



April 29, 2024

Tamara Fernandes  
Director, Farm Finance Branch  
Ontario Ministry of Agriculture, Food and Rural Affairs  
2nd Flr SE, 1 Stone Rd W  
Guelph, ON N1G 4Y2

Sent via email: [Tamara.Fernandes@ontario.ca](mailto:Tamara.Fernandes@ontario.ca)

Dear Ms. Fernandes,

Re: *Protecting Farmers from Non-Payment Act, 2023, Regulatory Consultations*

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On behalf of the Beef Farmers of Ontario (BFO), Ontario Cattle Feeders' Association (OCFA), Ontario Livestock Dealers Association (OLDA), and the Ontario Livestock Auction Markets Association (OLAMA) we write to you in response to regulatory posting #24-OMAFRA002, *Protecting Farmers from Non-Payment Act, 2023*.

While we believe the *Beef Cattle Financial Protection Program* is generally working well and is supported by the sector, we are supportive of changes that would help modernize and strengthen the program to ensure it works effectively for all users.

**Public Feedback Request #1 – Content of Agreement to Purchase or Sell**

- We remain supportive of the information proposed to qualify as an agreement to purchase or sell, including the inclusion of the dealer's licence number and the check-off fee being paid.

**Public Feedback Request #2 – Dealer Licence Fee**

- We are supportive of the proposal to increase the dealer licence fee to \$150/year and to introduce a \$50/year fee for livestock agents working under licenced dealers.
- We are supportive of making licence fee rates subject to ministerial approval.
- We are not supportive of tying licence fees to inflation or any other schedule. Decisions regarding future licence fee increases should be done with consultation and support from industry stakeholders.

**Public Feedback Request #3 – General Terms and Conditions Licences**

- We are supportive of the proposal to require 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.
- We have no further recommendations regarding additional conditions dealers should be subject to.



#### **Public Feedback Request #4 – Proof of Financial Responsibility**

- We are supportive of maintaining the existing financial ratios, and believe adding additional details within the regulations to support existing processes will improve the transparency of the program.
- We would like the Ministry to develop a reasonable service standard for licence application processing timelines (e.g. 30 days for new applicants, 15 days for renewals). Our respective organizations have received complaints about processing delays of 60-90 days in some instances, even for renewals from well-established operators.
- We would also like OMAFRA to confirm that licence holders with renewal applications proceeding through the review phase are still deemed to be licenced. If the licence has expired during the application review the licence should still be deemed active and in good standing provided no other licence conditions have been applied.
- Past behaviour should be factored into the licencing decision, including any history of NSF cheques, late payments, repeated failure to demonstrate the financial protection program levy has been paid, etc.
- Finally, the OMAFRA Director's office, Regulatory Compliance Unit, and Agricorp's investigations team should be equipped to confidentially and proactively share information between one another regarding licence holders and applicants, past enforcement actions and investigations, and other intelligence to ensure all parties involved in licencing, late payment investigations, and other enforcement activities have full and complete information and history to inform decisions.

#### **Public Feedback Request #5 – Small Dealer Exemption**

- We support amending the regulation to align with the current practice of defining a small dealer as an applicant with \$5,000 or less in weekly sales.

#### **Public Feedback Request #6 – Licence Registry**

- We question the value of creating a public registry that provides additional information beyond:
  - Active licence holders, their address, postal code and phone number. The addition of an email address would also help improve the registry.
  - Any imposed conditions the licence holder is currently operating under.
  - The name of the primary individual associated with the licence in the case of a licence holder operating under a farm business name or numbered company.
  - Active and approved agents licenced under licenced dealers.
  - We are not supportive of including information proposed under bullet points e) or f).
- We request that all stakeholder groups represented on the Board be notified immediately of any change to the dealer licencing list/registry. Presently, not all stakeholders are included in these communications.
- Individuals in arrears with the fund should not be able to be licenced as an agent under another licenced dealer.



#### **Public Feedback Request #7 – Board Membership**

- We support the expansion of sector/association board membership to include one representative from each of BFO, OLAMA, VFO, OLDA, DFO, MPO, and OCFA.
- While we agree that appointees to the Board should be active within the industry, we recommend leaving those decisions to each stakeholder organization to determine the best individual(s) to put forward for appointment consideration. A stakeholder group may decide that a staff person, retired member, or other individual who does not fit within the proposed definition of “active” may be best suited to represent their interests.

#### **Public Feedback Request #8 – Out of Province Sellers**

- We support the inclusion of provisions dictating out of province eligibility as the current gap has led to questions regarding compensation eligibility and requirements to remit levy fees.
- We would point out that checkoff levies from out of province sellers are likely being deducted and remitted now by some collectors, potentially in error.
- Regardless of residency, no producer or dealer who has not paid a levy fee, or had a levy fee deducted from the proceeds of a sale, or is not licenced in Ontario, should be eligible for compensation under the program.

#### **Public Feedback Request #9 – Inspectors from Other Acts**

- For the purposes of an audit, inspectors appointed under similar Acts, such as the *Beef Cattle Marketing Act* (BCMA), the *Farm Products Agencies Act*, the *Ontario Farm Products Marketing Act* that were provided powers to conduct inspections under the *Protecting Farmers from Non-Payment Act* could present some value. However, at this time we are not prepared to endorse a recommendation but would suggest that the regulations should not prevent these types of appointments from occurring in the future provided there is industry support.
- We further believe that if inspection appointment powers were granted, that inspection authorities should be separated between the grains and livestock sectors. As in, a grain inspector is not a livestock inspector, and vice-versa.

