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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1463

RIN 0560–AH30

Tobacco Transition Payment Program; Tobacco Transition Assessments

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Commodity Credit Corporation (CCC) is modifying the regulations for the Tobacco Transition Payment Program (TTPP) to clarify, consistent with current practice and as required by the Fair and Equitable Tobacco Reform Act of 2004 (FETRA), that the allocation of tobacco manufacturer and importer assessments among the six classes of tobacco products will be determined using constant tax rates so as to assure that adjustments continue to be based solely on changes in the gross domestic volume of each class. This means that CCC will continue to determine tobacco class allocations using the Federal excise tax rates that applied in fiscal year 2005. These are the same tax rates used when TTPP was implemented and must be used to ensure, consistent with FETRA, that changes in the relative class assessments are made only on the basis of changes in volume, not changes in tax rates. This technical amendment does not change how the TTPP is implemented by CCC, but rather clarifies the wording of the regulation to directly address this point.

DATES: *Effective Date:* December 10, 2010.

FOR FURTHER INFORMATION CONTACT: Jane Reed, Economic and Policy Analysis Staff, Farm Service Agency (FSA); phone: (202) 720–6782, e-mail: *jane.reed@wdc.usda.gov.* Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: FETRA (7 U.S.C. 518–519a), which was contained in the American Jobs Creation Act of 2004 (Pub. L. 108–357) authorizes TTPP, sometimes called the "tobacco buyout" program. Under TTPP, eligible former tobacco quota holders and tobacco producers receive payments in 10 annual installments in fiscal years 2005 through 2014. To fund TTPP, CCC collects quarterly assessments from domestic manufacturers and importers of tobacco products. FETRA specifies the methodology for determining quarterly assessments.

As specified in FETRA and the TTPP regulations, the assessments are allocated among six statutorily-specified classes of tobacco products: Cigarettes, cigars, snuff, roll-your-own, chewing, and pipe. FETRA specifies further the initial relative percentages that each class will pay of the total assessment levied each year of the program. Analysis by USDA determined that the initial allocation in FETRA was calculated using tax data and volumes published by the Treasury Department's Alcohol and Tobacco Tax and Trade Bureau (TTB). Specifically, it appeared that Congress used calendar year 2003 relevant tobacco class volume amounts (volume measured by using number of sticks for cigarettes and cigars, pounds for the other classes) from the published TTB data and multiplied those numbers by the then-applicable maximum excise tax rate. In this way, each class' volume was converted from differing bases (sticks and pounds) to a tax dollar figure. The tax figures were added together for a six-class total. Each class' allocation was then its percentage contribution to the six-class total of excise taxes and that percentage was then specified in section 625 of Pub. L. 108–357 (7 U.S.C. 518d) as each class' initial percentage of the overall allocation for TTPP.

The allocation of the total annual assessment needed to fund TTPP among the six classes is commonly referred to as Step A of the assessment process; Step B is the division of assessments within each class of that class' share among the manufacturers or importers of products in that particular class. This technical amendment only addresses Step A.

The initial percentage assigned to cigarette tobacco in FETRA was 96.331 percent, as specified in 7 U.S.C. 518d(c)(1). That allocation, and the allocation to the other five classes, was not intended to be permanent. Rather, as specified in 7 U.S.C. 518d(c)(2), it was provided in FETRA that for subsequent fiscal years, the Secretary would 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.

Thus, FETRA provides a specified restriction for adjustments to the Step A allocations to reflect changes in the share of gross domestic volume only, not changes in tax rates.

The current regulation in 7 CFR 1463.5(a) specifies that "the national assessment will be divided by CCC among each class of tobacco based upon CCC's determination of each class's share of the excise taxes paid. The value of the excise taxes paid for each class of tobacco will be based upon the reports filed by domestic manufacturers and importers of tobacco products with the Department of the Treasury and the Department of Homeland Security * * *"

Excise taxes paid are based on the volume of tobacco calculated from those reports, consistent with FETRA's intent to base any changes in the Step A allocations on changes in gross domestic volume. To assure the correctness of the result, a constant tax rate must be used, but the regulation is silent on which rates will be used. Until 2009, the point was moot in any event because the excise rates were, until then, unchanged. However, on April 1, 2009, Congress changed tobacco excise tax rates with the passage of the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3) and a question has been raised subsequently about which rates would be used for the calculation. The regulation is being clarified accordingly to address that question specifically. As specified in this technical amendment, CCC will continue to use the "old" rates

(the rates that were in effect when the program was established) for the Step A adjustments because otherwise the adjustments would be for changes in the tax rates instead of changes in volume.

