

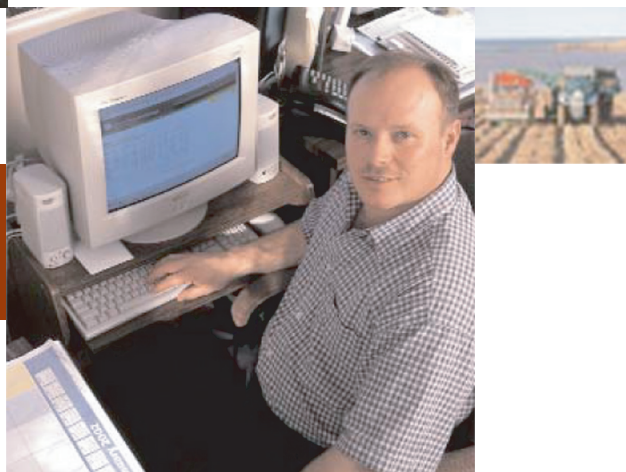
Agricultural Marketing Programs Act (AMPA)

Advance Payments Program (APP)

Administration Guidelines
January 2004



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Agriculture and
Agri-Food Canada

Agriculture et
Agroalimentaire Canada

Canada

I M P O R T A N T N O T I C E

The *Agricultural Marketing Programs Act* (AMPA) offers two programs to encourage orderly marketing: the Advance Payments Program (APP) and the Price Pooling Program (PPP). These programs are managed by the Financial Guarantee Programs Division within Agriculture and Agri-Food Canada.

These administration guidelines are related to the APP only. Information on the PPP can be obtained from the Program Manager, or at <http://www.agr.gc.ca/misb/nmp/ppp/index.html>

The objective of this manual is to assist administrators in making an application and in administering the APP.

If assistance is required concerning technical or administrative aspects of the APP application, please contact the Program Manager. A complete listing of program staff can be found in Appendix Q: Program Staff.

All correspondence concerning the APP should be sent to the address below:
Program Manager, Advance Payments Program
Agriculture and Agri-Food Canada
1341 Baseline Rd
Tower 7, 7th Floor
K1X 4H7
Telephone: 1-888-346-2511
Facsimile: (613) 759-6315
E-mail: ampa@agr.gc.ca

In administering the APP, it is most important that an administrator exercise the same care and prudence in granting an advance as a lending institution would (ie. due diligence, requiring a credit check on all first time applicants, and rejecting advance requests that represent too great a risk).

In the event of any question of meaning or interpretation of anything in these guidelines the legal interpretation of the Act and the Advance Guarantee Agreement between Agriculture and Agri-Food Canada and a producer organization will take precedence.

The information provided relating to the APP is collected for Agriculture and Agri-Food Canada under the authority of the *Agricultural Marketing Programs Act* for the purpose of an efficient management of the program. Any personal information provided to Agriculture and Agri-Food Canada will be protected under the provisions of the *Privacy Act* and will be stored in Personal Information Bank **Agriculture and Agri-Food Canada/PPU-140**. Other information may be accessible or protected as required under the provisions of the *Access to Information Act*.

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1. ADVANCE PAYMENTS PROGRAM

1.1 Purpose

The purpose of the Advance Payments Program is to improve marketing opportunities for crops of eligible producers by guaranteeing the repayment of advances made to them as a means of improving cash-flow at or after harvest.

1.2 Program Description

The Advance Payments Program is a federal loan guarantee program that facilitates access to credit for producers at or after harvest. With the protection of a loan guarantee in place, administrators (producer organizations) are able to negotiate a loan from financial institutions to make cash advances (maximum \$250,000) to the producers. The intended benefit of the APP is for producers to receive a cash advance on their stored crops soon after harvest allowing them to meet their short-term financial obligations. This gives them the flexibility to spread the marketing of their products throughout the year when market conditions are better, thus achieving orderly marketing of the products. The program also provides that the Federal Government will pay the interest on the first \$50,000 of an advance made under the program, thereby further assisting with the producers' cash flow. With the guarantee in place, the administrators are able to negotiate the loans at preferential rates, thereby providing interest savings for producers on the amounts over \$50,000.

As the program is delivered through producer organizations on behalf of their members, a producer can only receive an advance through producer organizations and not directly from Agriculture and Agri-Food Canada.

A producer may receive a total advance of up to \$250,000 for all crops or a lesser amount if set by the Minister in the Advance Guarantee Agreement with the producer organizations. The amount of the advance is based on half (50%) of the average farmgate price that, in the Minister's opinion, will be payable to producers of the crop in that area during the crop year.

As any one person or any one farm unit is limited to \$50,000 interest free and a total advance of up to \$250,000, applicants for an advance must disclose any applications with other program administrators and their involvement in other producer enterprises (partnership, corporation, cooperative etc.). Failure to provide accurate information on an APP application is an offence under AMPA which could result in prosecution.

Producers repay the advance to the administrator as the crop is sold and at the same rate per unit as the advance was issued. The administrator, in turn, repays the loan from which the advances were made. As producers make payments, the portion of the advance on which Agriculture and Agri-Food Canada is paying interest is the first portion of the advance to be reduced.

Agriculture and Agri-Food Canada makes the interest payments under the program for the advances under \$50,000 directly to the financial institution on behalf of the producer organizations on a monthly basis. These payments are based on monthly statements from the producer organizations documenting the interest due, and reconciled with a bank statement from the lender. (Appendix I- Part A)

The government guarantee is calculated based on the administrators's default history and can range from 85% to 99%. The administrator's liability is calculated based on their default history and number of repayment agreements nine months after the end of each of the previous two completed crop years and will range from 1% to 15%. If the default rate increases, the government guarantee will decrease and the administrator will take on a higher percentage of the liability. Should the default rate decrease, the administrator's liability will decrease and the percentage of the government guarantee will be increased accordingly. The calculation formula is established through the regulations of the *Agricultural Marketing Program Act* and are explained later in this document with an example in Appendix A-3: Administrators Liability. For all administrators using the APP for the first time the administrator's liability is one percent (1%), given that they would not have a default history.

2. ELIGIBLE CROPS

A "crop", as defined under Section 2 (1) of the AMPA, is:

- a) one or more field crops, or a portion of one or more field crops, grown in Canada, either cultivated or uncultivated, and stored in a non-processed form;
- b) maple syrup or honey produced in Canada; or
- c) any other agricultural product, grown or produced in Canada, designated by the Governor in Council (ie. ranch-raised fur).

Processed and/or frozen crops are not eligible under the Advance Payments Program.

A crop is considered to be processed if it has been subjected to a process that changes the state of the product or which goes beyond processing for storage, such as adding sugar to prolong its life, further processing wheat into flour and bran, or freezing berries. Greenhouse production is also excluded from the program.

To be eligible the producer of the crop must own it continuously and be responsible for marketing it. Ownership and responsibility for marketing is considered to be lost when the crop is sold, processed or placed in a pool; if someone other than the producer can give all or a part of the crop as security, ownership and responsibility for marketing is considered to be lost.

Despite the above criteria, producers of horticulture crops, maple syrup and honey who collectively own and market their eligible products will be considered to satisfy the ownership and responsibility for marketing criteria up to the point where the product is sold or placed in a pool for processing.

Farm-fed Grain

Farm-fed grain is included in the program on the basis that the crop is available for sale within an established market, and feeding represents one marketing option. An example would be grain corn which can be fed or marketed off the farm. Whole-plant silage or ground ear corn are not traded to any significant degree and therefore do not meet the condition described above. Administrators issuing advances on farm-fed grain must have the producers complete a schedule of feed usage, and must obtain post-dated cheques from the producer to be applied against the advances as the grain is being fed.

3. ELIGIBLE ADMINISTRATORS

Definition

An "administrator" as defined under Section 2 (1) of the AMPA, means the Canadian Wheat Board or any of the following organizations that has the power to sue and be sued in its own name:

- a) an organization of producers that is involved in marketing a crop; or
- b) any other organization that the Minister considers is supported by producers, and designates as an administrator.

