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## APPENDIX B—PAYMENT LIMITATIONS AND OTHER RESTRICTIONS

### FOOD SECURITY ACT OF 1985

[As Amended Through P.L. 110-246, Effective May 22, 2008]

#### SEC. 1001. [7 U.S.C. 1308] PAYMENT LIMITATIONS.

(a) DEFINITIONS.—In this section through section 1001F:

(1) COVERED COMMODITY.—The term “covered commodity” has the meaning given that term in section 1001 of the Food, Conservation, and Energy Act of 2008.

(2) FAMILY MEMBER.—The term “family member” means a person to whom a member in the farming operation is related as lineal ancestor, lineal descendant, sibling, spouse, or otherwise by marriage.

(3) LEGAL ENTITY.—The term “legal entity” means an entity that is created under Federal or State law and that—

(A) owns land or an agricultural commodity; or

(B) produces an agricultural commodity.

(4) PERSON.—The term “person” means a natural person, and does not include a legal entity.

(5) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(b) LIMITATION ON DIRECT PAYMENTS, COUNTER-CYCLICAL PAYMENTS, AND ACRE PAYMENTS FOR COVERED COMMODITIES (OTHER THAN PEANUTS).—

(1) DIRECT PAYMENTS.—The total amount of direct payments received, directly or indirectly, by a person or legal entity (except a joint venture or a general partnership) for any crop year under subtitle A of title I of the Food, Conservation, and Energy Act of 2008 for 1 or more covered commodities (except for peanuts) may not exceed—

(A) in the case of a person or legal entity that does not participate in the average crop revenue election program under section 1105 of that Act, \$40,000; or

(B) in the case of a person or legal entity that participates in the average crop revenue election program under section 1105 of that Act, an amount equal to—

(i) the payment limit specified in subparagraph (A); less

(ii) the amount of the reduction in direct payments under section 1105(a)(1) of that Act.

(2) COUNTER-CYCLICAL PAYMENTS.—In the case of a person or legal entity (except a joint venture or a general partnership) that does not participate in the average crop revenue election program under section 1105 of the Food, Conservation, and Energy Act of 2008, the total amount of counter-cyclical payments received, directly or indirectly, by the person or legal entity for any crop year under subtitle A of title I of that Act for 1 or more covered commodities (except for peanuts) may not exceed \$65,000.

(3) ACRE AND COUNTER-CYCLICAL PAYMENTS.—In the case of a person or legal entity (except a joint venture or a general partnership) that participates in the average crop revenue election program under section 1105 of the Food, Conservation, and Energy Act of 2008, the total amount of average crop revenue

election payments and counter-cyclical payments received, directly or indirectly, by the person or legal entity for any crop year for 1 or more covered commodities (except for peanuts) may not exceed the sum of—

(A) \$65,000; and

(B) the amount by which the direct payment limitation is reduced under paragraph (1)(B).

(c) **LIMITATION ON DIRECT PAYMENTS, COUNTER-CYCLICAL PAYMENTS, AND ACRE PAYMENTS FOR PEANUTS.—**

(1) **DIRECT PAYMENTS.—**The total amount of direct payments received, directly or indirectly, by a person or legal entity (except a joint venture or a general partnership) for any crop year under subtitle C of title I of the Food, Conservation, and Energy Act of 2008 for peanuts may not exceed—

(A) in the case of a person or legal entity that does not participate in the average crop revenue election program under section 1105 of that Act, \$40,000; or

(B) in the case of a person or legal entity that participates in the average crop revenue election program under section 1105 of that Act, an amount equal to—

(i) the payment limit specified in subparagraph (A); less

(ii) the amount of the reduction in direct payments under section 1105(a)(1) of that Act.

(2) **COUNTER-CYCLICAL PAYMENTS.—**In the case of a person or legal entity (except a joint venture or a general partnership) that does not participate in the average crop revenue election program under section 1105 of the Food, Conservation, and Energy Act of 2008, the total amount of counter-cyclical payments received, directly or indirectly, by the person or legal entity for any crop year under subtitle C of title I of that Act for peanuts may not exceed \$65,000.

(3) **ACRE AND COUNTER-CYCLICAL PAYMENTS.—**In the case of a person or legal entity (except a joint venture or a general partnership) that participates in the average crop revenue election program under section 1105 of the Food, Conservation, and Energy Act of 2008, the total amount of average crop revenue election payments received, directly or indirectly, by the person or legal entity for any crop year for peanuts may not exceed the sum of—

(A) \$65,000; and

(B) the amount by which the direct payment limitation is reduced under paragraph (1)(B).

(d) **LIMITATION ON APPLICABILITY.—**Nothing in this section authorizes any limitation on any benefit associated with the marketing assistance loan program or the loan deficiency payment program under title I of the Food, Conservation, and Energy Act of 2008.

(e) **ATTRIBUTION OF PAYMENTS.—**

(1) **IN GENERAL.—**In implementing subsections (b) and (c) and a program described in paragraphs (1)(C) and (2)(B) of section 1001D(b), the Secretary shall issue such regulations as are necessary to ensure that the total amount of payments are attributed to a person by taking into account the direct and indirect ownership interests of the person in a legal entity that is eligible to receive the payments.

(2) PAYMENTS TO A PERSON.—Each payment made directly to a person shall be combined with the pro rata interest of the person in payments received by a legal entity in which the person has a direct or indirect ownership interest unless the payments of the legal entity have been reduced by the pro rata share of the person.

(3) PAYMENTS TO A LEGAL ENTITY.—

(A) IN GENERAL.—Each payment made to a legal entity shall be attributed to those persons who have a direct or indirect ownership interest in the legal entity unless the payment to the legal entity has been reduced by the pro rata share of the person.

(B) ATTRIBUTION OF PAYMENTS.—

(i) PAYMENT LIMITS.—Except as provided in clause (ii), payments made to a legal entity shall not exceed the amounts specified in subsections (b) and (c).

(ii) EXCEPTION FOR JOINT VENTURES AND GENERAL PARTNERSHIPS.—Payments made to a joint venture or a general partnership shall not exceed, for each payment specified in subsections (b) and (c), the amount determined by multiplying the maximum payment amount specified in subsections (b) and (c) by the number of persons and legal entities (other than joint ventures and general partnerships) that comprise the ownership of the joint venture or general partnership.

