

His Excellency the Governor General in Council, on the recommendation of the Minister of Agriculture and Agri-Food, the Minister of Finance and the Treasury Board, pursuant to sections 4, 6, 10, 12 and 15 of the Farm Improvement and Marketing Cooperatives Loans Act, hereby makes the annexed Farm Improvement and Marketing Cooperatives Loans and Fees Regulations, 1998.

**FARM IMPROVEMENT AND MARKETING COOPERATIVES LOANS AND FEES
REGULATIONS
1998**

INTERPRETATION

1. (1) The definitions in this subsection apply in these Regulations.

“Act” means the *Farm Improvement and Marketing Cooperatives Loans Act*. (*Loi*)

“borrower” means a farmer or a farm products marketing cooperative. (*emprunteur*)

“guaranteed farm improvement loan” has the same meaning as in subsection 2(1) of the Farm Improvement Loans Act. (*prêt garanti*)

(2) The definitions in this subsection apply for the purposes of the Act.

“additions” includes the installation and construction of foundations for buildings and the purchase of materials for that purpose, and the purchase and installation of equipment for, or systems of plumbing, heating, ventilating, air conditioning, sewage disposal or water supply or parts thereof to an existing structure or as part of an increase to an existing structure. (*ajout*)

“altercation”, with respect to a building, means a structural modification to the exterior or interior of any structure that is designed to improve, modernize or increase the usefulness of a structure and includes

(a) the purchase of material for that purpose;

(b) the relocation of any equipment; and

(c) the modification of any system of plumbing, heating, ventilating, air conditioning, sewage disposal, water supply or electrical system, or any parts thereof. (*modification*)

“repair” includes the material required for the repair of any structure, implement or equipment, the painting of any structure and any repair to any system of plumbing, heating, ventilating, air conditioning, sewage disposal or water supply or electrical system, or any parts thereof. (*réparation*)

“works for drainage” means ditches, tiling and drainage installations and pumping and diking installations and includes works for the prevention of soil erosion by water. (*travaux de drainage*)

OTHER PRESCRIBED PURPOSES FOR LOANS

2. For the purpose of paragraph 4(1)(h) of the Act, the other purposes for loans made to farmers are the following:

(a) the clearing, breaking, irrigating and reclaiming of land;

(b) the conservation of soil and the prevention of soil erosion by the planting of trees and shelter belts;

(c) the purchase, movement to and installation on a farm of complete or partially complete structures and, if necessary, the completion of the installed structures;

- (d) if the cost is \$2,000 or more, a repair or overhaul of fencing;
- (e) if the cost is \$2,000 or more, the purchase and planting of maple trees for maple syrup production and the purchase and planting of fruit trees, Christmas trees and ginseng;
- (f) the construction of a road or driveway on a farm;
- (g) the costs of land transfer taxes and survey, appraisal and legal costs relating to the purchase of additional land;
- (h) the purchase of a crop storage condominium;
- (i) the cost of obtaining security on existing assets; and
- (j) the cost of a fee or charge referred to in section 17.

OTHER PRESCRIBED ANIMALS

3. For the purpose of subparagraph 4(1)(c)(iv) of the Act, other prescribed animals are deer, elk, bison, alpaca, llama, game birds, ostrich, emu and rhea.

CONSOLIDATION AND REFINANCING

4. (1) Subject to subsections (2) and (3), a lender may consolidate or refinance debts incurred for any of the purposes set out in paragraphs 4(1)(a) to (h) and 6(1)(a) to (d) of the Act.

(2) No loan for the purpose of consolidating or refinancing may be made if the debts to be consolidated or refinanced are

- (a) more than one year in arrears, in the case of loans or guaranteed farm improvement loans paid in annual instalments; or
- (b) more than six months in arrears, in the case of loans or guaranteed farm improvement loans paid in more frequent instalments.

(3) No debt may be consolidated or refinanced by the lender except for a debt incurred in respect of

- (a) a loan under the Act;
- (b) a guaranteed farm improvement loan under the *Farm Improvement Loans Act*; or
- (c) a loan granted before February 1, 1988 that
 - (i) was made to a farm products marketing cooperative, and
 - (ii) was for any of the following purposes in relation to the processing, distribution or marketing in Canada of the products of farming, namely,
 - A) the purchase of land,
 - B) the purchase or construction of a building or structure,
 - C) the repair or alteration of, or the making of additions to, a building or structure, and
 - D) the purchase or repair of machinery or apparatus.

