

April 19, 2024

Tamara Fernandes, Director (Acting)  
Farm Finance Branch  
Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)  
1 Stone Road West  
Guelph, Ontario  
N1G 4Y2

Submitted via email and online through the Regulatory Registry of Ontario

Dear Tamara Fernandes,

**Re: Proposal # 24-OMAFRA002: Proposed Regulations Under the *Protecting Farmers from Non-Payment Act***

The Ontario Federation of Agriculture (OFA) is pleased to provide feedback to the consultation questions asked in the discussion papers which detailed the proposals for both the Grain and Livestock financial protection programs.

### Summary of OFA recommendations

- For both the grain and livestock financial protection programs, the penalties for Type A offences that are more serious in nature should be doubled from what is proposed and number of fee tiers should be reduced to ensure they act as a true deterrent to non-compliance.
- For both the grain and livestock financial protection programs, the only approved methods of serving documents should be personal service and the use of couriers.
- For the livestock financial protection program, all classes of dealers and producers should be eligible for compensation at the 95% level with no per claim cap.
- For the livestock financial protection program, the only additional information that should be included in a public licence registry is the primary individual associated with the dealer's licence in cases where the dealer is operating under a farm business name or numbered company.

### Consultation questions in the Grain Financial Protection Program discussion paper:

1. Do you have any concern with the proposal to clarify that elevator operators are not required to provide proof of financial responsibility or security to obtain a licence to store grain? If "yes" what?

OFA supports the Ministry's proposal to clarify that elevator operators are not required to provide proof of financial responsibility or security to obtain a licence to store grain, as outlined in the discussion paper for the Grain Financial Protection Program. As outlined in the discussion paper, elevator operators do not own the grain they store and are required to have insurance against loss or damage, thereby mitigating the risks associated with non-payment and storage.

We understand the intent behind this proposal is to reduce regulatory burdens and costs for elevator operators, which is in line with OFA's position on reducing red tape.

2. Should the Ministry require any other information to be included in the agreement to sell or the agreement to store? If so, what should they be?

OFA appreciates the Ministry's efforts to clarify the requirements for written agreements to sell or store grain as part of the regulatory changes under the new *Protecting Farmers from Non-Payment Act*. OFA supports the current information proposed to be included in the sell and store agreements as they are inline with current requirements.

3. Do you have any concern with the proposal to make it clear that grain dealers must provide proof of financial responsibility and security (if required) for a licence to be continued pending renewal (deemed)?

OFA supports the Ministry's proposal to require grain dealers to provide proof of financial responsibility or security for their license to continue pending renewal. This measure aims to reduce the risk to the funds and addresses concerns raised during pre-consultation sessions regarding the exposure of the funds from applicants in deemed status. Ensuring that dealers are financially responsible and capable of meeting their obligations is crucial for maintaining trust and reducing risk within the grain sector.

4. Do you agree that the proposal to increase the licence fees paid by dealers and operators? If "no" why?

OFA acknowledges the Ministry's proposal to increase the license fees for grain dealers and operators as outlined in the discussion paper for the Grain Financial Protection Program. We understand the intention behind this proposal is to more accurately reflect the costs associated with issuing and renewing licenses, as well as managing the licensing component of the Program, which is currently significantly higher than the revenue generated from these fees.

OFA appreciates the consultation process for these proposed changes and recommends ongoing engagement with industry stakeholders for any future adjustments to fee structures.

5. Are you supportive of the proposal to make a dealer licence subject to the same reporting requirements as an operator licence? Do you think dealer's licences or elevator operator's licences should be subject to any other conditions? If "yes", what should those conditions be?

OFA is supportive of the proposal to make dealer licenses subject to the same reporting requirements. Ensuring that both grain dealers and elevator operators adhere to consistent reporting and operational standards helps reduce complexities and maintain fairness.

6. The Ministry is proposing:

- a. Administrative changes to add clarity to existing regulatory provisions related to determining financial responsibility. As the changes are administrative in nature the current process will remain largely unchanged. Including more details in the regulation will add clarity and transparency.
- b. To define security to mean letters of credit, bond or payables insurance.

OFA supports the Ministry's proposal to bring administrative clarity to the existing regulatory provisions concerning financial responsibility. We agree that incorporating more detailed criteria within the regulation will enhance both clarity and transparency, thereby facilitating a better understanding of compliance requirements.