(iii) REDUCTION.—Payments made to a legal entity shall be reduced proportionately by an amount that represents the direct or indirect ownership in the legal entity by any person or legal entity that has otherwise exceeded the applicable maximum payment limitation.

(4) 4 LEVELS OF ATTRIBUTION FOR EMBEDDED LEGAL ENTITIES.—

(A) IN GENERAL.—Attribution of payments made to legal entities shall be traced through 4 levels of ownership in legal entities.

(B) FIRST LEVEL.—Any payments made to a legal entity (a first-tier legal entity) that is owned in whole or in part by a person shall be attributed to the person in an amount that represents the direct ownership in the first-tier legal entity by the person.

(C) SECOND LEVEL.—

(i) IN GENERAL.—Any payments made to a first-tier legal entity that is owned (in whole or in part) by another legal entity (a second-tier legal entity) shall be attributed to the second-tier legal entity in proportion to the ownership of the second-tier legal entity in the first-tier legal entity.

(ii) OWNERSHIP BY A PERSON.—If the second-tier legal entity is owned (in whole or in part) by a person, the amount of the payment made to the first-tier legal entity shall be attributed to the person in the amount that represents the indirect ownership in the first-tier legal entity by the person.

(D) THIRD AND FOURTH LEVELS.—

(i) IN GENERAL.—Except as provided in clause (ii), the Secretary shall attribute payments at the third

and fourth tiers of ownership in the same manner as specified in subparagraph (C).

(ii) **FOURTH-TIER OWNERSHIP.**—If the fourth-tier of ownership is that of a fourth-tier legal entity and not that of a person, the Secretary shall reduce the amount of the payment to be made to the first-tier legal entity in the amount that represents the indirect ownership in the first-tier legal entity by the fourth-tier legal entity.

(f) **SPECIAL RULES.**—

(1) **MINOR CHILDREN.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), payments received by a child under the age of 18 shall be attributed to the parents of the child.

(B) **REGULATIONS.**—The Secretary shall issue regulations specifying the conditions under which payments received by a child under the age of 18 will not be attributed to the parents of the child.

(2) **MARKETING COOPERATIVES.**—Subsections (b) and (c) shall not apply to a cooperative association of producers with respect to commodities produced by the members of the association that are marketed by the association on behalf of the members of the association but shall apply to the producers as persons.

(3) **TRUSTS AND ESTATES.**—

(A) **IN GENERAL.**—With respect to irrevocable trusts and estates, the Secretary shall administer this section through section 1001F in such manner as the Secretary determines will ensure the fair and equitable treatment of the beneficiaries of the trusts and estates.

(B) **IRREVOCABLE TRUST.**—

(i) **IN GENERAL.**—In order for a trust to be considered an irrevocable trust, the terms of the trust agreement shall not—

(I) allow for modification or termination of the trust by the grantor;

(II) allow for the grantor to have any future, contingent, or remainder interest in the corpus of the trust; or

(III) except as provided in clause (ii), provide for the transfer of the corpus of the trust to the remainder beneficiary in less than 20 years beginning on the date the trust is established.

(ii) **EXCEPTION.**—Clause (i)(III) shall not apply in a case in which the transfer is—

(I) contingent on the remainder beneficiary achieving at least the age of majority; or

(II) contingent on the death of the grantor or income beneficiary.

(C) **REVOCABLE TRUST.**—For the purposes of this section through section 1001F, a revocable trust shall be considered to be the same person as the grantor of the trust.

(4) **CASH RENT TENANTS.**—

(A) **DEFINITION.**—In this paragraph, the term ‘cash rent tenant’ means a person or legal entity that rents land—

(i) for cash; or

(ii) for a crop share guaranteed as to the amount of the commodity to be paid in rent.

(B) RESTRICTION.—A cash rent tenant who makes a significant contribution of active personal management, but not of personal labor, with respect to a farming operation shall be eligible to receive a payment described in subsection (b) or (c) only if the tenant makes a significant contribution of equipment to the farming operation.

(5) FEDERAL AGENCIES.—

(A) IN GENERAL.—Notwithstanding subsection (d), a Federal agency shall not be eligible to receive any payment, benefit, or loan under title I of the Food, Conservation, and Energy Act of 2008 or title XII of this Act.

(B) LAND RENTAL.—A lessee of land owned by a Federal agency may receive a payment described in subsection (b), (c), or (d) if the lessee otherwise meets all applicable criteria.

(6) STATE AND LOCAL GOVERNMENTS.—

(A) IN GENERAL.—Notwithstanding subsection (d), except as provided in subsection (g), a State or local government, or political subdivision or agency of the government, shall not be eligible to receive any payment, benefit, or loan under title I of the Food, Conservation, and Energy Act of 2008 or title XII of this Act.

(B) TENANTS.—A lessee of land owned by a State or local government, or political subdivision or agency of the government, may receive payments described in subsections (b), (c), and (d) if the lessee otherwise meets all applicable criteria.

(7) CHANGES IN FARMING OPERATIONS.—

(A) IN GENERAL.—In the administration of this section through section 1001F, the Secretary may not approve any change in a farming operation that otherwise will increase the number of persons to which the limitations under this section are applied unless the Secretary determines that the change is bona fide and substantive.

(B) FAMILY MEMBERS.—The addition of a family member to a farming operation under the criteria set out in section 1001A shall be considered a bona fide and substantive change in the farming operation.

(8) DEATH OF OWNER.—

(A) IN GENERAL.—If any ownership interest in land or a commodity is transferred as the result of the death of a program participant, the new owner of the land or commodity may, if the person is otherwise eligible to participate in the applicable program, succeed to the contract of the prior owner and receive payments subject to this section without regard to the amount of payments received by the new owner.

(B) LIMITATIONS ON PRIOR OWNER.—Payments made under this paragraph shall not exceed the amount to which the previous owner was entitled to receive under the terms of the contract at the time of the death of the prior owner.

(g) PUBLIC SCHOOLS.—

(1) **IN GENERAL.**—Notwithstanding subsection (f)(6)(A), a State or local government, or political subdivision or agency of the government, shall be eligible, subject to the limitation in paragraph (2), to receive a payment described in subsection (b) or (c) for land owned by the State or local government, or political subdivision or agency of the government, that is used to maintain a public school.

(2) **LIMITATION.**—

(A) **IN GENERAL.**—For each State, the total amount of payments described in subsections (b) and (c) that are received collectively by the State and local government and all political subdivisions or agencies of those governments shall not exceed \$500,000.