NATURE OF INTEREST OF THE BORROWER IN FARMING OPERATION

5. For the purposes of paragraphs 4(3)(b) and 6(2)(b) of the Act,

- (a) in the case of a loan in respect of an item that does not form part of or is not affixed to real or immovable property, the borrower shall own the item outright or have purchased it under a conditional sales contract; and
- (b) in the case of a loan in respect of an item that forms part of or is affixed to real or

immovable property, the borrower shall

- (i) own the real or immovable property,
- (ii) lease the real or immovable property pursuant to the Prairie Farm Rehabilitation Act or the Veterans`Land Act,
- (iii) have a leasehold interest in the real or immovable property that extends at least two years beyond the term of the loan.

CONDITIONS OF LOANS

6. Subject to paragraphs 4(3)(c) and 6(2)(c) of the Act, the amount of a loan for any of the purposes set out in paragraphs 4(1)(a) to (h) and 6(1)(a) to (d) of the Act may not exceed the lesser of

- (a) 80% of the appraised value of the property in respect of which the loan is made, or
- (b) the cost of acquisition of the property.

7. Every lender shall, at the time of making a loan, require the borrower to give the lender, in addition to any other security referred to in section 15, a written promise to repay the loan signed by the borrower, as a separate document or as an integral part of the lender's loan document that sets forth the principal amount of the loan, the rate of interest payable on the loan and the repayment terms.

8. No initial loan disbursement may be made for a purchase made more than 60 days before the making of the disbursement.

9. Repayment of a loan, other than repayment that is scheduled to be made more frequently by agreement between the borrower and the lender, shall be made in instalments that are payable annually.

10. Full or partial prepayment of a loan shall be made in accordance with the *Bank Act*.

11. If a loan has a remaining term of fewer than the number of years permitted under paragraph 4(3)(d) or 6(2)(d) of the Act for that type of loan, the lender may renew the loan for additional terms at the rate of interest at the time of renewal if the combined terms do not exceed the maximum term allowed under the Act in respect of that type of loan.

12. If the Minister and the borrower approve the alteration or revision of the terms of the loan or any agreement in connection therewith by way of an extension of time or otherwise, the alteration or revision shall not discharge the liability of the Minister to the lender under the Act.

13. No security shall be released or substituted by a lender before a loan is paid in full unless authority to do so is obtained in writing from the Minister.

RATE OF INTEREST

14. (1) The maximum rate of interest payable per annum by a borrower in respect of a loan is

- (a) if the rate of interest on the loan is not fixed, the prime lending rate of the lender plus 1%, as that prime rate is fixed daily during the term of the loan; and
- (b) if the rate of interest is fixed, the residential mortgage loan rate of the lender for a comparable term plus 1%, as that rate is fixed on the date the funds are disbursed or on an earlier date agreed to in writing by the lender and the borrower.

(2) If a loan with a fixed rate of interest is to be extended before the expiry of its term, the interest rate on the loan may be blended, merged or combined with the interest rate fixed on the day of extension for the balance of the proposed term in accordance with the lender's current practice for that type of loan.

SECURITY

15. A lender shall take security for the repayment of a loan in one or more of the following forms, as appropriate:

- (a) under section 427 of the *Bank Act*;
- (b) by way of registering security in accordance with the applicable personal or movable property legislation in the province;
- (c) by commercial pledge;
- (d) by way of mortgage or hypothec on real or immovable property; or
- (e) by way of an assignment of any rights or interest of the borrower under an agreement for sale.

REGISTRATION OF LOANS

16. (1) A lender shall register every loan with the Minister, in a form approved by the Minister,
- (a) in the case of a loan made for any purpose set out in any of paragraphs 4(1)(a) to (c), (g) and (h) and 6(1)(a), (d) and (e) of the Act, within 60 days after the date on which the first disbursement is advanced; and
 - (b) in the case of loans made for any purpose set out in paragraph 4(1)(d), (e) or (f) or 6(1)(b) or (c) of the Act, within 180 days after the date on which the first disbursement is advanced.
- (2) The Minister may, on application by a lender, extend the time set out in paragraph (1)(a) or (b) if the Minister is satisfied that the lender was unable to register the loan within that time.