Regarding the proposal to define security as letters of credit, bonds, or payables insurance, OFA recognizes the value in specifying acceptable forms of security. This definition helps standardize what constitutes adequate security across the industry, ensuring that all parties have a clear understanding of the requirements.

However, OFA recommends that the Ministry remains flexible in its approach to security. OFA suggests that the Ministry consider the introduction of a review mechanism to periodically assess the effectiveness and appropriateness of the defined security types. Such a mechanism would ensure that the regulatory framework can adapt to changes in the financial landscape and continue to meet the needs of both producers and dealers effectively.

7. Do you have any concern with the proposal to increase the threshold to be considered a Small Dealer under the Program to less than \$50K in monthly sales? If "yes" what?

OFA supports the Ministry's proposal to increase the threshold for small dealers to \$50,000 in monthly purchases. This adjustment is a pragmatic response to the changes in the agricultural landscape over the past decade, taking into account the growth in farm sizes. Raising the threshold will likely benefit a greater number of small dealers by reducing their administrative burden and associated costs. We encourage the Ministry to remain responsive to the sector's evolving needs and to stakeholder feedback regarding the threshold.

8. Do you have any concerns with the proposed items to be included in the licence registry? If "yes", what are they?

OFA supports the initiative to establish a comprehensive public registry that enhances transparency and accountability within the grain sector. Making information about dealers and storage operators readily available will help foster trust among stakeholders.

9. Do you have any concerns with the changes proposed to specify the groups that must be represented on the Board and that that a certain number of appointees must be active in the industry? If "yes", what are they?

OFA supports the proposal to specify in regulation the representation of key agricultural industry groups on the Board, including at least one representative from the Grain Farmers of Ontario, Ontario Canola Growers Association, Ontario Agri-Business Association, and other members as

considered advisable by the Minister. This approach ensures a broad representation of the grain sector's interests.

10. Do you have any concerns with the change proposed to specify that only Ontario sellers, who pay the requisite “check-off fees” and sell to buyers licenced in Ontario are eligible for compensation?

OFA supports the proposed changes to specify that only Ontario sellers, who pay the requisite check-off fees and sell to a buyer licensed in Ontario—even if they are located outside of Ontario be eligible for compensation. Regardless of residency, no producer or dealer who has not paid a levy fee, or had a levy fee deducted off the proceeds of a sale, or is not licenced in Ontario, should be eligible for compensation under the program.

11. Are the additional grounds proposed to allow the Board to refuse a claim sufficient (i.e. failure to pay “check-off fee”; extension of credit; and no written agreement) ? If “no”, what grounds should not be included?

OFA supports the proposed additional grounds by which the Board may refuse to pay a claim and we have no suggestions for additional grounds to be added.

12. Should anything else be required to be included in a Cost Order or an Order To Pay? If “yes”, what else should be included?

OFA supports the Ministry's proposal to include in both a Cost Order and an Order To Pay a clear statement specifying the due date for payment (30 days after the Chair signs the order) and the condition that the debt will begin to incur interest if not paid by that date. This clarity contributes to the transparency and fairness of the process, ensuring that all parties are fully informed of their obligations and the consequences of non-compliance.

13. Should anything else be required to be included in the Compliance Order? If “yes”, what else should be included?

OFA supports the inclusion of additional information in Compliance Orders as proposed by the Ministry, specifically the clarifications regarding the appeal process, the immediate effect of Compliance Orders, and the consequences of failing to comply. These additions will contribute to a better understanding of Compliance Orders and facilitate compliance with the Act and regulations.

14. Do you agree with the proposed AMP amount for a first, second and third contravention? If “no” what would you recommend instead?

OFA recognizes the importance of having a structured penalty system that reflects the severity of non-compliance and the need to deter repeat offenses. The tiered approach for Type A and Type C contraventions, with increasing penalties for subsequent offenses, is seen as a reasonable method to encourage compliance and address the potential financial gain from non-compliance.

However, OFA believes the penalties for Type A offences that are more serious in nature should be doubled from what is proposed to ensure they act as a true deterrent to non-compliance. Reducing the number of fee tiers would also act as an effective deterrent of repeat non-compliance.

