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108TH CONGRESS
1ST SESSION

H. R. 3160

To eliminate the Federal quota and price support programs for tobacco, to provide transitional assistance to tobacco quota holders and traditional producers of tobacco affected by the elimination of these programs, to ensure the future quality and availability of United States-grown tobacco, to protect against the disruption of tobacco markets, to establish a trust fund to finance this Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2003

Mr. FLETCHER (for himself, Mr. MCINTYRE, Mr. GOODE, Mr. ETHERIDGE, Mr. BALLANCE, Mr. BALLENGER, Mr. BARRETT of South Carolina, Mr. BISHOP of Georgia, Mrs. BLACKBURN, Mr. BOUCHER, Mr. BOYD, Mr. BROWN of South Carolina, Mr. CLYBURN, Mr. COLLINS, Mr. COOPER, Mr. DAVIS of Tennessee, Mr. TOM DAVIS of Virginia, Mr. DEMINT, Mr. GORDON, Mr. HAYES, Mr. HILL, Mr. KINGSTON, Mr. LEWIS of Kentucky, Mr. LUCAS of Kentucky, Mr. MARSHALL, Mr. MILLER of North Carolina, Mr. NORWOOD, Mr. PETERSON of Minnesota, Mr. PRICE of North Carolina, Mr. ROGERS of Kentucky, Mr. SCOTT of Georgia, Mr. SPRATT, Mr. THOMPSON of Mississippi, Mr. WAMP, Mr. WHITFIELD, Mr. WILSON of South Carolina, Mr. DUNCAN, Mr. MURTHA, and Mr. ISAKSON) introduced the following bill; which was referred to the Committee on Agriculture

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A BILL

To eliminate the Federal quota and price support programs for tobacco, to provide transitional assistance to tobacco quota holders and traditional producers of tobacco affected by the elimination of these programs, to ensure the future quality and availability of United States-grown tobacco, to protect against the disruption of tobacco mar-

kets, to establish a trust fund to finance this Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Tobacco Reduction, Accountability, and Community Enhancement Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Termination of tobacco production adjustment programs.
Sec. 3. Termination of tobacco price support program.
Sec. 4. Liability.
Sec. 5. Replacement tobacco assistance programs.
Sec. 6. Regulations.
Sec. 7. Severability.
Sec. 8. Effective date.

SEC. 2. TERMINATION OF TOBACCO PRODUCTION ADJUSTMENT PROGRAMS.

(a) TOBACCO STANDARDS.—The Tobacco Inspection Act (7 U.S.C. 511 et seq.) is repealed.

(b) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203) is amended by striking subsection (c).

(c) TOBACCO INSPECTIONS.—Section 213 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) is repealed.

(d) TOBACCO CONTROL.—The Act of April 25, 1936 (commonly known as the Tobacco Control Act; 7 U.S.C. 515 et seq.), is repealed.

(e) COMMODITY HANDLING ORDERS.—Section 8c(2)(A) of the Agricultural Adjustment Act (7 U.S.C. 608c(2)(A)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended by striking ''tobacco,''.

(f) PROCESSING TAX.—Section 9(b) of the Agricultural Adjustment Act (7 U.S.C. 609(b)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (2), by striking ''tobacco,''; and

(2) in paragraph (6)(B)(i), by striking '', or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum,''.

(g) BURLEY TOBACCO IMPORT REVIEW.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(h) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking ''tobacco,''.

(i) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking ''tobacco,'';

(3) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(4) in paragraph (11)(B), by striking ''and tobacco'';

(5) in paragraph (12), by striking ''tobacco,'';

(6) in paragraph (14)—

(A) in subparagraph (A), by striking ''(A)''; and

(B) by striking subparagraphs (B), (C), and (D);

(7) by striking paragraph (15);

(8) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(9) by striking paragraph (17); and

(10) by redesignating paragraph (16) as paragraph (15).

(j) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking ''rice, or tobacco,'' and inserting ''or rice,''.

(k) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(l) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking ''tobacco,''.

(m) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking ''rice, or tobacco'' and inserting ''or rice''; and

(2) in the first sentence of subsection (b), by striking ''rice, or tobacco'' and inserting ''or rice''.

(n) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—

(1) by striking ''rice, or tobacco'' each place it appears in subsections (a) and (b) and inserting ''or rice''; and

(2) in subsection (a)—

(A) in the first sentence, by striking ''all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,''; and

(B) in the last sentence, by striking ''$500;'' and all that follows through the period at the end of the sentence and inserting ''$500.''.

(o) REGULATIONS.—Section 375 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

(1) in subsection (a), by striking ''peanuts, or tobacco'' and inserting ''or peanuts''; and

(2) by striking subsection (c).

(p) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking ''cotton, and tobacco'' and inserting ''and cotton''; and

(2) by striking subsections (d), (e), and (f).

(q) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking ''(a)''; and

(B) in paragraph (6), by striking ", but this clause (6) shall not be applicable in the case of burley tobacco"; and

(2) by striking subsections (b) and (c).

(r) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c note), is repealed.

(s) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

(t) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(u) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking "tobacco and".

SEC. 3. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM.

(a) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking "tobacco (except as otherwise provided herein), corn," and inserting "corn";

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking ‘‘, except tobacco,’’; and

(B) by striking ‘‘and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;’’; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(b) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1, 1445–2) are repealed.

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking ‘‘tobacco,’’.

(d) REVIEW OF BURLEY TOBACCO IMPORTS.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

(e) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting ‘‘(other than tobacco)’’ after ‘‘agricultural commodities’’ each place it appears.

SEC. 4. LIABILITY.

The amendments made by sections 2 and 3 shall not affect the liability of any person under any provision of

law so amended with respect to any crop of tobacco planted before the effective date of this Act.

SEC. 5. REPLACEMENT TOBACCO ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Title III of the Agricultural Adjustment Act of 1938 is amended by inserting after subtitle D (7 U.S.C. 1379a et seq.) the following:

"Subtitle E—Tobacco Assistance

"SEC. 380A. DEFINITIONS.

''In this subtitle:

''(1) ACTIVE TOBACCO PRODUCER.—The term 'active tobacco producer', with respect to a kind of tobacco, means a person that—

''(A) is actively engaged in the production of tobacco marketed or considered planted; and

''(B) shares in the risk of producing the tobacco.

''(2) APPLICABLE FISCAL YEAR.—The term 'applicable fiscal year' means each of fiscal years 2004 through 2011.

