§ 1463.103 Eligible quota holder.

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible quota holder, as defined in §1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title, the controlled substance provisions of part 718 of this title, and the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible quota holder.

§ 1463.104 Eligible tobacco producer.

(a) CCC will make a payment under this subpart to a person determined by CCC to be an eligible tobacco producer, as defined in §1463.102.

(b) The wetlands and highly erodible land provisions of part 12 of this title and the controlled substance provisions of part 718 of this title shall be applicable to payments made under this part to an eligible tobacco producer. However, the payment limitation provisions of part 1400 of this chapter shall not be applicable to payments made under this part to an eligible tobacco producer.

(c) For purposes of determining if an eligible tobacco producer has shared in the risk of producing a crop in the 2002, 2003, or 2004 crop years, CCC will consider evidence presented by a producer that includes, but is not limited to: written leases; contracts for the purchase of tobacco; crop insurance documents; or receipts for the purchase of items used in the production of tobacco.

§ 1463.105 Base quota levels for eligible quota holders.

(a) The BQL is determined separately for each kind of tobacco for each farm for which a 2004 basic marketing year quota was established under part 723 of this title. Any marketing quota assigned by FSA to a new farm in 2003 or 2004, other than through transfer from another farm, shall not be considered when determining the BQL.

(b) For burley tobacco quota holders BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

1. Farm BQL. The 2004 basic quota, multiplied by the BQL adjustment factor 1.071295. (NOTE: The factor adjusts the 2004 basic quota to the 2002 basic quota level.)

2. Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owners.)

(c) For flue-cured tobacco quota holders the BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

1. Farm BQL. The 2004 basic quota, multiplied by the BQL adjustment factor 1.23457. (NOTE: The factor adjusts the 2004 basic quota to the 2002 level.)

2. Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owner.)

(d) For quota holders of all other kinds of tobacco the BQL is established according to the following table, except as adjusted under paragraph (e) of this section:

1. Farm BQL. The basic allotment established for the farm in 2002 multiplied by the county average production yield. The following NASS yields are to be used for any county without production:

   (i) Fire-cured (type 21)—1746 lbs.
   (ii) Fire-cured (types 22–23)—2676 lbs.
   (iii) Dark Air-cured (types 35–36)—2475 lbs.
   (iv) Virginia Sun-cured (type 37)—1502 lbs.
   (v) Cigar Filler/Binder (types 42–44, 54, 55)—2230 lbs.

2. Quota holder BQL. The farm BQL multiplied by the quota holder's ownership share in the farm. (NOTE: In the case of undivided tract ownership, BQL must be distributed among the tract quota holders by the tract owner.)

(e)(1) CCC will divide the BQL for the farm between the parties to the agreement as CCC determines to be fair and equitable, taking into consideration the proportionate amounts of cropland sold, if:

   (i) On or before October 22, 2004, the owner of a farm had entered into an
agreement for the sale of all or a por-
tion of a farm for which a farm mar-
keting quota was established for the 2004 marketing year; and
(ii) Such agreement had not been ful-
filled or terminated prior to that date; and
(iii) The parties to the agreement are
unable to agree to the disposition of
the contract payment to be made with
respect to the farm.

(2) If, on or before October 22, 2004,
the owner of a farm had entered into
an agreement for the permanent trans-
fer of all or a portion of a tobacco mar-
keting quota and the transfer had not
been completed by such date, the
owner of the farm to which such quota
was to be transferred shall be consid-
ered to be the owner of the marketing
quota for the purposes of this subpart.
The BQL’s for the transferring farm
and the receiving farm will be adjusted
to reflect this transfer.

(f) Any tobacco marketing quota pre-
served under part 1410 of this chapter
as the result of the enrollment of a
farm in the Conservation Reserve Pro-
gram shall be included in the deter-
mination of the BQL of the farm.

§ 1463.106 Base quota levels for eligi-
ble tobacco producers.

(a) BQL is determined separately, for
each of the years 2002, 2003 and 2004, for
each kind of tobacco and for each farm
for which a 2002 farm marketing quota
had been established under part 723 of
this title.

(b) The BQL for producers of burley
tobacco is established as follows:

(i) The 2002-crop year BQL for burley
producers is the 2002 effective quota
pounds actually marketed, adjusted for
disaster lease and transfer, and consid-
ered-planted undermarketings and
overmarketings. The BQL is then mul-
tiplied by the producer’s share in the
2002 crop to determine the producer’s
2002 BQL. The adjustments for disaster
lease and transfer and considered-
planted undermarketings and overmar-
ketings are made as follows:

(i) Disaster-leased pounds are added
to the marketings of the transferring
farm and deducted from the mar-
ketings of the receiving farm;

(ii) Considered-planted pounds are
added to the farm’s actual marketings,
and includes only undermarketings
that were not part of the farm’s 2003 ef-
fective quota.

(iii) Pounds actually marketed as
overmarketings and sold penalty-free
are added to the farm BQL after the
BQL adjustment factor of 1.12486 has
been applied to the overmarketed
pounds.

(ii) The 2003-crop year BQL for burley
producers is the 2003 effective quota
pounds actually marketed, adjusted for
disaster lease and transfer and consid-
ered-planted undermarketings and
overmarketings, as follows:

(i) Disaster leases are added to the
marketings of the transferring farm
and deducted from the marketings of
receiving farm.

(ii) Considered-planted pounds are
added to the farm’s actual marketings,
and includes only undermarketings
that were not part of the farm’s 2004 ef-
fective quota.

(iii) Pounds actually marketed as
overmarketings and sold penalty-free
are added to the farm BQL after the
BQL adjustment factor of 1.071295 has
been applied to the overmarketed
pounds.

(iv) After these adjustments the BQL
is calculated as follows:

<table>
<thead>
<tr>
<th>Step</th>
<th>Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Subtract all 2002 undermarketings from the 2003 marketings, including undermarketings from the parent farm in any special tobacco combinations. Leased pounds are apportioned undermarketing history by dividing the transferring farm’s undermarketings by the transferring farm’s effective quota, before any temporary transfers, resulting in the percentage of undermarketings that were leased.</td>
</tr>
<tr>
<td>2</td>
<td>Multiply the 2003 marketings remaining after Step 1 times 1.12486 (the 2003-BQL adjustment factor).</td>
</tr>
<tr>
<td>3</td>
<td>Add the undermarketings that were subtracted in Step 1 to the sum of Step 2 to determine the farm 2003 BQL.</td>
</tr>
<tr>
<td>4</td>
<td>Multiply the sum from Step 3 times the producer’s share in the 2003 crop to determine the producer’s 2003 BQL.</td>
</tr>
</tbody>
</table>

(iii) The 2004-crop year BQL for burley
producers is the 2004 effective quota be-
fore disaster lease and transfer is cal-
lculated as follows: