

Oct. 22, 2004, 118 Stat. 1522. For complete classification of this Act to the Code, see section 1281 of this title and Tables.

EFFECTIVE DATE

Pub. L. 108-357, title VI, § 643, Oct. 22, 2004, 118 Stat. 1536, provided that: "This title [see Short Title note below] and the amendments made by this title shall apply to the 2005 and subsequent crops of each kind of tobacco."

SHORT TITLE

Pub. L. 108-357, title VI, § 601, Oct. 22, 2004, 118 Stat. 1521, provided that: "This title [enacting this chapter, amending sections 609, 1282, 1301, 1303, 1314h, 1361, 1371, 1373, 1375, 1378, 1379, 1428, 1433c-1, and 1441 of this title and section 714c of Title 15, Commerce and Trade, repealing sections 511r, 515 to 515k, 625, 1311 to 1314, 1314-1, 1314b, 1314b-1, 1314b-2, 1314c to 1314j, 1315, 1316, 1445, 1445-1, and 1445-2 of this title, enacting provisions set out as notes under this section and section 515 of this title, and repealing provisions set out as a note under section 1314c of this title] may be cited as the 'Fair and Equitable Tobacco Reform Act of 2004'."

§ 518a. Contract payments to tobacco quota holders

(a) Contract offered

The Secretary shall offer to enter into a contract with each tobacco quota holder under which the tobacco quota holder shall be entitled to receive payments under this section in exchange for the termination of tobacco marketing quotas and related price support under the amendments made by sections 611 and 612.¹ The contract payments shall constitute full and fair consideration for the termination of such tobacco marketing quotas and related price support.

(b) Eligibility

To be eligible to enter into a contract to receive a contract payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a tobacco quota holder. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(c) Base quota level

(1) Establishment

The Secretary shall establish a base quota level applicable to each tobacco quota holder identified under subsection (b).

(2) Poundage quotas

Subject to adjustment under subsection (d), for each kind of tobacco for which the marketing quota is expressed in pounds, the base quota level for each tobacco quota holder shall be equal to the basic quota for quota tobacco established for the 2002 tobacco marketing year under a marketing quota program established under part I of subtitle B of title III of the Agriculture² Adjustment Act of 1938 [7 U.S.C. 1311 et seq.] on the farm owned by the tobacco quota holder.

(3) Marketing quotas other than poundage quotas

Subject to adjustment under subsection (d), for each kind of tobacco for which there is marketing quota or allotment on an acreage basis, the base quota level for each tobacco quota holder shall be the quantity equal to the product obtained by multiplying—

(A) the basic tobacco farm marketing quota or allotment for the 2002 marketing year established by the Secretary for quota tobacco owned by the tobacco quota holder; by

(B) the average production yield, per acre, for the period covering the 2001, 2002, and 2003 crop years for that kind of tobacco in the county in which the quota tobacco is located.

(d) Treatment of certain contracts and agreements

(1) Effect of purchase contract

If there was an agreement for the purchase of all or part of a farm described in subsection (c) as of October 22, 2004, and the parties to the sale are unable to agree to the disposition of eligibility for contract payments, the Secretary, taking into account any transfer of quota that has been agreed to, shall provide for the equitable division of the contract payments among the parties by adjusting the determination of who is the tobacco quota holder with respect to particular pounds or allotment of the quota.

(2) Effect of agreement for permanent quota transfer

If the Secretary determines that there was in existence, as of the day before October 22, 2004, an agreement for the permanent transfer of quota, but that the transfer was not completed by that date, the Secretary shall consider the tobacco quota holder to be the party to the agreement that, as of that date, was the owner of the farm to which the quota was to be transferred.

(e) Contract payments

(1) Calculation of total payment amount

The total amount of contract payments to which an eligible tobacco quota holder is entitled under this section, with respect to a kind of tobacco, shall be equal to the product obtained by multiplying—

(A) \$7.00 per pound; by

(B) the base quota level of the tobacco quota holder determined under subsection (c) with respect to that kind of tobacco.

(2) Annual payment

During each of fiscal years 2005 through 2014, the Secretary shall make a contract payment under this section to each eligible tobacco quota holder, with respect to a kind of tobacco, in an amount equal to $\frac{1}{10}$ of the amount determined under paragraph (1) for the tobacco quota holder for that kind of tobacco.

(f) Death of tobacco quota holder

If a tobacco quota holder who is entitled to contract payments under this section dies and is survived by a spouse or one or more dependents,

¹ See References in Text note below.

² So in original. Probably should be "Agricultural".

the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the tobacco quota holder.

(Pub. L. 108-357, title VI, §622, Oct. 22, 2004, 118 Stat. 1525.)

REFERENCES IN TEXT

Sections 611 and 612, referred to in subsec. (a), are sections 611 and 612 of Pub. L. 108-357, which amended sections 609, 1282, 1301, 1303, 1361, 1371, 1373, 1375, 1378, 1379, 1428, 1433c-1, and 1441 of this title and section 714c of Title 15, Commerce and Trade, repealed sections 511r, 515 to 515k, 625, 1311 to 1314, 1314-1, 1314b, 1314b-1, 1314b-2, 1314c to 1314j, 1315, 1316, 1445, 1445-1, and 1445-2 of this title, and repealed provisions set out as a note under section 1314c of this title.

Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938, referred to in subsec. (c)(2), was classified to subpart I (§1311 et seq.) of part B of subchapter II of chapter 35 of this title prior to repeal by Pub. L. 108-357, title VI, §611(a), Oct. 22, 2004, 118 Stat. 1522. For complete classification of this Act to the Code, see section 1281 of this title and Tables.

§ 518b. Contract payments for producers of quota tobacco

(a) Contract offered

The Secretary shall offer to enter into a contract with each producer of quota tobacco under which the producer of quota tobacco shall be entitled to receive payments under this section in exchange for the termination of tobacco marketing quotas and related price support under the amendments made by sections 611 and 612.¹ The contract payments shall constitute full and fair consideration for the termination of such tobacco marketing quotas and related price support.

(b) Eligibility

(1) Application and determination

To be eligible to enter into a contract to receive a contract payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a producer of quota tobacco. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(2) Effect of multiple producers for same quota tobacco

If, on the basis of the applications submitted under paragraph (1) or other information, the Secretary determines that two or more persons are a producer of the same quota tobacco, the Secretary shall provide for an equitable distribution among the persons of the contract payments made under this section with respect to that quota tobacco, based on relative share of such persons in the risk of producing the quota tobacco and such other factors as the Secretary considers appropriate.

(c) Base quota level

(1) Establishment

The Secretary shall establish a base quota level applicable to each producer of quota tobacco, as determined under this subsection.

(2) Flue-cured and burley tobacco

In the case of Flue-cured tobacco (types 11, 12, 13, and 14) and Burley tobacco (type 31), the base quota level for each producer of quota tobacco shall be equal to the effective tobacco marketing quota (irrespective of disaster lease and transfers) under part I of subtitle B of title III of the Agriculture² Adjustment Act of 1938 [7 U.S.C. 1311 et seq.] for the 2002 marketing year for quota tobacco produced on the farm.

(3) Other kinds of tobacco

In the case of each kind of tobacco (other than tobacco covered by paragraph (2)), for the purpose of calculating a contract payment to a producer of quota tobacco, the base quota level for the producer of quota tobacco shall be the quantity obtained by multiplying—

(A) the basic tobacco farm acreage allotment for the 2002 marketing year established by the Secretary for quota tobacco produced on the farm; by

(B) the average annual yield, per acre, of quota tobacco produced on the farm for the period covering the 2001, 2002, and 2003 crop years.

(d) Contract payments

(1) Calculation of total payment amount

Subject to subsection (b)(2), the total amount of contract payments to which an eligible producer of quota tobacco is entitled under this section, with respect to a kind of tobacco, shall be equal to the product obtained by multiplying—

(A) subject to paragraph (2), \$3.00 per pound; by

(B) the base quota level of the producer of quota tobacco determined under subsection (c) with respect to that kind of tobacco.

(2) Annual payment

During each of fiscal years 2005 through 2014, the Secretary shall make a contract payment under this section to each eligible producer of tobacco, with respect to a kind of tobacco, in an amount equal to $\frac{1}{10}$ of the amount determined under paragraph (1) for the producer for that kind of tobacco.

(3) Variable payment rates

The rate for payments to a producer of quota tobacco under paragraph (1)(A) shall be equal to—

(A) in the case of a producer of quota tobacco that produced quota tobacco marketed, or considered planted, under a marketing quota in all three of the 2002, 2003, or 2004 tobacco marketing years, the rate prescribed under paragraph (1)(A);

(B) in the case of a producer of quota tobacco that produced quota tobacco marketed, or considered planted, under a marketing quota in only two of those tobacco marketing years, $\frac{2}{3}$ of the rate prescribed under paragraph (1)(A);

(C) in the case of a producer of quota tobacco that produced quota tobacco marketed, or considered planted, under a mar-

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