



Growing Forward 2

A federal-provincial-territorial initiative

AgriInvest Program Guidelines



Note: This document reflects agreements made by federal, provincial and territorial governments under Growing Forward 2

Minor modifications to the presentation of the original text of the AgriInvest Program Guidelines have been made in preparing this version. This document is not a substitute for the original signed Agreement and Amending Agreements.

Where discrepancies exist between these guidelines and the text in The Federal/Provincial/Territorial Agreement with respect to AgriStability and AgriInvest, the text in The Federal/Provincial/Territorial Agreement with respect to AgriStability and AgriInvest shall be deemed to be correct.

AgriInvest Program Guidelines – March 2013

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DEFINITIONS

Unless otherwise indicated, terms that are defined in the Agreement have the same meaning in these Guidelines.

Account: An AgrilInvest Account established under the Agreement.

Administrator: Provincial or Federal body or agency that administers the Program for a specific province or territory.

Agreement: Federal / Provincial / Territorial Agreement with respect to AgriStability and AgrilInvest.

Allowable Net Sales (ANS): The amount established under the Agreement, and detailed in Part 4 of these Guidelines.

CRA: Canada Revenue Agency.

Current Program Year: The Program Year for which Program Forms are submitted.

Deposit Notice: A notice sent to Participants by the Administrator, as set out in clause 3.3.

Entity: A Participant, other than an individual, recognized by law as having rights and duties such as a corporation, cooperative, communal organization, or limited partnerships.

Farming Income: Income derived from farming activities as defined by CRA.

Fund 1: The component of the Account holding all deposits made by the Participant which are permitted under the Program.

Fund 2: The component of the Account holding all government contributions and interest paid.

Maximum Account Balance: The amount determined under clause 2.4.

Maximum Government Deposit: The amount determined under clause 3.5.1 with respect to a Program Year.

Maximum Participant Deposit: 100% of the Participant's Allowable Net Sales for a Program Year.

Participant: The holder of an AgrilInvest Account.

Program: AgrilInvest as defined in the Agreement.

Program Forms: The forms prescribed by the Administrator for the reporting of required Current Program Year information.

Program Year: The period for which the Participant files a return under the *Income Tax Act*, or for Participants who are not required to file returns under the *Income Tax Act*, the calendar year.

Status Indian: A person entitled to be registered within the meaning of Section 6 of the *Indian Act*.

PART 1 - ELIGIBILITY

1.1 General Eligibility Requirements

An individual or Entity is eligible to participate in the Program if, in the Current Program Year, they have carried on the business of farming in Canada and reported Farming Income (or loss) for income tax purposes.

- Status Indians who carried on the business of farming on a reserve in Canada, and did not file returns for income tax purposes, are eligible to participate provided they submit information that would have otherwise been reported for tax purposes based on the requirements of the *Income Tax Act*, and meet all other Program requirements. For Program purposes, Status Indians will be deemed to have a December 31 fiscal year-end.
- Partners are eligible to participate in the Program as individuals. However, a partnership is eligible to participate as an Entity, provided the partners have reported Farming Income (or loss) for income tax purposes for the Program Year, and the partnership is recognized as:
 1. a legal Entity under Article 2188 of the *Quebec Civil Code* and if so, the Program will apply the same treatment to the partnership as a corporation with the appropriate adjustments; *or*
 2. a limited partnership
- Research stations, universities, colleges, and other government-funded institutions are not eligible for the Program.
- Former federal public office holders or servants who are not in compliance with federal conflict of interest guidelines are not eligible to receive payments under the Program.
- In the province of Quebec, in addition to meeting the specific requirements relating to account management and the prescribed forms for presenting financial data using the accrual accounting method, Participants must also meet the following provincial requirements:
 - register farm businesses and market farm products in accordance with the Regulation respecting the registration of agricultural operations and the payment of property taxes and compensations, enacted pursuant to An Act respecting the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (L.R.Q., c. M-14), with the exception of Participants affected by section 1.3 of these Guidelines and not eligible for registration;
 - market concerned products in accordance with the regulations and conventions in effect, enacted pursuant to *An Act respecting the marketing of agricultural, food and fish products* (L.R.Q., c. M-35.1).

1.2 Deceased Participants

The estates of deceased Participants are eligible to participate provided they meet all of the eligibility requirements specified in these Guidelines. These requirements may be met through a combination of activities performed by the deceased Participant and their estate. The executor or administrator of the estate must notify the Administrator of the Participant's death.

In the case of deceased Participants, the filing of more than one income tax return may be involved. The ANS for deceased Participants will be based on their final return (start of Program Year to the date of death), plus any return filed from the date of death to the end of the Program Year. If, in

addition to the final return, an optional return for the year of death for a deceased Participant is filed (such as a return of rights and things), this information must be submitted to the Administrator.

A beneficiary whose farming operation consists of all or most of the deceased Participant's farming operation may be considered as continuing to operate the same farming operation as the deceased. If there is more than one beneficiary, a common business arrangement must be created to carry on the same farming operation as the deceased Participant in order to retain the same historical information for the purposes of determining the Maximum Account Balance.

Accounts of estates will be closed and paid to the estate on receipt of written authorization from the trustee, executor or administrator of the estate. A surviving spouse may be allowed to transfer the estate's Account and participation history into the surviving spouse's own name and continue to participate as if the Account had always been his/her own. If the surviving spouse already has an Account, the two Accounts will be merged.

In order to close estate Accounts, the Administrator may require the executor or administrator to submit the following documentation:

- a written request to close the Account signed by the executor or administrator;
- a certified copy of the probated will or letters of administration/probate; and
- a certified copy of the death certificate.

1.3 Multi-Jurisdiction Farms

The province or territory of participation for Participants who live and farm in different provinces or territories is the province or territory where all or the majority of the gross Farming Income was earned over the last five years subject to adjustment including consideration of Program Year production units and location. Participants may not participate in the Program in more than one province/territory.

PART 2 – PROGRAM ACCOUNTS

2.1 Opening an Account

To participate in the Program, Participants must hold an AgrilInvest Account. Accounts will be opened by the Administrator, upon receiving Program Forms from an eligible producer without an Account. Alternatively, the Administrator may direct Participants to open an AgrilInvest Account at a financial institution under clause 6.4 of the Agreement.

2.2 Closing an Account

Participants that fail to submit Program Forms, or report no sales or purchases of eligible commodities, for two consecutive years will have their Account closed by the Administrator. The Administrator may also close the Account of Participants who do not withdraw excess deposits from Accounts held at financial institutions when required to do so by the Administrator. The Administrator shall cause any balance in the Account at the time of closure to be paid to the Participant.

Where an Entity ceases to exist, the Entity's Account will be closed at the time of dissolution and the Administrator shall cause any balance in the Account to be paid to the Entity. Where the Account is held at a financial institution the Entity must close its Account at the time of dissolution.

2.3 Interest

The Administrator shall pay interest on all Program funds on deposit with the Administrator at a rate and in a manner to be established by the Administrator.

Interest shall be earned from the date of receipt of a deposit into Fund 1, and from the date government contributions are credited to Fund 2. All interest paid by the Administrator will be credited to Fund 2.

Where the Account is held in a financial institution, any interest paid by the financial institution shall be credited to Fund 2.

2.4 Maximum Account Balance

Accounts are subject to a balance limit of 400% of the amount of the Participant's average ANS for the Program Year and two preceding Program Years, excluding any years for which ANS was not calculated under AgrilInvest. Where ANS was not calculated for one or more of those years, the balance limit will be calculated as 400% of the average ANS for the year(s) available.

The Maximum Account Balance will be established based on the most recent Deposit Notice for the most recent Program Year of participation.

Where a matching deposit would otherwise cause an Account balance to exceed the Maximum Account Balance, then the Administrator shall only make that part of the deposit which would leave the Account balance within the Maximum Account Balance.

The Administrator may require a Participant to withdraw sufficient funds from the Participant's Account so that the Account balance does not exceed the Maximum Account Balance. The Administrator may close the Participant's Account under clause 2.2 if the Participant does not make the required withdrawal by the deadline established by the Administrator.

2.5 Account Transfers

2.5.1 Incorporation

If an individual Participant incorporates the Participant's farming operation, the Participant can transfer the individual Account to the corporation. To do this a Participant must provide the Administrator with notification in writing of the intention to transfer, including the corporation's Business Number (if available) and the last year for which an individual application will be filed. If available, the Administrator may also request:

- documentation confirming the transfer has legally taken place in accordance with the *Income Tax Act* or a signed declaration from the Participant that the Participant has filed an election under s. 85 of the *Income Tax Act*,
- a copy of the original contract (or relevant sections) between the Participant and the corporation which identifies the assets being transferred and the related value. The AgrilInvest Account must be stipulated in the assets transferred.

2.5.2 Separation and Divorce

In the event of divorce or separation, the Account of an individual may be divided into two individual Accounts in accordance with the terms of a formal separation agreement, a voluntary divorce settlement agreement or a court ordered or approved divorce settlement. The resulting Accounts will be administered in accordance with the established rules. The separation agreements referred to above must be signed by the parties thereto and the signatures witnessed.

2.5.3 Account History

Where an Account is transferred to a surviving spouse (under clause 1.2), a corporation (under clause 2.5.1) or a spouse on separation or divorce (under clause 2.5.2), the Administrator may also transfer the Account history, in whole or in part, for the purpose of determining the Maximum Account Balance or for other purposes.

2.6 Use of Account for Other Programs

In addition to programs established under s. 12 of the *Farm Income Protection Act*, the Account may be used for the purpose of distributing funds from provincial programs, with the concurrence of Canada and the province or territory, and for federal programs, with the concurrence of at least two-thirds of the provinces and territories affected by the program.

PART 3 – PARTICIPATION PROCESS

3.1 Participation Requirements

- Sole proprietors, partners in a partnership (with the exception of limited partners and partnerships in Quebec), and estates participate in the Program as individuals. Individual Participants must each hold an AgriInvest Account and must provide their Social Insurance Number (SIN), as well as any other relevant information as required by the Administrator.
- An Entity must provide the Business Numbers and/or Taxation Numbers used by the Entity for income tax purposes, as well as any other relevant information as required by the Administrator. Corporations and co-operatives may also be required to provide the SIN's of each shareholder or co-operative member. Deposits will be made into the Account of the Entity.
- Multiple Operations: Each individual or Entity that reports Farming Income (or loss) for income tax purposes must participate in the Program separately. A Participant must report the Farming Income (or loss) of all sole proprietorships and/or partnerships (that are not considered a separate Participant) in which they are involved.

3.2 Program Forms and Application Deadline

Participants must submit completed Program Forms with all required documentation to the Administrator by the established deadline. Forms and information may be considered not received by the deadline unless all of the required information and documentation has been provided. The Administrator shall require, on an annual basis, confirmation that a Participant wishes to participate for the Program Year and the Farming Income and expense information submitted for income tax purposes (e.g. the Statement of Farming Activities), or other documentation as specified by the Administrator showing Farming Income and expense information. The same method of accounting that is used to report financial information for income tax purposes must be used for the purposes of participating in the Program.

The deadline for Participants to submit completed Program Forms with all required documentation will be 9 months after the end of the Program Year. The Administrator may extend the deadline for Participants with non-calendar year-ends, up to 9 months after the end of the calendar year.