FEES AND CHARGES

17. (1) A lender shall pay to the Minister at the time of registration of a loan a fee in the amount of 0.85% of the amount of every loan.
- (2) A lender may charge a borrower an administration charge in respect of a loan up to a maximum amount of
- (a) the lesser of 0.25% of the loan principal or \$250, if the loan is for less than \$250,000; and
 - (b) 0.1% of the loan principal, if the loan is for \$250,000 or more.

REPORTS

18. (1) A lender shall immediately report in writing to the Minister any act or omission by a farm products marketing cooperative that constitutes a default or breach of any obligation under a loan made for a purpose set out in subsection 6(1) of the Act.

(2) The Minister may, from time to time, require a lender to provide reports or information in respect of any loan on a form approved by the Minister.

PROCEDURE ON DEFAULT

19. (1) In this section, the default date is the day after the day on which a payment under a loan was scheduled to have been made but was not made.

(2) If a borrower is in default in respect of a payment on a loan made for a purpose set out in subsection 4(1) of the Act, the lender shall

(a) take any action that it considers advisable in the circumstances to

(i) effect collection of the unpaid balance of the loan,

(ii) obtain additional security,

(iii) realize on any or all of the security it has taken, or

(iv) effect any compromise with or grant any concession to any person other than the borrower; and

(b) submit to the Minister, within six months after the default date, a Report on Defaulted Loan, unless the claim referred to in section 20 has been submitted.

(3) If a borrower is in default in respect of a payment on a loan made for a purpose set out in subsection 6(1) of the Act, the lender shall, within 15 days after the default date,

(a) take any action referred to in paragraph (2)(a) that is agreed on with the Minister;

(b) submit to the Minister a Report of Defaulted Loans; and

(c) inform the Minister prior to appointing an independent consultant to monitor the activities of the borrower.

PROCEDURE FOR CLAIMS

20. (1) Unless otherwise authorized in writing by the Minister, a claim for loss on a loan sustained by a lender may not be made to the Minister until the loan has been in default for at least three months but no more than 18 months.

(2) Despite subsection (1), the Minister may require that a claim for loss be submitted at any time by notifying the lender in writing.

(3) A claim for any loss shall be submitted to the Minister in the form approved by the Minister, together with a copy of the borrower's application form and any other documentation that the Minister may require.

- (4) The payment is to be made within 60 days after the Minister approves the claim for loss.
- (5) If a claim for loss by a lender has been paid, the lender shall
- (a) execute a receipt in the form approved by the Minister;
 - (b) send to the Minister the receipt and the written promise of the borrower to repay the loan; and
 - (c) take measures in respect of any remaining security held by it for the loan in the manner that the Minister directs.
- (6) If further costs are incurred by a lender as a result of collection action taken after an initial claim for loss has been paid, the lender may make a claim for loss for those costs in accordance with the procedures set out in subsections (1) to (5).

DETERMINATION OF LOSS

21. The amount of loss sustained by a lender as a result of a loan that the Minister is liable to repay the lender is 95% of the total of
- (a) the unpaid principal of the loan;
 - (b) the accrued interest that was not paid by the borrower before the due date of the first unpaid instalment,
 - (c) the uncollected interest accrued after the date referred to in paragraph (b) and outstanding at the time the claim is approved for payment by the Minister, at the rate of interest specified in the written promise to repay the loan, for a maximum period of 365 days after that date;
 - (d) the amount of the legal fees, costs and disbursements that have been assessed and allowed under section 13 of the Act and actually incurred by the lender, with or without litigation, in collecting or endeavouring to collect the loan or in protecting the interests of the Minister, less any costs recovered by the lender; and
 - (e) the amount of any other costs or disbursements actually incurred by the lender in collecting or endeavouring to collect the loan or in protecting the interests of the Minister.

