

## **US Code**

*(Unofficial compilation from the Legal Information Institute)*

### **TITLE 7 - AGRICULTURE CHAPTER 21C—TOBACCO REFORM**

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**CHAPTER 21C—TOBACCO REFORM**

SUBCHAPTER I—TRANSITIONAL PAYMENTS TO TOBACCO QUOTA HOLDERS AND PRODUCERS OF TOBACCO

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## SUBCHAPTER I—TRANSITIONAL PAYMENTS TO TOBACCO QUOTA HOLDERS AND PRODUCERS OF TOBACCO

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### § 518. Definitions

In this subchapter and subchapter II:

**(1) Agricultural Act of 1949**

The term “Agricultural Act of 1949” means the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), as in effect on the day before October 22, 2004.

**(2) Agricultural Adjustment Act of 1938**

The term “Agricultural Adjustment Act of 1938” means the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.), as in effect on the day before October 22, 2004.

**(3) Considered planted**

The term “considered planted” means tobacco that was planted, but failed to be produced as a result of a natural disaster, as determined by the Secretary.

**(4) Contract**

The term “contract” means a contract entered into under section 518a or 518b of this title.

**(5) Contract payment**

The term “contract payment” means a payment made under section 518a or 518b of this title pursuant to a contract.

**(6) Producer of quota tobacco**

The term “producer of quota tobacco” means an owner, operator, landlord, tenant, or sharecropper that shared in the risk of producing tobacco on a farm where tobacco was produced or considered planted pursuant to a tobacco farm poundage quota or farm acreage allotment established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.).

**(7) Quota tobacco**

The term ‘quota tobacco’<sup>1</sup> means a kind of tobacco that is subject to a farm marketing quota or farm acreage allotment for the 2004 tobacco marketing year under a marketing quota or allotment program established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.).

**(8) Tobacco**

The term “tobacco” means each of the following kinds of tobacco:

- (A) Flue-cured tobacco, comprising types 11, 12, 13, and 14.
- (B) Fire-cured tobacco, comprising types 22 and 23.
- (C) Dark air-cured tobacco, comprising types 35 and 36.
- (D) Virginia sun-cured tobacco, comprising type 37.
- (E) Virginia fire-cured tobacco, comprising type 21.
- (F) Burley tobacco, comprising type 31.
- (G) Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 53, 54, and 55.

**(9) Tobacco quota holder**

The term “tobacco quota holder” means a person that was an owner of a farm, as of October 22, 2004, for which a basic tobacco farm marketing quota or farm acreage allotment for quota tobacco was established for the 2004 tobacco marketing year.

**(10) Tobacco Trust Fund**

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 7, 2011 (see <http://www.law.cornell.edu/uscode/uscpri.html>).*

The term “Tobacco Trust Fund” means the Tobacco Trust Fund established under section 518e of this title.

**(11) Secretary**

The term “Secretary” means the Secretary of Agriculture.

**Footnotes**

<sup>1</sup> So in original.

(Pub. L. 108–357, title VI, § 621, Oct. 22, 2004, 118 Stat. 1524.)

**References in Text**

The Agricultural Act of 1949, referred to in par. (1), is act Oct. 31, 1949, ch. 792, 63 Stat. 1051, as amended, which is classified principally to chapter 35A (§ 1421 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1421 of this title and Tables.

The Agricultural Adjustment Act of 1938, referred to in pars. (2), (6), and (7), is act Feb. 16, 1938, ch. 30, 52 Stat. 31, as amended, which is classified principally to chapter 35 (§ 1281 et seq.) of this title. Part I of subtitle B of title III of the Act 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.

**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.<sup>1</sup> 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 Agriculture<sup>2</sup> 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 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, 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.

**Footnotes**

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be "Agricultural".

(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.<sup>1</sup> 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 Agriculture<sup>2</sup> 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 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, 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 marketing quota in only one of those tobacco marketing years, 1/3 of the rate prescribed under paragraph (1)(A).

**(e) Death of tobacco producer**

If a producer of quota tobacco who is entitled to contract payments under this section dies and is survived by a spouse or one or more dependents, the right to receive the contract payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the producer.

**Footnotes**

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Probably should be “Agricultural”.

(Pub. L. 108–357, title VI, § 623, Oct. 22, 2004, 118 Stat. 1527.)

**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, 515a 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.

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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.

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## § 518c. Administration

### (a) Time for payment of contract payments

Contract payments required to be made for a fiscal year shall be made by the Secretary as soon as practicable.