Participants who are required to file returns for income tax purposes must report Program Year farming income (or loss) for income tax purposes to CRA no later than 3 months after the deadline for submitting Program Forms for that Program Year. Where the participant fails to do so, the participant shall not be eligible for that Program Year.

3.2.1 Late-filing

If a Participant provides the required documentation after the deadline, but within three months of the deadline, then the Administrator shall reduce the Participant's Maximum Government Deposit for that Program Year by 5% for each month (or part thereof) which has passed since the deadline.

If a Participant fails to provide the required documentation within three months after the deadline, then the Participant shall not be eligible for that Program Year.

3.3 Deposit Notice

After completed Program Forms have been received and processed, the Administrator will issue a Deposit Notice to Participants, which will include the Administrator's determination of the Participant's ANS, Maximum Government Deposit, Maximum Participant Deposit, deposit deadline and Maximum Account Balance.

3.4 Participant Deposits

Participants will have 90 days from the date of the Deposit Notice to make a deposit for that Program Year into Fund 1 of their Account. Participants may make only one deposit with respect to each Deposit Notice issued by the Administrator. The Administrator may require a minimum deposit of \$75, and may require that a Participant be eligible for a Maximum Government Deposit of at least \$75 in order to make a deposit. Deposits must not exceed the Maximum Participant Deposit. Deposit amounts received following the 90 day period will not be matched by the Administrator. If a Participant makes a deposit in excess of the Maximum Participant Deposit, the Maximum Account Balance, or outside the permitted period for a deposit, the Administrator may cause the excess to be returned to the Participant. Where the Account is held at a financial institution, the Administrator may require the Participant to withdraw the excess by a deadline established by the Administrator. If the Participant does not withdraw the excess by the deadline, the Administrator may close the Account under clause 2.2. Any withdrawal by the Participant shall be applied first to any excess deposit in the Account, and then to Fund 2 and then to Fund 1.

3.5 Government Contribution

Once a Participant has made a deposit into their Account, the Administrator will make a matching deposit into Fund 2 as a Government Contribution, subject to clauses 2.4 and 6.4. The amount of the Government Contribution with respect to a Program Year shall be the lesser of (a) the deposit made by the Participant for that Program Year; and (b) the Maximum Government Deposit. However, no Government Contribution shall be made if the Government Contribution would be less than \$75.

3.5.1 Maximum Government Deposit

The Maximum Government Deposit is equal to 1.0% of the Participant's ANS as calculated under Part 4 of these Guidelines, subject to any late-filing reduction set out in clause 3.2.1. The Maximum Government Deposit shall not exceed \$15,000 (being 1.0% of \$1.5 million in Allowable Net Sales).

3.5.2 Cross Compliance

The Administrator shall refuse to make a Government Contribution with respect to a Program Year to a Participant who has failed to meet a condition established by a province or territory whereby a Participant's eligibility to receive any of the Government Contribution for that Program Year is contingent upon the Participant undertaking one or more activities within the following themes:

- Traceability
- Environment
- Business development
- Innovation

In order to establish such a condition with respect to a Program Year, a province or territory must:

1. Obtain Canada's concurrence with the condition, which must be requested by the province or territory in writing before January 1 of that Program Year. For the 2013 Program Year, the province or territory must request concurrence no later than 3 months after this provision comes into effect.
2. In consultation with the Administrator, ensure that the information necessary to identify Participants who have not met the condition is provided to the Administrator within the timeline required by the Administrator. The criteria for identifying such Participants must be agreed to by both parties before the end of the Program Year for which the condition will be applied.

A producer appeal under clause 5.3 may consider whether the Administrator has properly applied the criteria for identifying Participants who have not met a condition. However, any disputes about the activity required by the province or territory shall not be considered in an appeal under clause 5.3. If the condition established by the province or territory is subject to an appeal process, the Administrator shall accept the results of an appeal.

3.6 Withdrawals

Where Accounts are held by the Administrator, the Administrator may establish limits on the frequency of withdrawals, as well as minimum amounts for withdrawals.

Any withdrawal request will first be applied to any excess deposit which remains in the Account, and then Fund 2 until the Fund 2 balance is zero, at which point any remaining part of the withdrawal shall be applied to Fund 1.

3.7 Exceptions to Deadlines

The Administrator may excuse a missed deadline where a Participant can demonstrate exceptional circumstances. Exceptional circumstances can be cited where the failure to meet the deadlines of the Program could not have been avoided by the exercise of due care by the Participant or a third party acting on behalf of the Participant.

3.8 Debts Due to the Crown

Debts due to the Crown may be deducted from any monies paid to a Participant and applied to the debt in adherence to the collection principles set out in clause 6.4 of these Guidelines. Participants will be notified of these offsets.

3.9 Treatment of Payments

Payments out of Fund 2 are considered investment income for income tax purposes. Program payments cannot be assigned, or otherwise encumbered, except for the purposes of the Advance Payments Program as set out under the *Agricultural Marketing Programs Act*.

In Quebec, program payments can be assigned as allowed under provincial law.

3.10 Adjustments to Financial Information

Participant-initiated adjustments to information used in calculating Program benefits for any Program Year may be requested by submitting a written request to the Administrator up to 18

months after the original Deposit Notice was issued for that Program Year. Additional benefits will not be paid with respect to a previous Program Year as a result of a Participant-initiated adjustment submitted outside the 18 month period for the previous Program Year.

If the Administrator rejects the adjustment, the Participant may submit an appeal under clause 5.3 with respect to the decision to reject the adjustment, within 90 days of being notified of that decision. Otherwise, an adjustment request which has been rejected may not be resubmitted by a Participant.

If the Administrator accepts the adjustment and issues a recalculated Deposit Notice for a Program Year, adjustments related to changes in that Deposit Notice may be submitted up to 90 days after that Deposit Notice is issued, or 18 months after the original Deposit Notice for that Program Year, whichever is later.