Application

When applying to the APP, the administrator must submit in letter format information demonstrating:

- that it represents eligible producers in an area who produce a significant portion of the crop in that area for which the advances will be made;
- that the issuing of those advances will improve marketing opportunities for the crops of eligible producers in the area that the administrator represents;
- its capacity of meeting its obligation (as outlined in Section 6 of this document) under the Advance Guarantee Agreement;
- its capacity to ensure adequate program control and accountability;
- that it is a legal entity capable of suing and of being sued in its own name;
- that it has resources to carry on the activities of the program and to support its financial liability in the case of significant default rates among producers;
- that it is financially viable;
- the information required as per Appendix A-1: Application Process.

4. ELIGIBLE PRODUCERS

Definition

"Producer" means a producer of an agricultural product who is:

- a) a Canadian citizen or a permanent resident; or
- b) a corporation, a majority of whose voting shares are held by Canadian citizens or permanent residents; or
- c) a cooperative, a majority of whose members are Canadian citizens or permanent residents; or
- d) a partnership or other association of persons where partners or members, who are Canadian citizens or permanent residents, are entitled to at least 50% of the profits of the partnership or association.

"Producer" includes a person or entity mentioned above that is entitled to a crop or a share in it as landlord, vendor, mortgagee, or hypothecary creditor on a date specified in the Advance Guarantee Agreement with the administrator. (Defined under Section 2 (1) of AMPA)

5. ELIGIBILITY FOR AN ADVANCE

Under the APP, individuals and independent farming operations, irrespective of the number of partners, members or shareholders, are limited to \$50,000 interest free, and a maximum of \$250,000 in total advances.

In order to accomplish this, AMPA defines "related producers" and establishes how the amounts advanced to related producers will be attributed to the individuals involved and vice versa. It should be noted that under the Act, the term producer may refer to an individual, partnership, corporation or association of producers. For purposes of the Act, producers are considered to be related if they are not operating at arms length. The definition of "at arms length" is the same as that in the Income Tax Act. AMPA further defines a number of scenarios under which producers would be considered to be not operating at arms length and are therefore considered to be related unless proof is provided to the contrary. These scenarios are outlined in Appendix A-2: Related Producers.

General Requirements to be Eligible for an Advance:

- the producer and any related producers must not be in default under a repayment agreement or have any outstanding guaranteed advances for the previous crop year, (*including any advances issued under the Prairie Grain Advance Payments Act (PGAPA) and the Advance Payments for Crops Act (APCA)*);
- the producer must not be ineligible, where an Advance Guarantee

Agreement provides that a producer continues to be ineligible for a guaranteed advance for any period specified in the Advance Guarantee Agreement, even though the producer has ceased to be in default;

- the producer must not have given the crop for which the advance was issued as security ranking in priority to the security interest given to the administrator. The producer demonstrates this by having the producer's primary lender sign a priority agreement. See (Section 7 and Appendix B: Application for an Advance - Part 5: Priority Agreement). The priority ranking ensures that, should the dispersal of the assets be forced, the Administrator is the first to obtain payment.

Where the Producer is an Individual; The Applicant:

- must be of the age of majority in the province of the farming operation;
- must be principally occupied in that operation, contributing significantly and materially to the production of the crop for which the advance is being made, or be entitled to the crop or a share in it as landlord, vendor, mortgagee, or hypothecary creditor;
- have title to the crop for which the advance is made;
- must not be a Member of Parliament with any or partial control over the administrator (e.g. Director).

Where the Producer is a Partnership, Corporation, Cooperative, or Association (Related Producer):

- must indicate on the advance application if the applicant is a partnership, corporation or cooperative. In all cases, the names of all shareholders and number of shares held, names of all members or names of all partners and the percentage of the profits to which they are entitled are required. Legal documentation should be obtained from the applicant to ensure that all proprietors and their interest in the applicant producer are being disclosed;
- all shareholders, members or partners of the company, cooperative or partnership must sign a form (Appendix B: Application for an Advance - Part 4: Joint and Several Guarantee) to be jointly and severally liable for any liability of the producer. Each partner, member or shareholder, as the case may be, is individually and collectively responsible for all of the outstanding amount of the advance in the case of default and all costs associated with collecting the default. If any of the shareholders, members or partners do not sign the form, no advance may be granted to the producer;
- if the corporation is one shareholder, the shareholder must agree in writing to be personally liable to the administrator for any liability of the producer and provide any security for the repayment of the advance that the administrator may require. In all cases a personal guarantee to repay the advance is required and is provided through a personal guarantee form (Appendix B: Application for an Advance - Part 3: Personal

Guarantee);

- in the case where there is more than one shareholder, member or partner, at least one of the shareholders; members, or partners, as the case may be, must be of the age of majority in that province, and be principally occupied in the farming operation.

Attribution

For purposes of calculating the maximum amount of advance for an individual or entity, amounts advanced to a related producer (*Partnerships, Corporations, Cooperatives, & Associations*) are attributable to the producers and the attributable percentage is:

- 100%, if the applicant is a sole proprietor;
- the percentage of the voting shares that the producer holds in the related producer, if the related producer is a corporation;
- "one divided by the number of members times 100", if the organization is a cooperative;
- the percentage of the profits of the partnership or association to which the producer is entitled, if the producer and the related organization are partners or members of the same partnership or other association of persons.

In order for the administrator to apply the attribution rules, the producer(s) will be required to provide all necessary information.

The producer(s) must be requested to sign a statement declaring that they are not required by the Income Tax Act to acknowledge involvement in any partnership, corporation, cooperative or association on their income tax statement. If the producers are not in a position to sign such a statement, they will be required to declare all parties with which they operate their farm business or the organizations in which they are members, shareholders or partners.

The application will clearly state that the producer may be required to substantiate the statements made either through a statement from their accountant or by providing a copy of their income tax statements. Failure to provide such proof will result in the producer not receiving an advance or being declared in default if the advance has been issued. The administrator may rely on the declaration in issuing the advance but should investigate any declaration that it has reason to believe is questionable.

An example of the calculation based on the attribution rules is provided in Appendix A-2: Related Producers.

Maximum Advance

The maximum amount of advances in any crop year that are eligible for a guarantee under the APP:

- for the crop covered by the advance payment guarantee with the administrator, is \$250,000 or a lesser amount specified in the Advance Guarantee Agreement;
- for all crops, including amounts that are attributable through any related producer, is the lesser of \$250,000 or a lesser amount as specified in the Advance Guarantee Agreement.

Calculation of the Advance

The amount of an eligible advance is calculated by multiplying the number of crop units for which the advance is requested by the advance rate per crop unit (*# of units x rate per unit*). The advance rate per crop unit is specified in the Advance Guarantee Agreement and must not exceed one half of the average farmgate price that, in the Minister's opinion, will be payable during the crop year to producers of that crop in the area that the producer organization represents.

6. OBLIGATION OF ADMINISTRATORS

The administrator is accountable to the Minister for the efficient administration of the program. Officials from the Department will be reviewing administrative procedures and monitoring the program to ensure compliance with the Advance Guarantee Agreement, procedures outlined in these Administration Guidelines and the Act. If the Act or the Advance Guarantee Agreement is breached, the agreement may be cancelled and the Minister may require the administrator to repay any interest payments or default payments made by AAFC to the lender.

In administering the APP, it is most important that an administrator exercise the same due diligence in granting an advance under AMPA as a lending institution would. The administrator is fully responsible for approving producers' applications and maintaining the operational control of the advance issuance and recovery process. It must be ready to fulfill all required duties related to the management of the program and demonstrate at any given time that it is doing so.

The administrator's responsibilities are specified in the Advance Guarantee Agreement. The agreement should be read thoroughly by the officers within the administering organization and a legal opinion sought on any areas of concern.

The officers should ensure that:

- 1) the terms are realistic;

- 2) that the organization is in a position to meet all the terms of the Advance Guarantee Agreement.

In general, the principal obligations of an administrator are as follows:

- to make the arrangements for the advances from money borrowed from a lender;
- to ensure that the interest rate on the money borrowed will not exceed the rate specified in the Advance Guarantee Agreement;
- to make an agreement with any authorized buyers for the withholding and forwarding of the appropriate amount of the payment directly to the administrator; (Appendix E: Agreement Between Administrator and Buyer)
- where the administrator is the buyer, to withhold amounts from any payments made to the producer for crop sold;
- submit a declaration of the advances issued to AAFC within two weeks of the date of issuance; (Appendix F: Declaration of Administrator)
- to repay the money it borrows, together with the interest, within the period specified in the Advance Guarantee Agreement from the amounts the administrator receives as repayment of advances;
- reconcile administrators records with the statement from the lender and submit to AAFC on a monthly basis a claim for reimbursement for interest costs; (Appendix I: Monthly Financial Reconciliation Report)
- to declare any producers in default who do not meet their obligations; (Appendix J: End of Crop Year Report)
- if a producer defaults, to pay the administrator's portion of the liability to the lender and Agriculture & Agri-Food Canada within the required time frame; (Appendix J: End of Crop Year Report)
- submit information on defaults on a monthly basis; (Appendix I: Monthly Reconciliation Report- Part C)

Please refer to the appendix index for details on the use of each appendix.

