

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1464

RIN 0560-AG96

#### Tobacco Payment Program

**AGENCIES:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements the Tobacco Payment Program authorized by the Agricultural Assistance Act of 2003. Section 205 of that Act requires the Commodity Credit Corporation to provide assistance to producers of tobacco. This rule is intended to implement this legislative mandate. Other provisions of the Agricultural Assistance Act of 2003 will be implemented under separate rules.

**EFFECTIVE DATE:** April 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Misty Jones at (202) 720-0200, or via electronic mail at [Misty\\_Jones@wdc.usda.gov](mailto:Misty_Jones@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Notice and Comment

Section 217 of Title II of Division N of the Consolidated Appropriations Resolution, 2003, (Pub. L. 108-7) (Agricultural Assistance Act of 2003) requires that the regulations to implement this program be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553, the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation in rulemaking (36 FR 13804, July 24, 1971). Thus, this rule is final as published.

##### Executive Order 12866

This final rule has been determined to be not significant under Executive Order

12866 and has not been reviewed by the Office of Management and Budget (OMB).

#### Federal Assistance Programs

This final rule applies to the following Federal assistance programs, as found in the Catalog of Federal Domestic Assistance: 10.073—Crop Disaster Program.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

#### Environmental Assessment

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

#### Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

#### Executive Order 12372

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

#### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

#### Small Business Regulatory Enforcement Fairness Act of 1996

Section 217(c) of the Agricultural Assistance Act of 2003 ("2003 Act"), Pub. L. 108-7, requires CCC to use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 (SBREFA), to forgo the usual 60-day delay in the effective date of major rules required by SBREFA (5 U.S.C. 801(a)(3)(A)(ii)). This rule affects a number of agricultural producers who may have a strong urgent need of the payments to be provided under it. For these reasons and in accord with 5 U.S.C. 808(2), CCC has determined that delay is contrary to public interest and this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

#### Paperwork Reduction Act

Section 217(c) of the Agricultural Assistance Act of 2003 requires that these regulations be promulgated and the programs administered without regard to 44 U.S.C. 35, 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, that 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 60-day public comment period required by 5 CFR 1320.8(d)(1).

#### Background

Section 205 of the Agricultural Assistance Act of 2003 directs the Secretary of Agriculture to use funds of the Commodity Credit Corporation (CCC) to provide assistance to persons associated with certain 2002-crop tobaccos. Tobaccos with an established 2002 acreage allotment or poundage quotas are eligible for payment. Eligible persons include owners of the land with an established 2002 acreage allotment or

quota, as well as growers, and in some cases, controllers of farms with quotas or allotments. This rule promulgates regulations governing payment eligibility in accord with the legislation.

As provided for by statute and set out by rule, each eligible kind of tobacco will have its own fund. For each kind, the fund amount will be based on multiplying the national quota or allotment (converted by a formula to pounds) by 5.55 cents per pound. For flue-cured tobacco (types 11–14) and for cigar filler tobacco (types 42–44 and 54–55), the fund will be divided into two parts, one for eligible owners and the other for eligible growers. The other eligible tobaccos “pot” will be divided into three equal parts, one for eligible owners, the other for eligible controllers and the remaining part for growers. The other eligible tobaccos are burley tobacco (type 31), fire-cured tobacco (types 21–23), dark air-cured tobacco (types 35–36), and Virginia sun-cured tobacco (type 37). Eligible persons will share in the sub-accounts based on basic or effective quota or allotment amounts as specified in the rule (irrespective of the actual production amounts that may or may not have occurred on a particular farm so long as the participants meet other program rules for payment).

Similar programs have been provided for in the past in part 1400. As with those programs, eligibility determinations will be made as of July 1 of the calendar year that corresponds with the crop year covered (2002 in this case). It is understood that, to the extent practicable, Congress has intended that this program be run in the same manner as its predecessors in part 1400. There is nothing in the history of this statute to indicate a view to the contrary, as would be expected were significant changes intended. This rule has been drafted accordingly. The statute specifies which tobaccos are eligible for payment and the factors for converting allotments to pounds. The statute sets a payment date of June 1, 2003. Payments will be made in advance of that date, if possible.

#### Cost/Benefit Assessment

Payments to eligible persons in 2003 are estimated to total \$55 million dollars.

#### List of Subjects in 7 CFR Part 1464

Agricultural commodities, Acreage allotments, Marketing quotas, Tobacco.

■ For the reasons set out in the preamble, 7 CFR part 1464 is amended as set forth below.

