Modernizing Producer Protection in Ontario - Grain Financial Protection Program

Operationalizing the *Protecting Farmers from Non-Payment Act*

February 2024

Contents

1. PURPOSE OF DISCUSSION PAPER

The purpose of this Discussion Paper is to receive feedback on proposed regulatory changes to support the implementation of the *Protecting Farmers from Non-Payment Act, 2023*, which was introduced and passed in the Legislature in Spring 2023 [the "Act"] in relation to the Grain Financial Protection Program [the "Program"].

- The new Act is the result of extensive consultation and cooperation between industry and government. It marks the first significant changes to the financial protection legislation in nearly 40 years. The new Act consolidates the three Acts governing the Financial Protection Programs (*Farm Products Payments Act*, *Grains Act* and *Livestock and Livestock Products Act*) under one Act.
- The new Act continues to mitigate the financial risk of non-payment with relevant and modern programs that are flexible and responsive to sector needs. The Act also updates board governance, improves and clarifies the rules and requirements to obtain and renew licences, expands the suite of progressive compliance tools to encourage compliance, makes it easier to expand the programs to other sectors, and updates the appeals provisions.

The current Program is working well and is well supported by the Grain Industry. As such, the Ministry of Agriculture, Food and Rural Affairs [the "Ministry"] plans on retaining the key components of the Program and implement the proposed regulatory changes identified in this Discussion Paper, or changes required to operationalize changes made to the Act based on feedback from stakeholders. Some changes being consulted on are consistent with status quo but are currently set out as a policy as opposed to set out in regulation. For increased transparency and clarity the Ministry is proposing to move these changes to regulation and as such the Ministry is consulting on these provisions as part of the regulation-making process.

Consultation on regulatory amendments is being done in two phases. Phase one included pre-consultation sessions with representatives of stakeholder groups. In the summer 2023, the Ministry shared a preliminary discussion paper that outlined the proposed regulatory amendments with representatives of key stakeholder groups for feedback. This was followed by meetings with stakeholders in the fall of 2023. This Discussion Paper has been updated based on the initial feedback received.

Posting on the Regulatory Registry for feedback is the second phase of this process. In the next phase, the Ministry is engaging more broadly but will continue to work with stakeholder groups to ensure that the Program continues to meet industry needs.

The Ministry is committed to receiving input from agricultural stakeholders, industry representatives, Indigenous communities as well as the general public so that regulations made by the Minister of Agriculture, Food and Rural Affairs [the "Minister"] are fair, reasonable, and strike a balance between reducing regulatory burden and achieving Program objectives while maintaining proper administration of the Program. Input provided will help shape the final content of the Minister's Regulation.

2. OVERVIEW OF THE CURRENT GRAIN FINANCIAL PROTECTION PROGRAM

The Program currently operates under the *Grains Act*, R.S.O. 1990, c. G. 10 [the "GA"] and the *Farm Products Payments Act*, R.S.O. 1990, c. F. 10 [the "FPPA"] as well as the regulations thereunder. The Program consists of two parts. They are: (1) licensing of dealers and elevator operators and inspection; and (2) Fund management. Appendix 1 of this Discussion Paper provides an overview of the legislative provisions and the key changes that would come into force if the Act were proclaimed into force and effect by the Lieutenant Governor in Council [the "LGIC"].

3. PROPOSED REGULATORY AMENDMENTS

The following sections set out proposed changes the Ministry would like to make to the regulatory framework governing the Program. Specifically, the Ministry is proposing to revoke and consolidate the four existing regulations governing the Program[1] and create a single new Minister's Regulation. The new Minister's Regulation is not intended to be significantly different from the existing regulations. Specifically, the new Minister's Regulation will continue to set out: (1) the requirements for dealer and elevator operator licensing; (2) fees payables to the Grain Financial Protection Board [the "Board"]; (3) how payments are paid from the Funds; and (4) Board payment of expenses.

Proposed changes are needed to operationalize the new Act or were identified as part of the previous consultation on the legislative changes. The regulatory changes being proposed should not require significant changes to current practices for producers, dealers or operators. Additionally, the proposed changes would be straight forward to implement and, therefore, are not expected to result in any significant administrative costs.