7. OBLIGATION OF PRODUCERS

The principal obligations of a producer are as follows:

- properly complete an application (Appendix B: Application for an Advance), including a declaration, and submit it to the administrator;
- provide all required documents to prove the eligibility requirements (Canadian Citizen/permanent resident, title of crops, etc.);
- adequately store the crop so it will remain in good marketable quality until disposed of in accordance with the agreement;
- provide a priority agreement for any liens or encumbrances on the crop, signed by the manager of the lender(s) or supplier(s); (Appendix B- Part 5)
- repay the advance as the crop is sold at the same rate as the advance

- was issued;
- sign an agreement to repay the advance and any interest that accrues on advances over \$50,000; (Appendix D: Agreement Between Administrator and Producer)
- have all perils insurance on the portion of the crop in storage for the value of the advance if stored in the producers own facility(ies) or provide proof that any commercial storage used has adequate insurance;
- complete an authorization for deduction by a buyer or broker that has an agreement with the administrator for this purpose (Appendix C: Producer Authorization to Buyer), or agree to repay the advance directly to the administrator including any interest under any terms established in the Advance Guarantee Agreement, (Appendix D: Agreement Between Administrator and Producer) or a combination of both methods;
- provide to the administrator any information that it requests for the purpose of applying the AMPA.

Please Note: When a producer applies for an advance for a crop (or in the case of farm-fed grain, a portion of the crop) all of the crop of that type is considered to be covered by the advance and on the first sales or disposal of that crop the appropriate portion of the advance must be repaid. A producer cannot designate only part of a crop of a certain type as being under the advance.

8. APPLICATION BY THE ADMINISTRATOR

8.1 Application for Participation

The administrator must make an application annually to Agriculture and Agri-Food Canada to participate in the APP. The administrator's completed application must be received by Agriculture and Agri-Food Canada at least **six to eight (6 - 8)** weeks prior to the Advance Guarantee Agreement being required. Please follow the instructions (as outlined in Appendix A-1 Application Process) for completing an application.

8.2 Approval of Application

In assessing the application, the Department must ensure that the administrator has the capability to properly administer the program. An appropriate advance rate, which cannot exceed 50% of the average farmgate price the producer is expecting to receive, will be established based on the information provided by the administrator and an analysis of the markets.

If the application is approved, four copies of an Advance Guarantee Agreement between the Department, the administrator and the lender, will be prepared and sent to the administrator for signature. The administrator will take the Advance Guarantee Agreement to the lender to finalize the financing and obtain the lenders signature at that time.

Upon receipt of the agreement, the administrator should:

- review the contents of the Advance Guarantee Agreement to ensure that its officers fully understand and agree to all the provisions of the agreement;
- have two authorized representatives sign the Advance Guarantee Agreement in the designated area;
- obtain the signature of the lender;
- return two signed copies to Agriculture and Agri-Food Canada.

When returning the agreement to Agriculture and Agri-Food Canada, a letter stating the name and address of the lender and the account information must be included.

9. ADMINISTRATION OF THE PROGRAM

9.1 Producer's Application

A sample producer application is attached (Appendix B: Application for an Advance). If the administrator chooses not to use the sample, it should ensure that, as a minimum, the requirements in the sample are included.

For all advances that are issued in the province of Alberta, the administrator must include as a term of its agreement with the producer the following clause:

“A clause providing that the producer agrees, pursuant to Section 7 of the Limitations Act of Alberta, to the extension of the limitation period for seeking remedial order for claims arising from this agreement to six years from the date the administrator knew, or in the circumstances ought to have known, of the claim.” This clause effectively means that an administrator in Alberta has up to six years to pursue a claim against a producer, which is consistent with other provinces.

9.2 Approval of Producer's Application

It is essential that the administrator establishes a clear, transparent and open decision making process for evaluating producer applications that will result in an unbiased, accurate assessment. One approach may be to have a formal Review Board made up of officers within the administering organization as well as the Secretary/Manager to review applications prior to issuing advances.

Prior to Issuing an Advance Payment

The administrator must do the following:

- take steps, in accordance with the terms and conditions of the Advance Guarantee Agreement, to ensure that the crop is harvested, is of marketable quality and is adequately stored by the producer so as to

remain of marketable quality until disposed of in accordance with the repayment agreement, (see Section 10.2 of this document - Crop Inspections);

- ensure that the crop's and producer's eligibility requirements are met, (see Section 2 and 4 of this document);
- evaluate the producer's credit, (see Section 10.1 of this document);
- keep records of those applications approved and not approved along with the supporting documentation;
- obtain a signed declaration from the producer including all of the statements included in Appendix B - Part 2: Declaration of Applicant;
- ensure that all agreements are completed in full and signed by officers that have designated signing authority;
 - Agreement Between Administrator and Producer (Appendix D: Agreement Between Administrator and Producer)
 - Joint & Several Guarantee (Appendix B: Application for an Advance - Part 4)
 - Personal Guarantee (Appendix B: Application for an Advance - Part 3)
 - Buyer Authorization (Appendix C: Producer Authorization to Buyer)
 - Buyer Agreement (Appendix E: Agreement Between Administrator and Buyer)
- ensure that a priority agreement form (Appendix B: Application for an Advance - Part 5) for any liens or encumbrances on the crop are signed by the lender(s) or supplier(s). If there are no liens or encumbrances, at least one priority agreement should be obtained stating this for the producers main lender.
- ensure that all required documents, such as insurance coverage, priority agreements, etc. are maintained for each producer on each producer's file.

Priority Agreement:

AMPA provides that the administrator have a security interest on any crop on which an advance is issued. The legislation further requires that the producer has not given the crop as security ranking in priority to that of the administrator. This means that should the administrator need to seize the crop, it would be the first to be paid from the proceeds. The priority agreement waives any right of the producer's lender to take precedence over the administrator with respect to the crop pledged as security for the advance. Prior to issuing an advance payment, a priority agreement must be completed by the lender(s) of each party entitled to a share in the crop identified in the advance application. If a producer deals with more than one lender, separate priority agreements must be completed by each lender. (The administrator must ensure that the priority agreement is completed properly, signed and dated.)

Crop suppliers may also have a security interest in a crop and the administrator must ensure that a priority agreement for these encumbrances is obtained. In such cases a

priority agreement specifically for crop suppliers is available, see Appendix B: Application for an Advance - Part 6: Suppliers Priority Agreement. The administrator may use the signed priority agreement to register Personal Property Security for all or only the larger advances. Also, the administrator may register Personal Property Security as soon as it receives any indication that a producer might be experiencing some financial difficulties.

The administrator is responsible for ensuring that the lender is respecting the terms of the priority agreement; any difficulty in this respect should be reported to the program administrator.

9.3 Producer's Repayment Agreement

All producers receiving an advance must complete and sign an agreement with the administrator agreeing to repay the advance (Appendix D: Agreement between Administrator and Producer). The agreement provided is general in nature and may not meet the needs of all organizations. Should the administrator choose not to use the sample, the agreement used must contain at a minimum the following provisions as per Section 10(2) of AMPA:

- the repayment of the advance either through authorized buyers or directly;
- keeping the crop adequately stored;
- the compliance with the other provisions of the agreement including;
 - terms and conditions governing the delivery of the crop and the payment of interest, both before and after any default;
 - a requirement that, in the case of default, the producer pays all costs associated with the recovery of the amount outstanding as well as the interest paid on the producer's behalf by the Department.

9.4 Repayment Options

In order to receive an advance, the producer must sign a repayment agreement with the administrator specifying the repayment terms and conditions, (Appendix D: Agreement between Administrator and Producer). In all cases, repayment of the advance is from the first crop sold of the type with respect to which the advance was issued.

