



February 17, 2021

ATTN: Shain Cameron
Farm Finance Branch Ontario
Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA)
1 Stone Road
Guelph, Ontario N1G 4Y2

Dear Ms. Cameron,

RE: Proposed changes to Ontario's Financial Protection Programs, Phase 2

Beef Farmers of Ontario (BFO) appreciates the opportunity to provide feedback on the proposed changes to the Beef Cattle Financial Protection Program (BCFPP). BFO represents the 19,000 beef farmers across Ontario by advocating in the areas of policy planning, industry development, and research, environment, animal health and welfare, and domestic and export market development.

For over 35 years, the BCFPP has compensated sellers when a dealer defaults on one or more payments. BFO is largely supportive of the BCFPP and the risk management options it provides Ontario's beef producers. However, the BCFPP can be extremely difficult for end-users to navigate due to the lack of transparency and consistency. Sellers continue to share concerns about the current dealer licensing process and the requirements to have a dealer's license revoked.

As the BCFPP has remained largely unchanged despite the evolving agri-food industry, BFO supports the Ontario government's commitment to review the program and enhance the business risk management tools available to beef producers.

The priority concerns and themes outlined by the industry during discussions with OMAFRA and the Financial Protection Boards are shared by the BFO board members. BFO agrees the processes for dealer licensing, responsibility, and compliance need to be more transparent; the long-term viability of the program could be improved with the innovative use of security deposits, and Agricorp should be retained as the agent administering the dealer licensing.

To improve client experience and program transparency, BFO recommends OMAFRA make the following amendments to the program review short-term action items:

- BCFPP should be accessible and user-friendly for all dealers and sellers. Information provided to the sellers should include the licensing, claims, and appeal processes in plain text language. As part of improving user accessibility, BFO supports the creation of an electronic submission option for claims and application forms.
- To ensure clarity in any dealer-seller transaction, BFO recommends that dealers be required to display their valid license in plain sight within the business premises, as well as provide their



licensing number on invoices and sale-related documents. This would align Ontario with requirements in Manitoba and Saskatchewan outlined in the Manitoba Livestock Dealers Program and the Saskatchewan Livestock Dealer Regulations.

- BFO recommends a requirement be established for all dealers (packing plant operators, abattoir operators, auction market operators, and country dealers) to acquire a license prior to carrying out any cattle sale-related business in Ontario. Examples of exceptions to this requirement include a dealer who maintains the livestock for greater than 30 days or an auctioneer who is vending assets as part of a farm liquidation. Such exemptions incorporate producer-to-producer sales. This requirement would align Ontario with rules established in both Saskatchewan and Alberta under the Saskatchewan Livestock Dealer Regulations and Alberta's Livestock Identification and Commerce Act, respectively.
- BFO recommends that additional licensing requirements be explored to prevent dealers with a history of payment default and bad business dealings from obtaining a license.
- BFO recommends that individuals operating under another license holder's name be vetted and approved before said individuals would be permitted to purchase cattle under the name of the license holder.
- On licensing transparency, BFO recommends full disclosure of the names of all new/current license holders, as well as details surrounding licenses that have been revoked and claims that have been made to sellers as a result of dealer default. Individuals operating under a license holder's license should also be disclosed.
- BFO does not recommend that each incident of late payment be disclosed, but rather that disclosure be made regarding the details of incidents where actual default (non-payment) occurred, and a claim made back to the seller.
- BFO recommends that all active dealers' license history be made public.

BFO has drafted the following comments with regard to OMAFRA's suggested long-term action items:

Streamlining the Legislative and Regulatory Framework

Proposed change: Consolidating all legislation governing the programs, currently spread across three separate Acts, into a single Act.

- BFO supports the amalgamation of the three Acts (LLPA, Grains Act, and Farm Products Act) into one Act. Housing the three Acts in one document will modernize the legislation and improve accessibility for users. However, BFO requests regulations and guidelines for the livestock and grains sectors to remain under separate subsections for ease in navigation and improved clarity.

Improving Licensing and Security Requirements

Proposed change: Clarifying the use of consequential information such as late payments at renewal, clearly defining the roles and responsibilities of the Financial Responsibility Review Committee, and reviewing the financial reporting requirements and ratios being used to determine financial viability to ensure that they continue to be adequate and proportionate to risks.

- The current lack of transparency within the licensing process remains a shortcoming of the current program. BFO supports the implementation of updated processes and easy-to-



understand tools that clearly outline licensing requirements, better define the roles and responsibilities of the Financial Responsibility Review Committee, and improve the transparency of financial reporting requirements and ratios used to determine financial viability to ensure that they continue to be adequate and proportionate to risks.

Proposed change: Clarifying acceptable security deposit requirements with the intent of providing more options around acceptable security and ensure consistency around how security is provided. The ministry is also exploring expanding how the security deposited is to be used (e.g., allowing the Boards to use the security to offset all costs incurred to adjudicate a claim and not just claim amount paid) and introducing requirements around how the security is to be invested, including how the interest is to be used.