''(3) BASE PERIOD.—The term 'base period' means the six-month period from January 1, 2004, through June 30, 2004, and each three-month period thereafter through the three-month period ending on June 30, 2011.

"(4) CONSIDERED PLANTED.—The term 'considered planted' means tobacco planted but failed to be produced as a result of a natural disaster, as determined by the Secretary.

"(5) DEPARTMENT.—The term 'Department' means the Department of Agriculture.

"(6) ELIGIBLE STATE.—The term 'eligible State' means each of the States of Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Minnesota, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

"(7) 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 the applicable fiscal year for an assessment under section 380T.

"(8) QUOTA TOBACCO.—The term 'quota tobacco' means a kind of tobacco that is subject to a farm marketing quota or farm acreage allotment for the 2002 tobacco marketing year under a marketing quota or allotment program established under part I of subtitle B of this title (as in effect on the day

before the date of the enactment of the Tobacco Reduction, Accountability, and Community Enhancement Act of 2003).

"(9) 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.

"(10) TOBACCO ADVISORY BOARD.—The terms 'Tobacco Advisory Board' and 'Board' mean a Tobacco Advisory Board established under section 380G for a kind of tobacco.

"(11) TOBACCO QUOTA HOLDER.—The term 'tobacco quota holder' means a person that is con-

sidered a tobacco quota holder under section 380B(b).

"(12) TOBACCO TRUST FUND.—The terms 'Tobacco Trust Fund' and 'Fund' mean the Tobacco Trust Fund established under section 380S.

"(13) TRADITIONAL PRODUCER OF TOBACCO.—The term 'traditional producer of tobacco' means a person that, for at least 1 of the 2000, 2001, or 2002 tobacco marketing years—

"(A) was actively engaged in the production of tobacco marketed, or considered planted, under a marketing quota established under part I of subtitle B of this title (as in effect on the day before the date of the enactment of the Tobacco Reduction, Accountability, and Community Enhancement Act of 2003); and

"(B) shared in the risk of producing the tobacco.

"(14) TRADITIONAL TOBACCO COUNTY.—The term 'traditional tobacco county' means a county in the United States that had 1 or more farms operated by traditional producers of tobacco under a marketing quota for at least 1 of the 2000, 2001, or 2002 tobacco marketing years. To determine the crop poundage base of an active tobacco producer

for a kind of tobacco produced in the State of Georgia under section 380I, the term includes a county that is contiguous to a county described in the preceding sentence.

"CHAPTER 1—PAYMENTS TO TOBACCO QUOTA HOLDERS AND TRADITIONAL PRODUCERS

"SEC. 380B. EQUITY RELIEF PAYMENTS TO TOBACCO QUOTA HOLDERS.

''(a) IN GENERAL.—The Secretary shall make transition payments under this section to each tobacco quota holder.

''(b) TOBACCO QUOTA HOLDER.—

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the Secretary shall consider a person to be a tobacco quota holder under this section if the person was an owner of a farm, as of July 1, 2002, for which a basic tobacco farm marketing quota or farm acreage allotment for quota tobacco was established with respect to the 2002 tobacco marketing year under a marketing quota program established under part I of subtitle B of this title (as in effect on the day before the date of the enactment of the Tobacco Reduction, Accountability, and Community Enhancement Act of 2003).

"(2) EFFECT OF PURCHASE CONTRACT.—If there was an agreement for the purchase of all or part of a farm described in paragraph (1) as of July 1, 2002, and the parties to the sale are unable to agree to the disposition of eligibility for payments under this section, the Secretary, taking into account any transfer of quota that has been agreed to, shall provide for the equitable division of the payments among the parties by adjusting the determination of who is the tobacco quota holder with respect to particular pounds of the quota.

"(3) EFFECT OF AGREEMENT FOR PERMANENT QUOTA TRANSFER.—If the Secretary determines that there was in existence, as of July 1, 2002, 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.

"(4) PROTECTED BASES.—A person that owns a farm with a tobacco poundage quota that is protected under a conservation reserve program contract entered into under section 1231 of the Food Security Act of 1985 (16 U.S.C. 3831) shall be con-

sidered to be a tobacco quota holder with respect to the protected poundage.

"(5) SECRETARIAL DISCRETION.—Notwithstanding paragraphs (1) through (4), the Secretary may declare a person to be the tobacco quota holder with respect to certain pounds of quota or otherwise for purposes of this section if the Secretary—

"(A) considers the declaration is needed to ensure a fair and equitable administration of the payments provided for in this section, including such actions as are necessary to prevent payments based on speculation; and

"(B) does not, in exercising the authority provided under this paragraph, effectively increase the total quota in excess of the quota that was available to all producers for the 2002 marketing year for other than seed or experimental use.

"(6) LIMITATION ON QUANTITY OF QUOTA HELD.—

"(A) IN GENERAL.—A person shall be considered a tobacco quota holder for purposes of this section only with respect to the quantity of basic quota that qualifies the person as a tobacco quota holder.

"(B) INCLUDED QUOTA.—The determination of the tobacco poundage amount for which the person qualifies shall—

"(i) be made based on the 2002 crop quota levels; and

"(ii) take into account sales of the farm that occurred before July 1, 2002, and any permanent transfers of quota that took place before that date.

"(c) APPLICATION.—To be eligible to receive payments under this section, a person shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to demonstrate that the person satisfies the definition of tobacco quota holder.

"(d) TOTAL AMOUNT AVAILABLE FOR PAYMENTS.—

"(1) IN GENERAL.—The Secretary shall determine the total amount to be paid to all tobacco quota holders under this section with respect to each kind of tobacco.

"(2) POUNDAGE QUOTA TOBACCO.—For each kind of tobacco for which the marketing quota is expressed in pounds, the total amount available for payments to tobacco quota holders under this section

shall be equal to the product obtained by multiplying—

"(A) $8 per pound; by

"(B) the annual average of tobacco farm basic quotas established under this Act for the 1997 through 2002 marketing years for that kind of tobacco.

"(3) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for which there is a marketing quota or allotment on an acreage basis, the Secretary shall convert the tobacco farm marketing quotas or allotments established under this Act for the 1997 through 2002 marketing year for that kind of tobacco to a poundage basis before executing the mathematical equation specified in paragraph (2).

"(e) BASE QUOTA LEVEL.—

"(1) IN GENERAL.—The Secretary shall determine the base quota level of each tobacco quota holder with respect to each kind of tobacco.