Repayments are applied first to the principal portion of the advance on which the Minister is paying interest.

Two different types of repayment methods are available to the producers:

1) Repayments through authorized buyers

- The producer repays by selling the crop to a buyer that has been authorized by the administrator to make deductions on the proceeds of sale (at the same rate per unit as the advance was made) and submit it directly to the administrator towards repayment of the advance and any accrued interest - see Section 9.5 of this document.

2) Direct repayments

- Where it is impractical for the producer to sell through an authorized buyer (e.g. farm to farm sales), the administrator may authorize the direct repayment option in the application form;
- The producer repays directly to the administrator within **seven (7) days** of receipt of payment or a maximum of **forty-five (45) days** from delivery to the buyer, whichever is earlier, (Appendix D: Agreement Between Administrator and Producer- Section 2). The repayment is at the same rate per unit as the advance was made. Exceptions to the required amount of repayment days (as above) may be granted on export sales;
- The administrator should require the producer to substantiate the date of sale by providing proof of sale and bills of lading. However, Section 10(2) of AMPA provides that the administrator may allow producers to pay without proof up to an amount specified in the repayment agreement but not exceeding the maximum amount specified by the regulations.

The regulations state a producer may pay the following amounts without proof of sale:

- the greater of \$500 or a percentage not to exceed 10% of the total amount advanced, the exact percentage to be specified in the Advance Guarantee Agreement.

Any amounts repaid in cash above the limits without proof of sale are subject to interest at the rate established in the agreement between the administrator and the producer on the excess amount from the day they got the advance to the day the repayment was made. **The Administrator must submit (Part B of Appendix "I") within fifteen (15) business days of the end of the month and shall include any collected interest from the producers. The Administrator shall submit the collected interest to the Minister no later than fifteen (15) business days following the end of the crop year.**

Although there are provisions for cash repayment, nothing in the regulations removes the obligation of a producer to have enough crop in storage to cover the amount of the advance. The cash repayment provision is intended to allow for dockage, bin audit shortages and shrinkage, it is not intended to allow for spoilage. Should an inspection reveal that a producer does not have sufficient crop to cover the remaining amount of the advance, it is the responsibility of the administrator to declare the producer in default and advise the Department within 15 business days from the date the producer was declared in default.

Please note: Some administrators have used a system of post-dated cheques to facilitate repayment. When the advance is issued, the producer provides the post dated cheques based on an anticipated sales schedule. The producer is responsible for reporting any variation from the schedule and providing the necessary cheques to substantiate the variation. This system is also used for farm fed grain.

9.5 Buyer Agreement

In order to facilitate the repayment of advances, an administrator may designate “authorized buyers”. An agreement is negotiated with each authorized buyer to deduct from the proceeds of sale an amount per unit of crop equal to the rate per unit of the advance and to forward the payment directly to the administrator to repay that portion of the advance. The agreement with all designated buyers should be completed prior to the distribution of applications in order to provide producers with a list of all authorized buyers. Should a producer identify a buyer that is not on the list, the administrator can either negotiate an agreement with the buyer or ask the producer to make direct repayments in accordance with the repayment schedule agreed to prior to issuing the advance to the producer. Please refer to Appendix E: Agreement between Administrator and Buyer for a sample of an agreement between an administrator and a buyer. This is a general agreement that may need to be amended to meet the specific needs of an administrator. The producer must then sign an authorization to the buyer to make the deductions (Appendix C: Producer Authorization to Buyer).

Particular attention should be paid to the following four (4) points included in the Buyer Agreement:

1. The buyer shall withhold from the amount owing to a producer amounts based on the same rate per unit as the advance was made as stipulated in the repayment schedule agreed to by the buyer and the administrator.
2. The buyer shall remit to the administrator any amounts withheld under (1) above within **forty-five (45) business days** from date of delivery of the crop. Exceptions may be granted on export sales.
3. The buyer shall not credit any amount of money specified in number one (1) to any account which the producer may have with the buyer, to the buyer's own account or to the producer's account, until the advance and any accrued interest is repaid.
4. In the event that the buyer does not comply with this agreement, the producer shall be liable for the full amount not remitted to the administrator, the related interest and any costs directly associated with collection from the date the buyer received that unit of crop from the producer.

Naming authorized buyers is beneficial to both the administrator and the buyers. For the administrator, deductions from the source of the sale tends to be a more secure means of obtaining payment. The buyers benefit from the fact that producers become more aware that the buyer is wanting to purchase their crops.

9.6 Issuing the Cheque

An advance payment can only be made once the producer's agreement with the administrator is signed by both parties. The agreement is only signed by the

administrator once all required application forms are signed, witnessed, and sealed.

Once the administrator is ready to make an advance payment, it must ensure that:

- the advance payment cheque is made payable to the “producers name” appearing on the application. If an Officer of a corporation, partnership or cooperative completes the application, the cheque must be made payable to the “corporation, partnership or cooperative”;
- **where the lender has a lien on the crop, the lender may request that the cheque be made payable to both the “producer and the lender”.** This requirement is outlined in the Priority Agreement (Appendix B- Part 5).

Prior to releasing the advance payment cheque, the administrator should consider whether market conditions have changed in such a way that it could impact upon the producer's ability to repay the advance at the same rate as the producer received the advance (e.g. decrease in expected market price). This is part of exercising due diligence. If this situation arises, please contact your assigned Program Officer to discuss the appropriate course of action.

9.7 Emergency Advances (Section 7(1) & (2) of AMPA)

AMPA has provisions for emergency advances to be made in cases in which an eligible producer has difficulty harvesting a crop because of unusual weather conditions and where there is a reasonable expectation that the producer will harvest the crop in a marketable condition. The Minister may enter into an agreement with the administrator authorizing that a portion of an advance be paid as an emergency advance. The maximum amount of the emergency advance is the lesser of \$25,000 or 50% of the advance that the administrator expects to make to the producer on the basis of the amount of crop that is expected to be harvested.

The Minister is not required to pay the interest on an emergency advance, unless the advance guarantee with the administrator provides for its payment.

All terms and conditions in the agreement relating to emergency advances must be included in the repayment agreement of the producer receiving this type of advance.

9.8 Declaration

After making an advance to a producer, the administrator must forward a declaration to Agriculture and Agri-Food Canada within **two (2) weeks** of the issuance of the advance (Declaration of Administrator Appendix F). Under the declaration, the administrator makes the statement that all of the advances listed were made in accordance with the Advance Guarantee Agreement and the Act.

The producer declaration list must indicate the following:

- name, address and telephone number of the producer;
- if the producer is a partnership, corporation or association, the name, address

- and percentage of ownership of all individuals involved;
- the amount advanced to each producer for the period and the total to date;
 - the date of the advance;
 - type of commodity;
 - cumulative total of producers and the amount advanced up-to-date under \$50,000.00;
 - cumulative total of producers and the total amount advanced up-to-date over \$50,000.00.

These declarations can be sent by normal mail, electronic mail (see Appendix Q: Advance Payments Program Staff, for a listing of the staff) or by facsimile at 1-613-759-6315.

It should be noted that the Department will not pay interest on any amounts in excess of that for which declarations have been received.

9.9 Recovering Administration Costs

The administrator may charge fees to producers for administrative services, including fees for receiving and dealing with applications for advances and for administering advances. The fees may be charged only for the purpose of recovering administrative costs under the APP and are subject to any terms and conditions of the Advance Guarantee Agreement. Should an inquiry arise from the producers served by the administrator, the administrator should be prepared to document that the fees are only covering administrative costs. The following are options the administrator may wish to consider:

- Charge a flat fee for each producer.
- Charge a percentage of the total advance amount.
- Charge a flat fee for the application and charge an additional fee for the direct costs of other activities such as inspections, credit check, etc.

Administration fees may be deducted from the advance provided that a clause to this effect is included in the producer's agreement with the administrator. Otherwise, a separate cheque could be requested from the producer.

9.10 Record Keeping

The administrator is fully responsible for maintaining the operational control of the advance issuing and recovery process. Maintenance of accurate and up-to-date records are critical for ensuring effective management. It is important that the administrator keep current and complete files. These files will be reviewed during any monitoring done by Program Officials or consultants hired on behalf of AAFC. The following Sections 9.11 to 9.14 are an outline of the files that should be kept.