Changing the Step A allocations based on changes in excise tax rates would not be consistent with FETRA. If, for example, there were only two classes of products and for some reason the tax rate of one doubled but the volumes of the two classes remained exactly the same, then the Step A shares of the two classes would change dramatically if the new tax rates were used even though there had been no change in the volumes. That would not be consistent with FETRA because there would be an adjustment that was not based on a change in volume. The new tax rates, adopted in 2009, were proportionately raised more for cigars and roll-your-own tobacco than for the other classes, and if the new tax rates were used, the assessment for cigars and for roll-your-own tobacco would be adjusted to a percentage that would be much higher than if the adjustments are based only on changes in volume. In the meantime, those for cigarettes and some other classes would be much lower, independent of any changes in volume, and contrary to FETRA. In the case of cigars, the assessment would be nearly triple.

The continued use of the old rates has been reflected in calculations for Step A adjustments published on the FSA website both in the fall of 2009 and this year. CCC will, however, continue to make adjustments based on changes in volume and, in fact, because of those adjustments the cigarette share of the assessments has declined from the original 96.3 percent to 91.57 percent for the upcoming year. As the published calculations show, a class' individual percentage volume decline or increase is not necessarily equal to the decline or increase in its proportion of the total among classes. The following hypothetical example is intended to demonstrate why this occurs: Assume there were just two categories of products and one had a volume of 100 and the other had a volume of 1, so that the larger category's proportion of the total volume, 100/101, would be over 99 percent. Assume next that the first category had a 50 percent decline in volume down to 50 units while the other stayed constant at 1. The new total volume would be 51 for the two categories. The larger category's proportion of the total volume (50 of 51) would still be over 98 percent despite the 50 percent decline in its volume. Again, this is a hypothetical example and the actual numbers used in the actual agency calculations are set out in the published calculations.

This amendment ensures that the regulation is clear and remains consistent with FETRA. Because this is a clarification only, and because this action is exempt from notice and comment rulemaking as specified in 7 U.S.C. 519a, this action is taken without prior public comment, although there have been public inquiries about this issue.

This amendment also corrects the authority for part 1463 to refer to the United States Code citation for FETRA, rather than the public law citation.

Executive Order 12866

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). This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule. This action is exempt from notice and comment rulemaking (7 U.S.C. 519a).

Environmental Review

The environmental impacts of this 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 FSA regulations for compliance with NEPA (7 CFR part 799). The rule change is a technical amendment and is solely administrative in nature. Therefore, FSA has determined that NEPA does not apply to this Final Rule and no environmental assessment or environmental impact statement will be prepared.

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. This rule neither provides Federal financial assistance or direct Federal development; it does not provide either grants or cooperative agreements. Therefore this program is not subject to Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This rule would not preempt State and or local laws, and regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, appeal provisions of 7 CFR parts 11 and 780 would need to be exhausted. This rule would not preempt a State or tribal government law, including any State or tribal government liability law.

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. 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." The policies contained in this rule do not have tribal implications that preempt tribal law. FSA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of CCC regulations.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or 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 by Title II of UMRA for State, local, or tribal governments or for 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

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 and this rule is effective on the date of publication in the **Federal Register**.

Federal Assistance Programs

The title and number of the Federal assistance program as 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, this rule amends 7 CFR part 1463 as follows:

PART 1463—2005–2014 TOBACCO TRANSITION PAYMENT PROGRAM

■ 1. The authority citation for part 1463 is revised to read as follows:

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

§ 1463.5 [Amended]

■ 2. Amend paragraph (a), first sentence, by adding the words "using for all years the tax rates that applied in fiscal year 2005" at the end.

Signed in Washington, DC, on December 7, 2010.

Jonathan W. Coppess,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2010–31061 Filed 12–9–10; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AI37

[NRC–2009–0014]

Domestic Licensing of Production and Utilization Facilities; Updates to Incorporation by Reference of Regulatory Guides; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correcting amendment.

SUMMARY: This document corrects a final rule that was published in the **Federal Register** on October 5, 2010 (75 FR 61321). The final rule amends the U.S. Nuclear Regulatory Commission's (NRC) regulations to incorporate by reference the latest revisions of two previously incorporated regulatory guides. This document is necessary to add a line of regulatory text that was inadvertently omitted from the final rule.

DATES: The correction is effective on December 10, 2010, and is applicable beginning November 4, 2010, the date the original rule became effective.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–492–3667, e-mail: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION: This document is the second set of corrections to the final rule that was published on October 5, 2010. The previous correction was published on October 21, 2010 (75 FR 64949). This document adds a line of text to the regulations at 10 CFR 50.55a(g)(3)(ii) that was inadvertently omitted from the final rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80—50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.55a, revise paragraph (g)(3)(ii) to read as follows:

§ 50.55a Codes and standards.

* * * * *

(g) * * *

(3) * * *

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of