3.1 Administration:

The Act provides the Minister with the authority to designate, by regulation: (a) agricultural products to which different parts of the Act applies; and (b) a delegated authority (Crown Agency or a not-for-profit corporation that is not a Crown Agency) to administer one or more parts of the Act.

a) **The Ministry is proposing to designate grain as an agricultural product with respect to Part IV (Dealers); Part V (Storage Operators); and Part VII (Funds and Boards) of the Act.** This is consistent with the status quo. The new Minister's Regulation would also continue to exempt dealers from requiring a licence to purchase or accept for sale any grain other than corn, canola, soybeans or wheat.

b) **The Ministry is also proposing to designate Agricorp, a Crown Agency, as the delegated authority responsible for administering the licensing component of the Program.** This is consistent with the status quo. If there is a desire, the Ministry would continue to work with industry to explore alternative delivery models in the future, including the option of an industry-delivered model.

The Board would be continued as would the Funds. The Board would remain responsible for managing the four Funds (grain corn, soybeans, wheat and canola) and adjudicating any claims made to the Funds. Members appointed to the Board are representatives from the grain industry and would continue to be appointed by the Minister.

3.2 Dealer and Elevator Operator Licence:

Licencing would be continued under the new legislative framework if the Act is proclaimed into effect (i.e. grain dealers and elevator operators would continue to require a licence issued by the Director (formerly referred to as Chief Inspector). Upon proclamation, the Minister would have the authority to make changes to the process via a Minister's Regulation.

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[1] They are:

- Ontario Regulation 260/97 – General, made under the *GA*; and
- Ontario Regulation 321/11 – Fees Payable To Board; Ontario Regulation 70/12 – Payment From Funds For Grain Producers; and Ontario Regulation 467/19 – Board Payment Of Expenses, all of which are made under the *FPPA*

The following are changes proposed to the existing licencing regime.

3.2.1 Application for Elevator Operator Licence:

Section 3 (1.1) of the GA requires any person that wishes to receive grain for storage to hold a licence as a grain elevator operator. Section 5(1) of the GA requires a person to apply to the Chief Inspector and pay the licence fee. Section 20 (1) of the GA requires every grain elevator operator to have insurance. These requirements would be continued under the new Act.

Section 2.(1) of O. Reg. 260/97 requires an application for a licence to be made on a form approved by the Chief Inspector. Currently if applying for a licence for the first time, the Chief Inspector requires Elevator Operators to submit the following information:

- Application for a licence as a grain elevator operator;
- Banker's confirmation;
- Agricorp's Certificate of insurance coverage;
- Licence fee payable;
- Business registration form or articles of incorporation; and
- Financial statements for the past three years, prepared by a third party.

As part of the Program review, the Ministry conducted a review of the requirement for elevator operators to provide proof of financial responsibility or security. Based on the review, the Ministry took the position that:

- This practice is not necessary as elevator operators do not own the grain and are required to have insurance against loss or damage by fire, lightning, explosion, windstorm and hail to the full market value of the grain; and
- Any risks associated with ceasing the practice were mitigated by other provisions in the legislation or through the awarding of damages via the Courts.
    - Owners storing with operators do not have the same non-payment risks as producers that sell to a dealer as operators do not own the grain that is stored (title remains with the owner).
    - At all times the amount of grain in an elevator must be equal to outstanding grain receipts and weigh tickets. The only exception is if the operator has a shortfall permit. To receive a shortfall permit, the operator must deposit security in the amount of the market value of the grain permitted to be in shortfall.
    - Title to grain stored remains at all times in the owner. An agreement to sell is required for the sale of grain stored and title to grain remains in the owner until the owner receives price agreed to by the owner and the operator.
- The practice adds costs and burden, without providing any significant additional protection. Given the above, the Ministry took the position that the practice is not necessary and informed the Chief Inspector. This means that elevator operators that do not hold a dealer licence will not be required to provide proof of financial responsibility or security to obtain a licence to receive grain for storage. Elevator operators would be required to apply using a form provided

Public Feedback Request #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?

by the Director and provide a proof of insurance. There are about 20 licencees who hold a grain elevator operator licence only each year. No concerns were identified during initial consultations.

3.2.2 Content of Agreement to Purchase or Sell A Designated Product and Agreement to Store A Designated Product

Under section 16 (1) of the GA, all grain delivered to a grain elevator is deemed to be for storage and such delivery and storage shall not constitute a sale unless it is established to the contrary in writing. The Act does not change this.

The GA defines an "agreement to sell" as a written agreement, made between a grain elevator operator and an owner of grain, for the sale of grain that is stored or to be stored. Section 18 (1) of the GA sets out that an agreement to sell shall be in the form prescribed by the regulations. However, O. Reg. 260/97 does not currently specify what information is required in the agreement to sell.

