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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1463

RIN: 0560-AH30

Tobacco Transition Program Assessments; Final Appeals and Revisions Procedures

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule, technical amendment.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the regulations for the Tobacco Transition Program (TTP) to clarify the final administrative actions required for the orderly close-out of the program. Through the Tobacco Transition Payment Program (TTPP), which is part of the TTP, eligible former tobacco quota holders and producers of quota tobacco receive payments from funds that CCC collects through quarterly assessments on domestic manufacturers and importers of tobacco products as required by the Fair and Equitable Tobacco Reform Act of 2004 (FETRA). This rule clarifies final dates and deadlines for the assessments and related program actions, including when CCC will make any final revisions to the quarterly assessments, when documentation is required for administrative appeals filed after FY 2014, when final appeals may be filed, and when CCC decisions on final appeals will take place.

DATES: *Effective date:* **[Insert date of publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Darlene Soto; telephone: (202)720-0542. Persons with disabilities who require alternative means for communications

(Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202)720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The TTP regulations are specified in 7 CFR part 1463. TTP was authorized by Title VI of the American Jobs Creation Act of 2004 (Pub. L. 108–357). Title VI is also known as FETRA (7 U.S.C. 518 – 519a). FETRA repeals the tobacco marketing quota and related price support programs authorized by Title III of the Agricultural Adjustment Act of 1938 and by the Agricultural Act of 1949, and provides for payments to persons who were owners of farms with tobacco quotas (referred to as tobacco quota holders), or who were producers of quota tobacco. The payments end in calendar year 2014. As specified in FETRA, TTP uses funds from assessments collected quarterly on domestic tobacco manufacturers and importers (also referred to here as “entities”) to make the payments referred to above.

Administrative support for the assessment portion of TTP will end in March 2016. Therefore, CCC needs to clarify a few final procedures and dates for the orderly close-out of the program. This rule clarifies administrative issues about how assessments and appeals will be handled after FY 2014. Specifically:

- Procedures and dates for issuance of final revised, or “trued,” quarterly assessment revisions;
- When supporting documents are required for administrative appeals filed after FY 2014;
- Final dates for filing appeals; and

- When final CCC decisions on appeals will take place.

All the changes in this rule are administrative in nature; the basic procedures for assessments and appeals are not changing with this rule. This rule simply amends the regulations to specify the final dates for appeals and submission of supporting documents for appeals, and the final appeals procedures, including clarifying the address to which appeals and supporting documents must be sent. Those final dates and procedures will be added to 7 CFR 1463.11, “Appeals and Judicial Review.” The dates and procedures for final revisions to the assessments are clarified in this document, but do not require any change to the regulations.

Additional clarifying information about final assessment procedures and other actions for the close-out of TTPP was provided in a notice published in the Federal Register on August 2, 2013 [78 FR 46905].

Issuance of Final Revised, or “Trued,” Quarterly Assessment Revisions

After the end of each fiscal year, CCC requests tobacco import and tax data from the U.S. Department of Treasury’s Alcohol and Tobacco Tax and Trade Bureau, and the U.S. Department of Homeland Security’s Customs and Border Protection. CCC uses this data to determine any errors or omissions in the data it used to calculate the TTPP assessments, identify and assess non-reporting entities, finalize the payments to tobacco quota holders or persons who were producers of quota tobacco, and compute the borrowed daily net interest amount. CCC then determines any necessary changes to entities’ market shares for all four quarters of the fiscal year and issues final revised, or “trued,” assessments. The revisions are typically issued on June 1 after a given fiscal

year. For example, FY 2014's final revised, or "trued," assessments will be issued on June 1, 2015.

Occasionally, a second assessment revision, i.e., a revision of what has been referred to here as the "final revised" assessment, is needed, due to data updates or reporting errors. For FY 2005-2010, second assessment revisions, or "second trued" assessments, have already been calculated and issued to all entities, taking into account reporting errors which required correction. Assessments for FY2011-FY2014 may require a "second trued" assessment. If necessary, CCC will make any necessary revisions for all ten fiscal years and issue revised assessments on or before December 1, 2015. After that date, there will be no revised assessments for any fiscal years issued.