"(2) POUNDAGE QUOTA TOBACCO.—For each kind of tobacco for which the marketing quota is expressed in pounds, the base quota level for a tobacco quota holder shall be equal to the tobacco farm marketing quota established under this Act for the 2002

marketing year for quota tobacco on the farm owned by the tobacco quota holder.

"(3) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for which there is a marketing quota or allotment on an acreage basis, the base quota level for a tobacco quota holder shall be equal to the product obtained (based on a poundage conversion) by multiplying—

"(A) the tobacco farm marketing quota or allotment established under this Act for the 2002 marketing year for the tobacco quota holder's farm; by

"(B) the average yield per acre for the tobacco quota holder's farm for the kind of tobacco for that marketing year.

"(f) PAYMENT AMOUNT.—The Secretary shall make payments to a tobacco quota holder with respect to a kind of tobacco under this section in a total amount that bears the same ratio to the amount determined by the Secretary under subsection (d) with respect to that kind of tobacco as the base quota level of the tobacco quota holder with respect to that kind of tobacco bears to the base quota level of all tobacco quota holders with respect to that kind of tobacco.

"(g) TIME FOR PAYMENT.—The amount determined under subsection (f) for a tobacco quota holder shall be paid in seven equal installments on November 1 of each of the calendar years 2004 through 2010, except that 50 percent of the payment required to be made on November 1, 2004, shall be paid on September 30, 2004.

"(h) DEATH OF TOBACCO QUOTA HOLDER.—If a tobacco quota holder who is entitled to 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.

"SEC. 380C. DIRECT PAYMENTS TO TRADITIONAL PRODUCERS OF TOBACCO.

"(a) IN GENERAL.—The Secretary shall make direct payments under this section to traditional producers of tobacco.

"(b) APPLICATION.—To be eligible to receive payments under this section, a person shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to demonstrate that the person satisfies the definition of traditional producer of tobacco.

"(c) TOTAL AMOUNT AVAILABLE FOR PAYMENTS.—

"(1) IN GENERAL.—The Secretary shall determine the total amount to be paid to traditional producers of tobacco under this section with respect to each kind of tobacco.

"(2) POUNDAGE QUOTA TOBACCO.—For each kind of tobacco for which the marketing quota is expressed in pounds, the total amount available for payments to traditional producers of tobacco under this section shall be equal to the product obtained by multiplying—

"(A) $4 per pound; by

"(B) the annual average of tobacco farm effective quotas established under this Act for the 1997 through 2002 marketing years for that kind of tobacco.

"(3) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for which there is a marketing quota or allotment on an acreage basis, the Secretary shall convert the tobacco farm marketing quotas or allotments established under this Act for the 1997 through 2002 marketing years for that kind of tobacco to a poundage basis before executing the mathematical equation specified in paragraph (2).

"(d) PAYMENT QUANTITY.—

"(1) IN GENERAL.—The Secretary shall determine the payment quantity of tobacco for each traditional producer of tobacco with respect to each kind of tobacco.

"(2) POUNDAGE QUOTA TOBACCO.—For each kind of tobacco for which the marketing quota is expressed in pounds, the payment quantity for a traditional producer of tobacco shall be equal to the average of the July 1 effective quota for that quota tobacco produced by the producer under this Act for the 2000, 2001 and 2002 marketing years.

"(3) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—For each kind of tobacco for which there is a marketing quota or allotment on an acreage basis, the payment quantity for a traditional producer of tobacco shall be equal to the average of the actual pounds of that kind of tobacco produced by the traditional producer of tobacco for the 2000, 2001 and 2002 marketing years.

"(e) PAYMENT AMOUNT.—The Secretary shall make payments to each traditional producer of tobacco with respect to a kind of tobacco under this section in a total amount that bears the same ratio to the amount determined by the Secretary under subsection (c) with respect to that kind of tobacco as the payment quantity of the

producer with respect to that kind of tobacco bears to the payment quantities of all traditional producers of tobacco with respect to that kind of tobacco.

"(f) TIME FOR PAYMENT.—The amount determined under subsection (e) for a traditional producer of tobacco shall be paid in seven equal installments on November 1 of each of the calendar years 2004 through 2010, except that 50 percent of the payment required to be made on November 1, 2004, shall be paid on September 30, 2004.

"(g) DEATH OF ACTIVE TOBACCO PRODUCER.—If a traditional producer of tobacco who is entitled to transition 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 producer.

"SEC. 380D. ADMINISTRATION.

"(a) RESOLUTION OF DISPUTES.—

"(1) IN GENERAL.—Any dispute regarding the eligibility of a person to receive a payment under this subtitle, or the amount of the payment, may be appealed to the county committee established under section 8 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h) for the county or other area in which the farming operation of the person is located.

"(2) NATIONAL APPEALS DIVISION.—Any adverse determination of a county committee under subsection (a) 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.).

"(b) USE OF QUALIFIED FINANCIAL INSTITUTIONS.—The Secretary may use qualified financial institutions to manage assets, make payments, and otherwise carry out this subtitle.

"CHAPTER 2—TOBACCO QUALITY AND QUANTITY

"SEC. 380G. TOBACCO ADVISORY BOARDS.

"(a) ESTABLISHMENT.—The Secretary shall establish in the Department a permanent advisory board for each kind of tobacco, to be known as a 'Tobacco Advisory Board'.

"(b) MEMBERSHIP.—

"(1) NUMBER.—Each Tobacco Advisory Board shall have 11 members.

"(2) COMPOSITION.—The Board for a kind of tobacco shall consist of the following:

"(A) 5 members appointed by the Secretary from nominations submitted by rep-

resentatives of active tobacco producers in the United States of that kind of tobacco.

"(B) 5 members appointed by the Secretary from nominations submitted by representatives of tobacco product manufacturers in the United States that purchase that type of tobacco, including at least 1 representative of export dealers of tobacco or tobacco products appointed from nominations submitted by export dealers.

"(C) An officer or employee of the Department appointed by the Secretary.

"(3) ALLOCATION OF PRODUCER MEMBERSHIP.—In appointing members to the Tobacco Advisory Board for a kind of tobacco under paragraph (2)(A), the number of members appointed by the Secretary to represent active tobacco producers of that kind of tobacco in a particular State shall, to the maximum extent practicable, bear the same ratio to the total number of members of the Board as—

"(A) the total volume of domestic sales of the kind of tobacco produced in the State during the most recent period for which data is available; bears to

"(B) the total volume of domestic sales of the kind of tobacco produced in all States during the most recent period for which data is available.