### (b) Use of county committees to resolve disputes

Any dispute regarding the eligibility of a person to enter into a contract or to receive contract payments, and any dispute regarding the amount of a contract payment, may be appealed to the county committee established under section 590h of title 16 for the county or other area in which the farming operation of the person is located.

### (c) Role of National Appeals Division

Any adverse determination of a county committee under subsection (b) may be appealed to the National Appeals Division established under subtitle H of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6991 et seq.).

### (d) Use of financial institutions

The Secretary may use a financial institution to manage assets, make contract payments, and otherwise carry out this title.<sup>1</sup>

### (e) Payment to financial institutions

The Secretary shall permit a tobacco quota holder or producer of quota tobacco entitled to contract payments to assign to a financial institution the right to receive the contract payments. Upon receiving notification of the assignment, the Secretary shall make subsequent contract payments for the tobacco quota holder or producer of quota tobacco directly to the financial institution designated by the tobacco quota holder or producer of quota tobacco. The Secretary shall make information available to tobacco quota holders and producers of quota tobacco regarding their ability to elect to have the Secretary make payments directly to a financial institution under this subsection so that they may obtain a lump sum or other payment.

## Footnotes

<sup>1</sup> See References in Text note below.

(Pub. L. 108–357, title VI, § 624, Oct. 22, 2004, 118 Stat. 1528.)

## References in Text

The Department of Agriculture Reorganization Act of 1994, referred to in subsec. (c), is title II of Pub. L. 103–354, Oct. 13, 1994, 108 Stat. 3209, as amended. Subtitle H of the Act is classified principally to subchapter VIII (§ 6991 et seq.) of chapter 98 of this title. For complete classification of this Act to the Code, see Tables.

This title, referred to in subsec. (d), means title VI of Pub. L. 108–357, which enacted this chapter, amended 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, 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, enacted provisions set out as notes under sections 515 and 518 of this title, and repealed provisions set out as a note under section 1314c of this title. For complete classification of title VI to the Code, see Short Title note set out under section 518 of this title and Tables.

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**§ 518d. Use of assessments as source of funds for payments**

**(a) Definitions**

In this section:

**(1) Base period**

The term “base period”<sup>1</sup> means the one-year period ending the June 30 before the beginning of a fiscal year.

**(2) Gross domestic volume**

The term “gross domestic volume” means the volume of tobacco products—

- (A) removed (as defined by section 5702 of title 26); and
- (B) not exempt from tax under chapter 52 of title 26 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States.

**(3) Market share**

The term “market share” means the share of each manufacturer or importer of a class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product during the base period for a fiscal year for an assessment under this section.

**(b) Quarterly assessments**

**(1) Imposition of assessment**

The Secretary, acting through the Commodity Credit Corporation, shall impose quarterly assessments during each of fiscal years 2005 through 2014, calculated in accordance with this section, on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States during that fiscal year.

**(2) Amounts**

Beginning with the calendar quarter ending on December 31 of each of fiscal years 2005 through 2014, the assessment payments over each four-calendar quarter period shall be sufficient to cover—

- (A) the contract payments made under sections 518a and 518b of this title during that period; and
- (B) other expenditures from the Tobacco Trust Fund made during the base quarter periods corresponding to the four calendar quarters of that period.

**(3) Deposit**

Assessments collected under this section shall be deposited in the Tobacco Trust Fund.

**(c) Assessments for classes of tobacco products**

**(1) Initial allocation**

The percentage of the total amount required by subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product in fiscal year 2005 shall be as follows:

- (A) For cigarette manufacturers and importers, 96.331 percent.
- (B) For cigar manufacturers and importers, 2.783 percent.
- (C) For snuff manufacturers and importers, 0.539 percent.
- (D) For roll-your-own tobacco manufacturers and importers, 0.171 percent.
- (E) For chewing tobacco manufacturers and importers, 0.111 percent.
- (F) For pipe tobacco manufacturers and importers, 0.066 percent.

**(2) Subsequent allocations**

For subsequent fiscal years, the Secretary shall periodically adjust the percentage of the total amount required under subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product specified in paragraph (1) to reflect changes in the share of gross domestic volume held by that class of tobacco product.

**(3) Effect of insufficient amounts**

If the Secretary determines that the assessment imposed under subsection (b) will result in insufficient amounts to carry out this subchapter during a fiscal year, the Secretary shall assess such additional amounts as the Secretary determines to be necessary to carry out this subchapter during that fiscal year. The additional amount shall be allocated to manufacturers and importers of each class of tobacco product specified in paragraph (1) in the same manner and based on the same percentages applicable under paragraph (1) or (2) for that fiscal year.