### PART 1464—TOBACCO

■ 1. The authority citation for 7 CFR part 1464 is revised to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1, 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Pub. L. 108–7, 117 Stat. 11.

■ 2. Add subpart G to read as follows:

#### Subpart G—Tobacco Payment Program

Sec.

- 1464.601 Applicability and basic terms for payments.
- 1464.602 Administration.
- 1464.603 Eligibility.
- 1464.604 Definitions.
- 1464.605 Sign up.
- 1464.606 [Reserved]
- 1464.607 Payment benefits.
- 1464.608 Offsets and assignments.
- 1464.609 Misrepresentation and scheme or device.
- 1464.610 Cumulative liability.
- 1464.611 Estates, trusts, and minors.
- 1464.612 Death, incompetence, or disappearance.
- 1464.613 Appeals.

#### Subpart G—Tobacco Payment Program

##### § 1464.601 Applicability and basic terms for payments.

This subpart sets forth the terms and conditions of the Tobacco Payment Program (TOPP). Under this program CCC will make direct payments on a farm relating to basic tobacco quotas or allotments established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*) for eligible tobaccos. Payments are subject to the availability of funds and payment formulas set out in this part.

##### § 1464.602 Administration.

This subpart shall be administered by the Executive Vice President, CCC or his designee, under the general supervision of the Farm Service Agency (FSA), Deputy Administrator for Farm Programs (Deputy Administrator). The program shall be carried out in the field by State and county FSA committees and FSA employees in accordance with this subpart.

##### § 1464.603 Eligibility.

For a person to be considered an eligible person for purposes of this part, such person must own or control (in some cases only) a farm for which on the status date a basic 2002 crop quota or allotment for eligible tobacco was established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*). Also, growers of that tobacco are eligible for payments to the extent provided for in this part.

##### § 1464.604 Definitions.

The definitions set forth in this section shall apply to the administration of TOPP under this subpart. The definitions in §§ 718.2 and 723.104 of this title also apply to TOPP. The definitions in this section apply rather than the definitions in §§ 718.2 and 723.104 of this title to the extent that the definitions in those sections differ. The following terms shall have the following meanings:

**Controller** means that person or entity who, as determined by the Deputy Administrator, controls the land used to produce eligible tobacco and share in the risk of production.

**Eligible person** means an owner, or (as applicable) controller of a farm for which a basic quota or allotment was established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 to the extent otherwise provided in these rules. Growers of that tobacco, as specified in this part, can also be eligible for payment. For this TOPP, an eligible person's status, as owner or controller or grower, will be determined as of July 1, 2002.

**Eligible tobacco** means each of the following kinds of tobacco: Flue-cured tobacco (types 11, 12, 13 and 14), burley tobacco (type 31), Virginia sun-cured tobacco (type 37), fire-cured tobacco (types 21–23), dark air-cured tobacco (types 35–36), and cigar filler/binder tobacco (types 42 through 44, 54 and 55).

**Grower** means for flue-cured tobacco and cigar binder tobacco, a “producer,” as defined below, for all other eligible tobaccos, as “grower/tenant,” as defined below.

**Grower/tenant** means a person or entity who provides labor to produce tobacco and share in the risk of production.

**Owner** means with respect to a quota or allotment farm the person or entity who owns the land for which the tobacco quota or allotment was established for the 2002 crop as of the operative status date of July 1, 2002 provided for in this part.

**Payment pounds** means the pounds of tobacco for which a person is eligible to be paid under this subpart.

**Producer** means a person or entity actively engaged in planting, growing, harvesting, and/or marketing of tobacco, or who shares in the risk of producing the crop.

**Share in the risk of production** means having a direct financial stake in the success of the crop through a direct share in the actual proceeds from the actual marketing of the crop which share is conditional upon the success of

that marketing. Farm owners who cash-lease their farmland to a tobacco producer for the right to grow tobacco on that land and receive payment for such right regardless of whether or not a tobacco crop is marketed are not considered to share in the risk of production. Farm laborers who provide service in exchange for a wage and whose payment is not subject to the marketing or the tobacco crop are not considered to share in the risk of production.

TOPP means the Tobacco Payment Program.

**§ 1464.605 Sign up.**

(a) To apply for TOPP funds, persons must submit an application to the county FSA office by the date established by the Deputy Administrator. Late applications may be accepted if approved by the Deputy Administrator, if the lateness was the result of documented hardship.