All adjustments require supporting documentation and are subject to verification, audit and/or inspection by the Administrator. If verification, audit, or inspection results in a change to the amount a Participant is entitled to under these Guidelines, the change will be handled pursuant to clause 5.2.

Where adjustments affect taxable income, the Administrator may require that the adjustment be accepted by CRA before it is accepted for Program purposes.

Where a Participant submits an adjustment to AgriStability for a Program Year, and the AgriStability Administrator accepts that adjustment, then the AgriInvest Administrator may accept the same adjustment for the purposes of AgriInvest (to the extent that it is relevant to AgriInvest calculations), even if the prescribed period for AgriInvest adjustments has passed. Where the AgriInvest Administrator accepts the adjustment and as a result the Participant's Maximum Government Deposit or Maximum Participant Deposit changes, additional deposits may be made and overpayments may be collected pursuant to clause 5.2.

The deadlines established by this clause do not apply in cases of adjustments initiated by the Administrator.

PART 4 – ALLOWABLE NET SALES (ANS)

Allowable Net Sales will be calculated as the revenue from eligible agricultural commodities (including eligible program payments) less purchases of eligible agricultural commodities, and adjusted as outlined in Part 4.

A Participant's ANS (after adjustments) will not exceed \$1.5 million for Program purposes.

Where a Participant's Program Year represents a period greater or less than 12 months the ANS will be calculated based on all revenues from and purchases of allowable agricultural commodities during the Program Year.

4.1 Eligible Agricultural Commodities

All agricultural commodities whose revenue are reportable to CRA as Farming Income will be considered eligible commodities for Program purposes, with the following exceptions:

- (i) Supply-Managed Commodities;
- (ii) Commodities generated through aquaculture;
- (iii) Trees produced or harvested for use in reforestation, or for firewood, construction material, poles or posts, fibre, or pulp and paper;
- (iv) Peat moss;
- (v) Livestock sold in the operation of a wild game reserve; and
- (vi) Commodity sales and purchases related to farming activities outside of Canada

Revenue from and purchases of livestock in the operation of a hunt farm (where permitted by law) are allowable, excluding amounts related to any ancillary services (such as transportation, lodging, outfitting, etc.).

4.1.1 Point of Sale

In order for commodity income to be considered eligible for the Program purposes, it must only include value that was added while under the Participant's control. To be recognized as commodity income, a commodity sale must meet the following conditions:

- (i) the Participant is able to demonstrate ownership of the product at the time of sale through identity preservation and must bear full direct risk for the commodity; and
- (ii) the Participant has a separate defined billing or accounting transaction clearly showing the commodity sales value and any deductions from the commodity sales value.

Commodity sale amounts can include point of sale adjustments and value added provided they meet the aforementioned criteria. For greater certainty, the following list details amounts that may be included in the sales value of commodities for Program purposes (where those amounts have been deducted at point of sale):

Grains, Oilseeds and Special Crops

- Association/commodity organization dues
- Custom Work (drying, field spraying, harvesting, trucking related to production inputs, soil testing)
- Freight, elevation/handling (related to producer and agent-administered cars only)
- Fertilizer, pesticides, and chemicals

- Grading and inspection
- Interest
- Farm supply accounts, excluding seeds and plants
- Marketing board, commission, agency, selling fees
- Research fees
- Storage

Horticulture

- Advertising/promotion
- Association/commodity organization dues
- Chemical application
- Co-operative charges
- Custom Work (field spraying, harvesting, trucking related to production inputs, soil testing)
- Distribution/freight related to marketed product
- Export levies
- Fertilizer, pesticides, and chemicals
- Field inspection
- Grading and inspection
- Interest
- Marketing board, commission, agency, selling fees
- Other farm supplies, excluding seeds and plants
- Packing
- Research fees
- Sorting
- Storage
- Washing
- Waste charge

Livestock

- Auction fees
- Association/commodity organization dues
- Brand inspection
- Custom work (trucking related to production inputs)
- Export levies
- Freight related to marketed product
- Grading and inspection
- Handling
- Interest
- Marketing board, commission, agency, selling fees
- Medicine
- Other farm supplies
- Research fees
- Yardage
- Acreage measurement

4.1.2 Eligible Program Payments

The following program payments will be included in eligible sales under the Program:

- (i) AgrilInsurance payments in respect of eligible agricultural commodities;
- (ii) Unsubsidized insurance payments in respect of eligible agricultural commodities;
- (iii) Wildlife Damage Compensation Payments;
- (iv) Other program payments that meet the following conditions:
 - a. the program payments were calculated on the basis of the replacement value for income otherwise generated by lost eligible commodity production or sale amounts;
 - b. the program payments were made under an authority other than the Agreement; and
 - c. the federal government and at least two-thirds of the affected provinces and territories concur that conditions (a) and (b) have been met.
- (v) Canadian Food Inspection Agency (CFIA) payments that are reportable as farm income for income tax purposes and which were calculated on the basis of the replacement value of eligible commodities.

4.1.3 Custom Feeding

Income generated through the operation of a custom feedlot, as well as the expense related to use of these services, will be included under the Program to the extent they constitute an eligible commodity sale or purchase. Where the portion of the custom feeding income related to eligible commodity sales is unknown, the Administrator will deem 70% of the reported custom feeding income to be an eligible commodity sale. Similarly, where the portion of payment for custom feeding services related to commodity sales is unknown, the Administrator will deem 70% of the reported custom feeding expense to be an eligible commodity purchase.

4.1.4 Prepared Feed Purchases

Purchases of prepared feed will be considered eligible under the Program to the extent they constitute an eligible commodity purchase. Where the portion of the prepared feed composed of eligible agricultural commodities is unknown, the Administrator will deem 65% of the reported prepared feed purchase to be an eligible commodity purchase.

