

payments to the extent provided for in this part.

§ 1464.604 Definitions.

The definitions set forth in this section shall apply to the administration of TOPP under this subpart. The definitions in §§ 718.2 and 723.104 of this title also apply to TOPP. The definitions in this section apply rather than the definitions in §§ 718.2 and 723.104 of this title to the extent that the definitions in those sections differ. The following terms shall have the following meanings:

Controller means that person or entity who, as determined by the Deputy Administrator, controls the land used to produce eligible tobacco and share in the risk of production.

Eligible person means an owner, or (as applicable) controller of a farm for which a basic quota or allotment was established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 to the extent otherwise provided in these rules. Growers of that tobacco, as specified in this part, can also be eligible for payment. For this TOPP, an eligible person's status, as owner or controller or grower, will be determined as of July 1, 2002.

Eligible tobacco means each of the following kinds of tobacco: Flue-cured tobacco (types 11, 12, 13 and 14), burley tobacco (type 31), Virginia sun-cured tobacco (type 37), fire-cured tobacco (types 21-23), dark air-cured tobacco (types 35-36), and cigar filler/binder tobacco (types 42 through 44, 54 and 55).

Grower means for flue-cured tobacco and cigar binder tobacco, a "producer," as defined below, for all other eligible tobaccos, as "grower/tenant," as defined below.

Grower/tenant means a person or entity who provides labor to produce tobacco and share in the risk of production.

Owner means with respect to a quota or allotment farm the person or entity who owns the land for which the tobacco quota or allotment was established for the 2002 crop as of the operative status date of July 1, 2002 provided for in this part.

Payment pounds means the pounds of tobacco for which a person is eligible to be paid under this subpart.

Producer means a person or entity actively engaged in planting, growing, harvesting, and/or marketing of tobacco, or who shares in the risk of producing the crop.

Share in the risk of production means having a direct financial stake in the success of the crop through a direct share in the actual proceeds from the actual marketing of the crop which share is conditional upon the success of that marketing. Farm owners who cash-lease their farmland to a tobacco producer for the right to grow tobacco on that land and receive payment for such right regardless of whether or not a tobacco crop is marketed are not considered to share in the risk of production. Farm laborers who provide service in exchange for a wage and whose payment is not subject to the marketing of the tobacco crop are not considered to share in the risk of production.

TOPP means the Tobacco Payment Program.

§ 1464.605 Sign up.

(a) To apply for TOPP funds, persons must submit an application to the county FSA office by the date established by the Deputy Administrator. Late applications may be accepted if approved by the Deputy Administrator, if the lateness was the result of documented hardship.

(b) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

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§ 1464.607 Payment benefits.

(a) Payment will only be made subject to the availability of funds and only for eligible tobacco and for eligible persons who meet all conditions of eligibility for whom monies are provided by the terms of this section.

(b) The total national payment amount made available for each kind of eligible tobacco for all claimants for that kind of tobacco, will be computed by multiplying the 2002 crop national

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poundage amount for that kind by 5.55 cents per pound.

(c) The national poundage amount of a kind shall be, for those tobaccos for which poundage quotas were established for individual farms, the national basic quota, in total, for all farms. For all other tobaccos, the 2002 crop national poundage amount shall be determined by multiplying the national basic acreage allotment for that kind of tobacco by the following per acre conversion factors:

(1) For fire-cured tobacco (type 21) 1,746 pounds;

(2) For fire-cured tobacco (types 22-23) 2,676 pounds;

(3) For dark air-cured tobacco (types 35-36) 2,475 pounds; and

(4) For Virginia sun-cured tobacco (type 37) 1,502 pounds.

(d) Once the national payment amount is determined for the eligible tobacco kind, it will for flue-cured tobacco (types 11-14) and for cigar filler tobacco (types 42-44 and 54-55) be divided into two equal parts, one for eligible owners and the other for eligible growers. Shares in the sub-accounts will be determined using basic poundage quota amounts for flue-cured tobacco and basic allotments for the cigar filler types. For cigar filler type allotments, a conversion to pounds will be made using the same conversion factor provided in paragraph (b) of this section.

(e) For those eligible tobaccos not covered in paragraph (d) of this section, the national payment amount fund as determined under paragraph (b) of this section will be divided into three equal parts. Those parts shall be: one for eligible owners; one for eligible controllers; and one for eligible growers. Shares in each sub-account will be determined for burley tobacco using:

(1) Basic poundage quota amounts for owners; and

(2) Effective quota amounts for controllers and growers.

(f) For all other tobaccos covered by paragraph (e) of this section, shares in each sub-account will be determined using:

(1) Basic allotments for owners; and

(2) Effective allotment amounts for controllers and growers. Allotments will be converted to pounds using the

conversion factors in paragraph (c) of this section. "Effective quotas" and "effective allotments" means the amount of quota or allotment before any transfer which, as determined by the Deputy Administrator, occurred after a disaster.

(g) Growers who otherwise meet the terms of this part, will qualify based on the full amount of the basic quota or effective quota or allotment, as the case may be, for the kind involved, even though they did not fully produce the operative pounds. Such growers must meet the labor, active engagement in farming, and risk of production elements of the "grower" definition of §1464.604, as applicable to their kind of tobacco. The Deputy Administrator may provide other elements of eligibility as necessary to accomplish the provisions of this part in accord with the operative legislation.

(h) Payments will be made as soon as practicable.

(i) The amount of TOPP funds allocated to the eligible persons in Georgia will be disbursed only if the State of Georgia agrees to use an equal amount of funds (not to exceed \$13,000,000) to make payments in the same manner as provided for in this section.

(j) All payments under this part are subject to the eligibility of funds. In the case where a payment to a farm is disputed the Deputy Administrator may require that all interested parties agree to the resolution of the dispute before any payment is made and may delay payments to the farm until any such disputes are resolved. Also, as determined appropriate to accomplish the goal that program payments be made expeditiously in a manner that is administratively efficient, the Deputy Administrator may properly exclude payments to a person who does not file a timely claim and all payments may be made to those parties whose claim to the payment is not challenged. Nothing in this section shall, however, be construed to prevent the agency from denying any payment to any person based upon a failure of that person to meet any eligibility criteria set forth in this part.