**(d) Notification and timing of assessments**

**(1) Notification of assessments**

The Secretary shall provide each manufacturer or importer subject to an assessment under subsection (b) with written notice setting forth the amount to be assessed against the manufacturer or importer for each quarterly payment period. The notice for a quarterly period shall be provided not later than 30 days before the date payment is due under paragraph (3).

**(2) Content**

The notice shall include the following information with respect to the quarterly period used by the Secretary in calculating the amount:

**(A)** The total combined assessment for all manufacturers and importers of tobacco products.

**(B)** The total assessment with respect to the class of tobacco products manufactured or imported by the manufacturer or importer.

**(C)** Any adjustments to the percentage allocations among the classes of tobacco products made pursuant to paragraph (2) or (3) of subsection (c).

**(D)** The volume of gross sales of the applicable class of tobacco product treated as made by the manufacturer or importer for purposes of calculating the manufacturer's or importer's market share under subsection (f).

**(E)** The total volume of gross sales of the applicable class of tobacco product that the Secretary treated as made by all manufacturers and importers for purposes of calculating the manufacturer's or importer's market share under subsection (f).

**(F)** The manufacturer's or importer's market share of the applicable class of tobacco product, as determined by the Secretary under subsection (f).

**(G)** The market share, as determined by the Secretary under subsection (f), of each other manufacturer and importer, for each applicable class of tobacco product.

**(3) Timing of assessment payments**

**(A) Collection date**

Assessments shall be collected at the end of each calendar year quarter, except that the Secretary shall ensure that the final assessment due under this section is collected not later than September 30, 2014.

**(B) Base period quarter**

The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter.

**(e) Allocation of assessment within each class of tobacco product**

**(1) Pro rata basis**

The assessment for each class of tobacco product specified in subsection (c)(1) shall be allocated on a pro rata basis among manufacturers and importers based on each manufacturer's or importer's share of gross domestic volume.

**(2) Limitation**

No manufacturer or importer shall be required to pay an assessment that is based on a share that is in excess of the manufacturer's or importer's share of domestic volume.

**(f) Allocation of total assessments by market share**

The amount of the assessment for each class of tobacco product specified in subsection (c)(1) to be paid by each manufacturer or importer of that class of tobacco product shall be determined for each quarterly payment period by multiplying—

- (1) the market share of the manufacturer or importer, as calculated with respect to that payment period, of the class of tobacco product; by
- (2) the total amount of the assessment for that quarterly payment period under subsection (c), for the class of tobacco product.

**(g) Determination of volume of domestic sales**

**(1) In general**

The calculation of the volume of domestic sales of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary based on information provided by the manufacturers and importers pursuant to subsection (h), as well as any other relevant information provided to or obtained by the Secretary.

**(2) Gross domestic volume**

The volume of domestic sales shall be calculated based on gross domestic volume.

**(3) Measurement**

For purposes of the calculations under this subsection and the certifications under subsection (h) by the Secretary, the volumes of domestic sales shall be measured by—

- (A) in the case of cigarettes and cigars, the number of cigarettes and cigars; and
- (B) in the case of the other classes of tobacco products specified in subsection (c)(1), in terms of number of pounds, or fraction thereof, of those products.

**(h) Measurement of volume of domestic sales**

**(1) Submission of information**

Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by paragraph (2) that are required to be filed with a Federal agency on the same date that those returns or forms are filed, or required to be filed, with the agency.

**(2) Returns and forms**

The returns and forms described by this paragraph are those returns and forms that relate to—

- (A) the removal of tobacco products into domestic commerce (as defined by section 5702 of title 26); and
- (B) the payment of the taxes imposed under charter<sup>2</sup> 52 of title 26, including AFT Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.

**(3) Effect of failure to provide required information**

Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18. The Secretary may also assess against the person a civil penalty in an amount not to exceed two percent of the value of the kind of tobacco products manufactured or

imported by the person during the fiscal year in which the violation occurred, as determined by the Secretary.

**(i) Challenge to assessment**

**(1) Appeal to Secretary**

A manufacturer or importer subject to this section may contest an assessment imposed on the manufacturer or importer under this section by notifying the Secretary, not later than 30 business days after receiving the assessment notification required by subsection (d), that the manufacturer or importer intends to contest the assessment.