In the case of ranch fur operators, where the portion of the prepared feed composed of eligible agricultural commodities is unknown, the Administrator will deem 20% of the reported prepared feed purchase to be an eligible commodity purchase

4.1.5 Processing and Resale

Revenue from processed agricultural commodities will be considered eligible agricultural sales if:

- the commodities were produced on the Participant's agricultural operation; and
- the income and expenses are reportable, and were reported, as Farming Income (or loss) by that Participant to the Canadian Revenue Agency for income tax purposes.

"Processing" is defined as changing the state of the commodity (e.g.; strawberries to jam, beeswax to candles, beef to beef jerky, grain to flour).

Income and expenses related to the purchase of commodities for resale are not allowable.

4.2 Mixed Supply-Managed Adjustment

Where a Participant has sales or purchases of Supply-Managed Commodities, the Participant's ANS will be adjusted to reflect the non-supply managed production of the farming operation, by adding (a) Supply-Managed Commodities revenue and subtracting (b) Supply-Managed Commodities purchases and then multiplying the result by a ratio of (c) allowable agricultural commodity revenue to (c) allowable agricultural commodity revenue plus (a) Supply-Managed Commodities revenue.

$$(ANS + a - b) \times c / (c + a)$$

4.3 Crop/Livestock Share

Income earned through the rental of productive land or livestock, whether contingent on a commodity sale or otherwise, must be reported as rental income for income tax purposes, and is not considered an eligible sale under the Program. However, where the arrangement constitutes a joint venture, such that the landlord's share in the eligible purchases reasonably approximates their share in the related eligible revenue, these amounts may be considered eligible sales or purchases. Tenants reporting sales derived through a crop or livestock share or lease must report their information based on their percentage share of production.

The joint venture must be such that both the tenant and the landlord each receives their share of the eligible income and each pays their share of the eligible purchases for the production that is shared between the landlord and tenant. E.g. Landlord and tenant are in a third crop share agreement for 300 acres of canola where the crop was seeded using seed purchased in the Program Year. The landlord is reporting revenue from the sale of one third of the canola crop and the tenant is reporting two-thirds of the revenue. For the landlord's share of the revenue from the sale of the canola to be eligible for AgrilInvest the landlord must report commodity purchases that would be approximately the cost of seed for 100 acres of canola.

If there were no commodity purchases in the Program Year related to the production, the sales may still be eligible if the Participant can substantiate with documentation or a reasonable explanation why there were no purchases. E.g.: Landlord and tenant use seed grown on-farm where each Participant provides a proportional amount of seed related to their share of the production.

4.4 Transactions Not At Fair Market Value (FMV)

Transactions between all parties must be at Fair Market Value (FMV) to be considered eligible for inclusion in the calculation of Allowable Net Sales. Transactions above or below FMV may be adjusted by the Administrator to reflect FMV. Where these transactions cannot be clearly defined, the Administrator may combine the ANS of the Participants engaged in these transactions, and allocate each Participant involved a portion of the combined total ANS based on the percentage of the total eligible commodity revenue reported by that Participant. In this case, each Participant's Maximum Government Deposit, Maximum Participant Deposit, and Maximum Account Balance will be calculated using the ANS allocated by the Administrator.

4.5 Evading Prescribed Limits

Where the Administrator is of the opinion that Participants have structured their business operations with the effect of avoiding application of the \$1.5 million limitation on ANS or the Maximum Account Balance, the Administrator may limit the combined ANS and Account balances of those Participants to the prescribed limits for one Participant.

PART 5 - PROGRAM MANAGEMENT

5.1 Audits, Verification and Accuracy of Information

By participating in the Program, a Participant consents to the disclosure of personal information required for Account administration. In doing so, the Participant further consents to allow access to any information by the Minister of Agriculture and Agri-Food and the Provincial/Territorial Ministers of Agriculture for the purposes of audit, analysis, evaluation, Program development and calculating and delivering separate program payments subject to the provisions of their respective privacy legislation.

A Participant may be subject to audit on a pre- or post-payment basis by the Administrator. Any information obtained through audit or inspection may be made available by the Administrator to CRA. Participants who are in the process of an audit must continue to adhere to all Program deadlines.

A Participant who provides false or misleading information will be denied a payment for the Program, and will be required to repay any payment received. If audit or inspection otherwise results in a change to the amount a Participant is entitled to under the Program Guidelines, any additional amount will be paid to the Participant and any overpayment will be repayable by the Participant, as set out in clause 5.2.

If a Participant has provided false information, or has breached a condition of eligibility, the Administrator may deem the Participant to be ineligible to participate in the program for future years. The Administrator must provide notice to the Participant and an opportunity to respond before doing so.

If a Participant fails to provide the required information or access to books and records, the Participant will be denied all or part of the payment for the Program Year or will be required to repay any payment received.

It is the Participant's responsibility to ensure that information supplied for income tax purposes and the Program is correct and complete. Participants must inform the Administrator of any changes or corrections to information supplied to the Administrator.

The Administrator will not be responsible for notifying Participants of incorrect tax reporting. The Administrator may adjust tax information as necessary for the purposes of calculating ANS, but the Administrator will not be responsible for reporting the adjustments or corrections to CRA. Participants may be notified in writing that a correction of information reported for income tax purposes is required in order for a Program application to be processed.

5.2 Changes to Benefits

Notwithstanding clause 3.4, where audit, inspection or adjustment results in an increase to the Participant's Maximum Government Deposit after the deadline for making a deposit has expired, and the increase is at least \$75, the Participant will receive a recalculated Deposit Notice, and be given 90 days to make a deposit up to the amount of the difference between the original and recalculated Maximum Participant Deposit. However, any additional Government Contribution based on that deposit shall not be greater than the difference between the original and recalculated Maximum Government Deposit.