Final Appeals Documentation Required Within 30 Days

As specified in 7 CFR 1463.11, entities have 30 business days after receiving notice of an assessment or other decision, to submit a written statement appealing that determination, including any dispute about the amount of the determination. That is not changing with this rule. However, the previous version of the regulation did not specify a timeframe within which entities are required to provide supporting documentation to CCC to support an appeal. Accordingly, this rule amends 7 CFR 1463.11 to clarify that for appeals filed after October 1, 2014, appellants have 30 calendar days after submission of the written statement of appeal to CCC to provide any supporting documentation to CCC. Any documents received after that time will not be considered by the hearing officer. This clarification is necessary for an orderly end to the program.

This 30 calendar day window to provide supporting documentation only applies

to appeals made after October 1, 2014, regardless of the date of the relevant assessment. For example, if CCC issues an entity its March 2014 final revised, or “trued” assessment, on June 1, 2015, and that entity files an appeal of that trued assessment with CCC on July 10, 2015, then that entity will have 30 calendar days thereafter -- or until August 9, 2015 -- to provide any supporting documentation, either as requested by CCC or as the company deems relevant. In all cases, CCC will render an administrative determination within 30 calendar days after receiving the supporting documentation. In the event CCC has not rendered a decision in such time, all administrative remedies available to the appellant will be deemed to be exhausted. In this example, CCC would make a ruling on the appeal by September 8, 2015.

Appeals must be submitted to the address specified in 7 CFR 1463.11(a), which is clarified in this rule to provide the current room number of the TTPP staff.

Final Dates for all Appeals

This rule amends 7 CFR 1463.11 to specify the final dates for appeals and other actions. It specifies that the final date that entities may file an administrative appeal is January 14, 2016; that is 30 business days after CCC will issue any last revised assessments.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 642(b) of FETRA (Pub. L. 108-357), which requires that the regulations are to be promulgated without

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

Executive Order 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is a technical amendment, which is administrative in nature and is not expected to have costs or benefits. This technical amendment did not require Office of Management and Budget (OMB) designation under Executive Order 12866, “Regulatory Planning and Review,” and therefore OMB has not reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any

other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because CCC is not required by any law to publish a proposed rule for public comments on this rule.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). FSA has determined that the provisions identified in this final rule are administrative in nature, intended to ensure the orderly close-out of the program, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the

programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not preempt Tribal law.

The policies contained in this rule do not, to our knowledge, impose substantial unreimbursed direct compliance costs on Indian Tribal governments, have Tribal implications, or preempt Tribal law. USDA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of USDA regulations. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally

requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104-121, SBREFA). Therefore, CCC is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective on the date of publication in the Federal Register.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is Tobacco Transition Payment Program —10.085.

Paperwork Reduction Act

These regulations are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 642 of Pub. L. 108-357 (7 U.S.C. 519a), which provides that these regulations, which are necessary to implement TTPP, be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1463

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

For the reasons discussed in the preamble, CCC amends 7 CFR part 1463 as follows:

PART 1463—2005-2014 TOBACCO TRANSITION PROGRAM

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

Authority: 7 U.S.C. 518-519a, 714b, and 714c.

Subpart A – Tobacco Transition Assessments

2. Amend §1463.11 by revising paragraphs (a) and (c) to read as follows:

§1463.11 Appeals and judicial review.

(a) An entity may appeal any adverse determination made under this subpart, including with respect to the amount of the assessment, by submitting a written statement that sets forth the basis of the dispute to Darlene Soto, Tobacco Transition Assessment Program Manager, U.S. Department of Agriculture, 1400 Independence Avenue, SW.,

Room 3722, Mail Stop 0515, Washington D.C. 20250-0514, within 30 business days of the date of receipt of the notification by CCC of its determination.

* * * * *

(c) For any appeals filed after October 1, 2014, appellants must submit all supporting documentation within 30 calendar days following the date of the initial written appeal to CCC. Any documents received after that time will not be considered by the hearing officer.

(1) The final date that entities may file an appeal is January 14, 2016.

(2) If 30 calendar days elapse following receipt by CCC of the final submission of supporting documentation by an appellant with respect to any appeal filed under this section regarding an assessment imposed on a domestic manufacturer or importer of tobacco products, without a final administrative decision by CCC, then all administrative remedies available to the appellant will be deemed to be exhausted; except, if the 30th calendar day would fall on a weekend day or federal holiday, then the 30th calendar day will be deemed the next business day following such weekend day or federal holiday.

* * * * *

Signed on April 3, 2014

Juan M. Garcia,
Administrator,
Farm Service Agency, and
Executive Vice President,
Commodity Credit Corporation.

[FR Doc. 2014-07979 Filed 04/08/2014 at 8:45 am; Publication Date: 04/09/2014]