#### **Public Feedback Request #10 – Payment Timelines and Definitions**

- Industry at large has been working under the assumption that all sales, regardless of who the buyer is, require payment to be made within 6 or 9 business days depending on the value of the sale.
- Regulation 560/93, which gives 15 days for payment for co-operatives and producers who purchase cattle from dealers, creates a discrepancy that is difficult to justify.
- As such, we do not agree that producers buying from licenced dealers should be granted additional time to pay, in this case 15 business days, and should instead be treated the same as any other sale with a standardized payment deadline of either 6 or 9 business days.



#### **Public Feedback Request #11 – Timelines to Apply to Fund**

- We support the standardization of payment timelines, (6 or 9 business days) as well as the timeline to apply to the Board (30 days).
- The regulations should clearly state whether timelines are in business or calendar days. The payment timelines are clearly understood as business days. However, the timeline to apply to the Board is not clear whether that is in reference to 30 calendar days, or 30 business days.

#### **Public Feedback Request #12 – Payment out of the Fund**

- While we support the proposal to increase the percentage of value on payments for dealer to producer and dealer to co-operative sales from 85 per cent to 95 per cent, the proposed cap of \$195,000 is still insufficient given market price trends.
- We do question the discussion paper statistic that references a 55% increase in cattle prices since 2011, which is used to support the new price cap. Ontario market price data (BFO/Canfax) shows that for all stocker weight categories, 2024 prices have increased between 155% and 166% since 2011 for steers, and between 108% and 143% for heifers. When broken down to a per truck basis, average values of a full truckload of cattle using current market prices can range anywhere between \$140,000 to \$250,000 depending on the class and weight of cattle being transported.
- We reiterate our initial recommendation to increase the cap to \$500,000.
- In response to the argument that these types of transactions are inherently riskier given producers are not licenced and as such do not go through the licencing process, we would point out that:
  - 1) Producer to producer sales are not eligible under the program. If this is a question about risk then private treaty sales should be provided the same coverage and risk protection as dealer to producer sales.
  - 2) Sales to co-operatives are inherently less risky, not more so, given the shared risk model that breeder and feeder co-ops employ. For feeder co-ops the risk is even lower given financing is backed by a government guarantee.

#### **Public Feedback Request #13 – Exemption from Extension to Pay**

- We strongly oppose the proposal to provide the veal sector with an exemption on the extension of the time to pay (extension of credit) in order to address their concerns regarding veal weight breaks and those that ship cattle more than once a week. Notwithstanding our view that granting such an exemption would increase risk to the fund, promote moral hazard and potentially collusion amongst actors, and erode the integrity of the program, we also believe strongly that the same arguments supporting this request for veal producers would apply to many commercial beef feedlot operations.
- Given the language in the discussion paper we feel it is worth clarifying that an extension of credit does not typically occur until the first load is deemed to be in default. Meaning, high flow operations that ship multiple times a week would not be deemed to have extended credit, and risk having a claim refused by the Board (in most cases), until the 6<sup>th</sup> or 9<sup>th</sup> business day following the date of the sale.



- Regarding extension of credit generally, we wish to once again raise the point that a seller should not be penalized or considered to have extended credit warranting a claim refusal if partial payment is received for the sale. Often this occurs without any written or verbal agreement. In any respect, accepting partial payment should not be construed as making an arrangement for extension of time to pay, on its own. The Ministry should look at the existing regulations, specifically Section 18(1)4 of Regulation 560/93, and determine whether this language needs to be amended to ensure the above scenario does not automatically disqualify a seller from receiving a claim from the fund.

#### **Public Feedback Request #14– Cost Orders and Order to Pay**

- We support the prescribed conditions, in addition to those set out in the Act, to set the date the payment is due, and when interest would begin to be incurred with respect to a Cost Order or an Order to Pay. We believe the Board should have the ability to recover costs.

#### **Public Feedback Request #15– Compliance Orders**

- We have no additional feedback to provide with respect to compliance orders, and are generally supportive.

#### **Public Feedback Request #16– Administrative Monetary Penalties (AMPs)**

- While we are supportive of utilizing AMPs to penalize the most egregious and serious contraventions, we do maintain concerns about AMP misuse and overuse. We also question fine amounts being levied on a per day basis, as opposed to on an infraction basis.
- We are supportive of applying AMPs to individuals acting as a dealer without a licence. This represents a positive improvement from the current system that we hope will help curb and dissuade unlicensed dealer activity.
- A retention period of two years for each individual contravention seems appropriate in our view.
- Overall, we expect OMAFRA to continue to utilize a progressive compliance and education-first approach for less serious contraventions and reserve AMPs for repeat non-compliance offenders and egregious contraventions.

#### **Public Feedback Request #17– Aggravating Factors**

- We have no additional feedback to provide with respect to aggravating factors, and are generally supportive.

#### **Public Feedback Request #18– Methods of Serving Documents**

- We do not support the approach being considered in relation to the methods of serving documents. Similar to existing Board guidance in Sections 14 and 15 of Regulation 560/93, courier and registered mail should be the preferred methods of serving documents. We would also accept personal service. Regular mail, email and fax should not be considered as acceptable forms of serving documents with respect to this program.



Thank you for the opportunity to comment on regulatory posting #24-OMAFRA002, *Protecting Farmers from Non-Payment Act, 2023*. We would be pleased to meet with you and your team to discuss our comments in further detail should that be of interest.

Sincerely,

Beef Farmers of Ontario  
Ontario Cattle Feeders' Association  
Ontario Livestock Dealers Association  
Ontario Livestock Auction Markets Association