

November 13, 2020

The Honourable Ernie Hardeman
Minister of Agriculture, Food and Rural Affairs
1 Stone Rd W
Guelph, ON N1G 4Y2

(Submitted by email and online via Regulatory Registry of Ontario)

Dear Minister Hardeman,

Re: Regulatory proposal number 20-OMAFRA33 - Updating regulations under the *Farm Registration and Farm Organizations Funding Act, 1993* (FRFOFA), which establishes the Farm Business Registration Program (FBR Program), to support electronic delivery of the Farm Business Registration program, reduce administrative burden for farmers, and provide flexibility due to COVID-19.

The Ontario Federation of Agriculture (OFA) proudly represents more than 38,000 farm family members across the province, supporting our members and the agri-food industry on issues, legislation, and regulations governed by all levels of government. OFA works to ensure the agri-food sector and our rural communities are included, consulted, and considered in any new and changing legislation that impacts the sustainability of our farm businesses. We are the leading agricultural advocate for Ontario farmers, their businesses, and their communities.

OFA greatly appreciates the Ministry's work to ensure an efficient and effective Farm Business Registration (FBR) program and farm organization accreditation process. We recognize that much thought and consideration has gone into developing the proposed approaches for regulatory provisions under the *Farm Registration and Farm Organizations Funding Act, 1993* (FRFOFA), as outlined in the Ministry's discussion paper. OFA has worked and is pleased to continue working with the Ministry, Agricorp, and other Accredited Farm Organizations (AFOs) to improve the delivery of the FBR program.

OFA supports the intent and direction of the proposed regulatory approaches presented in the Ministry's discussion paper. OFA encourages the Ministry to consider taking further steps to enhance the FBR program experience for Ontario farmers and improve the AFO accreditation process.

Enhancements to the FBR Program

Information Collection and Disclosure

OFA applauds efforts to reduce burdening farmers with unnecessary paperwork. Removing the requirement to complete a more detailed registration form every five years and reducing the

amount of information collected as part of the registration process are two very important steps aimed at streamlining the registration process for Ontario farmers. OFA fully supports the Ministry's proposal to reduce the amount of unnecessary information collected from farmers.

Ontario farmers continue to have concerns with the government's disclosure of their information. OFA believes business information should be afforded the same protections and privacy considerations provided to personal information when that business information may reveal personal information. In our October 1, 2020 submission to the Ministry of Government and Consumer Services regarding personal privacy reforms, OFA strongly recommended that the *Freedom of Information and Protection of Privacy Act* (FIPPA) be amended to ensure information is not released by government without the consent of the person(s) the information relates to, and that business information be treated as personal information when the business and personal information are the same information, or the business information could be used to obtain the personal information of the business owner(s) or employee(s).

The FRFOFA sets out how the Ministry can use collected information and enables the Minister to prescribe other ways in which the Ministry can use this information. The discussion paper states:

The Ministry is proposing that the Ministry continue to be allowed to use the information obtained under the FRFOFA for the following purposes:

- Validating eligibility for Ministry and other programs that require a person to have an FBRN
- Providing sector and/or county level information to Statistics Canada at its request
- Providing information to Agriculture and Agri-Food Canada to help share information on emerging plant/animal health issues with producers, including a successor department, at its request
- Such other purposes as the Minister may determine or in the public interest.

OFA recommends limiting the scope of the suggested prescribed FBR information uses.

We propose:

- Validating eligibility for Ministry and other Ontario government administered programs that require a person to have an FBRN
- Providing sector and/or county level information, excluding any information which could be used to identify one or more Farm Business Registrants, to Statistics Canada at its request
- Providing information to Agriculture and Agri-Food Canada to help share information on emerging plant/animal health issues with producers, including a successor department, at its request
- Such other purposes as the Minister may determine are in the public interest, as long as any information which could be used to identify one or more Farm Business Registrants is withheld.