9.11 Program File

The administrator must maintain a program file with, as a minimum, copies of the following documentation:

- application submitted (Appendix A-1: Application Process) to the Department and a copy of the APP agreement under the AMPA;
- agreements with all authorized buyers (Appendix E: Agreement between Administrator and Buyer);
- agreement with lender;
- copies of declarations submitted to the Department (Appendix F: Declaration of Administrator);
- documentation of any decisions dealing with the administration of the program;
- all correspondence related to the program, including correspondence with the Department.

9.12 Lender & Reconciliation File

The administrator must maintain a lender reconciliation file with, as a minimum, copies of the following documentation:

- Duplicate deposit book;
- Monthly lender's statement;
- Monthly reconciliation of the lender's statement (Appendix I: Monthly Reconciliation Report);
- Diary of actions taken to rectify any discrepancies between the lender's records and the administrator's records.
- End of crop year report.

9.13 Producer File

An administrator must maintain a separate file for each producer that receives an advance. A copy of the contents in the producer's file must be submitted to the Department if the producer is declared in default and the administrator requests the Department to honour the guarantee.

These files must contain the following documents and information where applicable:

- application for an advance payment (Appendix B: Application for an Advance);
- application declaration (Appendix B - Part 2: Declaration of an Applicant);
- list of all related producers, shareholders, members or partners with the attributable percentage, person or entity entitled to the crop or a share of it as landlord, vendor, mortgagee or hypothecary creditor (Appendix B - Part 2: Declaration of an Applicant);
- Repayment Agreement between defaulted producer and the administrator (Appendix K: Repayment Agreement between Defaulted Producer and Administrator);
- Priority Agreement (re: lender's security) (Appendix B - Part 5);
- Personal Guarantee (if applicable) (Appendix B - Part 3);
- in the case of a partnership or corporation/co-operative application, a Joint

- & Several Guarantee (Appendix B - Part 4);
- partnership agreement, registered or unregistered together with the names of all shareholders, members or partners;
- documentation of the assessment of the producer's credit worthiness performed prior to the issuance of the advance and after being declared in default (credit checks, financial statements, comments from discussions with lenders, etc.);
- authorization for deduction by a buyer (Appendix C: Producer Authorization to Buyer);
- bin inspection reports or other documents establishing the volume of crop in storage (Appendix G: Crop Inspection Report);
- reconciliations of the producer's repayment to each inspection (Appendix H: Analysis of Inspection);
- copy of the producer repayment schedule if the producer is repaying on a schedule;
- proof of all perils insurance coverage;
- documentation of the approval of the application;
- notification by producer of any difficulties with the repayment arrangements;
- ledger cards reflecting advances, repayments, collections and collecting methods;
- cancelled cheques as evidence of an advance being made to the applicant or a record of the cheque stub information;
- documentation of repayments: cash payments, interest payments, remittances, etc.;
- any sales information used to verify the timeliness of payments;
- analysis of sales information results;
- analysis of the producer's potential for default;
- a detailed account of action taken on the producers default;
- all follow up correspondence pertaining to legal procedures or other collection efforts including any notices filed to a trustee in the case of a bankruptcy or estate;
- a copy of any correspondence with judicial authorities pertaining to any potential offences under AMPA.

9.14 Accounting Files

To ensure the minimum in accounting standards, the following records should be maintained.

Disbursement Journal:

This journal will be a permanent record of all advances issued. It may be replaced by a cheque register which would include the following:

- cheque number and the date the cheque was issued;
- name of payee;
- amount of advance (cheque);

At month's end, a calculation to total all disbursements should be made and posted to the General Ledger Control.

Receipts Journal:

This journal will be a permanent record of all repayments. It may be replaced by a bank deposit register which would include the following:

- enter date of deposit and the producer's name;
- amount of deposit;
- source of deposit (ie. producer, collection agency or lawyer);

At month's end, the total of all deposits should be calculated and posted to the General Ledger Control.

Individual Producer Ledger Cards:

This ledger should be continually updated to reflect the producer's outstanding balance and to prepare the producer's statement of account. A copy should be kept in the producer's file.

There should be one ledger card for each producer and it should include the following information:

- producer's name, address, file number and amount advanced;
- dates cheques were issued (disbursements) or received (deposits);
- dates cheques cleared the loan account;
- dates of producer reimbursement and source of funds received (from producer and/or buyer, collection agency).

The ledger cards must balance with the general ledger control on a monthly basis.

General Ledger Control:

This ledger will summarize the journals on a monthly basis and will include:

- totals from disbursement journal;
- totals from receipts journal;
- reconciliations with total of individual producer ledger cards on a monthly basis;
- reconciliations to lender statement on a monthly basis (this should be done in the form of Appendix I: Monthly Reconciliation Report and must be submitted to the Department within 15 business days of month's end along with the claim for reimbursement of interest).

10. ENSURING REPAYMENTS

Under AMPA, the administrator's liability can range from 1% to 15%, depending on the organization's default history. Consequently, it is in the Administrator's best interest to implement procedures that will minimize defaults in order to limit its liability. Two factors that have proven to be effective in achieving a low default rate are the evaluation of the producers' credit worthiness and the steps taken to ensure that the crop is harvested, is of marketable quality and is adequately stored by the producer. In their applications, the administrators are to indicate their proposed approaches related to these two items. If the approach is considered to be sufficient for limiting the Government's and the organization's risk, the approach will be included in the Advance Guarantee Agreement. If program officials determine that additional elements are

needed in the approach, the administrator will be contacted to discuss the options before the agreement is drafted. For first time applicants to the program, the administrator's liability will be 1% for the first year.

10.1 Credit Evaluation

There are a number of means by which an administrator can evaluate a producer's credit worthiness. There are two elements to the evaluation; the producer's solvency (financial statements) and the producer's credit history. What follows are a number of options that have been used in the past. The administrator should not feel limited to any one of the items listed, as any combination of the following or any other proposal will be considered.

Some options to consider when verifying credit worthiness:

- a credit check conducted by a qualified organization;
- a credit check conducted by the administrator through contacting the producer's known creditors, lender and suppliers of agricultural inputs;
- a review of the producer's financial statements;
- a review of the producer's credit history with the organization;
- ensuring that the producer's line of credit with a lender is greater than the advance and establishing a priority agreement with the institution if the lender has a lien on the crop. In cases where the administrator is uncertain, the lien could be registered through the Personal Property Security Act (PPSA) for additional protection. Although Section 12 of AMPA gives the administrator security on the crop, the security interest would have to be registered in order to be effective. In most cases in which the lender has security on the crop, the lender will request that the advance cheque be made payable to the "producer and the lender" so that the proceeds are applied against the line of credit.

In order to limit administration costs, the administrator may want to have a graduated evaluation depending upon the number of years a producer has been in the program and the repayment history of the producer.

In all cases, the administrator is liable for the cost of the credit assessment; however, this can be charged to the producer as an administrative fee. The assessment done on a producer must be documented in the producer's file and if the advance is issued, **must warrant** the issuance of the advance.

It should be noted that when the administrator has possession of the crop (i.e. it is stored in facilities of the administrator) and receives all repayments directly from authorized buyers, consideration will be given to waiving the need for credit evaluation. Under such a system, there are limited opportunities for the producer to default and therefore a credit evaluation may not be necessary.

10.2 Crop Inspection

Although 100% inspection is preferred, some administrators will be in a situation in which this is not practical or feasible. In developing an alternative system aimed at achieving the same goals, the administrators should consider, among others, the following issues:

- the availability and accuracy of documentation from other sources that may assist in establishing the volume of crop a producer has in storage;
- the control the administrator has on a marketing system (e.g. there are limited opportunities to sell wheat in Canadian Wheat Board designated areas without the knowledge and cooperation of the Board);
- if the producer sells through authorized buyers;
- if the crop is in commercial storage;
- if the crop is in storage controlled by the administrator.