Where audit, inspection or adjustment results in a decrease of at least \$75 to the Maximum Government Deposit a Participant is entitled to under Program Guidelines, the Administrator may cause the amount of any overpayment to be removed from Fund 2, and cause an equal amount to be returned from Fund 1 to the Participant or considered as excess. If sufficient funds are not present in the Account for this purpose, the Administrator may collect Fund 2 overpayment amounts directly from the Participant in adherence to the collection principles set out in clause 6.4 of these Guidelines.

The Administrator will not issue a recalculated Deposit Notice where the only change is to the Maximum Account Balance.

5.3 Producer Appeals

A producer who is of the view that Program rules were not correctly applied in the processing of their Program Year file may request a review by the Administrator. The Administrator may refer matters raised by producers to an Appeals Committee it has established.

Appeals shall be conducted according to the Common Terms of Reference attached as Annex A to these Guidelines.

5.3.1 Submitting an Appeal

Appeals shall be subject to a deadline of 90 days from the date that the appellant is notified by the Administrator of the decision which is subject to appeal.

Appeals must be submitted in writing to the Administrator. Appeal submissions must clearly identify the nature of the appeal and provide sufficient information and documentation to substantiate the appeal. The details surrounding the situation must be verifiable for the appeal to be upheld. Failure to identify the nature of the appeal and/or provide sufficient information and documentation to substantiate the appeal by the date specified by the Administrator will result in the appeal not being forwarded for appeal.

Appellants, including those who use the services of a third party, shall be considered responsible for knowing and following Program policies and adhering to deadlines. Disagreement with Program policies is not a valid ground for appeal.

The Administrator may decline to refer an appeal to an Appeals Committee where the appeal does not disclose a valid ground for appeal.

5.3.2 Appeals Committees

An Appeals Committee shall consider matters referred to it by the Administrator in accordance with procedures established by the Administrator and the Agreements governing the Program, and make non-binding recommendations.

PART 6 – FINANCIAL PROVISIONS AND ADMINISTRATIVE COST-SHARE

6.1 Budgets and Invoicing

6.1.1 Invoicing of Government Contributions to Fund 2

The Administrator shall invoice the other party for its estimated share of Fund 2 payments based upon an agreed-to period. The invoice shall contain actual Fund 2 payments to date, a forecast of estimated Fund 2 payments for the requested advance period, interest amounts on advance balances and total amounts advanced to date. The invoiced party shall pay the invoiced amount within thirty (30) days of receipt of invoice. The advances shall be accounted for by the Administrator on a basis consistent with the invoicing period through a reconciliation of the amount advanced with actual payments made to the Participants. Any amount owing by one party on account of advances made shall be repaid within thirty (30) days of the receipt by both parties of the final audited reconciliation of payments made. Upon termination of the Program by one of the parties, any outstanding amount identified on the final reconciliation shall be paid or reimbursed to the appropriate party.

6.1.2 Administrative Budgets and Invoicing of Eligible Administrative Costs

The Administrator shall invoice the other party for its estimated share of incurred administrative costs, net of any administrative revenue, at least quarterly.

Administrative costs eligible for cost sharing must be consistent with the Administrative Cost-Sharing Principles (clause 8 of the Agreement) and any other terms as in an exchange of letters between the parties.

Upon termination of the Program by one of the parties, any outstanding amount identified in a final reconciliation shall be paid or reimbursed to the appropriate party.

6.2 Interest on Program Advance Balances and Unpaid Administrative Invoices

Interest on Program payments made shall be calculated on the average daily closing balance of advances. The calculated interest shall be credited or debited, as the case may be, to the account of the party that advanced the funds.

Interest on administrative cost payments made shall be calculated on the average daily closing balance of advances. Once the invoiced amount is accepted by the invoiced party, that party agrees to pay the Administrator interest on accepted invoiced amounts not paid within thirty (30) days.

Upon written agreement of both parties, an Administrator may forego the receipt of the interest payment resulting from the advanced funds.

The rate of interest shall be ninety (90) percent of the monthly average of the weekly three-month Treasury Bill tender rates for the month immediately preceding the month in respect of which interest is paid.

6.3 Accounting Principles

1. Payers reserve the right to offset their cost reimbursement obligations to a claimant with any eligible administrative costs they have incurred – subject to the principles set out in these Guidelines and clause 8 of the Agreement. Claimants retain the right to audit any such costs used by payers to offset their requests for reimbursement.
2. If a claimant administers the delivery of another claimant's AgriInvest Program initiative, and does not charge the latter for its services, then the former shall be allowed to claim the eligible administrative costs it incurred on behalf of both itself and the other claimant for whom it is delivering the Program. The claimant benefiting from this method of service delivery shall not be allowed to claim these costs. If the claimant contracted to deliver the Program on behalf of another charges the latter for doing so, then all monies recovered by it for doing so must be netted against its previously incurred, eligible operating costs. In such a case, the claimant paying for this service shall be allowed to report the amount it paid for this service delivery process as its own operating costs.
3. The reporting cycle for Program-related administrative costs shall be on a fiscal (March 31st) basis rather than on a calendar (December 31st) basis.
4. Minimum documentary evidence shall be maintained and made available for audit purposes.

6.4 Overpayment Collection Principles

6.4.1 Collection of Overpayments

The Administrator shall require Participants to repay any overpayments and shall recover overpayments by any available means while materially adhering to the following collection principles:

- Participants are to receive a written notification when a debt is created containing, at a minimum, the following information: Amount of debt; Program name; Date of notification; Delivery agent contact; Interest rate and interest start date, if applicable;
- The notification must request repayment of the debt;
- Interest is to be charged at the prescribed rate on all outstanding debts;
- Interest will start 30 days after the notification date;
- The prescribed rate will be the 90 day Federal Treasury Bill rate plus two percent (2%) per annum (equivalent rates based on commercial prime rates are acceptable) or other rates with the agreement of cost sharing partners; and
- Interest waivers, at the Program level, can be granted with the concurrence of the cost sharing partner(s).