COLLECTION AFTER PAYMENT

22. (1) Unless otherwise instructed by the Minister, a lender shall, even if its claim for loss in respect of a loan has been paid, take action to effect collection of the loan on behalf of the Minister by
- (a) collecting payments of principal and interest owed by the borrower under the terms of the loan;
 - (b) realizing on any security taken with respect to a loan made under these Regulations;
 - (c) continuing any legal proceedings that were commenced pursuant to subsection 19(2) or (3);
- or
- (d) commencing legal proceedings in respect of default in payment if none were commenced under subsection 19(2) or (3).
- (2) Any payment or security that is collected or realized under subsection (1) shall be remitted without delay to the Minister.

(3) Any actual costs incurred in relation to an action referred to in subsection (1) shall be the subject of a claim and be made and proceeded with in the manner set out in section 20.

PRESCRIBED PROPORTION

23. For the purpose of section 10 of the Act, the prescribed proportion is 66%.

REPEAL

24. *The Farm Improvement and Marketing Cooperatives Loans and Fees Regulations* are repealed.

COMING INTO FORCE

25. These Regulations come into force on 60 days after the day that these Regulation are published in the *Canada Gazette*.

REGULATORY IMPACT ANALYSIS STATEMENT

(This statement is not part of the Regulations.)

Description

The Farm Improvement and Marketing Cooperatives Loans Act (FIMCLA) is a federal government loan loss indemnification program designed to increase the availability of loans for the purpose of the improvement and development of farms and the processing, distribution or marketing of farm products by cooperatives associations. Subject to limitations established by the Act, the government is liable to pay a lender 95 per cent of any loss in respect of a loan made.

FIMCLA was enacted in 1987; it replaced the Farm Improvement Loans Act, which was introduced in 1944. In June 1995, FIMCLA was amended to increase the five-year aggregate principal amount of loans (the cap) which can be guaranteed under the Act from \$1.5 billion to \$3 billion. As part of the process to increase the lending ceiling to \$3 billion and in live with the federal government policy to move towards cost-recovery, Cabinet authorized an increase to the user's fee to cover the costs of the program. In addition, after several years of operation, and in response to stakeholders' requests, a review of the Regulations has resulted in these new regulations designed to also improve the effectiveness of the program's administration by addressing specific issues which currently adversely impact both borrowers and the lenders.

The substantive changes from the previous regulations are:

1. A change in the formula for determining the maximum interest rate which lenders can charge for fixed interest rate loans.
2. An increase in the registration fee payable by the borrower for loans guaranteed under the Act.
3. Definition of the nature of security to be taken for guaranteed loans.

4. Expansion of the definition of eligible activities.

The new regulations come into effect 60 days after the publication of the Regulations in the Canada Gazette Part II.

Alternatives

Regulatory amendments are required in order to respond to the government's cost recovery initiative, and to make the delivery process more efficient. Several different scenarios were considered, but the above measures were deemed to be the most appropriate.

1. Status Quo

The status quo is not an acceptable option in view of the 1995 Cabinet decision to increase the registration fee and recent Budget decisions regarding full cost recovery.

2. Cost Recovery and Program Administration Improvements

The regulatory changes listed above, including the amendments to enable the program to recover increased costs associated with program expansion and administrative costs, should improve program effectiveness and efficiency.

Benefits and Costs

The new Regulations will allow more straightforward application of the Act, and more efficient program administration, keeping costs to the Government and borrowers at a minimum.

Borrowers will pay a share of the cost of providing the expanded loan guarantee program, and the administrative costs of the program will move towards full cost recovery. The increase to the registration fee will increase these revenues to a projected amount of \$4 million per fiscal year, which will be used to offset a portion of program defaults and administration costs. Statutory funding requirements will continue to be sourced from the Consolidated Revenue Fund.

Although farmers and farmer cooperatives may object to the increase in registration fees, the availability of medium term credit at favourable interest rates and on reasonable terms contributes to strengthening production capacity and improving farm income and financial stability.