(B) **EXCEPTION.**—The limitation in subparagraph (A) shall not apply to States with a population of less than 1,500,000.”.

(h) **TIME LIMITS; RELIANCE.**—Regulations of the Secretary shall establish time limits for the various steps involved with notice, hearing, decision, and the appeals procedure in order to ensure expeditious handling and settlement of payment limitation disputes. Notwithstanding any other provision of law, actions taken by an individual or other entity in good faith on action or advice of an authorized representative of the Secretary may be accepted as meeting the requirement under this section or section 1001A, to the extent the Secretary deems it desirable in order to provide fair and equitable treatment.

**SEC. 1001A. [7 U.S.C. 1308-1] NOTIFICATION OF INTERESTS; PAYMENTS LIMITED TO ACTIVE FARMERS.**

(a) **NOTIFICATION OF INTERESTS.**—To facilitate administration of section 1001 and this section, each person or legal entity receiving payments described in subsections (b) and (c) of section 1001 as a separate person or legal entity shall separately provide to the Secretary, at such times and in such manner as prescribed by the Secretary—

(1) the name and social security number of each person, or the name and taxpayer identification number of each legal entity, that holds or acquires an ownership interest in the separate person or legal entity; and

(2) the name and taxpayer identification number of each legal entity in which the person or legal entity holds an ownership interest.

(b) **ACTIVELY ENGAGED.**—

(1) **IN GENERAL.**—To be eligible to receive a payment described in subsection (b) or (c) of section 1001, a person or legal entity shall be actively engaged in farming with respect to a farming operation as provided in this subsection or subsection (c).

(2) **CLASSES ACTIVELY ENGAGED.**—Except as provided in subsections (c) and (d)—

(A) a person (including a person participating in a farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or a participant in a similar entity, as determined by the Secretary) shall be considered to be actively engaged in farming with respect to a farming operation if—

(i) the person makes a significant contribution (based on the total value of the farming operation) to the farming operation of—

(I) capital, equipment, or land; and

(II) personal labor or active personal management;

(ii) the person's share of the profits or losses from the farming operation is commensurate with the contributions of the person to the farming operation; and

(iii) the contributions of the person are at risk;

(B) a legal entity that is a corporation, joint stock company, association, limited partnership, charitable organization, or other similar entity determined by the Secretary (including any such legal entity participating in the farming operation as a partner in a general partnership, a participant in a joint venture, a grantor of a revocable trust, or as a participant in a similar legal entity as determined by the Secretary) shall be considered as actively engaged in farming with respect to a farming operation if—

(i) the legal entity separately makes a significant contribution (based on the total value of the farming operation) of capital, equipment, or land;

(ii) the stockholders or members collectively make a significant contribution of personal labor or active personal management to the operation; and

(iii) the standards provided in clauses (ii) and (iii) of subparagraph (A), as applied to the legal entity, are met by the legal entity;

(C) if a legal entity that is a general partnership, joint venture, or similar entity, as determined by the Secretary, separately makes a significant contribution (based on the total value of the farming operation involved) of capital, equipment, or land, and the standards provided in clauses (ii) and (iii) of subparagraph (A), as applied to the legal entity, are met by the legal entity, the partners or members making a significant contribution of personal labor or active personal management shall be considered to be actively engaged in farming with respect to the farming operation involved; and

(D) in making determinations under this subsection regarding equipment and personal labor, the Secretary shall take into consideration the equipment and personal labor normally and customarily provided by farm operators in the area involved to produce program crops.

(c) SPECIAL CLASSES ACTIVELY ENGAGED.—

(1) LANDOWNER.—A person or legal entity that is a landowner contributing the owned land to a farming operation shall be considered to be actively engaged in farming with respect to the farming operation if—

(A) the landowner receives rent or income for the use of the land based on the production on the land or the operating results of the operation; and

(B) the person or legal entity meets the standards provided in clauses (ii) and (iii) of subsection (b)(2)(A).

(2) ADULT FAMILY MEMBER.—If a majority of the participants in a farming operation are family members, an adult



family member shall be considered to be actively engaged in farming with respect to the farming operation if the person—

(A) makes a significant contribution, based on the total value of the farming operation, of active personal management or personal labor; and

(B) with respect to such contribution, meets the standards provided in clauses (ii) and (iii) of subsection (b)(2)(A).

(3) SHARECROPPER.—A sharecropper who makes a significant contribution of personal labor to a farming operation shall be considered to be actively engaged in farming with respect to the farming operation if the contribution meets the standards provided in clauses (ii) and (iii) of subsection (b)(2)(A).

(4) GROWERS OF HYBRID SEED.—In determining whether a person or legal entity growing hybrid seed under contract shall be considered to be actively engaged in farming, the Secretary shall not take into consideration the existence of a hybrid seed contract.

(5) CUSTOM FARMING SERVICES.—

(A) IN GENERAL.—A person or legal entity receiving custom farming services shall be considered separately eligible for payment limitation purposes if the person or legal entity is actively engaged in farming based on subsection (b)(2) or paragraphs (1) through (4) of this subsection.

(B) PROHIBITION.—No other rules with respect to custom farming shall apply.

(6) SPOUSE.—If 1 spouse (or estate of a deceased spouse) is determined to be actively engaged, the other spouse shall be determined to have met the requirements of subsection (b)(2)(A)(i)(II).

(d) CLASSES NOT ACTIVELY ENGAGED.—

(1) CASH RENT LANDLORD.—A landlord contributing land to a farming operation shall not be considered to be actively engaged in farming with respect to the farming operation if the landlord receives cash rent, or a crop share guaranteed as to the amount of the commodity to be paid in rent, for the use of the land.

(2) OTHER PERSONS AND LEGAL ENTITIES.—Any other person or legal entity that the Secretary determines does not meet the standards described in subsections (b)(2) and (c) shall not be considered to be actively engaged in farming with respect to a farming operation.

**SEC. 1001B. [7 U.S.C. 1308-2] DENIAL OF PROGRAM BENEFITS.**

(a) 2-YEAR DENIAL OF PROGRAM BENEFITS.—A person or legal entity shall be ineligible to receive payments specified in subsections (b) and (c) of section 1001 for the crop year, and the succeeding crop year, in which the Secretary determines that the person or legal entity—

(1) failed to comply with section 1001A(b) and adopted or participated in adopting a scheme or device to evade the application of section 1001, 1001A, or 1001C; or

(2) intentionally concealed the interest of the person or legal entity in any farm or legal entity engaged in farming.