"(c) CHAIRPERSON.—The Secretary shall appoint the chairperson of each Tobacco Advisory Board, with a different member serving as chairperson of a Board every 2 years.

"(d) TERMS.—Members of a Tobacco Advisory Board shall serve for 2-year terms, except that the terms of the members first appointed to the Boards shall be staggered so as to establish a rotating membership of the Boards, as determined by the Secretary.

"SEC. 380H. DUTIES AND ADMINISTRATION OF TOBACCO ADVISORY BOARDS.

"(a) DUTIES.—The Tobacco Advisory Board for a kind of tobacco shall—

"(1) determine and describe the physical characteristics of that kind of tobacco produced in the United States and unmanufactured tobacco of that kind imported into the United States;

"(2) assemble and evaluate, in a systematic manner, concerns and problems with the quality of that kind of tobacco produced in the United States,

expressed by domestic and foreign buyers and manufacturers of tobacco products;

''(3) review data collected by Federal agencies on the physical and chemical integrity of that kind of tobacco produced in the United States and unmanufactured tobacco imported into the United States, to ensure that tobacco being used in domestically-manufactured tobacco products is of the highest quality and is free from prohibited physical and chemical agents;

''(4) not later than a date determined by the Secretary, make recommendations to the Secretary on the base year, for the maximum crop poundage base under section 380I(f) for each crop of that kind of tobacco;

''(5) establish a registration system to monitor the production of that kind of tobacco;

''(6) investigate and communicate to the Secretary—

''(A) conditions with respect to the production of that kind of tobacco that discourage improvements in the quality of tobacco produced in the United States; and

"(B) recommendations for regulatory changes that would address tobacco quality issues affecting that kind of tobacco;

"(7) conduct oversight regarding tobacco marketing issues (such as opening sales dates and marketing regulations) affecting that kind of tobacco and applicable to auction markets;

"(8) provide assistance to Federal agencies on actions taken by the Federal agencies that affect the quality or quantity of that kind of tobacco produced in the United States; and

"(9) carry out such other related activities as are assigned to the Board by the Secretary.

"(b) ADMINISTRATION.—The Secretary shall provide the Tobacco Advisory Boards with (as determined by the Secretary)—

"(1) a staff that is—

"(A) experienced in the sampling and analysis of unmanufactured tobacco; and

"(B) capable of collecting data and monitoring tobacco production information; and

"(2) other resources and information necessary for the Boards to perform their duties, including information concerning acreage devoted to the production of each kind of tobacco.

"(c) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Tobacco Advisory Boards.

"SEC. 380I. TOBACCO POUNDAGE LIMITATION PROGRAM.

"(a) DEFINITIONS.—In this section:

"(1) CROP POUNDAGE BASE.—The term 'crop poundage base' means the crop poundage base for a kind of tobacco for a crop for an active tobacco producer, as determined by the Secretary under subsection (e).

"(2) PERMITTED POUNDAGE.—The term 'permitted poundage' means the number of pounds of a kind of tobacco authorized to be produced by an active tobacco producer, consistent with the annual poundage limitation program announced by the Secretary for the kind of tobacco.

"(b) ESTABLISHMENT AND MAINTENANCE.—

"(1) IN GENERAL.—The Secretary shall establish and may maintain a poundage limitation program for each crop of each kind of tobacco.

"(2) SUPPLY.—In determining whether to maintain the poundage limitation program for a crop of a kind of tobacco, the Secretary shall determine whether the total supply of that kind of tobacco, in

the absence of limitations, will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable supplies and prices.

"(3) ANNOUNCEMENT.—

"(A) IN GENERAL.—The Secretary shall announce the annual poundage limitation program for a kind of tobacco as soon as practicable preceding the year in which the crop is harvested.

"(B) SPECIAL RULE FOR 2004 CROP.—In the case of the 2004 crop for a kind of tobacco, the Secretary shall announce the poundage limitation program as soon as practicable after the date of the enactment of the Tobacco Reduction, Accountability, and Community Enhancement Act of 2003.

"(4) CONSULTATION.—The Secretary shall carry out this subsection with regard to a kind of tobacco in consultation with the Tobacco Advisory Board established for that kind of tobacco.

"(c) APPLICATION OF LIMITATION.—Under a poundage limitation program for a kind of tobacco, the Secretary shall achieve the limitation by applying a uniform percentage adjustment to the crop poundage base for the kind of tobacco in each traditional tobacco county for the

crop for active tobacco producers that produce that kind of tobacco in that county, as determined by the Secretary.

"(d) COMPLIANCE.—

"(1) LOANS, PURCHASES, OR PAYMENTS.—An active tobacco producer that knowingly produces a kind of tobacco in excess of the permitted poundage for the kind of tobacco, or violates any lease or transfer requirements of this section, shall be ineligible for any loans, purchases, or payments for the kind of tobacco.

"(2) NO CARRY OVER.—An active tobacco producer may not carry over permitted poundage for a crop of a kind of tobacco, which is not produced by the producer, for production in a subsequent crop year.

"(3) PENALTIES.—

"(A) CRIMINAL PENALTY.—A producer that violates this subsection may be fined not more than $100,000 or imprisoned not more than 2 years, or both.

"(B) CIVIL PENALTY.—In addition to any penalty imposed under paragraph (1), the Secretary may assess against a producer that violates this subsection a civil penalty in an amount not to exceed 2 percent of the value of

the kind of tobacco produced by the producer during the crop year in which the violation occurred, as determined by the Secretary.

"(3) JURISDICTION TO PREVENT AND RESTRAIN VIOLATIONS.—A United States district court shall have jurisdiction to prevent and restrain a producer from producing a kind of tobacco in excess of the permitted poundage for the kind of tobacco.

"(e) DETERMINATION OF CROP POUNDAGE BASES.—

"(1) 2004 CROP YEAR.—Subject to subsections (f) through (i), the crop poundage base for an active tobacco producer for the 2004 crop of each kind of tobacco shall equal the average of the number of pounds of that kind of tobacco harvested by the active tobacco producer in a traditional tobacco county and marketed in each of the 5 crop years preceding the crop year, as determined and adjusted by the Secretary.