For Type C offences that represent less serious compliance or administrative contraventions OFA recommends an education first approach. We recommend that Type C AMPs only be applied in rare cases of repeated failure to correct issues of non-compliance. When Type C offences are applied, we again recommend that the fees be doubled, and the number of fee tiers be reduced.

15. Do you agree with the proposed retention period (two years) for each individual contravention? If no, what would you recommend instead?

OFA has reviewed the Ministry's proposal regarding the two-year retention period for considering previous contraventions when issuing a new Administrative Monetary Penalty (AMP) for a contravention of the same provision by the same person under the Grain Financial Protection Program.

OFA supports the two-year retention period for considering previous contraventions when issuing new AMPs. This period strikes a balance between holding entities accountable for past actions and allowing for the possibility of operational improvements and compliance rectification over time.

16. Do you support the Ministry's proposed approach for dealing with aggravating factors? If "no", what do you not support? Should the Ministry consider additional aggravating factors? If "yes", what additional aggravating factors should be considered?

OFA appreciates the Ministry's initiative to define aggravating factors in the regulation, which the courts can consider when determining penalties for offences under the Act. This approach acknowledges the varied nature of offences and aims to ensure that penalties are proportionate to the severity and impact of the contravention.

OFA supports the Ministry's proposals to identify specific aggravating factors that would warrant increased penalties

17. Do you support the approach being considered in relation to the methods of serving documents?

OFA does not support the proposed methods of serving documents. We recommend that Personal service and the use of Couriers be the only approved methods of serving documents.

### **Consultation questions in the Livestock Financial Protection Program discussion paper:**

1. Should any other information be required to be included in the agreement to purchase or sell? If so, what should they be?

OFA supports the proposed content requirements for the written agreements, including the business names and addresses, dealer's licence number, sale date, description and identification of the cattle, number of head, purchase price, "check-off" fee, and payment date. These elements are crucial for transparency and traceability in transactions and align with practices in other provinces, such as Alberta and Saskatchewan.

2. Do you agree with the proposal to increase to the dealer licence fee to \$150/year and to introduce a \$50/year fee for each livestock agent? If "no" why?

OFA supports the Ministry's proposal to update the livestock dealer license fee from \$25/year to \$150/year and to introduce a \$50/year fee for dealer agents. Recognizing that the existing fee structure has remained unchanged since the 1980s, we understand the necessity to reflect the current costs of issuing, renewing licenses, and administering the Program.

The proposed fees are within the range of those charged in other provinces, such as Alberta and Saskatchewan, suggesting that the increase is reasonable in a broader context. However, it's crucial to ensure that the fees remain competitive in the future and do not place Ontario's livestock dealers at a disadvantage.

3. Do you have any concern with the proposed change to require livestock dealers to inform the Director where there is a change in the location of banking facilities; nature or form of ownership; or control of the business operations? Should licences be subject to any other conditions? If "yes", what should those conditions be?

OFA has reviewed the Ministry's proposal under the new Financial Protection Program Act to require livestock dealers to report significant changes in their operation, including changes in the location of banking facilities, the nature or form of ownership, and control of the business operations. This requirement is in line with the existing conditions for grain dealers and elevator operators under the Grain Program.

OFA has no issues with the Ministry's proposal as it enhances transparency and accountability within the livestock sector. The most critical point for the livestock program is to ensure the licenced dealer and agent list is up to date and communicated to all industry partners, as well as published on Agricorp's website.

4. The Ministry is proposing:
  - a. Administrative changes to add clarity to existing regulatory provisions related to determining financial responsibility. As the changes are administrative in nature the current process will remain largely unchanged. Including more details in the regulation will add clarity and transparency.
  - b. To define security to mean a letter of credit or bond.

OFA has reviewed the Ministry's proposals regarding administrative changes for determining financial responsibility and defining security for licensed dealers within the Beef Cattle Financial Protection Program.

#### Administrative Changes:

OFA supports the Ministry's initiative to clarify existing regulatory provisions concerning financial responsibility. The proposed administrative changes aim to enhance clarity and transparency, which are vital for ensuring all stakeholders have a clear understanding of the requirements and processes. Maintaining the current process while increasing its transparency addresses stakeholder requests for clearer guidelines and a more transparent assessment methodology.