(b) EXTENDED INELIGIBILITY.—If the Secretary determines that a person or legal entity, for the benefit of the person or legal entity or the benefit of any other person or legal entity, has knowingly engaged in, or aided in the creation of a fraudulent document, failed

to disclose material information relevant to the administration of sections 1001 through 1001F, or committed other equally serious actions (as identified in regulations issued by the Secretary), the Secretary may for a period not to exceed 5 crop years deny the issuance of payments to the person or legal entity.

(c) **PRO RATA DENIAL.**—

(1) **IN GENERAL.**—Payments otherwise owed to a person or legal entity described in subsections (a) or (b) shall be denied in a pro rata manner based on the ownership interest of the person or legal entity in a farm.

(2) **CASH RENT TENANT.**—Payments otherwise payable to a person or legal entity shall be denied in a pro rata manner if the person or legal entity is a cash rent tenant on a farm owned or under the control of a person or legal entity with respect to which a determination has been made under subsection (a) or (b).

(d) **JOINT AND SEVERAL LIABILITY.**—Any legal entity (including partnerships and joint ventures) and any member of any legal entity determined to have knowingly participated in a scheme or device to evade, or that has the purpose of evading, sections 1001, 1001A, or 1001C shall be jointly and severally liable for any amounts that are payable to the Secretary as the result of the scheme or device (including amounts necessary to recover those amounts).

(e) **RELEASE.**—The Secretary may partially or fully release from liability any person or legal entity who cooperates with the Secretary in enforcing sections 1001, 1001A, and 1001C, and this section.

**SEC. 1001C. [7 U.S.C. 1308-3] FOREIGN PERSONS MADE INELIGIBLE FOR PROGRAM BENEFITS.**

Notwithstanding any other provision of law:

(a) **IN GENERAL.**—Any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) shall be ineligible to receive any type of loans or payments made available under title I of the Food, Conservation, and Energy Act of 2008, the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.), or under any contract entered into under title XII, with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person, unless such person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such farm.

(b) **CORPORATION OR OTHER ENTITIES.**—For purposes of subsection (a), a corporation or other entity shall be considered a person that is ineligible for production adjustment payments, price support program loans, payments, or benefits if more than 10 percent of the beneficial ownership of the entity is held by persons who are not citizens of the United States or aliens lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act, unless such persons provide a substantial amount of personal labor in the production of crops on such farm. Notwithstanding the foregoing provisions of this subsection, with respect to an entity that is determined to be ineligible to receive such payments, loans, or other benefits, the Secretary may make

payments, loans, and other benefits in an amount determined by the Secretary to be representative of the percentage interests of the entity that is owned by citizens of the United States and aliens lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act.

(c) PROSPECTIVE APPLICATION.—No person shall become ineligible under this section for production adjustment payments, price support program loans, payments or benefits as the result of the production of a crop of an agricultural commodity planted, or commodity program or conservation reserve contract entered into, before, the date of the enactment of this section.

**SEC. 1001D. [7 U.S.C. 1308-3a] ADJUSTED GROSS INCOME LIMITATION.**

(a) DEFINITIONS.—

(1) IN GENERAL.—In this section:

(A) AVERAGE ADJUSTED GROSS INCOME.—The term “average adjusted gross income”, with respect to a person or legal entity, means the average of the adjusted gross income or comparable measure of the person or legal entity over the 3 taxable years preceding the most immediately preceding complete taxable year, as determined by the Secretary.

(B) AVERAGE ADJUSTED GROSS FARM INCOME.—The term “average adjusted gross farm income”, with respect to a person or legal entity, means the average of the portion of adjusted gross income of the person or legal entity that is attributable to activities related to farming, ranching, or forestry for the 3 taxable years described in subparagraph (A), as determined by the Secretary in accordance with subsection (c).

(C) AVERAGE ADJUSTED GROSS NONFARM INCOME.—The term “average adjusted gross nonfarm income”, with respect to a person or legal entity, means the difference between—

(i) the average adjusted gross income of the person or legal entity; and

(ii) the average adjusted gross farm income of the person or legal entity.

(2) SPECIAL RULES FOR CERTAIN PERSONS AND LEGAL ENTITIES.—In the case of a legal entity that is not required to file a Federal income tax return or a person or legal entity that did not have taxable income in 1 or more of the taxable years used to determine the average under subparagraph (A) or (B) of paragraph (1), the Secretary shall provide, by regulation, a method for determining the average adjusted gross income, the average adjusted gross farm income, and the average adjusted gross nonfarm income of the person or legal entity for purposes of this section.

(3) ALLOCATION OF INCOME.—On the request of any person filing a joint tax return, the Secretary shall provide for the allocation of average adjusted gross income, average adjusted gross farm income, and average adjusted gross nonfarm income among the persons filing the return if—

(A) the person provides a certified statement by a certified public accountant or attorney that specifies the method by which the average adjusted gross income, average

adjusted gross farm income, and average adjusted gross nonfarm income would have been declared and reported had the persons filed 2 separate returns; and

(B) the Secretary determines that the method described in the statement is consistent with the information supporting the filed joint tax return.

(b) LIMITATIONS.—

(1) COMMODITY PROGRAMS.—

(A) NONFARM LIMITATION.—Notwithstanding any other provision of law, a person or legal entity shall not be eligible to receive any benefit described in subparagraph (C) during a crop, fiscal, or program year, as appropriate, if the average adjusted gross nonfarm income of the person or legal entity exceeds \$500,000.

(B) FARM LIMITATION.—Notwithstanding any other provision of law, a person or legal entity shall not be eligible to receive a direct payment under subtitle A or C of title I of the Food, Conservation, and Energy Act of 2008 during a crop year, if the average adjusted gross farm income of the person or legal entity exceeds \$750,000.

(C) COVERED BENEFITS.—Subparagraph (A) applies with respect to the following:

(i) A direct payment or counter-cyclical payment under subtitle A or C of title I of the Food, Conservation, and Energy Act of 2008 or an average crop revenue election payment under subtitle A of title I of that Act.

(ii) A marketing loan gain or loan deficiency payment under subtitle B or C of title I of the Food, Conservation, and Energy Act of 2008.

(iii) A payment or benefit under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333).

(iv) A payment or benefit under section 1506 of the Food, Conservation, and Energy Act of 2008.