6.4.2 Set-off

Where a Participant is indebted to the Crown under an agricultural program, the Administrator may, upon request from a program administrator, have such amounts deducted from any monies otherwise payable by the Administrator into or out of a Participant's Account subject to the following set-off principles, unless otherwise agreed to by the cost-sharing partners:

- Set-offs of debts owing under AgriInvest, AgriStability or AgriInsurance against payments delivered by the Administrator will be processed first in accordance with the following priorities:
 - Set-off against same program, and
 - Set-off against other Business Risk Management programs (AgriStability, AgriInsurance and AgriInvest) with oldest debts normally collected first;
- Set-offs will occur against the full payment amount (Federal/Provincial/Territorial); and
- Set-offs of non-Business Risk Management program debts can be made against payments delivered by the Administrator as a secondary priority to AgriStability, AgriInsurance and AgriInvest debts.

6.4.3 Debt Write-off

Where an overpayment exists for a Participant or former Participant, the Administrator may have such debt, or a portion thereof, written-off subject to the following write-off principles:

- Debt write-off shall only occur against criteria approved by the Federal/Provincial/Territorial cost-sharing partner(s). Minimum criteria would include:
 - (a) a structured notification and follow-up process – minimum three notifications with the Participant;
 - (b) all reasonable collection actions have been taken, including consultations with legal services to identify any steps that may be taken to recover the amount, which may include, but is not limited to court proceedings; garnishment proceedings; and use of collection agencies;
- A notification process is required to advise cost-sharing partner(s) (minimum quarterly if greater than \$10,000; else annually) of complete write-off and partial write-off; and
- Approval of the write off by a senior official of the Administrator is required.

PART 7 – MANAGEMENT OF GUIDELINES

7.1 Coming Into Effect

These Guidelines shall come into effect for the 2013 Program Year. The Guidelines in effect for the 2012 Program Year shall not apply to the 2013 Program Year or later Program Years.

7.2 Program Guidelines Review

Authorized representatives from each of the signatories to the Program will:

- monitor and periodically review Program Guidelines to ensure they are applied in a consistent manner by all Administrators;
- provide advice and guidance on administrative and policy issues related to the Program.

7.3 Amendment

These Guidelines may be amended from time to time according to the requirements set out in clause 5.7 of the Agreement for adopting Guidelines.

7.4 Termination

These Guidelines shall be terminated with respect to a province or territory upon the termination of the Agreement with respect to a province or territory.

7.5 Application

These Guidelines are subject to the Agreement, and any inconsistency between the Guidelines and the Agreement shall be resolved in favour of the Agreement.

Annex A: Common Terms of Reference for AgrilInvest Appeals Committees

1. General Provisions for Appeals

- 1.1 A producer who is of the view that Program rules were not correctly applied in the processing of their application may submit an appeal to the Administrator.
- 1.2 Appeals shall be subject to a deadline of 90 days from the date that the producer is notified by the Administrator of the decision which is subject to appeal.
- 1.3 Appeals must be submitted in writing to the Administrator. Appeal submissions must clearly identify the nature of the appeal and provide sufficient information and documentation to substantiate the appeal.
- 1.4 The Administrator may refer matters raised by producers to an Appeals Committee it has established. The Administrator may decline to refer an appeal to an Appeals Committee where it does not disclose a valid ground for appeal.

2. Roles and Responsibilities of Appeals Committees

- 2.1 The Appeals Committee will review requests in writing from producers or their authorized representative who have appealed the Administrator's interpretation or implementation of Program policies and deadlines.
- 2.2 The Appeals Committee will make non-binding recommendations to the Administrator.
- 2.3 The Appeals Committee cannot create exceptions to the eligibility criteria or any other provisions included in the AgrilInvest Program Guidelines, the Agreement, or the *Farm Income Protection Act*.
- 2.4 Where a deadline appeal is referred to the Appeals Committee, the Appeals Committee may recommend exceptions to deadlines in cases of "Force Majeure" involving exceptional circumstances, where the failure to meet the requirements of the AgrilInvest program could not be avoided by the exercise of due care by the producer or a third party acting on behalf of the producer. Examples of "Force Majeure" include Acts of God such as flash floods, unscheduled surgery, or the death or serious illness of the producer or an immediate member of the producer's family. When reviewing cases involving "Force Majeure" the length of time prior to the deadline when the events occurred must be taken into consideration.
- 2.5 The Appeals Committee will decide on cases with similar factual circumstances in a consistent manner.
- 2.6 The Appeals Committee will provide for producers to participate by teleconference in meetings of the Appeals Committee when their case is being reviewed. Producers who participate in meetings may have their farm preparer join by teleconference as well to assist them in answering questions from members of the Appeals Committee. Participation by other representation is not permitted. Where a producer participates in an Appeals Committee meeting, a representative of the Administrator may also participate.
 - 2.6.1 Producers must give the Secretariat 14 days notice of their intention to participate in a meeting, and are responsible for any costs incurred for participating by teleconference.

- 2.7 The Appeals Committee may request additional information from the Administrator or the appellant producer as required. The Appeals Committee may also invite the appellant producer or the Administrator to participate in meetings to provide factual information to the Appeals Committee with respect to a case being adjudicated.
- 2.8 The Appeals Committee may rehear cases if new information is provided that was not originally considered by the Appeals Committee, or if the initial recommendation of the Appeals Committee is in contravention of a program authority or other legal requirement. The Chairperson will decide if a case will be reheard in this regard.
- 2.9 The Appeals Committee may request that issues with respect to Program parameters, administrative practices, or these Terms of Reference identified in the course of carrying out their duties be raised by the Administrator to the Federal-Provincial-Territorial Administrators Working Group for review.