AFOs receive registration information as per FRFOFA's subsection 21(3) and section 13 of O. Reg. 723/93. OFA wishes to continue to receive information about our FBR supporters, including fax numbers and email addresses. Therefore, OFA supports the discussion paper's statement: "The subject-matter covered by sections 11 to 13 of O. Reg. 723/93 would be incorporated into the new Minister's Regulation".

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Determination of Gross Farm Income (Section 1(2) of O. Reg. 723/93)

Returning Registrants and New Registrants can be impacted by how Gross Farm Income is determined. As you know, the FBR program requires all farm businesses that earn an annual gross farm income of \$7,000.00 or more to register with the Ministry to obtain a farm business registration number. Section 1(2) of O. Reg. 723/93 specifies how the Ministry shall determine whether a farm business meets this annual gross farm income threshold. Currently, section 1(2) states:

The annual gross income of a farming business shall be determined in the same manner as the gross income from farming of the farming business is determined under the *Income Tax Act* (Canada) for the most recent taxation year for which a tax return was filed in relation to the farming business during the eighteen-month period preceding the date on which the annual registration form is required. O. Reg. 723/93, s. 1 (2).

OFA fully supports the Ministry's proposal to assist Returning Registrants who have experienced a drop in their farm operation's gross farm income due to the COVID-19 by temporarily modifying how the farm income requirement would be determined for the 2021 program year. Without this proposed amendment to section 1(2), some farm operations would face losing their FBR renewal status due to COVID-19 or other challenges impacting their ability to earn sufficient gross farm income in 2020.

Every registration year, some would be Returning Registrants are unable to register because they have experienced a gross farm income decline as reported on their most recent income tax return, leaving them below the FBR program's \$7,000 Gross Farm Income eligibility threshold. To maintain their Farm Property Class Tax Rate status, these farm businesses must apply for a "not a normal production year" income exemption. According to Farm Property Class Tax Rate program information posted on Agricorp's website, the "not a normal production year" income exemption is for farm businesses whose gross farm income for the previous income tax year was less than \$7,000 due to unusual circumstances, such as extreme weather or market changes, that could not have been prevented with best management practices. To be granted this exemption, the farmer needs to demonstrate why their gross farm income was less than \$7,000 and how the farm business will generate at least \$7,000 annually.

After being granted the "not a normal production year" income exemption, some remain perplexed that they are still not permitted to renew their FBR number. Given Agricorp delivers both the FBR program and the Farm Property Class Tax Rate program, OFA questions why the FBR program eligibility rules have not been amended to better serve those would be Returning Registrants who can receive the Farm Property Class Tax Rate program benefit regardless through this income exemption.

Therefore instead of a temporary change, **OFA recommends modifying O. Reg. 723/93, s. 1(2) such that the Ministry shall determine the annual gross income of a farming business based on the higher gross farm income amount reported for the most recent taxation year or the taxation year immediately preceding the most recent taxation year if reported.**

New farm businesses and recently incorporated farm businesses also face FBR registration barriers. The Ministry's discussion paper notes that "The Ministry recognizes the importance its programs can have on all farm businesses but particularly new farm businesses" and proposes "to allow a New Registrant to obtain an FBRN at any point during the year, provided the requirements to obtain the FBRN has been met." OFA notes that those requirements include providing proof of farm income to Agricorp. Currently, the only acceptable proof is the registrant's

income tax return in relation to the farming business filed with the Canada Revenue Agency (CRA) for the most recent taxation year during the last eighteen-month period, as specified in section 1(2) of O. Reg. 723/93. However, an income tax return for a new farm business, or a recently incorporated farm business, will not be filed with CRA until after the business' first fiscal year-end and based on CRA filing dates. In conclusion, section 1(2) of O. Reg 723/93 must be amended to allow new farm businesses and recently incorporated farm businesses earlier access to the FBR program.