"(2) SUBSEQUENT CROP YEARS.—Subject to subsections (f) through (i), in the case of the 2005 and subsequent crops of each kind of tobacco, the crop poundage base for an active tobacco producer of a kind of tobacco shall equal the number of pounds of that kind of tobacco harvested by the ac-

tive tobacco producer in a traditional tobacco county and marketed in the preceding crop year, as determined and adjusted by the Secretary.

"(3) CONSULTATION.—The Secretary shall carry out this subsection with regard to a kind of tobacco in consultation with the Tobacco Advisory Board established for that kind of tobacco.

"(f) MAXIMUM CROP POUNDAGE BASES.—

"(1) IN GENERAL.—Subject to paragraph (2), the total number of pounds devoted to a kind of tobacco by active tobacco producers during a crop year shall not exceed the total number of pounds devoted to the kind of tobacco by active tobacco producers during a crop year determined by the Secretary.

"(2) ADJUSTMENT.—If the active tobacco producers of a kind of tobacco demonstrate to the Secretary that the application of paragraph (1) to a crop of a kind of tobacco will result in unbalanced supply and demand conditions, the Secretary may adjust the total number of pounds that may be devoted to the kind of tobacco by active tobacco producers during the crop year.

"(g) SALE, LEASE, OR TRANSFER OF CROP POUNDAGE BASES.—

"(1) PROHIBITION.—Except as provided in paragraph (2), an active tobacco producer shall not directly or indirectly sell, lease, or transfer to another person or other legal entity a crop poundage base established for an active tobacco producer under this section.

"(2) EXCEPTION.—If the crop poundage base of an active tobacco producer for a type of tobacco covers tobacco that was produced by the producer in more than one traditional tobacco county, the producer may elect to consolidate the base in a single traditional tobacco county in which the producer bore or shared in the risk of producing a crop of that kind of tobacco for the 2002 crop year.

"(h) REALLOCATION OF UNUSED CROP POUNDAGE BASES.—

"(1) COUNTY POOL.—Subject to paragraphs (2), (3), and (4), if an active tobacco producer with a crop poundage base for a kind of tobacco elects not to use all or part of the crop poundage base to continue to produce that kind of tobacco, the unused crop poundage base shall be placed in a pool established for the traditional tobacco county where the unused crop poundage base was originally located for reallocation by the Secretary to other active to-

bacco producers of that kind of tobacco in the traditional tobacco county. The Secretary shall distribute the unused crop poundage base among those producers that request a portion of the unused crop poundage base according to the percentage of previous year production, by pound, of that kind of tobacco in that county.

"(2) STATE POOL.—Subject to paragraph (4), if any crop poundage base for a kind of tobacco remains after the crop poundage base is made available to producers of that kind of tobacco in the traditional tobacco county in a State under paragraph (1), the unused crop poundage base shall be placed in a pool established for the State for reallocation by the Secretary to other producers of that kind of tobacco in traditional tobacco counties. The Secretary shall distribute the available unused crop poundage base among those producers that request a portion of the unused crop poundage base according to the percentage of previous year production, by pound, of that kind of tobacco in the State.

"(3) TRADITIONAL GROWING AREA POOL.—Subject to paragraph (4), if any crop poundage base for a kind of tobacco remains after the crop poundage base is made available to producers of that kind

of tobacco in the traditional tobacco county in a State under paragraph (1), and remains after the crop poundage base is made available to producers of that kind of tobacco in the State under paragraph (2), the unused crop poundage base shall be placed in a pool established for reallocation by the Secretary to other producers of that kind of tobacco in a traditional tobacco county for that kind of tobacco. The Secretary shall distribute the available unused crop poundage base among those producers that request a portion of the unused crop poundage base according to the percentage of previous year production, by pound, of that kind of tobacco in that traditional growing area.

"(4) NEW PRODUCERS.—In reallocating unused crop poundage bases for a kind of tobacco in a traditional tobacco county made available under any of the preceding paragraphs, the Secretary shall make available to any new producers of that kind of tobacco in the traditional tobacco county up to 10 percent of the crop poundage bases available for reallocation for the kind of tobacco in the traditional tobacco county.

"(5) REALLOCATION PROCEDURES.—The Secretary shall establish procedures by which producers

of a kind of tobacco, including new producers under paragraph (4), may request the reallocation unused crop poundage base available under this subsection.

"(i) COMPLIANCE WITH CONSERVATION AND AGRICULTURAL REQUIREMENTS.—As a condition of the establishment of a crop poundage base for an active tobacco producer for a crop of a kind of tobacco, the producer shall agree, during the crop year for which the crop poundage base is established—

"(1) to comply with applicable conservation requirements under subtitle B of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.);

"(2) to comply with applicable wetland protection requirements under subtitle C of title XII of the Act (16 U.S.C. 3821 et seq.);

"(3) to use the land of the active tobacco producer, in a quantity consistent with the crop poundage base, for an agricultural or conserving use, and not for a nonagricultural commercial or industrial use, as determined by the Secretary; and

"(4) to effectively control noxious weeds and otherwise maintain the land in accordance with sound agricultural practices, as determined by the Secretary, if the agricultural or conserving use in-

volves the noncultivation of any portion of the land referred to in paragraph (3).

"CHAPTER 3—TOBACCO MARKET STABILITY PROGRAM

"SEC. 380M. TOBACCO MARKET STABILITY PROGRAM.

"(a) IN GENERAL.—If during any period of a marketing year, to be established by the Secretary, the insured price for the crop of a kind of tobacco exceeds the average domestic price for the crop of the kind of tobacco, as determined by the Secretary, the Secretary shall make available to active tobacco producers of that kind of tobacco market stability payments for the marketing year in an amount obtained by multiplying—

"(1) the payment rate for the crop (as determined under subsection (b)); and

"(2) the permitted poundage for the active tobacco producer (as determined under section 380I).

"(b) PAYMENT RATE.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the payment rate for a crop of a kind of tobacco under this section shall be the amount by which—

"(A) the insured price for the crop; exceeds

"(B) the domestic price for the crop.

"(2) INSURED PRICES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the insured price for each crop of a kind of tobacco under this section shall be a price, which is determined by the Secretary to be necessary to provide market stability for that kind of tobacco and for which private insurance may be obtained in accordance with subsection (c) at a cost that does not exceed (but may be less than) the assessment imposed for that kind of tobacco pursuant to subsection (f).