#### Definition of Security:

Additionally, OFA supports the proposal to define security explicitly as a letter of credit or bond. This definition helps standardize the security requirements across the sector, providing a clear framework for dealers to comply with their financial responsibility obligations.

5. The Ministry is proposing to amend the regulation to align with practice by defining a small dealer who is thus not required to provide security as an applicant with \$5,000 or less in weekly sales? Do you have any concerns?

OFA appreciates the Ministry's effort to clearly define the small dealer exemption and its criteria within the regulatory framework. While we support the exemption as a means to facilitate participation in the market by small-scale dealers, we encourage the Ministry to remain responsive to the sector's evolving needs and to stakeholder feedback regarding the exemption threshold. Continual engagement with the industry and periodic reviews of the threshold will be key to ensuring that the exemption serves its intended purpose effectively.

6. Do you have any concerns with the proposed items to be included in the licence registry? If "yes", what are they?

OFA has concerns about the information the ministry is proposing to include in a public registry, including release of information that would under normal circumstances only be obtained through a freedom of information request.

OFA recommends that the only additional information to be included in a public licence registry be the primary individual associated with the dealer's licence in cases where the dealer is operating under a farm business name or numbered company. Further, OFA recommends that all dealer agents should be listed on the registry under the approved licenced dealer's name.

7. Do you have any concern with the proposed change? If "yes", what are they?

OFA strongly supports the initiative to formally expand the Board's composition to include representatives from the Beef Farmers of Ontario (BFO), Ontario Livestock Dealers Association (OLDA), Veal Farmers of Ontario (VFO), Dairy Farmers of Ontario (DFO), Meat and Poultry Ontario (MPO), and the Ontario Cattle Feeders' Association (OCFA). This inclusive approach ensures that the Board benefits from a wide range of perspectives and expertise, reflecting the diversity of stakeholders within Ontario's beef cattle industry.

Additionally, OFA endorses the proposal to require that a certain number of Board appointees be active in the industry, as defined by recent production, buying, selling of beef cattle, or membership in a represented commodity organization. This requirement guarantees that Board decisions are informed by current industry experiences and challenges, enhancing the Board's relevance and responsiveness to the sector's needs.

8. Do you have any concerns with the change proposed to specify that only Ontario sellers, who pay the requisite "check-off fees" and sell to buyers licenced in Ontario are eligible for compensation?

OFA supports the proposed changes to specify that only Ontario sellers, who pay the requisite check-off fees and sell to a buyer licensed in Ontario—even if they are located outside of Ontario be eligible for compensation. Regardless of residency, no producer or dealer who has not paid a levy fee, or had a levy fee deducted off the proceeds of a sale, or is not licenced in Ontario, should be eligible for compensation under the program.

9. Do you have any concerns with the proposal to allow inspectors appointed under other Acts be allowed to be an inspector under the Act? If "yes", what?

OFA supports this initiative as it can potentially streamline the inspection process by leveraging the expertise and authority of existing inspectors across different regulatory frameworks.

10. Do you have any concerns with the proposal to clarify who is eligible to make a claim and the timelines for producers to pay dealers? If “yes”, what?

OFA supports the Ministry’s efforts to clarify the definitions of regular versus designated producers and to streamline the understanding of who is eligible to make a claim under the Fund. Simplifying these definitions and making it explicit that licensed dealers can make claims when they sell to other licensed dealers, producers, or co-operatives is a positive step towards reducing confusion and ensuring that the Fund’s protection is accessible to all eligible parties.

Regarding the proposal to clarify the 15-day payment timeline for producers when buying from licensed dealers, OFA recognizes the need for consistency in the regulatory framework. Ensuring that both producers and dealers are aware of their respective payment obligations is crucial for maintaining trust and fairness in the marketplace.

11. Should licenced dealers who sell to producers be given more time to make a claim to the Board in the event of non-payment by a producer?

OFA supports the proposal to standardize the timelines for making a claim to the Board to 30 days after the payment becomes due. This change would simplify the process for stakeholders, making it clearer and more predictable for all parties involved.

12. Do you have any concerns with the proposed change to the cap on a claim made in respect of a (1) producer who is not a feeder cattle or a breeder cattle co-operative; and (2) feeder cattle or a breeder cattle co-operative? If yes, what? The impact to the producer “check-off fee” will be determined as part of the actuarial review.

