U.S.C. 1445–1(a)(7)) is amended by
22 striking the period at the end of the paragraph and
23 inserting “, and shall include any kind of tobacco for
24 which tobacco production licenses are in effect or for
25 which tobacco production licenses are not dis-

1 approved by producers under title I of the Phase III
2 Implementation Act.”.

3 (2) Section 106B(a)(5) of the Agricultural Act
4 of 1949 (7 U.S.C. 1445–2(a)(5)) is amended by
5 striking the period at the end of the paragraph and
6 inserting “, and shall include any kind of tobacco for
7 which tobacco production licenses are in effect or for
8 which tobacco production licenses are not dis-
9 approved by producers under title I of the Phase III
10 Implementation Act.”

11 **SEC. 202. EFFECTIVE DATE.**

12 This title and the amendments made by this title
13 shall apply with respect to the 2004 and subsequent flue-
14 cured and burley tobacco crops.

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