"(B) MINIMUM PRICE.—The insured price for each crop of a kind of tobacco under this section shall not be less than $1.00 per pound, unless the Secretary determines that lower insured price is necessary.

"(3) DOMESTIC PRICES.—The domestic price for the crop of a kind of tobacco under this section shall be determined by the Secretary.

"(c) DELIVERY THROUGH PRIVATE PROVIDERS.—

"(1) IN GENERAL.—The Secretary shall carry out this section, to the maximum extent practicable, through contracts with private insurance companies

and other private entities approved by the Secretary (referred to in this section as 'private providers').

"(2) REIMBURSEMENT.—The Secretary shall reimburse private providers for administrative expenses incurred in carrying out this section, as determined by the Secretary.

"(d) DELIVERY THROUGH LOCAL DEPARTMENT OFFICES.—If the Secretary determines that there are an insufficient number of private providers to carry out this section in all or part of a State, the Secretary (acting through local offices of the Department) shall carry out this section directly in all or part of the State.

"(e) ADDITIONAL COVERAGE.—The Secretary may offer additional coverage to active tobacco producers on a farm of a crop of a kind of tobacco under this section under which a higher level of price coverage is made available to the active tobacco producers on the farm, in exchange for an additional premium paid by the active tobacco producers on the farm.

"(f) ASSESSMENT.—

"(1) IN GENERAL.—Effective for each marketing year for a kind of tobacco for which tobacco market stability payments are made available under this section, subject to paragraph (2), each producer and purchaser of that kind of tobacco shall remit to

the Commodity Credit Corporation a marketing assessment in an amount determined by the Secretary that is sufficient to provide the payments for that kind of tobacco.

"(2) LIMITATION ON ASSESSMENT.—The Secretary shall not impose or collect an assessment under this section for a marketing year until and unless the Secretary determines that the amounts made available under section 380S(c)(1)(C) to carry out this section for that marketing year will be insufficient.

"(3) AMOUNT.—Subject to paragraph (2), the amount of producer and purchaser assessments for a kind of tobacco under this subsection—

"(A) shall be determined in such a manner that producers and purchasers share equally in paying assessments required under this subsection; and

"(B) shall not exceed 5 cents per pound.

"(4) COLLECTION.—The producer and purchaser assessments shall be—

"(A) collected in the same manner as provided for in section 106A(d)(2) or 106B(d)(3) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(d)(2), 1445–2(d)(3)) (as in effect on

the day before the date of the enactment of the Tobacco Reduction, Accountability, and Community Enhancement Act of 2003), as applicable; and

"(B) enforced in the same manner as provided in section 106A(h) or 106B(j) of the Agricultural Act of 1949 (7 U.S.C. 1445–1(h), 1445–2(j)) (as in effect on the day before the date of the enactment of the Tobacco Reduction, Accountability, and Community Enhancement Act of 2003), as applicable.

"(5) USE OF QUALIFIED FINANCIAL INSTITUTIONS.—The Secretary may use qualified financial institutions to manage assets, make collections, and otherwise carry out this subsection.

"(6) ENFORCEMENT.—The Secretary may enforce this subsection in the courts of the United States.

"(g) CONSULTATION.—The Secretary shall make the determinations required by this section with regard to a kind of tobacco in consultation with the Tobacco Advisory Board established for that kind of tobacco. After the Secretary announces the terms and conditions of the tobacco market stability program for a crop year for a kind of tobacco, the Secretary shall consult with the Tobacco Ad-

visory Board established for that kind of tobacco before making any change to the program for the crop year.

"CHAPTER 4—COMPETITIVE GRANTS FOR TOBACCO RESEARCH

"SEC. 380Q. COMPETITIVE GRANTS FOR TOBACCO RESEARCH.

"(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall make competitive grants under section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7626) to colleges and universities located in eligible States to conduct research—

"(1) to assist tobacco producers to diversify crops or implement other means to reduce or eliminate the reliance of the producers on the production of tobacco or to promote alternative uses of tobacco or enhance the quality of tobacco produced in the United States; and

"(2) to foster and facilitate development, evaluation, and implementation of economically viable new agricultural technologies and enterprises for rural communities.

"(b) GRANT DISTRIBUTION.—In making grants under this section, the Secretary shall provide for an equitable distribution of the grants based on the volume of

each kind of tobacco that is produced in each eligible State, as determined by the Secretary

"CHAPTER 5—FUNDING

"SEC. 380S. 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' and to be used in carrying out this subtitle. The Fund shall consist of—

"(1) such amounts as are deposited in the Fund under subsection (b);

"(2) such amounts as are necessary from the Commodity Credit Corporation; and

"(3) any interest earned on investment of amounts in the Fund under subsection (d).

"(b) DEPOSITS.—Revenues from assessments collected under section 380T shall be deposited in the Fund.

"(c) EXPENDITURES.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3) and notwithstanding any other provision of law, in addition to any other funds that may be available, the Secretary may use from the Fund such amounts as the Secretary determines are necessary—

"(A) to make payments to tobacco quota holders and traditional producers of tobacco under chapter 1;

"(B) to pay necessary expenses of the Tobacco Advisory Boards and to carry out the poundage limitation program under chapter 2;

"(C) to carry out the tobacco market stability program under chapter 3, in an amount equal to $50,000,000 for each of fiscal years 2005 through 2008;

"(D) to make competitive grants for tobacco research under chapter 4, in an amount equal to $12,000,000 for each of fiscal years 2005 through 2009;

"(E) to make grants to each 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) (as in effect on the day before the date of the enactment of the Tobacco Reduction, Accountability, and Community Enhancement Act of 2003) to assist the association to transition to alternative methods of marketing tobacco in accordance with a plan approved by the Secretary, with the grants allo-

cated on the basis of the proportion of the kind of tobacco marketed by each association, in an amount not to exceed $1,500,000 for each kind of tobacco for each of fiscal years 2004 through 2008;

"(F) to make payments to appropriate tobacco warehouse associations, as determined by the Secretary, in an amount not to exceed $1,500,000 for each of fiscal years 2004 through 2008; and

"(G) to pay administrative costs incurred by the Secretary in carrying out this subtitle and reimburse the Commodity Credit Corporation for costs incurred by the Commodity Credit Corporation under paragraph (2).

"(2) EXPENDITURES BY COMMODITY CREDIT CORPORATION.—

"(A) IN GENERAL.—Subject to subparagraph (B) and notwithstanding any other provision of law, the Secretary may use funds of the Commodity Credit Corporation to make payments under paragraph (1).