(v) A payment or benefit under title IX of the Trade Act of 1974 or subtitle B of the Federal Crop Insurance Act.

(2) CONSERVATION PROGRAMS.—

(A) LIMITS.—

(i) IN GENERAL.—Notwithstanding any other provision of law, except as provided in clause (ii), a person or legal entity shall not be eligible to receive any benefit described in subparagraph (B) during a crop, fiscal, or program year, as appropriate, if the average adjusted gross nonfarm income of the person or legal entity exceeds \$1,000,000, unless not less than 66.66 percent of the average adjusted gross income of the person or legal entity is average adjusted gross farm income.

(ii) EXCEPTION.—The Secretary may waive the limitation established under clause (i) on a case-by-case basis if the Secretary determines that environmentally sensitive land of special significance would be protected.

(B) COVERED BENEFITS.—Subparagraph (A) applies with respect to the following:

- (i) A payment or benefit under title XII of this Act.
  - (ii) A payment or benefit under title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171; 116 Stat. 223) or title II of the Food, Conservation, and Energy Act of 2008.
  - (iii) A payment or benefit under section 524(b) of the Federal Crop Insurance Act (7 U.S.C. 1524(b)).
- (c) INCOME DETERMINATION.—
- (1) IN GENERAL.—In determining the average adjusted gross farm income of a person or legal entity, the Secretary shall include income or benefits derived from or related to—
- (A) the production of crops, including specialty crops (as defined in section 3 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note; Public Law 108-465)) and unfinished raw forestry products;
  - (B) the production of livestock (including cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry, fish, and other aquacultural products used for food, honeybees, and other animals designated by the Secretary) and products produced by, or derived from, livestock;
  - (C) the production of farm-based renewable energy (as defined in section 9001 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101));
  - (D) the sale, including the sale of easements and development rights, of farm, ranch, or forestry land, water or hunting rights, or environmental benefits;
  - (E) the rental or lease of land or equipment used for farming, ranching, or forestry operations, including water or hunting rights;
  - (F) the processing (including packing), storing (including shedding), and transporting of farm, ranch, and forestry commodities, including renewable energy;
  - (G) the feeding, rearing, or finishing of livestock;
  - (H) the sale of land that has been used for agriculture;
  - (I) payments or other benefits received under any program authorized under title I of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7901 et seq.) or title I of the Food, Conservation, and Energy Act of 2008;
  - (J) payments or other benefits received under any program authorized under title XII of this Act, title II of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171; 116 Stat. 223), or title II of the Food, Conservation, and Energy Act of 2008;
  - (K) payments or other benefits received under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333);
  - (L) payments or other benefits received under title IX of the Trade Act of 1974 or subtitle B of the Federal Crop Insurance Act;
  - (M) risk management practices, including benefits received under a program authorized under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) (including a catastrophic risk protection plan offered under section 508(b) of that Act (7 U.S.C. 1508(b))); and
  - (N) any other activity related to farming, ranching, or forestry, as determined by the Secretary.

(2) **INCOME DERIVED FROM FARMING, RANCHING, OR FORESTRY.**—In determining the average adjusted gross farm income of a person or legal entity, in addition to the inclusions described in paragraph (1), the Secretary shall include any income reported on the Schedule F or other schedule used by the person or legal entity to report income from farming, ranching, or forestry operations to the Internal Revenue Service, to the extent such income is not already included under paragraph (1).

(3) **SPECIAL RULE.**—If not less than 66.66 percent of the average adjusted gross income of a person or legal entity is derived from farming, ranching, or forestry operations described in paragraphs (1) and (2), in determining the average adjusted gross farm income of the person or legal entity, the Secretary shall also include—

(A) the sale of equipment to conduct farm, ranch, or forestry operations; and

(B) the provision of production inputs and services to farmers, ranchers, foresters, and farm operations.

(d) **ENFORCEMENT.**—

(1) **IN GENERAL.**—To comply with subsection (b), at least once every 3 years a person or legal entity shall provide to the Secretary—

(A) a certification by a certified public accountant or another third party that is acceptable to the Secretary that the average adjusted gross income, average adjusted gross farm income, and average adjusted gross nonfarm income of the person or legal entity does not exceed the applicable limitation specified in that subsection; or

(B) information and documentation regarding the average adjusted gross income, average adjusted gross farm income, and average adjusted gross nonfarm income of the person or legal entity through other procedures established by the Secretary.

(2) **DENIAL OF PROGRAM BENEFITS.**—If the Secretary determines that a person or legal entity has failed to comply with this section, the Secretary shall deny the issuance of applicable payments and benefits specified in paragraphs (1)(C) and (2)(B) of subsection (b) to the person or legal entity, under similar terms and conditions as described in section 1001B.

(3) **AUDIT.**—The Secretary shall establish statistically valid procedures under which the Secretary shall conduct targeted audits of such persons or legal entities as the Secretary determines are most likely to exceed the limitations under subsection (b).

(e) **COMMENSURATE REDUCTION.**—In the case of a payment or benefit described in paragraphs (1)(C) and (2)(B) of subsection (b) made in a crop, program, or fiscal year, as appropriate, to an entity, general partnership, or joint venture, the amount of the payment or benefit shall be reduced by an amount that is commensurate with the direct and indirect ownership interest in the entity, general partnership, or joint venture of each person who has an average adjusted gross income, average adjusted gross farm income, or average adjusted gross nonfarm income in excess of the applicable limitation specified in subsection (b).

(f) **EFFECTIVE PERIOD.**—This section shall apply only during the 2009 through 2012 crop, program, or fiscal years, as appropriate.

**SEC. 1001E. [7 U.S.C. 1308-4] EDUCATION PROGRAM.**

(a) **IN GENERAL.**—The Secretary shall carry out a payment provisions education program for appropriate personnel of the Department of Agriculture and members and other personnel of county and State committees established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)), for the purpose of fostering more effective and uniform application of the payment limitations and restrictions established under sections 1001 through 1001C.

(b) **TRAINING.**—The education program shall provide training to the personnel in the fair, accurate, and uniform application to individual farming operations of the provisions of law and regulation relating to the payment provisions of sections 1001 through 1001C.

(c) **ADMINISTRATION.**—The State office of the Agricultural Stabilization and Conservation Service shall make the initial determination concerning the application of payment limitations and restrictions established under sections 1001 through 1001C to farm operations consisting of more than 5 persons, subject to review by the Secretary.