3. Membership and Process

- 3.1 The voting members of the Appeals Committee will be producers appointed by the Administrator. A non-voting federal or provincial government representative may also be appointed by the Administrator to be a member of the Appeals Committee. The Administrator may set the term of an appointment, and reappoint members to the Appeals Committee whose terms have expired.
- 3.2 Members of the Appeals Committee are responsible for the following:
 - 3.2.1 attending Program training offered by the Administrator;
 - 3.2.2 reviewing appeal submissions in advance of meetings;
 - 3.2.3 meeting on a regular basis or as required to clear the appeals backlog;
 - 3.2.4 declaring any conflict of interest (as per Appendix 1);
 - 3.2.5 considering appeal cases in a fair and impartial manner;
 - 3.2.6 voting on recommendations as moved by Appeals Committee members;
 - 3.2.7 abiding by the decision of the majority; and
 - 3.2.8 protecting the confidentiality of the information obtained in the course of their duties as Appeals Committee members.
- 3.3 One of the voting members of the Appeals Committee will be selected as the Chairperson, based on the process established by the Administrator. In addition to other duties that may be assigned in these Terms of Reference, the Chairperson will be responsible for ensuring that:
 - 3.3.1 Appeals Committee business is completed in an impartial and efficient manner;
 - 3.3.2 quorum requirements are met;
 - 3.3.3 the actions of the Appeals Committee respect the Terms of Reference; and
 - 3.3.4 records of discussion from Appeals Committee meetings prepared by the Secretariat are reviewed and approved in a timely manner.
- 3.4 For any given meeting of an Appeals Committee, there will be a minimum of three and a maximum of five voting members in attendance.

- 3.5 The quorum required to make a recommendation to the Administrator is three voting members.
- 3.6 Recommendations of the Appeals Committees will be made by the majority of the votes of the voting members present.

4. Secretariat

- 4.1 The Secretariat to an Appeals Committee will be provided by the Administrator that has appointed the Appeals Committee. The Secretariat is responsible for:
 - 4.1.1 providing the Appeals Committee with the information necessary to ensure the implementation of these Terms of Reference;
 - 4.1.2 scheduling meetings and preparing the Administrator's submission for each appeal case;
 - 4.1.3 forwarding both the Administrator's and producer's submission to the Appeals Committee in advance of the meeting;
 - 4.1.4 providing the appellant with the information required to participate by teleconference, and inviting the appellant to indicate within 14 days of the meeting whether he or she wishes to participate.
 - 4.1.5 preparing records of discussion and seeking the Chairperson's review and approval of the same;
 - 4.1.6 contacting a producer for additional information requested by the Appeals Committee, and
 - 4.1.7 notifying the appellant of both the Appeals Committee's recommendation and the Administrator's final decision once the case has been reviewed.

Appendix 1 to the Common Terms of Reference

Conflict of Interest Criteria

Members of the Appeals Committee are expected to make decisions in a fair and impartial manner, free from considerations affecting their own personal interest. A conflict of interest arises where the member has a personal interest in the outcome of an appeal which is sufficient to influence the member's judgment.

One way in which a conflict can arise is where the member has a relationship with the appellant. This could be a financial interest (in the case of a company or business associate) or a personal relationship (in the case of a family member or close friend). Generally speaking, cases affecting the member's immediate or extended family would be considered to raise conflicts of interest (i.e. spouses, parents, children, brothers and sisters as well as their children and spouses). However, the member will need to consider in each case the nature of the relationship (if any) and whether it could be expected to influence the member's judgment.

A conflict would arise where the member is the appellant, since members cannot consider their own appeals. It would be difficult to avoid the appearance of special treatment even when only the remaining members of an Appeals Committee consider a fellow member's appeal. For this reason, it may be necessary to establish an ad-hoc committee which is free from the conflict. Alternatively, it may be that the appellant and the Administrator can agree to waive the conflict.

A conflict can also arise due to the subject matter of the appeal, in cases where the issue to be determined would affect the member's own participation in the Program. To some extent this is unavoidable, since all members are Program Participants and thus will be affected somewhat by the principles established in appeals. For this reason, issues which affect a broad range of Participants would not require members to withdraw. However, there may be cases in which a member is among a narrow group which would be affected by an issue and in those cases a conflict may require the member to withdraw.

It is the member's responsibility to identify cases in which a conflict of interest may require the member to withdraw. This includes both real conflicts of interest and "apparent" conflicts. These arise where a reasonable person, fully informed of the circumstances, could be expected to believe that there would be a conflict. It is sufficient that an apparent conflict exists, since the appeal process must not only be fair but also be seen to be fair.

Members who identify potential conflicts of interest (real or apparent) should discuss the matter with the chairperson of the Appeals Committee, and if necessary withdraw from the case. Where the member and the chairperson disagree with respect to the potential conflict of interest, then the appellant and the Administrator should be informed of the circumstances, so that they can decide whether to waive the potential conflict.

In cases where the chairperson of the Appeals Committee is subject to a conflict of interest, the chairperson will withdraw from the case, and an alternate chairperson will be appointed by the remaining Appeals Committee members.

There may be cases in which most or all members of an Appeals Committee are subject to a conflict of interest. In those cases, it may be necessary to establish an ad-hoc committee which is

free from the conflict. Alternatively, it may be that the appellant and the Administrator can agree to waive the conflict.

Members should also ensure that they do not take personal advantage of confidential information obtained because of their participation in the appeal process (that is, information which is not otherwise available to the public).