The Act makes it clear that written agreements are required to purchase or sell *or* store a Part IV (Dealers); Part V (Storage Operators) designated products. Grain will be designated as an agricultural product with respect to Part IV (Dealers); Part V (Storage Operators). These agreements must be in writing and satisfy any requirements prescribed by regulation.

The Ministry is proposing that any written document qualify as an agreement to sell or store if it contains the following information. No concerns were identified during initial consultations.

Content of Agreement to Sell:	Content of Agreement to Store:
1. the names of the parties to the sale; 2. the date of the sale; 3. the type of grain sold; 4. the quality of grain being sold; 5. the number of tonnes of grain being sold; 6. the purchase price for the grain being sold; and 7. the date of payments for the sale. These are mostly aligned with record keeping requirements for dealers currently set out under section 16 of O. Reg. 70/12.	1. the name and business address of the grain elevator operator; 2. the name and address of the owner of the grain; 3. the date of delivery of the grain; 4. the kind, grade and dockage of the grain; 5. the net weigh of the grain; 6. if applicable, the gross weigh or the tare weigh of the grain; 7. the moisture content of the grain; 8. the serial number of the weigh ticket; 9. whether the grain is delivered for storage, sale or any other specified use; and 10. the name and signature of the person issuing the weigh ticket These are aligned with current weigh ticket requirements. This means that a weigh ticket qualifies as an agreement to store.

Public Feedback Request #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?

3.2.3 Licence Application Renewal Deadline and Deeming of a License to Continue:

Under section 9(3) the GA, the application for the renewal of a dealer or elevator operator's licence must be made within the prescribed period or, if no period is prescribed, before the expiry date of the licence. Under section 2(3) O. Reg. 260/97 an application for renewal of an elevator operator's licence is due at least 60 days before the licence expires. Section 13(3) of O. Reg. 260/97 imposes the same 60 days renewal time on an application for a dealer's licence.

As part of AgriCorp's customer service process, to give licencees sufficient time to gather and submit any required information for licensing purposes, Agricorp mails renewal packages four months (120 days) prior to expiry.

O. Reg. 260/97 does not set out any timeline for when the Chief Inspector must complete the review and let a dealer know if any security is required. Under the GA licences that expire during the process of being renewed are moved into a deemed status, if the licencee applied for renewal before expiry, paid the fee, and observed and carried out the provisions of the Act and regulations. The GA is silent on licencee providing proof of financial responsibility or security for the licence to continue pending renewal. This is the status quo under the legislation governing the Livestock Program.

During pre-consultation sessions there were concerns about the exposure of the Funds from applicants in deemed status. The new Act gives the Minister the authority to make regulations prescribing the requirements for a licence to continue pending renewal. To reduce the risk to the Funds, the Ministry is proposing changes to the status quo to make it clear that dealers must provide proof of financial responsibility or security for their licence to continue pending renewal.

Public Feedback Request #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).

3.2.4 Fees for Dealer and Operator Licence and Shortfall Permit:

Section 5 (1.1) of the GA gives the Agency (AgriCorp) the power to establish and collect licence fees and penalties for late payments of fees. The fees are not currently set out in regulation (licence fees are publicly posted on AgriCorp's website).

Under the Act, the authority to set licence fees has been moved to the Minister. The Ministry is proposing to increase the fees paid to better reflect the costs of issuing and renewing licences. The amount of the increase is based on feedback coming out of pre-consultation sessions.

Fees	Current fees	Proposed fees
Dealer licence fee	$100	$200
Elevator Operator is storing less than five thousand (5,000) tonnes	$75	$150
Elevator Operator is storing five thousand (5,000) tonnes but less than twenty-five thousand (25,000) tonnes	$150	$300
Elevator Operator is storing more than twenty-five thousand (25,000) tonnes	$225	$450
Shortfall permit	$150	$300

The licence fees are used to offset some of the costs to deliver the Program. The majority of the remaining costs are paid from the Funds for Grain Producers. AgriCorp collects approximately $84,000 annually from these fees (the dealer licence fee was increased in 2014 from $48 to

$100; the fees paid by elevator operators have not changed since 2004). The cost to administer the licensing component of the Program is about $540,000/year (paid from the Fund for Grain Producers).