The following are a number of options that could be considered by administrators as the inspection approach:

- Where the crop is either stored on the farm or commercially stored, one inspection prior to the issuance of an advance, then additional inspections during the crop year as needed. Third party inspections (storage reports) could be used in lieu of direct inspections in the case of commercial storage.
- Where the crop is stored in the administrator's facilities, one inspection upon the delivery of the product to the facilities prior to the issuance of an advance. Thereafter, normal verification done by the administrator's staff to verify the condition of the crop may be sufficient.
- A review of inspection reports from other programs such as the market revenue or crop insurance could be used in lieu of an inspection by or on behalf of the administrator.
- A review of land use and information on provincial yield potential to establish if the claims on a producer's application are reasonable. Inspections could be conducted on a monitoring basis after the advance. Any producers found not to be in compliance could be penalized to the extent allowable under the Advance Guarantee Agreement and the Act.
- A combination of the above, based on a producer's history in the program. For example, if a producer has been in the program for three years and has been in compliance with the repayment agreement during audits in each of these years, only a minimal inspection requirement would be considered necessary.

10.3 Inspection Process

The advance application form should clearly indicate that the administrator has the right to inspect the crop before the advance is issued or at any time during the crop year.

In order to ensure that the producer accepts the results of the inspection done on the crop, the following should be considered:

- An inspection report must be completed and filed for each inspection (see Appendix G: Crop Inspection Report);
- All areas of the report should be completed. It is important to identify the estimated amount of cullage, shrinkage and spoilage in order to determine the remaining amount available for sale. Where not applicable, "N/A" should be marked in the blank;
- Both the producer and the inspector should sign and date the inspection form;
- The inspector should note in the "Comments" section any concerns with the quality and/or condition of the crop and the adequacy of the storage facility;
- A clear breakdown by producer should be provided, if producers are jointly storing crop.

When an inspection is conducted during the crop year, the administrator should reconcile the difference between the quantity of crop on which the advance was received and the quantity of crop on hand, as per the inspection report, with the repayments received (Appendix H: Analysis of Inspection). If it is determined that the producer has not been repaying in accordance with the repayment agreement, the action outlined in Section 10.5 of these Administration Guidelines should be taken. In some instances, the administrator may be required as per the Advance Guarantee Agreement, to submit these reconciliations (Appendix H - Analysis of Inspection) to AAFC.

It should be noted that repayment must be from the first crop sold of the type of crop on which the advance was issued. A producer may not specify bins as being not under the program.

10.4 Sales Information

The administrator should verify that the repayment by both the buyer and the producer is prompt by ensuring that the remittance is made within the time frame allowed for repayment in the Agreement between the Administrator and Producer (Appendix D). Any delay in repayment should be investigated and corrective action taken.

The administrator should also verify that the advance is being repaid at the same rate per unit as the advance was given. Any significant discrepancies should be investigated and appropriate action taken to rectify the situation.

In order to verify the timeliness of repayments, the administrator could request the following information:

- For direct repayments, the producer could provide the following with all repayments: copies of sales slips, bills of lading or cash tickets, etc., which identify the date of sale, the quantity of goods sold and the amount of the sale. However, as outlined in Section 9.4 of these Administration Guidelines, AMPA does allow for a maximum of \$500 or up to 10% of the amount advance, whichever is greater, to be repaid without proof of sale.
- For sales through an authorized buyer, the buyer should be required to remit with repayments: the identification of the date of sale, the quantity of goods sold and the amount of the sale.

Where the buyer is not remitting promptly the administrator could consider cancelling the designation of the buyer. However, it should be noted that the producer is ultimately responsible for the repayment of the advances including any interest charges resulting from late repayment or insufficient repayment as per Section 3 of the producer agreement (Appendix D: Agreement Between Administrator and Producer) whether caused by the producer or the buyer.

10.5 Follow-up on Inspections and Sales Information

If the producer does not have sufficient crop in storage for the remaining balance of the advance, the administrator should:

- determine if a cheque has subsequently been received for a recent sale (within the time frame allowed by the administrator's agreement) which equals the discrepancy;
- determine if a recent sale has been made and repayment is forthcoming;
- send the producer a letter demanding payment within **twenty (20) business days** and indicating that if payment is not received, the producer will be declared in default;
- if it is determined that the producer has not respected the terms of the repayment agreement, the administrator must declare the producer in default and inform the Department within the period specified in the advance payment guarantee with the administrator.

11. BANKING ARRANGEMENTS

Any lender that meets the definition of a lender under AMPA may provide the financing for advances. A lender means a financial institution, as defined in Section 2 of the Bank Act, or any other legal entity that the Minister of Finance may designate upon the application of that entity.

If the administrator wishes to use a lender that would not fall under Section 2 of the Bank Act, the lender must make an application to the Minister of Finance.

11.1 Bank Accounts

In administering the program, each administrator should have a:

Loan Account

These accounts are used exclusively for the issuance and repayment of advances for the crop year. Two loan accounts must be opened each year: one for advances of up to \$50,000 and the second account for advances of over \$50,000. The separate account for the up to \$50,000 will facilitate the calculation of the interest payable by Agriculture and Agri-Food Canada.

Interest Suspense Account

Each administrator may need an interest suspense account. If the administrator does not pay the interest on the loan account for advances under \$50,000 as it comes due, the interest charges can be applied to the suspense account. The interest cheque from the government can then be applied to this account.

Default Account

If there are defaults during a crop year, the outstanding advances for those producers shall be maintained in a default account. As it is a separate account, the default account will facilitate the interest calculations for the producers in default which must be paid by the administrator and charged back to the defaulted producer. If the administrator has defaults for more than one crop year, defaults from each particular crop year should be kept in separate accounts.

Trust Account

If the administrator is using holdbacks to cover its portion of the liability, it should have a trust account. The lending arrangements should clearly indicate that such an account is held in trust for the producers and may be used to cover the administrator's liability on the default of a producer.

11.2 Bank Agreements

Each administrator will have an agreement with its lender. This agreement must identify the interest rate to be charged, account numbers to be used and any special arrangements (ie. direct deposit). The Advance Guarantee Agreement with the administrator and the lender states that the interest rate cannot exceed prime minus a quarter of one percentage point or the rate specified in the agreement. This provision limits the cost to Agriculture and Agri-Food Canada for the interest free provision of AMPA and limits the liability in the case of defaults.

If there are special arrangements for making payments to the lender, such as all

interest payments being directed to a central branch, Agriculture and Agri-Food Canada program officials should be made aware in writing so the interest payments can be directed appropriately.

11.3 Other Methods of Financing

There are methods of financing available on the market other than the line of credit established by the administrator through a lender that may be available at a lower interest rate.

The benefits of these methods are as follows:

- reduction of the interest cost for Agriculture and Agri-Food Canada, thereby reducing overall program costs and/or making the availability of the program to a broader section of the industry, and;
- reduction of interest paid by the producer for advances over \$50,000.

The most common method used by Administrators under the program are Bankers' Acceptances. Bankers' Acceptances are money market instruments that link those with short term cash surpluses with those with short term cash needs, such as administrators of this program. With these instruments, the financing rate obtained by the administrator is considerably better than would be offered on a line of credit. Any administrator with advances in excess of two million dollars (\$2,000,000), should have discussions with its lending institution on the use of Bankers' Acceptances.

11.4 Assignment of Guarantee

With the amendment to the Act allowing a tripartite agreement with the Department, the administrator and the lender, it is unlikely that lenders will require an Assignment of Crown Debt. However, some lenders may request an assignment of the rights and privileges under the Advance Guarantee Agreement. If the lender requires an assignment, this should be indicated in the application, and the lender should contact the Program Manager directly to discuss its merits.

11.5 Interest Claims and Bank Reconciliations

Interest Claims

The Department pays directly to the lender designated by the administrator the interest costs on advances of up to \$50,000. The administrator must provide a request for payment of the interest within **fifteen (15) business days** of the end of the month. Such a request shall include a statement (Appendix I: Monthly Financial Reconciliation Report) reconciled with the lender's invoice showing the eligible interest charged on advances to producers. The administrator is also responsible for ensuring that a copy of the lender's invoice is provided within the same time frame. From these documents, the eligible payment to the lender will be determined. To ensure proper reconciliation, it is recommended that the lending institution forward their statement directly to the administrator. Once the administrator reconciles the bank statement against their

records, (Appendix I: Monthly Financial Reconciliation Report) should be completed and faxed along with the bank statement to Agriculture and Agri-Food Canada at 1-613-759-6315.

It should be noted that interest claims will not be paid until the statement of account from the lender and the statement from the administrator have been received by Agriculture and Agri-Food Canada. A cheque for payment of interest claims will be forwarded by Agriculture and Agri-Food Canada to the lender within **thirty (30) business days** of receipt of the required documentation.