**(2) Information**

Not later than 180 days after October 22, 2004, the Secretary shall establish by regulation a procedure under which a manufacturer or importer contesting an assessment under this subsection may present information to the Secretary to demonstrate that the assessment applicable to the manufacturer or importer is incorrect. In challenging the assessment, the manufacturer or importer may use any information that is available, including third party data on industry or individual company sales volumes.

**(3) Revision**

If a manufacturer or importer establishes that the initial determination of the amount of an assessment is incorrect, the Secretary shall revise the amount of the assessment so that the manufacturer or importer is required to pay only the amount correctly determined.

**(4) Time for review**

Not later than 30 days after receiving notice from a manufacturer or importer under paragraph (1), the Secretary shall—

(A) decide whether the information provided to the Secretary under paragraph (2), and any other information that the Secretary determines is appropriate, is sufficient to establish that the original assessment was incorrect; and

(B) make any revisions necessary to ensure that each manufacturer and importer pays only its correct pro rata share of total gross domestic volume from all sources.

**(5) Immediate payment of undisputed amounts**

The regulations promulgated by the Secretary under paragraph (2) shall provide for the immediate payment by a manufacturer or importer challenging an assessment of that portion of the assessment that is not in dispute. The manufacturer and importer may place into escrow, in accordance with such regulations, only the portion of the assessment being challenged in good faith pending final determination of the claim.

**(j) Judicial review**

**(1) In general**

Any manufacturer or importer aggrieved by a determination of the Secretary with respect to the amount of any assessment may seek review of the determination in the United States District Court for the District of Columbia or for the district in which the manufacturer or importer resides or has its principal place of business at any time following exhaustion of the administrative remedies available under subsection (i).

**(2) Time limits**

Administrative remedies shall be deemed exhausted if no decision by the Secretary is made within the time limits established under subsection (i)(4).

**(3) Excessive assessments**

The court shall restrain collection of the excessive portion of any assessment or order a refund of excessive assessments already paid, along with interest calculated at the rate prescribed in section

NB: This unofficial compilation of the U.S. Code is current as of Jan. 7, 2011 (see <http://www.law.cornell.edu/uscode/uscp.html>).

3717 of title 31, if it finds that the Secretary’s determination is not supported by a preponderance of the information available to the Secretary.

**(k) Termination date**

The authority provided by this section to impose assessments terminates on September 30, 2014.

**Footnotes**

<sup>1</sup> So in original.

<sup>2</sup> So in original. Probably should be “chapter”.

(Pub. L. 108–357, title VI, § 625, Oct. 22, 2004, 118 Stat. 1529.)

**References in Text**

The Harmonized Tariff Schedule of the United States, referred to in subsec. (a)(2)(B), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

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**§ 518e. Tobacco Trust Fund**

**(a) Establishment**

There is established in the Commodity Credit Corporation a revolving trust fund, to be known as the “Tobacco Trust Fund”, which shall be used in carrying out this subchapter. The Tobacco Trust Fund shall consist of the following:

- (1) Assessments collected under section 518d of this title.
- (2) Such amounts as are necessary from the Commodity Credit Corporation.
- (3) Any interest earned on investment of amounts in the Tobacco Trust Fund under subsection (c).

**(b) Expenditures**

**(1) Authorized expenditures**

Subject to paragraph (2), and notwithstanding any other provision of law, the Secretary shall use amounts in the Tobacco Trust Fund, in such amounts as the Secretary determines are necessary—

- (A) to make payments under sections 518a and 518b of this title;
- (B) to provide reimbursement under section 519 (c) of this title;
- (C) to reimburse the Commodity Credit Corporation for costs incurred by the Commodity Credit Corporation under paragraph (2); and
- (D) to make payments to financial institutions to satisfy contractual obligations under section 518a or 518b of this title.

**(2) Expenditures by Commodity Credit Corporation**

Notwithstanding any other provision of law, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to make payments described in paragraph (1). Not later than January 1, 2015, the Secretary shall use amounts in the Tobacco Trust Fund to fully reimburse, with interest, the Commodity Credit Corporation for all funds of the Commodity Credit Corporation expended under the authority of this paragraph. Administrative costs incurred by the Secretary or the Commodity Credit Corporation to carry out this title <sup>1</sup> may not be paid using amounts in the Tobacco Trust Fund.

**(c) Investment of amounts**

**(1) In general**

The Commodity Credit Corporation shall invest such portion of the amounts in the Tobacco Trust Fund as are not, in the judgment of the Commodity Credit Corporation, required to meet current expenditures.

**(2) Interest-bearing obligations**

Investments may be made only in interest-bearing obligations of the United States.