(b) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

**§ 1464.606 [Reserved]**

**§ 1464.607 Payment benefits.**

(a) Payment will only be made subject to the availability of funds and only for eligible tobacco and for eligible persons who meet all conditions of eligibility for whom monies are provided by the terms of this section.

(b) The total national payment amount made available for each kind of eligible tobacco for all claimants for that kind of tobacco, will be computed by multiplying the 2002 crop national poundage amount for that kind by 5.55 cents per pound.

(c) The national poundage amount of a kind shall be, for those tobaccos for which poundage quotas were established for individual farms, the national basic quota, in total, for all farms. For all other tobaccos, the 2002 crop national poundage amount shall be determined by multiplying the national basic acreage allotment for that kind of tobacco by the following per acre conversion factors:

- (1) For fire-cured tobacco (type 21) 1,746 pounds;
- (2) For fire-cured tobacco (types 22–23) 2,676 pounds;
- (3) For dark air-cured tobacco (types 35–36) 2,475 pounds; and
- (4) For Virginia sun-cured tobacco (type 37) 1,502 pounds.

(d) Once the national payment amount is determined for the eligible tobacco kind, it will for flue-cured

tobacco (types 11–14) and for cigar filler tobacco (types 42–44 and 54–55) be divided into two equal parts, one for eligible owners and the other for eligible growers. Shares in the sub-accounts will be determined using basic poundage quota amounts for flue-cured tobacco and basic allotments for the cigar filler types. For cigar filler type allotments, a conversion to pounds will be made using the same conversion factor provided in paragraph (b) of this section.

(e) For those eligible tobaccos not covered in paragraph (d) of this section, the national payment amount fund as determined under paragraph (b) of this section will be divided into three equal parts. Those parts shall be: one for eligible owners; one for eligible controllers; and one for eligible growers. Shares in each sub-account will be determined for burley tobacco using:

(1) Basic poundage quota amounts for owners; and

(2) Effective quota amounts for controllers and growers.

(f) For all other tobaccos covered by paragraph (e) of this section, shares in each sub-account will be determined using:

(1) Basic allotments for owners; and

(2) Effective allotment amounts for controllers and growers. Allotments will be converted to pounds using the conversion factors in paragraph (c) of this section. “Effective quotas” and “effective allotments” means the amount of quota or allotment before any transfer which, as determined by the Deputy Administrator, occurred after a disaster.

(g) Growers who otherwise meet the terms of this part, will qualify based on the full amount of the basic quota or effective quota or allotment, as the case may be, for the kind involved, even though they did not fully produce the operative pounds. Such growers must meet the labor, active engagement in farming, and risk of production elements of the “grower” definition of § 1464.604, as applicable to their kind of tobacco. The Deputy Administrator may provide other elements of eligibility as necessary to accomplish the provisions of this part in accord with the operative legislation.

(h) Payments will be made as soon as practicable.

(i) The amount of TOPP funds allocated to the eligible persons in Georgia will be disbursed only if the State of Georgia agrees to use an equal amount of funds (not to exceed \$13,000,000) to make payments in the same manner as provided for in this section.

(j) All payments under this part are subject to the eligibility of funds. In the case where a payment to a farm is disputed the Deputy Administrator may require that all interested parties agree to the resolution of the dispute before any payment is made and may delay payments to the farm until any such disputes are resolved. Also, as determined appropriate to accomplish the goal that program payments be made expeditiously in a manner that is administratively efficient, the Deputy Administrator may properly exclude payments to a person who does not file a timely claim and all payments may be made to those parties whose claim to the payment is not challenged. Nothing in this section shall, however, be construed to prevent the agency from denying any payment to any person based upon a failure of that person to meet any eligibility criteria set forth in this part.

**§ 1464.608 Offsets and assignments.**

(a) TOPP payments, or a portion thereof, shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor. However, offsets and withholdings of TOPP payments may be taken in accordance with part 1403 of this chapter.

(b) TOPP payments may be assigned as provided in part 1404 of this chapter.

**§ 1464.609 Misrepresentation and scheme or device.**

(a) A person who is determined to have misrepresented any fact with the intention of affecting a TOPP program determination or received payments as a result of such misrepresentation shall not be entitled to payments and must refund all payments, plus interest in accordance with 7 CFR part 1403.

(b) A person determined to have knowingly adopted a scheme or device that tends to defeat the purpose of the program, or made any fraudulent representation shall refund all payments, plus interest determined in accordance with 7 CFR part 1403 and shall not receive any payment not yet made.