- BFO supports the continued flexibility of acceptable security options that gives license applicants a variety of ways to demonstrate and post-security.
- BFO encourages OMAFRA to clearly define how much security is collected, how the security is invested, and how the security's interest can be used.
- BFO strongly supports the Board's ability to collect on all administrative and legal costs associated with the adjudication of a claim. Currently, the Board does not have the ability to collect administrative and legal costs from a dealer that has defaulted on payment. In BFO's view, these costs can and should be rightly paid by the dealer in question. Specifically:
 - a. BFO supports the Board's ability to collect on all administrative and legal costs associated with the adjudication of a claim from dealers deemed to be viable.
 - b. BFO supports the Board's ability to collect on all administrative and legal costs associated with the adjudication of a claim directly from the posted security from non-viable dealers.
 - c. Further, BFO strongly recommends that OMAFRA continue to provide the Livestock Financial Protection Board with access to OMAFRA's legal services team, including all associated costs of such access.

License Clarity

Proposed change: Make it clear that the OMAFRA Director can use the past conduct of an applicant to refuse to issue or renew a license.

- BFO supports this and encourages the Director to use all relevant information at his/her disposal to determine whether to refuse to issue or renew a license to an applicant.

Proposed change: Allow the Director to be able to refuse to grant a license if the person applying, or a person associated with the person applying, has been the cause of claims to be paid from the funds (i.e., unless arrangements have been made for reimbursement).

- BFO supports the decision to allow the Director the power to refuse or grant licenses

Proposed change: Allow the Director to create a registry to allow for specific dealer information to be made available to the public. Information on the registry could include: (1) if a dealer has lost their license, (2) if a license was suspended, or (3) if a dealer is operating under any conditions of if convicted of any offenses



- BFO supports the development of a registry that would allow the public to access information regarding a license holder's license history as per our recommendations outlined on page 2 of this document.

Proposed change: Give the Minister the power to require dealers and elevator operators to display (physically in their operation or on their website)/provide their license if requested

- BFO supports granting the Minister (or their OMAFRA designate) the power to request dealers to display any relevant information regarding their license as per our recommendations outlined on page 2 of this document.

Proposed change: Prohibit the use of a license by third parties unless previously approved by Director

- BFO recommends that individuals operating under another license holder's name be listed as an approved third party before said individuals would be permitted to purchase cattle under the name of the license holder.

Proposed change: Make it clear that written agreements are required to sell or store agricultural products

- BFO supports the requirement for written agreements as a condition of program eligibility. BFO recommends that handwritten agreements be viewed as an accepted form of a written agreement.

Proposed change: Make conditions to deem a license consistent and allow the Minister to prescribe other conditions if desired.

- BFO encourages consistency across all licenses and is in support of additional conditions if they:
 - a. are of benefit to the program, and
 - b. do not add financial or additional administrative burden on the licensee

Improving Inspection and Enforcement

Proposed change: Ensure that the necessary tools and powers are in place to respond to complaints in a measured way that is proportional to the risks; including removing the penalty for not reporting late payments by producers; reviewing communication material to better clarify the difference between inspections and investigations; review the regulatory powers with respect to inspections to ensure that they align with current best practices; exploring the use of administrative monetary penalties and order to pay to encourage compliance.

The reporting of late payments is a central function of the cattle program and should be maintained as it allows the adjudication board and the licensing authority to better assess a dealer's history. While the reporting of late payments is a central function of the cattle program, a better system of enforcement and compliance would incorporate enforcement agents to support compliance efforts, similar to what is done under the current grains program. In BFO's view, enforcement agents would support a more robust program to provide greater oversight of licensed dealers, which in turn would better support and protect sellers of cattle.

- BFO supports the elimination of the producer penalty for failure to report late payments.



- BFO supports the continued requirement of sellers to report late payment within the timeframes outlined under the program. OMAFRA and industry must continue to promote the need for sellers to promptly report incidents of late payment.
- BFO recommends that OMAFRA conduct an investigation into the feasibility and cost of creating livestock financial protection enforcement agents, similar to those used in the grains program, to support compliance efforts.
- BFO recommends that OMAFRA extend the proposed 15-day appeal request timeline to 30 calendar days. This would align with the existing window under the program to report a claim. Many other provincial programs also provide more reasonable appeal windows. For example, the Ontario Wildlife Damage Compensation Program allows appeal claims to be made up to 20 business days after the initial decision. With the increased enforcement measures and noncompliance penalties that are being considered by the province, BFO believes a longer appeal window is warranted.
- BFO supports the recommendation to have appeals reviewed by the Agriculture, Food, and Rural Affairs Tribunal. However, BFO is concerned that the current makeup of Tribunal members may not provide enough access to the program or sector-specific knowledge and expertise to appropriately adjudicate appeals. In light of this, BFO recommends that a sub-committee be formed with subject-matter experts to hear appeals under the program. A similar approach is currently used under the Business Risk Management Review Committee, where a sub-committee of subject-matter experts is used specifically to adjudicate appeals under the Ontario Wildlife Damage Compensation Program. BFO would happily provide recommendations for the Minister to consider to fill vacant Tribunal seats so that an appropriate sub-committee could be formed. A pool of candidates to consider would be current or former members of the Financial Protection Program Board of Directors or the Livestock Financial Protection (Adjudication) Board.
- BFO supports all of the enforcement tools outlined in the proposal, including the Compliance Orders, Freeze Orders, and Administrative Monetary Penalties. However, BFO is concerned with the amount of discretion that will be provided to the Director and how that power may be used to determine the type of enforcement measure that may be used. BFO would hope that an education-first approach, through the use of non-formal means of enforcement and compliance orders, would be used as the primary enforcement tools before freeze orders or AMPs are considered.

