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DEPARTMENT OF AGRICULTURE

Farm Service Agency

Tobacco Transition Payment Program; Availability of Current Assessment Methods Determination Document

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice of availability of determinations.

SUMMARY: The Commodity Credit Corporation (CCC) is making available a document regarding two consolidated determinations with respect to the current methods used to calculate manufacturer and importer assessments that fund the Tobacco Transition Payment Program (TTPP). It is in response to challenges raised in two lawsuits - Prime Time International Co. v. Vilsack et al and Philip Morris USA Inc. v. Vilsack et al - involving the terms and construction of the Fair and Equitable Tobacco Reform Act of 2004 (FETRA). Both matters involve the question of what is a "share of gross domestic volume" within the meaning of FETRA and the question of what is to be done with those "shares" in calculating program liabilities. Because the outcomes of these two lawsuits have the potential to affect not only the plaintiffs, but also all other importers and manufacturers, public availability of a USDA determination is warranted.

FOR FURTHER INFORMATION CONTACT: Jane Reed, phone: (202) 720-6782; mail: Farm Service Agency, USDA, ATTN: Jane Reed, U.S. Department of Agriculture, Farm Service Agency, Economic and Policy Analysis Staff, Mail stop 0515, 1400 Independence Ave, SW, Washington DC, 20250-0515; email: jane.reed@wdc.usda.gov; fax: (202) 720-8120. Persons with disabilities who require alternative means for

communication information (Braille, large print, audiotape, etc.) should contact USDA's 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) authorized the TTPP following the termination of the longstanding tobacco price support program. The 10-year TTPP (operating from fiscal year (FY) 2005 through FY 2014) makes annual payments of about $1 billion to those who held tobacco quotas and produced tobacco at the time FETRA established TTPP. These payments are funded via assessments that are collected from domestic tobacco manufacturers and importers.

USDA uses a two-step process for calculating these assessments for each manufacturer and importer. First, the total amount of assessment liability is divided among six classes of tobacco products (cigarettes, cigars, snuff, roll-your-own, chewing, and pipe). Second, liability is further divided among the individual manufacturers and importers based on each company's market share within each class. For both steps, a party's or class' "share" of "gross domestic volume" – that volume being defined in FETRA as the totality of those products of all categories removed into domestic commerce and not exempt from Federal excise tax - is a key element. How these terms are interpreted, and what a party's or class' "share" is of that "gross domestic volume" within the meaning of FETRA are key elements in both disputes.

USDA believes, after considering the matter, that the continued use of current procedure to calculate manufacturer and importer assessments is warranted. A detailed explanation of the issues and USDA's rationale is available in the USDA determination at http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecpa&topic=fta-ta. The

determination addresses the rulemaking matter covered in a Federal Register document published March 22, 2011 (76 FR 15859-15864) with respect to the "Step B" calculations. The determination also addresses an administrative petition regarding "Step A." These terms and the nature of the disputes are described in detail in the document available at the link noted above.

Signed on November 16, 2011.

Bruce Nelson,
Administrator,
Farm Service agency.

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