**(3) Acquisition of obligations**

For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

**(4) Sale of obligations**

Any obligation acquired by the Tobacco Trust Fund may be sold by the Commodity Credit Corporation at the market price.

**(5) Credits to Fund**

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Tobacco Trust Fund shall be credited to and form a part of the Fund.

**Footnotes**

<sup>1</sup> See References in Text note below.

(Pub. L. 108–357, title VI, § 626, Oct. 22, 2004, 118 Stat. 1533.)

**References in Text**

This title, referred to in subsec. (b)(2), means title VI of Pub. L. 108–357, which enacted this chapter, amended 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, 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, enacted provisions set out as notes under sections 515 and 518 of this title, and repealed provisions set out as a note under section 1314c of this title. For complete classification of title VI to the Code, see Short Title note set out under section 518 of this title and Tables.

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**§ 518f. Limitation on total expenditures**

The total amount expended by the Secretary from the Tobacco Trust Fund to make payments under sections 518a and 518b of this title and for the other authorized purposes of the Fund shall not exceed \$10,140,000,000.

(Pub. L. 108–357, title VI, § 627, Oct. 22, 2004, 118 Stat. 1534.)

## SUBCHAPTER II—IMPLEMENTATION AND TRANSITION

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### § 519. Treatment of tobacco loan pool stocks and outstanding loan costs

#### (a) Disposal of stocks

To provide for the orderly disposition of quota tobacco held by an association that has entered into a loan agreement with the Commodity Credit Corporation under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) (referred to in this section as an “association”), loan pool stocks for each kind of tobacco held by the association shall be disposed of in accordance with this section.

#### (b) Disposal by associations

For each kind of tobacco held by an association, the association shall be responsible for the disposal of a specific quantity of the loan pool stocks for that kind of tobacco held by the association. The quantity transferred to the association for disposal shall be equal to the quantity determined by dividing—

- (1) the amount of funds held by the association in the No Net Cost Tobacco Fund and the No Net Cost Tobacco Account established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) for the kind of tobacco; by
- (2) the average list price per pound for the kind of tobacco, as determined by the Secretary.

#### (c) Disposal of remainder by Commodity Credit Corporation

##### (1) Disposal

Any loan pool stocks of a kind of tobacco of an association that are not transferred to the association under subsection (b) for disposal shall be disposed of by Commodity Credit Corporation in a manner determined by the Secretary.

##### (2) Reimbursement

As required by section 518e (b)(1)(B) of this title, the Secretary shall transfer from the Tobacco Trust Fund to the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) such amounts as the Secretary determines will be adequate to reimburse the Commodity Credit Corporation for any net losses that the Corporation may sustain under its loan agreements with the association.

#### (d) Transfer of remaining no net cost funds

Any funds in the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2) that remain after the application of subsections (b) and (c) shall be transferred to the association for distribution to producers of quota tobacco in accordance with a plan approved by the Secretary.

(Pub. L. 108–357, title VI, § 641, Oct. 22, 2004, 118 Stat. 1534.)

### References in Text

Sections 106A and 106B of the Agricultural Act of 1949, referred to in text, were classified to sections 1445–1 and 1445–2, respectively, of this title prior to repeal by Pub. L. 108–357, title VI, § 612(a), Oct. 22, 2004, 118 Stat. 1523.

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### § 519a. Regulations

#### (a) In general

The Secretary may promulgate such regulations as are necessary to implement this title<sup>1</sup> and the amendments made by this title.<sup>1</sup>

**(b) Procedure**

The promulgation of the regulations and administration of this title <sup>1</sup> and the amendments made by this title <sup>1</sup> shall be made without regard to—

- (1) the notice and comment provisions of section 553 of title 5;
- (2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and
- (3) chapter 35 of title 44 (commonly known as the “Paperwork Reduction Act”).

**(c) Congressional review of agency rulemaking**

In carrying out this section, the Secretary shall use the authority provided under section 808 of title 5.

**Footnotes**

<sup>1</sup> See References in Text note below.

(Pub. L. 108–357, title VI, § 642, Oct. 22, 2004, 118 Stat. 1535.)

**References in Text**

This title, referred to in subsecs. (a) and (b), means title VI of Pub. L. 108–357, which enacted this chapter, amended 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, 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, enacted provisions set out as notes under sections 515 and 518 of this title, and repealed provisions set out as a note under section 1314c of this title. For complete classification of title VI to the Code, see Short Title note set out under section 518 of this title and Tables.