Supporting Effective Fund Management and Claim Adjudication

Proposed change: Maintain the producer compensation funds but consider consolidating the four-grain funds into one; limit coverage to only those that contribute to the fund (i.e., out of province sellers not eligible); and provide the Boards with the authority to prorate claims if there is not enough money in the funds to pay all claims.

BFO believes that sellers eligible for a claim under the program should receive full compensation. While extraordinary circumstances may warrant consideration of payment proration to protect the long-term health of the fund, a seller's loss should be prioritized for compensation. As such, BFO recommends the following:

- BFO agrees that only those contributing to the fund should be eligible to access the program.



- BFO does not support granting the Boards with discretion to prorate payments. Eligible claims should be paid out in full. In instances where fund claims would deplete the fund's balance, the government backstop would ensure claim amounts are paid to sellers in full.
- BFO requests that the province reaffirms its commitment to backstop the fund if payments were to exceed the fund's balance.

Updated Appeals Process

- BFO supports the proposed requirement for licensees to make a formal request for a hearing.
- BFO supports the proposed transition of the Tribunal from a hearing board to a review board, where the Tribunal would only review appeals of Director decisions. BFO would like to reiterate our recommendation outlined on page 3 of this document for the establishment of a Tribunal sub-committee filled with subject-matter experts knowledgeable in the program and livestock sector.
- BFO supports making fines consistent for all parties within the same sector.
- BFO fully supports removing the provincial offense for the non-reporting of late payments from the Livestock and Livestock Protection Act.

Enhancing Program Delivery Efficiencies

Proposed change: Retain Agricorp as the delivery agent for the licensing component while exploring alternatives to the Boards being a provincial agency. The ministry will work with industry to explore the range of models to make current administration more efficient, and this will include looking at models like a Delegated Administrative Authority and/or working within the current construct to make the agencies more cost-effective (e.g., a single agency with one set of reporting requirements, with the specific members appointed the specific sectors).

- BFO supports the retention of Agricorp to maintain responsibility for dealer licensing. With that said, the delivery agent must be held accountable to all parties that pay into the fund, including the full disclosure of licensing decisions and changes to a license holder's status and disclosure of a dealer's license history.
- BFO supports maintaining the Livestock Financial Protection Board as an industry-led agency of the Crown responsible for program adjudication and financial oversight of the fund.

Updating of Board Power

BFO supports updating the governance powers to reflect best practices, which include:

- giving the Boards natural person powers
- setting out the size of the Board
- allowing members at a meeting to appoint Chair and Vice-Chair (if both are absent)
- and allowing the Boards to delegate non-adjudicative decision-making powers to a Committee of the Board

BFO is not in support of the following administrative changes that would allow boards:

- to manage more than one fund



- to make loans between funds
- boards and funds to be merged

BFO supports giving the Boards new powers to carry out existing functions and reduce cost, including allowing:

- all Boards to obtain loans and loan guarantees from the province
- the Board Chair to assign panels to hear claims as opposed to the entire Board.
- Board to refuse to pay a claim if a producer did not pay into the fund.
- BFO supports the board being able to create a process to “weed out” frivolous or vexatious claims or claims made in bad faith and claims where producer/owner fails to cooperate.
- BFO supports the ability to issue a cost order to adjudicate a claim/an order to pay against any dealer or whose claim they have paid.
- BFO recommends that the 30-day payment deadline be extended to a minimum of 90 days.
- BFO supports the deposit of proceeds from either the “Costs Order” or the “Order to Pay” into the corresponding fund

BFO supports all methods outline in proposed changes if there is a non-payment; those include:

- the Orders may be filed/enforced as an Order of the Court;
- the Board may direct the Director to take payment from security and require a “top-up,” suspend a license; or refuse to renew a license and
- the Board may disclose to a consumer reporting agency.
- With respect to the ability to issue a lien against a property, BFO recommends the window of time be extended to align with the repayment deadline recommended above (at least 90 days).

BFO would like to thank OMAFRA for the opportunity to provide feedback on the proposed changes to the BCFPP. We look forward to the modernization of the BCFPP, as well as the benefits offered to beef producers in the process. We would be pleased to answer any questions about our comments, and we look forward to participating in future conversations with regard to the BCFPP.

Sincerely,



Rob Lipsett, President