- The Canadian Grain Commission charges $316.71 for both dealer and elevator licence classes, regardless of purchase amount or storage capacity. The licence fees in some US jurisdictions are set out below:

Dealers (who do not store grain)	For elevators or dealers that store grain (note that the licence fee varies based on storage capacity, except in Illinois)
• Michigan $1,500. • Illinois is $200 ($150 in certain cases • Indiana is $1500 • Iowa is $66 to $955, depending on the purchase amount.	• Michigan: licence fees range from $585 to $1,155 (max fee applies if you store 7,270 tonnes or more) • Indiana: licence fees range from $1000 to 2,500 (max fee applies if you store 181,435 tonnes or more) • Iowa: licence fees range from $58 to $440 (max fee applies if you store 172,364 tonnes or more) • Illinois is $200 for Class I and $150 for Class II warehouses[2]

Public Feedback Requested #4

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

3.2.5 General Terms and Conditions Licences:

Section 28 (1) (b) of the GA gives AgriCorp the authority, subject to minister approval, to make regulations prescribing the terms and conditions under which a licences may be issued.

Under section 8 of the GA and section 8 of O. Reg. 260/97 every licence issued to an elevator operator is subject to the following conditions:

a. Direct its insurer to notify the Chief inspector, in writing, promptly of any, lapse, termination or other alteration in a contract of insurance required;

b. Every holder of a licence as a grain elevator operator shall forthwith report in writing to the Chief Inspector where there has been a change:
    1. in the location of the banking facilities of the licencee,
    2. in the nature or form of the ownership of the grain storage elevator in respect of which the licence has been issued,
    3. in the control of the grain elevator or of the business operations thereof, and
    4. in the persons authorized to sign a grain storage receipt or an agreement to sell.

Under section 17 of the O. Reg. 260/97 a licence to carry on business as a dealer is subject to the following conditions.

a. The licencee complies with regulatory requirements regarding when a payment is made from the Fund to a seller or storer grain as a result of a default of the licencee;

b. The licencee complies with regulations regarding the payment of fees to the Board; and the collection of fees and forwarding them to the Board.

[2] Class I public grain warehouses have the authority to issue both negotiable and non-negotiable warehouse receipts; Class II public grain warehouse are only authorized to issue non-negotiable warehouse receipts.

The Chief Inspector also requires that dealers and elevator operators display their licence on all premises. This is not a regulatory requirement.

The Act provides the Minister with the authority to impose general terms and conditions that would be imposed on all licences. The Ministry is proposing to keep the existing requirement and update them to also include the requirement for dealers and operators to display their licence on all premises to align the regulation with practice.

The Ministry is also proposing to align the requirements for dealers with operators. This means that entities that are licenced as dealers only (currently 75) would also be required 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. No concerns were identified during pre-consultation.

Public Feedback Request #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?

3.2.6 Proof of Financial Responsibility and Security Requirements:

Currently, the GA provides AgriCorp with the power to, subject to Minister approval, make regulations requiring dealers or any class of dealers to furnish security or proof of financial responsibility to the Chief Inspector and providing for the forfeiture and disposition of security that is furnished.

Section 14 of O. Reg. 260/97 requires that every dealer shall furnish to the Chief Inspector proof of financial responsibility or security. The Chief Inspector may refuse to renew, suspend or revoke a licence if, the dealer fails to furnish proof of financial responsibility or to deposit security required.

In recognition of the fact that there are alternatives to the current proof of financial responsibility and security model (e.g. Canada's security bond model – all dealers have to provide security even those deemed low risk) the Act does not require a dealer to show proof of financial responsibility for a licence to be issued/renewed. Instead, it gives the Minister the authority to make regulations governing the requirements that must be met to obtain or renew a licence, including requirements related to, financial responsibility and security for licenced dealers.

During the pre-consultation sessions stakeholders were not supportive of significant changes to the process that determines financial responsibility. Reasons include: the loss of historical trending information, a transition period that creates uncertainty and no burden reduction or significant cost saving for Program delivery or the dealers.

The current process to determine financial responsibility and security requirements is set out below. The Ministry is proposing to maintain the status quo but make regulatory changes to align the regulation with the status quo. Proposed regulatory changes are intended to add clarity and transparency but will not result in changes to the overall process as set out below.

Proof of Financial Responsibility Requirements for Dealers:

The current process for determining whether a dealer is financially responsible includes the use of seven financial ratios and a qualitative assessment to assign a financial score.

Quantitative Assessment:

The following seven financial ratios are used to calculate the financial score.