The interest on the portion of advances greater than \$50,000 must be paid by the administrator directly to the lender and recovered from the producer.

Bank Reconciliations

It is the administrator's responsibility to reconcile the lender's interest claim for the monthly interest charges. This reconciliation is mandatory and must respect normal accounting procedures.

If the calculations do not match the lender's calculations (e.g. charges have been made against the account for which there appears no justification, or, deposits have not been credited to the account), it is the administrator's responsibility to deal with the bank directly to rectify these problems.

The administrator should amend the Disbursement and/or Receipts Journal for any inconsistencies uncovered through the bank reconciliation process.

11.6 Monthly Outstanding Advances

A monthly report stating the outstanding balance of advances issued, both up to \$50,000, and over \$50,000, must be sent to Agriculture and Agri-Food Canada within **fifteen (15) business days** of the month end. In order to limit the number of statements the administrators must provide, this statement is included on the claim for interest form as outlined in Appendix I: Monthly Financial Reconciliation Report.

12. DEFAULTS

12.1 Pre-default

At the first indication that repayment from a producer may be delayed, the administrator should attempt to establish the producer's ability to repay. A letter explaining the consequences of defaulting under the program should be sent to the producer. A sample letter can be found in (Appendix L: First Letter Prior to Default) of the guidelines. If the likelihood of repayment is questionable and the crop has not been sold, the administrator should register its security under the Personal Property Security Act (PPSA) if they have not already done so. As each province has its own legislation, the administrator will have to contact the provincial authorities to determine the steps that need to be taken.

12.2 Stay of Default

If there is a situation that is beyond the producers control, the administrator may request a stay of default. As per Section 21 (2) of the Act, if a default is impending the Minister may, at the request of the administrator order the default be stayed for a specified period on any terms the Minister may establish. The administrator should contact departmental officials before the end of the crop year do discuss if a stay of default is warranted.

12.3 Defining a Default

The administrator shall declare a producer in default and immediately inform the producer of the same, if:

- Any of the producer's obligations under the producer's agreement with the administrator has not been discharged within **twenty (20) business days** after the day on which the administrator mails or delivers a notice to the producer stating that the producer has had, in the opinion of the administrator, adequate opportunity to discharge that obligation and requesting the producer to discharge that obligation;
- Any of the producer's obligations under the producer's agreement has not been discharged at the end of the crop year during which the advance was made;
- Any of the producer's obligations under the agreement have not been discharged on the day on which the producer files an assignment under the *Bankruptcy and Insolvency Act* or a receiving order under that Act is made against the producer; or
- The producer breaches, at any time, any of the producer's obligations under the agreement.

12.4 Notice of Default and Monthly Default Reports

Notice of Default

Within **fifteen (15) business days of the end of the crop year**, the administrator must complete and submit to Agriculture and Agri-Food Canada the End of Crop Year Report form (Appendix J). This form notifies the Department of the number of producers in default and the amounts outstanding and due to AAFC. The administrator must also document all of the following actions as they will be required should a request to honour the guarantee be made:

- collection efforts;
- calls to producers and lawyers
- copies of letters sent to producers;
- details of any other action taken;
- farm visits and the status of the crop.

Default Reports

When an administrator has defaults for which Agriculture and Agri-Food Canada has not yet honoured the guarantee, the administrator must complete (Appendix I: Monthly

Financial Reconciliation Report - Part C) and submit it to the Department on a monthly basis along with Parts A and B completed, with their monthly claim for interest. This reports the status of each defaulted producer, by crop year, repayments, if any, and other required information. This monthly report must be received by Agriculture and Agri-Food Canada within **fifteen (15) business days** of the month's end.

12.5 Administrator's Liability

The administrator's liability is from 1% to 15% and is calculated based on the administrator's default history and success with repayment agreements on the default accounts. A full description of the formula used to establish the administrator's liability and a sample calculation is provided in Appendix A-3: Administrator's Liability. Appendix A-3 must be submitted along with the application as it is required for the drafting of the Advance Guarantee Agreement.

12.5.1 Payment of Administrator's Liability

Each administrator must reimburse its liability (principal and interest) within **fifteen (15) business days** following the day on which the administrator learns of the default.

Principal

- 1) The administrator must deposit an amount equal to its liability percentage, as outlined in the Advance Guarantee Agreement, of the outstanding defaulted principal amount in the default loan account, as discussed in Section 11.1;
- 2) Proof of payment must be forwarded to the Department along with a breakdown, by producer, of the amount and the date paid.

Interest

- 1) As Agriculture and Agri-Food Canada has already paid the interest on the first \$50,000 of each advance, the administrator must pay its liability portion of the interest to the "Receiver General for Canada" and forward the cheque to the Program Manager;
- 2) For the portion of the advance over \$50,000, the administrator's portion of the liability for the interest incurred on the advance must be forwarded to the lender for deposit into the default account, if the interest has not been paid on an ongoing basis.

12.5.2 Other Liability

The administrator is also liable to pay to the Minister for any additional interest resulting from:

- its failure to reimburse the loan on the next business day following the day on which the administrator receives payment, in whole or in part, of those advances;
- its failure to reimburse its liability within **fifteen (15) business days** following the day the organization learns of a producer defaulting.

12.6 Producer's Liability

Once in default, the producer becomes liable to the administrator for:

- 1) the amount of the advance outstanding;
- 2) the interest on the outstanding advance from the date of the original advance at the default rate of interest; and
- 3) costs incurred by the administrator to recover the amounts mentioned in 1) and 2).

It is important to note that in number 2, the interest is charged back to the date of the advance. This means that all producers declared in default lose the interest-free benefit of the program.

The producer remains in a default position until all debts under the APP and the Spring Credit Advance Program (SCAP) are paid in full, pursuant to Subparagraph 21(3) of the Act.

The producer should be made aware that crop spoilage, shrinkage or a bankrupt buyer does not release the producer from his or her obligation to repay the advance.

12.7 Default Rate of Interest

The provisions of the APP allow an administrator to charge a higher rate of interest on the balance of a defaulted account. The intent of these provisions is to further discourage producers from going into default. If the rate of interest charged on default is the commercial rate, there exists little incentive to repay the advance before the end of the crop year. If the administrator chooses to have a higher rate of interest for defaults, the higher rate must be specified in the repayment agreements with the producers. As the intent is not for the administrators to make money on the default interest, the higher rate should be limited to what a producer could reasonably receive by going to a lender directly.

It should be noted that the Minister's guarantee applies to the rate of interest charged by the lender on the advanced amounts and not the default interest rate charged by the administrator to the producer. Consequently, although an administrator may charge a producer in default prime plus 2%, if a claim is submitted on the guarantee, the Department will pay the rate charged by the lender, which cannot exceed prime minus one quarter of one percentage point.

12.8 Ineligibility Period

Section 21(4) of AMPA states that the Advance Guarantee Agreement may provide that a producer continues to be ineligible for an advance for a specified period even though the producer ceases to be in default. When making its application, an administrator should indicate if it wishes to have an ineligibility period and, if so, the length of the period.

12.9 Repayment Agreement with the Administrator

In all cases, the administrator should be attempting to get the producer to acknowledge the debt (Appendix P: Acknowledgement of Debt) and to sign a repayment agreement, (Appendix K: Repayment Agreement Between Defaulted Producer and Administrator).

The administrator must enter into a repayment agreement with a defaulted producer. However, if the terms of the repayment agreement exceed 5 years, the agreement must first be approved by the Department.

As outlined in Appendix A-3: Administrator's Liability, when calculating the administrator's liability, a reduction in the liability is given where an administrator has established a valid repayment agreement with a defaulted producer. Consequently, it is in the administrator's best interest to establish repayment agreements with the defaulted producers. However, should the producer default on the repayment agreement the default would be considered in the liability calculation in future years.

The repayment agreement (Appendix K) should include the following:

- date of the original agreement between the producer and the administrator;
- crop year and the crop covered;
- original advance amount and the outstanding balance due;
- acknowledgement of the debt by the producer;
- agreement to default judgement under provincial legislation where applicable;
- confirmation that payments of post crop year interest on the bank loan will be paid by the producer in default on a monthly basis;
- outline of the method of repayment whether, by monthly payments or deductions from new crop year, until principal, interest and costs are fully repaid;
- the administrator should obtain additional security for the value of the outstanding amount, especially for larger defaults. This can be released upon payment in full;
- confirmation that costs for collection attempts, legal and otherwise, will be charged to the producer in default.