(c) Persons who are party to the TOPP application must refund any excess or unearned TOPP payments to CCC, plus interest, made under such application.

**§ 1464.610 Cumulative liability.**

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such

person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

#### **§ 1464.611 Estates, trusts, and minors.**

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such persons furnish evidence of the authority to execute such documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and has executed the applicable program documents; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

#### **§ 1464.612 Death, incompetence, or disappearance.**

In the case of death, incompetence, or disappearance of any person who is eligible to receive assistance in accordance with this part, such person or persons as specified in part 707 of this title may receive such assistance.

#### **§ 1464.613 Appeals.**

Determinations made under this part may be appealed as provided in parts 11 and 780 of this title.

Signed in Washington, DC, on April 7, 2003.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 03-9319 Filed 4-16-03; 8:45 am]

BILLING CODE 3410-05-P

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 2**

#### **RIN 3150-AC07**

#### **Availability of Official Records**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations on availability of official records in three areas. The amendments require those who submit documents claimed to contain proprietary or other confidential information to specifically

mark those portions of the document containing such information to decrease the chances of inadvertent public release of the information by the NRC, codify NRC's practices and delineate the circumstances under which the agency will not return confidential documents that have been submitted to the NRC, and codify NRC's practices of making as many copies of copyrighted material submitted to the agency as it needs to perform its regulatory and licensing functions. The amendments are necessary to conform the NRC's regulations regarding the availability of official records to case law and agency practice.

**EFFECTIVE DATE:** June 16, 2003.

**ADDRESSES:** The comments received in response to NRC's proposed rule for availability of official records are available electronically at the NRC's Public Electronic Reading Room on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Copies of comments received also may be examined at the NRC Public Document Room (PDR), One White Flint North, First Floor, 11555 Rockville Pike, Rockville, Maryland or by contacting 1-800-397-4209 or 301-415-4737, or by email at [pdrc@nrc.gov](mailto:pdrc@nrc.gov). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received also may be viewed via the NRC's interactive rulemaking website (<http://ruleforum.llnl.gov>). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301-415-5905; email [CAG@nrc.gov](mailto:CAG@nrc.gov).

#### **FOR FURTHER INFORMATION CONTACT:**

Catherine M. Holze, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555-0001, telephone (301) 415-1560, email [CMH@nrc.gov](mailto:CMH@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Responses to Comments
- III. Final Action
- IV. Voluntary Consensus Standards
- V. Environmental Impact: Categorical Exclusion
- VI. Paperwork Reduction Act Statement
- VII. Regulatory Analysis
- VIII. Regulatory Flexibility Certification
- IX. Backfit Analysis

X. Small Business Regulatory Enforcement Fairness Act

## **I. Background**

Procedures governing the submission of proprietary information to the NRC are found at 10 CFR 2.790. Under this regulation, absent extraordinary circumstances, material determined to be proprietary is protected by the NRC and not released to the public. The regulations set forth procedures that submitters may use to challenge an NRC determination that material is not proprietary, or a decision by the agency to release proprietary information to the public. The regulations also address the circumstances under which the agency would (or would not) return a document containing proprietary information to the submitter. In the past, the regulation had not addressed the right of the NRC to reproduce copyrighted material submitted to it.

On December 23, 1992 (57 FR 61013), the Commission published proposed amendments to § 2.790 explaining the need for standardized markings on proprietary documents submitted to the NRC, expanding the circumstances under which the NRC would not return proprietary information to the submitter, and clarifying that the agency would reproduce copyrighted material submitted to it, as necessary to carry out its regulatory and licensing functions. The proposed changes were not intended to modify agency policy or practice regarding the public disclosure of proprietary information submitted to the NRC. However, public commenters on the proposed rule expressed concern over the potential for increased public disclosure of proprietary submittals, probably due to NRC's failure to make clear that NRC's refusal to return a proprietary document to its submitter did not mean that the NRC intended to release the document to the public. The earlier commenters also indicated that the established process worked fairly well, that overly-prescriptive document marking procedures would be cumbersome and unnecessary, but that the proposed copyright provisions seemed reasonable.

In response, the NRC issued a revised proposed rule for comment on October 17, 2001 (66 FR 52721). The revised proposal made the regulation easier to understand, and proposed additional changes and clarifications. Specifically, the proposed rule, as revised, differentiated between the discrete determinations of document withholding from the public and document return to the submitter, and incorporated additional "exceptions" to the document return rule. It did not