Therefore, in addition to allowing a New Registrant to obtain an FBR number at any point during the year, **OFA recommends modifying O. Reg. 723/93, s. 1(2) such that the Ministry shall determine in the same manner as the gross income from farming of the farming business is determined under the Income Tax Act (Canada) the annual gross income of a farming business that has not filed a tax return for the most recent taxation year or the taxation year immediately preceding the most recent taxation year in relation to the farming business based on documentation confirming the gross farm income of the farming business will be at least \$7,000 during the current taxation year.**

The Farm Property Class Tax Rate program has accommodated new farm businesses and recently incorporated farm businesses through the "start-up farm business" income exemption and the "business structure change" income exemption. Those income exemptions can help inform the Ministry about what documentation it might wish to accept to confirm the \$7,000 gross farm income threshold has been met.

AFO Selection

The Ministry's discussion paper proposes that should a farm business make their required payment payable to a farm organization which is no longer accredited, then the farm business should have 60 days instead of 30 days to resubmit a payment directed to an appropriate AFO.

OFA is supportive of the proposed time period extension. However, we believe few payments should require return and resubmission. Registrants provide direction to Agricorp as to which AFO to forward their FBR payment to through the AFO selection process. Agricorp should be expected to make every reasonable effort to correct errors with regards to a registrant's AFO selection to ensure AFO payments are directed appropriately. In other words, Agricorp should seek further instructions from the registrant as to how to direct their payment instead of automatically returning their original payment and requiring them to resubmit their payment.

Improvements to the AFO Reaccreditation Process

Eligibility Requirements to be Accredited/Re-Accredited

The FRFOFA provides the Minister with the power to prescribe the criteria respecting the accreditation of farm organizations. Section 5 of O. Reg. 723/93 currently sets out the requirements a farm organization must meet to become an AFO and the requirements an existing AFO must meet to be re-accredited as an AFO. The discussion paper states the "Ministry is examining the accreditation/re-accreditation requirements set out under section 5 of O. Reg. 723/93 to see whether any changes should be made to help reduce the administrative burden for the AFOs, while ensuring that they demonstrate sound governance, financial accountability and the provision of value to Ontario's farmers."

OFA believes that an efficient accreditation renewal process with minimal controversy is possible with carefully, clearly worded regulations that: indicates the appropriate evidence an AFO needs

to provide to the Agriculture, Food and Rural Affairs Appeal Tribunal (the Tribunal) to demonstrate that the AFO meets the accreditation criteria; and outlines how the Tribunal may proceed to allow an AFO to remedy situations where the Tribunal finds insufficient evidence to grant renewal of accreditation.

AFOs have presented their respective evidence before several panels of the Tribunal over the years. Although previous Tribunal panel rulings have been informative, one panel's interpretation of the eligibility criteria is not binding on future panels. In fact, some panels have interpreted the criteria differently over the years. Subsequent panels may refuse renewal because of an AFOs longstanding practise which was considered acceptable to past panels. For example, AFOs automatically granted membership to Farm Business Registrants, who selected and financially supported their individual organization, for many years before a Tribunal panel released a decision in May 2012 ruling that the longstanding practice of negative option membership for the person or farm business making the FBR payment was not in compliance.

When submitting their accreditation renewal applications to the Tribunal, AFOs must decide what evidence to include that will show they meet the accreditation renewal criteria listed in Section 5(2) of O. Reg. 723/93 made under the FRFOFA. Notwithstanding that section 5(2) states: "A farm organization qualifies for accreditation if it meets the following criteria: ...", some Tribunal panels have chosen to also judge an AFOs performance over the last three-year period since the last accreditation renewal decision. For example, in the Tribunal's decision released in May of 2012 regarding OFA's accreditation renewal application, OFA failed to provide the Tribunal with their audited financial statements for 2008 and 2010 within the prescribed period (as per the requirement before the regulations were amended). The decisions stated: "in plain language, the OFA must submit compliant documents within the prescribed 10 day window *on an ongoing basis during the period of its accreditation*. Therefore, there is no remedy because the window of time when the OFA can submit compliant documents closes each year and cannot be re-opened."