"(B) REIMBURSEMENT TO COMMODITY CREDIT CORPORATION.—Not later than January 1, 2011, the Commodity Credit Corporation

shall be reimbursed in full, with interest, for all funds of the Commodity Credit Corporation expended under subparagraph (A).

"(3) ADMINISTRATIVE EXPENSES.—An amount not to exceed $20,000,000 for each fiscal year of the amounts in the Fund shall be available to pay the administrative expenses necessary to carry out this subtitle.

"(d) INVESTMENT OF AMOUNTS.—

"(1) IN GENERAL.—The Commodity Credit Corporation shall invest such portion of the Fund as is not, in the judgment of the Commodity Credit Corporation, required to meet current withdrawals.

"(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 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 Fund shall be credited to and form a part of the Fund.

"(e) ADMINISTRATION.—In administering the Fund, the Secretary shall make payments, reimburse agencies of the Department, and accept deposits without regard to limitations on total amounts of allotments and fund transfers under section 11 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714i).

"(f) USE OF QUALIFIED FINANCIAL INSTITUTIONS.—The Secretary may use qualified financial institutions to manage assets, make payments, and otherwise carry out this subtitle.

"SEC. 380T. ASSESSMENTS.

"(a) IN GENERAL.—The Secretary, acting through the Commodity Credit Corporation, shall impose quarterly assessments, 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.

"(b) TOBACCO TRUST FUND.—Assessments collected under this section shall be deposited in the Tobacco Trust Fund.

"(c) ASSESSMENT FOR EACH CLASS OF TOBACCO PRODUCT.—

"(1) ALLOCATION BY CLASS OF TOBACCO PRODUCTS.—The percentage of the total amount to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product in each applicable fiscal year shall be—

"(A) for cigarette manufacturers and importers, 98.303 percent;

"(B) for snuff manufacturers and importers, 0.428 percent;

"(C) for chewing tobacco manufacturers and importers, 0.098 percent;

"(D) for manufacturers and importers of small cigars, 0.011 percent;

"(E) for manufacturers and importers of large cigars, 1.095 percent;

"(F) for pipe tobacco manufacturers and importers, 0.021 percent; and

"(G) for roll-your-own tobacco manufacturers and importers, 0.044 percent.

"(2) ADJUSTMENT.—The Secretary shall adjust the percentage of the total amount to be assessed against, as determined by paragraph (1), and paid by, the manufacturers and importers of each class of

tobacco product in each applicable fiscal year by multiplying the percentage of the total amount to be assessed, as determined by such paragraph, by a fraction—

"(A) the numerator of which is the total volume of domestic sales of that class of tobacco product during the preceding applicable fiscal year; and

"(B) the denominator of which is the total volume of domestic sales of that class of tobacco product during the fiscal year ending September 30, 2003.

"(3) TOTAL ASSESSMENT.—The total amount to be assessed against all manufacturers and importers of all classes of tobacco product in each applicable fiscal year shall be equal to the amount required to carry out this subtitle during the applicable fiscal year, as determined by the Secretary. If the amount to be assessed after the application of paragraphs (1) and (2) is insufficient to carry out this subtitle during the applicable fiscal year, the Secretary may assess such additional amount as the Secretary determines to be necessary to carry out this subtitle during the applicable fiscal year. Such additional amount shall be allocated to the manufacturers and

importers of each class of tobacco product in the same manner and based on the same percentages applied in determining the total amount to be assessed under paragraph (1), as adjusted by paragraph (2) during the applicable fiscal year.

"(4) NOTIFICATION OF ASSESSMENTS.—The Secretary shall notify all manufacturers and importers of tobacco products of the amount of the assessment for each quarterly payment period. The notice for a quarterly payment period shall refer gross domestic sales and market shares for the quarterly payment period and conform with the requirements of subsection (h).

"(5) TIMING OF ASSESSMENT PAYMENTS.—

"(A) IN GENERAL.—Assessments shall be collected at the end of each calendar year quarter, and 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. The payments over four calendar quarters, beginning with the calendar quarter ending on December 31 of each applicable fiscal year, shall be sufficient to cover the payments required under chapter 1 on November 1 of that same applicable fiscal year and

other expenditures of the Tobacco Trust Fund required by section 380S during the base quarter periods corresponding to those four calendar quarters.

"(B) SPECIAL RULE.—In the case of the chapter 1 payments required to be made on September 30, 2004, the assessments shall be paid on that same date and correspond to the first base period of six months.

"(d) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—

"(1) ALLOCATION.—The assessment for each class of tobacco product 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. No manufacturer or importer shall be required to pay an assessment in excess of the manufacturer's or importer's share of domestic volume.

"(2) GROSS DOMESTIC VOLUME DEFINED.—In this section, the term 'gross domestic volume' means the volume of tobacco products removed, as defined by section 5702(k) of the Internal Revenue Code of 1986, and not exempt from tax under chapter 52 of the Internal Revenue Code at the time of their re-

moval under such chapter or the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

"(e) ALLOCATION OF TOTAL ASSESSMENTS BY MARKET SHARE.—The amount of the assessment for each class of tobacco product to be paid by each manufacturer or importer of the class of tobacco product under subsection (a) 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.

"(f) 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 (g), as well as any other relevant information provided to or obtained by the Secretary. The volume

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

"(2) MEASUREMENT.—For purposes of the calculations under this subsection and the certifications under subsection (g) by the Secretary, the volumes of domestic sales shall be measured by—

"(A) in the case of cigarettes, the numbers of cigarettes;

"(B) in the case of small cigars, the number of cigars weighing not more than three pounds per thousand;

"(C) in the case of large cigars, the number of cigars weighing more than three pounds per thousand; and

"(D) in the case of other classes of tobacco products, in terms of number of pounds, or fraction thereof, of these products.

"(g) MEASUREMENT OF VOLUME OF DOMESTIC SALES.—

"(1) IN GENERAL.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by this paragraph that are required to be filed with a Government agency on the same date that those returns or forms are filed, or re-

quired to be filed, with such agency. The returns and forms described by this paragraph are those returns and forms related to the release of tobacco products into domestic commerce, as defined by section 5702(k) of the Internal Revenue Code of 1986 and the payment of the taxes imposed under charter 52 of the Internal Revenue Code of 1986, including AFT Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.