(d) **COMMODITY CREDIT CORPORATION.**—The Secretary shall carry out the program provided under this section through the Commodity Credit Corporation.

**SEC. 1001F. [7 U.S.C. 1308-5] TREATMENT OF MULTIYEAR PROGRAM CONTRACT PAYMENTS.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, in the event of a transfer of ownership of land (or an ownership interest in land) by way of devise or descent, the Secretary of Agriculture may, if the new owner succeeds to the prior owner's contract entered into under title XII, make payments to the new owner under such contract without regard to the amount of payments received by the new owner under any contract entered into under title XII executed prior to such devise or descent.

(b) **LIMITATION.**—Payments made pursuant to this section shall not exceed the amount to which the previous owner was entitled to receive under the terms of the contract at the time of the death of the prior owner.

## **CONTROLLED SUBSTANCES ACT**

### **CONTROLLED SUBSTANCES PRODUCTION CONTROL**

**SEC. 519. [21 U.S.C. 889]** (a) As used in this section:

(1) The term “controlled substance” has the same meaning given such term in section 102(6) of the Controlled Substances Act (21 U.S.C. 801(6)).

(2) The term “Secretary” means the Secretary of Agriculture.

(3) The term “State” means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(b) Notwithstanding any other provision of law, following the date of enactment of this Act, any person who is convicted under Federal or State law of planting, cultivation, growing, producing,

harvesting, or storing a controlled substance in any crop year shall be ineligible for—

(1) as to any commodity produced during that crop year, and the four succeeding crop years, by such person—

(A) any price support or payment made available under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(B) a farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(C) crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.);

(D) a disaster payment made under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.); or

(E) a loan made, insured or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) or any other provision of law administered by the Farmers Home Administration; or

(2) a payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity that is—

(A) produced during that crop year, or any of the four succeeding crop years, by such person; and

(B) acquired by the Commodity Credit Corporation.

(c) Not later than 180 days after the date of enactment of this Act, the Secretary shall issue such regulations as the Secretary determines are necessary to carry out this section, including regulations that—

(1) define the term “person”;

(2) govern the determination of persons who shall be ineligible for program benefits under this section; and

(3) protect the interests of tenants and sharecroppers.



## APPENDIX B—TOBACCO TRANSITIONAL PAYMENTS

[As Amended Through P.L. 110-246, Effective May 22, 2008]

### TITLE VI—FAIR AND EQUITABLE TOBACCO REFORM

**SEC. 601. [7 U.S.C. 518 note] SHORT TITLE.**

This title may be cited as the “Fair and Equitable Tobacco Reform Act of 2004”.

#### **Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs**<sup>601-1</sup>

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#### **Subtitle B—Transitional Payments to Tobacco Quota Holders and Producers of Tobacco**

**SEC. 621. [7 U.S.C. 518] DEFINITIONS.**

In this subtitle and subtitle C:

(1) **AGRICULTURAL ACT OF 1949.**—The term “Agricultural Act of 1949” means the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), as in effect on the day before the date of the enactment of this title.

(2) **AGRICULTURAL ADJUSTMENT ACT OF 1938.**—The term “Agricultural Adjustment Act of 1938” means the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.), as in effect on the day before the date of the enactment of this title.

(3) **CONSIDERED PLANTED.**—The term “considered planted” means tobacco that was planted, but failed to be produced as a result of a natural disaster, as determined by the Secretary.

(4) **CONTRACT.**—The term “contract” means a contract entered into under section 622 or 623.

(5) **CONTRACT PAYMENT.**—The term “contract payment” means a payment made under section 622 or 623 pursuant to a contract.

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

(7) **QUOTA TOBACCO.**—The term ‘quota tobacco’ means a kind of tobacco that is subject to a farm marketing quota or

<sup>601-1</sup> Subtitle A omitted because it amends other laws.

farm acreage allotment for the 2004 tobacco marketing year under a marketing quota or allotment program established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.).

(8) TOBACCO.—The term “tobacco” means each of the following kinds of tobacco:

(A) Flue-cured tobacco, comprising types 11, 12, 13, and 14.

(B) Fire-cured tobacco, comprising types 22 and 23.

(C) Dark air-cured tobacco, comprising types 35 and 36.

(D) Virginia sun-cured tobacco, comprising type 37.

(E) Virginia fire-cured tobacco, comprising type 21.

(F) Burley tobacco, comprising type 31.

(G) Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 53, 54, and 55.

(9) TOBACCO QUOTA HOLDER.—The term “tobacco quota holder” means a person that was an owner of a farm, as of the date of enactment of this title, for which a basic tobacco farm marketing quota or farm acreage allotment for quota tobacco was established for the 2004 tobacco marketing year.

(10) TOBACCO TRUST FUND.—The term “Tobacco Trust Fund” means the Tobacco Trust Fund established under section 626.

(11) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

**SEC. 622. [7 U.S.C. 518a] CONTRACT PAYMENTS TO TOBACCO QUOTA HOLDERS.**

(a) CONTRACT OFFERED.—The Secretary shall offer to enter into a contract with each tobacco quota holder under which the tobacco quota holder shall be entitled to receive payments under this section in exchange for the termination of tobacco marketing quotas and related price support under the amendments made by sections 611 and 612. The contract payments shall constitute full and fair consideration for the termination of such tobacco marketing quotas and related price support.

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

(c) BASE QUOTA LEVEL.—

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

(2) POUNDAGE QUOTAS.—Subject to adjustment under subsection (d), for each kind of tobacco for which the marketing quota is expressed in pounds, the base quota level for each tobacco quota holder shall be equal to the basic quota for quota tobacco established for the 2002 tobacco marketing year under a marketing quota program established under part I of subtitle B of title III of the Agriculture Adjustment Act of 1938 on the farm owned by the tobacco quota holder.

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

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

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

(d) **TREATMENT OF CERTAIN CONTRACTS AND AGREEMENTS.**—

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

(2) **EFFECT OF AGREEMENT FOR PERMANENT QUOTA TRANSFER.**—If the Secretary determines that there was in existence, as of the day before the date of the enactment of this title, an agreement for the permanent transfer of quota, but that the transfer was not completed by that date, the Secretary shall consider the tobacco quota holder to be the party to the agreement that, as of that date, was the owner of the farm to which the quota was to be transferred.