12.10 Administrator's Collection Activity

If the producer fails to cooperate with the administrator and does not want to sign a repayment agreement, the administrator must take the following collection action on a default before making an application for the Minister to honour the guarantee under the program:

- send four letters to the producer, requesting payment with one direct contact by phone or personal visit prior to the final letter to discuss the situation and attempt to negotiate a repayment. Please refer to Appendix L: First Letter Prior to Default, Appendix M: Second Default Letter,

Appendix N: Third Default Letter and Appendix O: Fourth Default Letter for sample wording of a series of four (4) letters that could be used starting with a letter that could be sent at least **two (2) months** prior to crop year end. The second, third, and fourth letter (Appendix M, N, O:) should be sent “REGISTERED MAIL” and a copy sent to all partners, shareholders and members;

- in the case of a bankrupt producer, the administrator must file notice with the receiver that the administrator and the Department, with the Department referred to as Her Majesty the Queen in Right of Canada are creditors and immediately transfer the producers file to AAFC to honour the guarantee;
- in the case of an estate, the administrator must file notice with the executor of the estate that the administrator has an interest;
- where the administrator believes that an offence has been committed under AMPA, the appropriate judicial authority must be requested to take the necessary action in view of the offence and all necessary information must be provided to that authority.

An administrator may wish to take further collection actions on its own in order to recover delinquent accounts and to thereby reduce its liability in future years. This action could range from hiring a collection agency to obtaining judgement and a writ of execution. The costs of such action must be charged back to the defaulted producer.

The administrator may consider obtaining judgement which involves a suit against the producer. In all cases, the administrator and the Department should be listed as joint plaintiffs, with the Department referred to as Her Majesty the Queen in Right of Canada.

Judgement should only be initiated when:

- the financial statements show assets but the producer is experiencing cash flow problems;
- the producer is likely to repay the advance but not until sometime in the future;
- the producer is solvent but does not agree to repayment terms with the organization.

Before taking any action with respect to a defaulting producer, it should be determined whether or not the producer is insolvent. A producer is insolvent if liabilities exceed assets and the producer will not be able to meet financial obligations in the near future. Should an administrator decide to take legal action against a producer to recover a debt, it should be noted that only those legal expenses incurred by administrators in collection attempts of advances are eligible for payment by the Department and eventual charging back to the producer. The acceptable hourly rate is \$100.00 unless circumstances, in the opinion of the Minister, justify a higher rate. Approval of a higher rate must be obtained, in writing, from the Minister, at the time circumstances justifying a higher rate are known as per the provision of Section 22 of the AMPA.

12.11 Payments Received from Defaulted Producers

After default, payments received by administrators on behalf of defaulted producers will be applied in the following manner:

- all funds will be applied first to reduce all outstanding interest with the lender on the advance;
- any additional funds will be used to reimburse the outstanding principal of the advance;
- interest from the date of default back to the date of issuance and all collection costs, including legal costs, may be the last to be retired.

13. FARM DEBT MEDIATION SERVICE

The Farm Debt Mediation Service (FDMS) provides insolvent producers and their creditors with mediation services pursuant to the federal Farm Debt Mediation Act (FDMA) and Regulations to help them arrive at a mutually satisfactory arrangement. The service is a private, confidential and economical alternative to the often costly, public and drawn-out process of resolving insolvency disputes in the courts. Where this is not successful, the parties still have recourse to the courts. For more information on this service, please refer to the following website:
http://www.agr.gc.ca/progser/fdms_e.phtml.

14. COMPROMISE SETTLEMENTS

During a meeting of the creditors, the producer may propose a compromise settlement with the creditors. Anytime in which AAFC will not be receiving payment in full, the administrator must receive AAFC's approval prior to accepting a compromise settlement. AAFC's policy on accepting compromise settlements is based on equal treatment compared to other creditors. If an Administrator does not request such approval through the Program Manager, they could be held liable for the difference between the settlement offer and the full amount of the debt.

14.1 Process to accept a compromise settlement:

If a compromise settlement is being offered and the administrator feels that AAFC has been treated fairly with regards to other creditors, submit all the following documentation to program officials for review.

- Previous two (2) year financial statements;
- Previous two (2) tax returns;
- A current aged (i.e. 0-30, 30-60, 60-90, & over 90 days) listing of accounts receivable;
- A current aged (i.e. 0-30, 30-60, 60-90, & over 90 days) listing of accounts

- payable;
- A current credit report;
- Name and address of the Financial Institution that are providing financial services to the Individual/corporation/cooperative;
- Any financial restructuring agreements with other creditors, including mediation reports;
- A net worth statement of each individual in the operation;
- Proof of bankruptcy, divorce, receivership, etc;
- Statement from debtor as to the expectation of any crop insurance proceeds and;
- List of assets and liabilities
- Repayment Agreement

If the settlement is submitted to AAFC, program officials will analyze the compromise settlement and if it is accepted, AAFC will respond with a letter of approval which will include a reasonable deadline for repayment.

If the administrator feels that the compromise settlement is not acceptable, then it may reject the offer without AAFC's approval. Once you have received a letter of approval from AAFC, you may accept the settlement offer with the deadline for repayment.

When payment has been received from the compromise settlement, you should send a claim to AAFC so that the remaining portion of the advance will be honored by AAFC's guarantee.

If you do not receive payment by the deadline given in the approval letter from AAFC, the balance remains payable in full. At this time you may start legal action if necessary.

15. HONOURING THE GUARANTEE

15.1 Claim for Transfer of Debt

Once the administrator has complied with the collection attempts outlined in Section 12.10 of this document, a letter requesting the Minister to honour the guarantee under the APP may be submitted to the Department along with the following:

- an updated (Appendix I: Monthly Financial Reconciliation Report - Part C); an updated statement of account outlining the producer's outstanding balance;
- a copy of the producer's file (duly completed as per the list under Section 9.13 of this document);
- an updated financial history and collection activity report from the collection agency (if applicable).

If the administrator has not made a request for payment within 10 months of the end of the crop year, the lender may make a request for payment directly to the Minister for the

principal and interest outstanding.

15.2 Applicable Conditions

Agriculture and Agri-Food Canada will consider honouring its guarantee after it receives the defaulted producer's completed file (as specified under Section 9.13 of this document) from the administrator together with the request for the transfer of debt. The completeness of the documentation will determine how quickly the guarantee is honoured.

Before honouring its guarantee, the Department will determine if:

- the administrator has met its requirements as specified in its agreement with the Department and these Administration Guidelines;
- the administrator has completed, at a minimum, the collection action outlined in Section 12.10 of these Administration Guidelines.

15.3 Payment of Principal and Interest

To honour the guarantee, the Department sends directly to the lender or to the administrator, as specified in the agreement, the amount for which the Minister is liable under the Advance Guarantee Agreement. In most cases, the amount will be directed to the lender, unless the administrator has requested otherwise, at the time the agreement was entered into.

The administrator will receive notice from the Department that payment of principal is being processed. Once the cheque is deposited against the defaulted producer's account, the administrator must prepare an invoice (reconciled with the lender) for interest reimbursement. The interest invoice must include the interest incurred up to the date that the principal cheque is deposited in the account and a statement showing the interest which the Department paid on the outstanding balance during the crop year.

15.4 Collection of the Debt by Agriculture and Agri-Food Canada

Once the claim to honour a guarantee has been approved by the Department, Program Officials will forward the producer's file to Corporate Management Branch within Agriculture and Agri-Food Canada which will undertake any collection action required to collect the debt owing to the Department.

The Department will attempt to collect the amount outstanding under the APP through such means as the use of collection agencies, recovery from amount owed to the producer from other governmental programs such as NISA and any other safety net program, and any other methods deemed appropriate.

It should be noted that the defaulted producer will be charged interest by the Department at the default rate of interest that is set out in the agreement between the producer and the administrator.

When possible, the administrator should assist the Department in the collection of the amount outstanding after the Department honours the guarantee. Any amounts collected/received by the administrators on behalf of defaulted producers should be made payable to the "Receiver General for Canada" and forwarded to the Department, within **five (5) business days** of receipt.