In 1996-97, FIMCLA was used to facilitate 16,250 loans totaling more than \$488 million. The average loan size was about \$30,000, and the five-year average is just over \$22,000. The program cap, now providing that the five-year aggregate principal amount of loans guaranteed can reach \$3 billion, puts a ceiling on the maximum level of program activity. Historically, FIMCLA has presented a low level of risk to Canadian taxpayers, with net losses averaging 0.44 per cent since 1988.

The particular benefits and costs of each major change is discussed in the following paragraphs.

Fixed Interest Rate Loans:

The formula for determining the maximum rate of interest for fixed term loans which lenders can charge will be changed from the current prime rate-based formula, to a maximum of the lender's residential mortgage rate plus 1 percent. The change to a residential mortgage rate-based formula will enable lenders to match cost of funds with the loan interest rate. This will encourage lenders to offer fixed term loans consistently instead of only when the formula makes the practice cost efficient for lenders. The returns available to lenders for variable and fixed rate of interest loans will be comparable, as variable loans are set at prime plus 1 percent, and fixed rate loans would be at residential mortgage rate plus 1 percent. Borrowers will benefit from the greater willingness of lenders to offer fixed rate of interest loans under the amended formula.

Registration Fees:

The registration fee payable by the borrower for loans guaranteed under the Act will increase from the current 0.5 percent of the loan amount to 0.85 percent of the loan amount. This increase is necessary in order to offset the borrowers' share of the increased level of defaults expected as a result of the increase in the program cap from \$1.5 to \$3 billion, and to cover program operating costs. The change, while not putting the program on a full cost recovery basis, is consistent with Government direction on cost recovery and recent Budget decisions.

Nature of Security to be Taken for Guaranteed Loans:

Although administrative guidance has been available to lenders on the nature of security to be held against repayment of loans, the requirements as allowed under the Act (paragraph 6(2)(f)) have not been specified by regulation. Prescribing security requirements will improve the safeguards on guaranteed loans and contribute to controlling losses while ensuring lenders are aware of the requirements.

Expansion of the Definition of Eligible Activities:

Borrowers will be allowed to obtain loans for three new purposes, in addition to the existing loan purposes, namely: for the purchase of a crop storage condominium; fees and charges and for costs associated with obtaining security for eligible purposes other than the purchase of additional land. The latter allows loan guarantees for the common practice of mortgaging property in order to finance a farm project which, by itself, does not provide sufficient security in the opinion of the lender. With the addition of fees and charges loans, producers will have the option of terming the costs over the life of the loan. Allowing the purchase of a crop storage condominium as an eligible loan purpose should result in reduced storage/handling costs and increased marketing efficiencies as in the case, for example, of grain storage condominiums located adjacent to major grain handling facilities on primary transportation corridors.

Consultation

Extensive consultations on possible program changes were held with major stakeholder over

the past three years. Among lenders, the parties consulted were representatives of chartered banks (Canadian Bankers Association), association representatives of credit unions, caisses populaires, and trust companies, and the Alberta Treasury Branch officials. In addition, extensive consultations took place with a variety of producer and producer organizations, including the Canadian Federation of Agriculture. Through annual meetings, committee meetings, and individual discussions, requests for change were considered and specific recommendations developed. Several amendments proposed are mostly housekeeping in nature and arise from comments received from producers and their organizations, participating commercial lenders and the Standing Joint Committee for the Scrutiny of Regulations, as well as an internal review and audit of program operations.

This Regulation was pre-published in the *Canada Gazette* Part I on June 6, 1998. Amendments were made to those Regulations. Included in the changes is technical wording related to security provisions to take into account Quebec civil law concepts and the inclusion of claim and reporting requirements previously omitted. To improve the effectiveness of the program's administration and conform with normal lending practices, the eligibility of fees and charges loans was added. More flexibility was provided by allowing the registration of fees by lenders when, due to exceptional circumstances, more time is required. Finally, the coming into force of the regulations was amended from the date the Regulations are registered to 60 days after the publication of the regulations in the *Canada Gazette* Part II to ease the implementation of the new Regulations.

Compliance and Enforcement

The Regulations provide guidelines for the administration of loans under the *Farm Improvement and Marketing Cooperatives Loans Act*. The Minister may deny a claim for loss by a lender if loans have not been administered in the manner prescribed by the Regulations.