(e) **CONTRACT PAYMENTS.**—

(1) **CALCULATION OF TOTAL PAYMENT AMOUNT.**—The total amount of contract payments to which an eligible tobacco quota holder is entitled under this section, with respect to a kind of tobacco, shall be equal to the product obtained by multiplying—

(A) \$7.00 per pound; by

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

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

(f) **DEATH OF TOBACCO QUOTA HOLDER.**—If a tobacco quota holder who is entitled to contract payments under this section dies and is survived by a spouse or one or more dependents, 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. 623. [7 U.S.C. 518b] CONTRACT PAYMENTS FOR PRODUCERS OF QUOTA TOBACCO.**

(a) **CONTRACT OFFERED.**—The Secretary shall offer to enter into a contract with each producer of quota tobacco under which the producer of quota tobacco shall be entitled to receive payments under this section in exchange for the termination of tobacco marketing quotas and related price support under the amendments made by sections 611 and 612. The contract payments shall constitute full and fair consideration for the termination of such tobacco marketing quotas and related price support.

(b) **ELIGIBILITY.**—

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

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

(c) **BASE QUOTA LEVEL.**—

(1) **ESTABLISHMENT.**—The Secretary shall establish a base quota level applicable to each producer of quota tobacco, as determined under this subsection.

(2) **FLUE-CURED AND BURLEY TOBACCO.**—In the case of Flue-cured tobacco (types 11, 12, 13, and 14) and Burley tobacco (type 31), the base quota level for each producer of quota tobacco shall be equal to the effective tobacco marketing quota (irrespective of disaster lease and transfers) under part I of subtitle B of title III of the Agriculture Adjustment Act of 1938 for the 2002 marketing year for quota tobacco produced on the farm.

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

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

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

(d) **CONTRACT PAYMENTS.**—

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

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

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

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

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

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

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

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

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

**SEC. 624. [7 U.S.C. 518c] ADMINISTRATION.**

(a) TIME FOR PAYMENT OF CONTRACT PAYMENTS.—Contract payments required to be made for a fiscal year shall be made by the Secretary as soon as practicable.

(b) USE OF COUNTY COMMITTEES TO RESOLVE DISPUTES.—Any dispute regarding the eligibility of a person to enter into a contract or to receive contract payments, and any dispute regarding the amount of a contract payment, may be appealed to the county committee established under section 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.

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

(d) USE OF FINANCIAL INSTITUTIONS.—The Secretary may use a financial institution to manage assets, make contract payments, and otherwise carry out this title.

(e) PAYMENT TO FINANCIAL INSTITUTIONS.—The Secretary shall permit a tobacco quota holder or producer of quota tobacco entitled to contract payments to assign to a financial institution the right

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

**SEC. 625. [7 U.S.C. 518d] USE OF ASSESSMENTS AS SOURCE OF FUNDS FOR PAYMENTS.**

(a) DEFINITIONS.—In this section:

(1) BASE PERIOD.—The term “base period” means the one-year period ending the June 30 before the beginning of a fiscal year.

(2) GROSS DOMESTIC VOLUME.—The term “gross domestic volume” means the volume of tobacco products—

(A) removed (as defined by section 5702 of the Internal Revenue Code of 1986); and

(B) not exempt from tax under chapter 52 of the Internal Revenue Code of 1986 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

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

(b) QUARTERLY ASSESSMENTS.—

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

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

(A) the contract payments made under sections 622 and 623 during that period; and

(B) other expenditures from the Tobacco Trust Fund made during the base quarter periods corresponding to the four calendar quarters of that period.

(3) DEPOSIT.—Assessments collected under this section shall be deposited in the Tobacco Trust Fund.

(c) ASSESSMENTS FOR CLASSES OF TOBACCO PRODUCTS.—

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

(A) For cigarette manufacturers and importers, 96.331 percent.

(B) For cigar manufacturers and importers, 2.783 percent.

(C) For snuff manufacturers and importers, 0.539 percent.

(D) For roll-your-own tobacco manufacturers and importers, 0.171 percent.

(E) For chewing tobacco manufacturers and importers, 0.111 percent.

(F) For pipe tobacco manufacturers and importers, 0.066 percent.

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

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

(d) **NOTIFICATION AND TIMING OF ASSESSMENTS.**—

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

(2) **CONTENT.**—The notice shall include the following information with respect to the quarterly period used by the Secretary in calculating the amount:

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

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

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

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

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

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

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

(3) TIMING OF ASSESSMENT PAYMENTS.—

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

(B) BASE PERIOD QUARTER.—The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter.

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

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

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

(f) ALLOCATION OF TOTAL ASSESSMENTS BY MARKET SHARE.—The amount of the assessment for each class of tobacco product specified in subsection (c)(1) to be paid by each manufacturer or importer of that class of tobacco product shall be determined for each quarterly payment period by multiplying—

(1) the market share of the manufacturer or importer, as calculated with respect to that payment period, of the class of tobacco product; by

(2) the total amount of the assessment for that quarterly payment period under subsection (c), for the class of tobacco product.

(g) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

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

(2) GROSS DOMESTIC VOLUME.—The volume of domestic sales shall be calculated based on gross domestic volume.

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

(A) in the case of cigarettes and cigars, the number of cigarettes and cigars; and

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



(h) MEASUREMENT OF VOLUME OF DOMESTIC SALES.—

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

(2) RETURNS AND FORMS.—The returns and forms described by this paragraph are those returns and forms that relate to—

(A) the removal of tobacco products into domestic commerce (as defined by section 5702 of the Internal Revenue Code of 1986); and

(B) the payment of the taxes imposed under chapter 52 of the Internal Revenue Code of 1986, including AFT Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.

(3) EFFECT OF FAILURE TO PROVIDE REQUIRED INFORMATION.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. The Secretary may also assess against the person a civil penalty in an amount not to exceed two percent of the value of the kind of tobacco products manufactured or imported by the person during the fiscal year in which the violation occurred, as determined by the Secretary.

(i) CHALLENGE TO ASSESSMENT.—

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

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

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

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

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

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

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

(j) JUDICIAL REVIEW.—

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

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

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

(k) TERMINATION DATE.—The authority provided by this section to impose assessments terminates on September 30, 2014.

**SEC. 626. [7 U.S.C. 518e] TOBACCO TRUST FUND.**

(a) ESTABLISHMENT.—There is established in the Commodity Credit Corporation a revolving trust fund, to be known as the "Tobacco Trust Fund", which shall be used in carrying out this subtitle. The Tobacco Trust Fund shall consist of the following:

(1) Assessments collected under section 625.