The current accreditation renewal criteria can be categorized as either "state of affair" or "achievement". The "state of affair" criteria lend themselves easily to determining whether an AFO "meets" the condition in the present state. For example, an AFO must be a corporation. Although the AFO may choose to provide its original Letters of Patent as evidence, it is clear that the requirement is that the AFO is (at that moment) a corporation.

The "achievement" criteria are another matter. In those cases, AFOs can only provide evidence of past actions in order to make their case that they presently "meet" the requirements. For example, each Local Branch must hold an annual general meeting. The AFO may provide a copy of a Local Branch's annual general meeting agenda or minutes as evidence. It can be argued that "achievement" criteria are about having "met" the requirement as opposed to "meeting" the requirement. As a result, it is understandable why some Tribunal panels may have interpreted their task as judging an AFO's past performance.

OFA recommends adding "and has met in the last twelve months" to wording currently found in section 5(2) of O. Reg. 723/93 to state that a farm organization qualifies for accreditation renewal if it meets and has met in the last twelve months the following criteria: ...

Suspension of Reaccreditation Requirements During an Emergency Situation

The FRFOFA provides the Minister with a general regulation-making power respecting any matter that is advisable to carry out the intent and purpose of the regulations made under section 33(2) of the FRFOFA. As noted in the discussion paper, the "Ministry is considering having a provision included in the Minister's Regulation that would allow the Minister to temporarily suspend some

eligibility requirements (e.g. requirement to hold an annual general meeting) that have to be met in the event that an emergent situation arises, such as COVID-19, that is beyond to the control of the AFOs and adversely impacts their ability to meet the eligibility requirements during the emergent situation. The effect of the above provision is that the AFOs would not have to meet some eligibility requirements to be re-accredited during the time the Minister has suspended the eligibility requirements.”

OFA fully supports this proposal. **OFA further recommends that the Minister have sole discretion to temporarily suspend some reaccreditation eligibility requirements and that the Minister’s authority not be contingent upon an emergent situation arising.**

Length of Accreditation/Reaccreditation

The discussion paper notes the “Ministry is considering setting the term of a farm organization’s initial accreditation at five (5) years and the Ministry is also considering setting the term of an AFO’s re-accreditation at five (5) years. Currently, the accreditation period for all three AFOs will come to an end in 2021. The Ministry is proposing to extend the current accreditation period to 2023, so that the current accreditation period will be five (5) years.”

OFA is in favour of lengthening the current 3-year accreditation renewal period, provided that AFO’s are not burdened by having to provide additional evidence to the Tribunal on application for renewal of accreditation due to the lengthen period between hearings. OFA believes a 5-year accreditation renewal period is appropriate.

OFA fully supports the Ministry’s proposal of a September 1st expiry date for accreditation or reaccreditation period. This would result in a December 1st to March 1st application window each and every time that accreditation renewal was needed. Although the time the accreditation renewal process may take from application to decision is indeterminate. Ideally, Tribunal decisions would be released soon after most of the current year registrations have been completed, thus giving the most time for an unsuccessful AFO to reapply to regain accreditation before the roll out of the next FBR program year. The September 1st expiry date will provide for an earlier application window in the calendar year, which should facilitate earlier released decisions.

In closing, we greatly appreciate the opportunity to provide our comments and recommendations with respect to the Ministry’s discussion paper. OFA supports the intent and direction of the proposed regulatory approaches and encourages the Ministry to consider our recommendations. We believe that the FBR program and AFO reaccreditation process can be enhanced to better serve all parties involved. We look forward to our continued collaboration on this file.

Sincerely,



Keith Currie
President

cc: The Honourable Lisa Thompson, Minister of Government and Consumer Services
Ms. Bozena Szymanski, Farm Finance Branch, OMAFRA
OFA Board of Directors