OFA does not support the proposal of increasing the cap to \$195,000. OFA recommends that all classes of dealers and producers be eligible for compensation at the 95% level with no per claim cap.

- 13.
- a. Are the additional grounds that the Ministry is proposing to allow the Board to refuse a claim sufficient (i.e. failure to pay “check-off fee” and the claimant having knowledge that the purchaser ceased business or filed for bankruptcy and failed to notify the Director, and no written agreement)? If no, which ones should or should not be included?
  - b. Do you have any concerns with the proposal to include a special exemption to the “extension of credit” rule for the veal sector given the nature of the veal industry? If “yes” What?

Concerns with Proposed Additional Grounds for Claim Refusal:

OFA supports the proposed additional grounds by which the Board may refuse to pay a claim and we have no suggestions for additional grounds to be added.



Special Exemption for the Veal Sector:

OFA recognizes the unique challenges faced by the veal industry, particularly regarding the timelines for receiving payment and the risk of disqualification from Fund claims due to perceived extensions of payment time. The proposed exemption from the “extension of the time to pay” rule acknowledges these challenges and represents a positive step towards addressing industry-specific issues. Any regulatory amendments should be crafted in close consultation with the Veal Farmers of Ontario (VFO) and other stakeholders to ensure they effectively address the industry’s needs without compromising the Fund’s objectives.

14. Should anything else be required to be included in a Cost Order or an Order To Pay? If “yes”, what else should be included?

OFA supports the Ministry’s efforts to enhance clarity and transparency in the financial obligations arising from a Cost Order or an Order To Pay. By specifying the payment due date and the conditions under which interest will accrue, these changes will help ensure that all parties are fully informed of their responsibilities and the potential consequences of late payment.

15. Should anything else be required to be included in the Compliance Order? If “yes”, what else should be included?

OFA has no concerns with the proposed inclusions in the Compliance Orders, recognizing their importance in ensuring clarity and understanding for the recipients about their rights and obligations.

16. Do you agree with the proposed AMP amount for a first, second, third as well as fourth and subsequent contravention? If “no”, what would you recommend instead? Do you agree with the proposed retention period (two years) for each individual contravention? If no, what would you recommend instead?

After reviewing the proposed AMP amounts for various contraventions and the retention period for considering previous contraventions, OFA offers the following feedback:

Proposed AMP Amounts for Contraventions:

OFA recognizes the importance of having a structured penalty system that reflects the severity of non-compliance and the need to deter repeat offenses. The tiered approach for Type A and Type C contraventions, with increasing penalties for subsequent offenses, is seen as a reasonable method to encourage compliance and address the potential financial gain from non-compliance.

However, OFA believes the penalties for Type A offences that are more serious in nature should be doubled from what is proposed to ensure they act as a true deterrent to non-compliance. Reducing the number of fee tiers would also act as an effective deterrent of repeat non-compliance.

For Type C offences that represent less serious compliance or administrative contraventions OFA recommends an education first approach. We recommend that Type C AMPs only be applied in rare cases of repeated failure to correct issues of non-compliance. When Type C offences are applied, we again recommend that the fees be doubled, and the number of fee tiers be reduced.

Proposed Retention Period:

OFA supports the two-year retention period for considering previous contraventions when issuing new AMPs. This period strikes a balance between holding entities accountable for past actions and allowing for the possibility of operational improvements and compliance rectification over time.

17. Do you support the Ministry's proposed approach for dealing with aggravating factors? If "no", what do you not support? Should the Ministry consider additional aggravating factors? If "yes", what additional aggravating factors should be considered?

OFA has no issues with the proposal to prescribe certain conditions as aggravating factors. However, we recommend caution when applying aggravating factor one which states "the person who committed the offence profited from committing the offence" as this would apply to most situations where there is a payment default.

18. Do you support the approach being considered in relation to the methods of serving documents?

OFA does not support the proposed methods of serving documents. We recommend that Personal service and the use of Couriers be the only approved methods of serving documents.

OFA appreciates the Ministry's commitment to enhancing the financial protection for Ontario's farmers through the *Protecting Farmers from Non-Payment Act* and its proposed regulations. We look forward to continued collaboration with OMAFRA and our commodity partners to refine and implement these regulations effectively.

Sincerely,



Drew Spoelstra  
President

cc: OFA Board of Directors