(2) Such amounts as are necessary from the Commodity Credit Corporation.

(3) Any interest earned on investment of amounts in the Tobacco Trust Fund under subsection (c).

(b) EXPENDITURES.—

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

(A) to make payments under sections 622 and 623;

(B) to provide reimbursement under section 641(c);

(C) to reimburse the Commodity Credit Corporation for costs incurred by the Commodity Credit Corporation under paragraph (2); and

(D) to make payments to financial institutions to satisfy contractual obligations under section 622 or 623.

(2) EXPENDITURES BY COMMODITY CREDIT CORPORATION.—Notwithstanding any other provision of law, the Secretary shall

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

(c) INVESTMENT OF AMOUNTS.—

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

(2) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in interest-bearing obligations of the United States.

(3) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

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

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

(4) SALE OF OBLIGATIONS.—Any obligation acquired by the Tobacco Trust Fund may be sold by the Commodity Credit Corporation at the market price.

(5) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Tobacco Trust Fund shall be credited to and form a part of the Fund.

**SEC. 627. [7 U.S.C. 518f] LIMITATION ON TOTAL EXPENDITURES.**

The total amount expended by the Secretary from the Tobacco Trust Fund to make payments under sections 622 and 623 and for the other authorized purposes of the Fund shall not exceed \$10,140,000,000.

## Subtitle C—Implementation and Transition

**SEC. 641. [7 U.S.C. 519] TREATMENT OF TOBACCO LOAN POOL STOCKS AND OUTSTANDING LOAN COSTS.**

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

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

(1) the amount of funds held by the association in the No Net Cost Tobacco Fund and the No Net Cost Tobacco Account established under sections 106A and 106B of the Agricultural

Act of 1949 (7 U.S.C. 1445-1, 1445-2) for the kind of tobacco;  
by

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

(c) DISPOSAL OF REMAINDER BY COMMODITY CREDIT CORPORATION.—

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

(2) REIMBURSEMENT.—As required by section 626(b)(1)(B),  
the Secretary shall transfer from the Tobacco Trust Fund to the  
No Net Cost Tobacco Fund or the No Net Cost Tobacco Account  
of an association established under section 106A or 106B of the  
Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2) such  
amounts as the Secretary determines will be adequate to reim-  
burse the Commodity Credit Corporation for any net losses that  
the Corporation may sustain under its loan agreements with  
the association.

(d) TRANSFER OF REMAINING NO NET COST FUNDS.—Any funds  
in the No Net Cost Tobacco Fund or the No Net Cost Tobacco Ac-  
count of an association established under sections 106A and 106B  
of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2) that re-  
main after the application of subsections (b) and (c) shall be trans-  
ferred to the association for distribution to producers of quota to-  
bacco in accordance with a plan approved by the Secretary.

**SEC. 642. [7 U.S.C. 519a] REGULATIONS.**

(a) IN GENERAL.—The Secretary may promulgate such regula-  
tions as are necessary to implement this title and the amendments  
made by this title.

(b) PROCEDURE.—The promulgation of the regulations and ad-  
ministration of this title and the amendments made by this title  
shall be made without regard to—

(1) the notice and comment provisions of section 553 of title  
5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture  
effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices  
of proposed rulemaking and public participation in rulemaking;  
and

(3) chapter 35 of title 44, United States Code (commonly  
known as the “Paperwork Reduction Act”).

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In car-  
rying out this section, the Secretary shall use the authority pro-  
vided under section 808 of title 5, United States Code.

**SEC. 643. [7 U.S.C. 518 note] EFFECTIVE DATE.**

This title and the amendments made by this title shall apply  
to the 2005 and subsequent crops of each kind of tobacco.

## APPENDIX C—MISCELLANEOUS

### FOOD SECURITY ACT OF 1985

[As Amended Through P.L. 110–246, Effective May 22, 2008]

#### COST REDUCTION OPTIONS

SEC. 1009. [7 U.S.C. 1308a] (a) Notwithstanding any other provision of law, whenever the Secretary of Agriculture determines that an action authorized under subsection (c), (d), or (e) will reduce the total of the direct and indirect costs to the Federal Government of a commodity program administered by the Secretary without adversely affecting income to small- and medium-sized producers participating in such program, the Secretary shall take such action with respect to the commodity program involved.

(b) In the announcement of the specific provisions of any commodity program administered by the Secretary of Agriculture, the Secretary shall include a statement setting forth which, if any, of the actions are to be initially included in the program, and a statement that the Secretary reserves the right to initiate at a later date any action not previously included but authorized by this section, including the right to reopen and change a contract entered into by a producer under the program if the producer voluntarily agrees to the change.

(c) When a nonrecourse loan program is in effect for a crop of a commodity, the Secretary may enter the commercial market to purchase such commodity if the Secretary determines that the cost of such purchases plus appropriate carrying charges will probably be less than the comparable cost of later acquiring the commodity through defaults on nonrecourse loans under the program.

(d) When the domestic market price of a commodity for which a nonrecourse loan program (including the program authorized by section 110 of the Agricultural Act of 1949 (7 U.S.C. 1445e)) is in effect is insufficient to cover the principal and accumulated interest on a loan made under such program, thereby encouraging default by a producer, the Secretary may provide for settlement of such loan and redemption by the producer of the commodity securing such loan for less than the total of the principal and all interest accumulated thereon if the Secretary determines that such reduction in the settlement price will yield benefits to the Federal Government due to—

- (1) receipt by the Federal Government of a portion rather than none of the accumulated interest;
- (2) avoidance of default; or
- (3) elimination of storage, handling, and carrying charges on the forfeited commodity.

(e) When a production control or loan program is in effect for a crop of a major agricultural commodity, the Secretary may at any time prior to harvest reopen the program to participating producers for the purpose of accepting bids from producers for the conversion of acreage planted to such crop to diverted acres in return for payment in kind from Commodity Credit Corporation surplus stocks of the commodity to which the acreage was planted, if the Secretary determines that (1) changes in domestic or world supply or demand conditions have substantially changed after announcement of the program for that crop, and (2) without action to further adjust pro-

duction, the Federal Government and producers will be faced with a burdensome and costly surplus. Such payments in kind shall not be included within the payment limitation per person established under section 1001 of this Act, but shall be limited to a total \$20,000 per year per producer for any one commodity.

(f) The authority provided in this section shall be in addition to, and not in place of, any authority granted to the Secretary under any other provision of law.