"(2) PENALTIES.—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, United States Code. In addition, the Secretary may assess against the person a civil penalty in an amount not to exceed 2 percent of the value of the kind of tobacco products manufactured or imported by such person during the applicable fiscal year, as determined by the Secretary.

"(h) ASSESSMENT NOTIFICATION; CONTENT.—The Secretary shall provide each manufacturer or importer subject to an assessment under subsection (a) with written notice setting forth the amount to be assessed against such manufacturer or importer for the applicable quar-

terly period. The notice for a quarterly period shall be provided not later than 30 days before the date payment is due under subsection (c)(5). The notice shall include the following information with respect to such quarterly period used by the Secretary in calculating such amount:

"(1) The total combined assessment for all manufacturers and importers of tobacco products.

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

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

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

"(5) 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 such manufacturer's or importer's market share under subsection (e).

"(6) Such manufacturer's or importer's market share of the applicable class of tobacco product as determined by the Secretary under subsection (e).

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

"(i) CHALLENGE TO ASSESSMENT.—

"(1) APPEAL TO SECRETARY.—A manufacturer or importer subject to this section may contest an assessment imposed on such person pursuant to this section by notifying the Secretary within 10 business days after receiving the assessment notification required by subsection (h). Such manufacturer and importer may place into escrow, in accordance with rules promulgated by the Secretary, only the portion of the assessment being challenged in good faith pending final determination of the assessment under this subsection.

"(2) PROCEDURE FOR APPEAL.—The Secretary shall by regulation establish a procedure whereby a person contesting an assessment pursuant to this subsection may present information to the Secretary to demonstrate that such assessment is incorrect, including information to demonstrate the following:

"(A) The total combined assessment imposed by the Secretary on all manufacturers and importers is excessive.

"(B) The Secretary's allocation of the total assessment among the classes of tobacco products is incorrect.

"(C) The total volume of gross domestic sales of all manufacturers and importers of the relevant class of tobacco product calculated by the Secretary under subsection (e) is incorrect.

"(D) The level of gross domestic sales attributed to such person by the Secretary for purposes of calculating such person's market share under subsection (e) exceeds such person's actual domestic sales of such class of tobacco product.

"(E) The amount of the assessment attributed to such person by the Secretary exceeds such person's pro rata share based on such person's share of gross domestic sales.

"(3) CHALLENGE.—In challenging an assessment under this subsection, the manufacturer or importer may use any information that is available, including third party data on industry or individual company sales volumes. Such information may con-

stitute evidence sufficient to establish that the Secretary's initial determination was incorrect, in which event the assessment shall be revised so that the manufacturer or importer is required only to pay the amount correctly determined.

"(4) TIME FOR REVIEW.—Within 30 days after receiving notice from a manufacturer or importer under paragraph (2), the Secretary shall decide whether the information provided to the Secretary pursuant to such paragraph and any other information which the Secretary determines is appropriate is sufficient to establish that the original assessment was incorrect, and shall 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 such portion of the assessment that is not in dispute.

"(6) JUDICIAL REVIEW.—Any manufacturer or importer aggrieved by a determination of the Secretary with respect to the amount of any assessment

may seek review of such 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 under this subsection. Administrative remedies shall be deemed exhausted if no decision by the Secretary is made within the time limits under paragraph (4). 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 3717 of title 31, United States Code, if it finds that the Secretary's determination is not supported by a preponderance of the information available to the Secretary.

"(7) REGULATIONS.—The Secretary shall issue regulations to implement this subsection within 6 months after the date of the enactment of this Act.

"(j) TERMINATION DATE.—The authority provided by this section terminates on September 30, 2011.

"SEC. 380U. COMMODITY CREDIT CORPORATION.

The Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out this subtitle, to remain available until expended.

"SEC. 380V. TRANSITION PROVISIONS.

"(a) TOBACCO STOCKS.—

"(1) IN GENERAL.—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 subsection.

"(2) ASSOCIATIONS.—For each kind of tobacco held by an association, the proportion of loan pool stocks for each kind of tobacco held by the association that shall be transferred to the association shall be equal to—

"(A) 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), respectively, for the kind of tobacco; divided by

"(B) the average list price per pound for the kind of tobacco, as determined by the Secretary.

"(3) COMMODITY CREDIT CORPORATION.—Any loan pool stocks of a kind of tobacco of an association that are not disposed of in accordance with paragraph (2) shall be—

"(A) transferred by the association to the Commodity Credit Corporation;

"(B) disposed of in a manner determined by the Secretary; and

"(C) should any loss be incurred by the disposals described in subparagraph (B), these losses shall first be paid by the association for that kind of tobacco to the extent of the revenue received from the sale of tobacco transferred to the association pursuant to paragraph (2).

"(b) NO NET COST FUNDS.—

"(1) IN GENERAL.—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), respectively, that remain after the application of subsection (a) and sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1) (as in effect on the day before the date of the enactment of the Tobacco Reduction,

Accountability, and Community Enhancement Act of 2003) shall be transferred to the association for distribution to members of the association in accordance with a plan approved by the Secretary.

"(2) ASSOCIATIONS WITH NO LOAN POOL STOCKS.—In the case of an association that does not hold any loan pool stocks that are covered by subsection (a)(2), any funds in the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of the association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–1, 1445–2), respectively, shall be transferred to the association for distribution to members of the association in accordance with a plan approved by the Secretary.".

(b) CONFORMING AMENDMENTS.—Section 320B(c)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h(c)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking "by" at the end and inserting "or"; and

(3) by adding at the end the following:

"(B) in the case of the 2003 marketing year, the price support rate for the kind of tobacco involved in effect under section 106 of the Agricultural

Act of 1949 (7 U.S.C. 1445) at the time of the violation; by''.

SEC. 6. REGULATIONS.

(a) IN GENERAL.—In accordance with the notice and comment provisions of section 533 of title 5, United States Code, the Secretary of Agriculture may promulgate such regulations as are necessary to implement this Act and the amendments made by this Act.

(b) PROCEDURE.—The promulgation of the regulations and administration of this Act and the amendments made by this Act shall be made without regard to chapter 35 of title 44, United States Code (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, United States Code.

SEC. 7. SEVERABILITY.

If any provision of this Act or the application of any provision of this Act to any person or circumstance is held to invalid, the remainder of this Act and the application of the provisions of the Act to any other person or circumstance shall not be affected thereby and shall continue to be enforced to the fullest extent possible.

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall apply to the 2004 and subsequent crops of each kind of tobacco.

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