Ratio	Formula/Description	Point allocation
1. Current Ratio	current assets ÷ current liabilities (Indicates a business's ability to meet short-term obligations, such as claims by creditors and current operating expenses. A high current ratio is desirable	Zero to a maximum of 23 points depending on ratio (0.5 and below "0" points and 1.82 and above 23 points)
2. Debt to Equity Ratio	total debt ÷ total equity (Indicates the amount of financial leverage a business uses). Businesses with low debt to equity ratios are not as vulnerable when the economy is slow.	Zero (ratio of 4 and above) to a maximum of 25 points (ratio of 0 to 0.16).
3. Interest Coverage Ratio	(net income + income tax expense + interest expense + depreciation ÷ amortization) ÷ interest expense (Indicates a business's ability to service debt). A high interest coverage ratio is desirable.	Zero (ratio of 0.5 and below) to a maximum of 10 points (ratio of 2.975 and above)
4. Average Collection Period Ratio	accounts receivable ÷ average daily sales (Indicates how rapidly a business collects money owed to it). A smaller average collection period ratio is desirable.	Zero (ratio of 60 and above) to a maximum of 2 points (ratio of 30 and below)
5. Stability Ratio	sales ÷ equity (Indicates the volume of sales related to equity). A smaller stability ratio is desirable	Zero (ratio of 30 and above) to a maximum of 15 points (ratio 0 to 2)
6. Profit Margin on Sales Ratio	(net income + income tax expense) ÷ sales (Indicates the portion of each sales dollar remaining after all expenses have been deducted). A higher profit margin on sales ratio is desirable	Zero (ratio of 0.0001 and below) to a maximum of 20 points (0.0306 and above) depending on ratio
7. Line of Credit Ratio	maximum drawn credit ÷ total authorized credit (Indicates the extent to which a business has used its line of credit. A smaller line of credit ratio is desirable.	Zero (ratio of 1 and above) to a maximum of 5 points (ratio of 0 to 0.40)

If the financial score calculated is less than 50, the licencee will need to provide additional information to support the application. If the score is between 50 and 60, the licencee still may consider providing additional information to strengthen the score.[3]

For Reference:

- ***In Iowa****,* grain dealers must maintain a minimum Current Ratio of 1:1. To issue credit-sale contracts, grain dealers must have a minimum net worth equal to fifty cents per bushel of grain carried on their credit-sale contract. Also, a Debt/Asset Ratio of 0.75 is needed to purchase grain by credit sale contract with no restrictions. The department will suspend the authorization to issue credit-sale contracts if the current ratio is less than 1:1 or if the net

[3] Additional information dealers may submit include financial commentary, subsequent event explanation, banking arrangement information, financial projections, appraisals, financial security (e.g. letter of credit or bond). Under the Livestock Program when an applicant scores 50 points or better, the applicant has met the financial responsibility test and the Director does not require security.

worth is less than $75,000. The Department may suspend the authorization to issue credit-sale contracts if the grain dealer's debt to asset ratio exceeds 0.75:1. For example, if the dealer's Debt to Asset Ratio is greater than 0.75 but less than 0.85 monthly reporting is required, and if the dealer's Debt to Asset Ration is over 0.85, the dealer must cease purchasing by credit sale contract or post a bond or a letter of credit dollar for dollar, demonstrating positive working capital. If a review type financial statement is submitted, the licencee must also post $100,000 bond or a letter of credit to purchase grain by credit sale contract. The Department also estimates a "Probability of Failure" for each licencee. If this number is over 45 the Bureau will include that licenced entity on an accelerated examination schedule.

- ***In Michigan***, if a dealer's Current Ratio is less than 1:1, the dealer is required to provide a compliance plan to the Department either verbally or in writing. This is the only ratio required by law. A trend analysis is a key part of this process as some companies based on operation will not meet the 1:1 Current Ratio. As such, Michigan also accepts a business' Debt to Equity Ratio, earnings and allowable net assets into account. Dealers must have allowable net assets: (1) of $100,000 or more, if they handled 1 million or fewer bushels of farm produce in their most recent fiscal; and (2) equal or more than the product of $0.10 multiplied by the number of bushels of farm produce handled in most recently completed fiscal year, if they handled more than 1 million bushels of farm produce in their most recent fiscal. If the dealer fails to meet any of the allowable net asset requirements, the dealer is required to provide a deficiency bond or other security approved by the Department equal to the amount by which the grain dealer's allowable net assets failed to meet the allowable net asset requirement. For example, a dealer that handles 5 million bushels would need to provide a reviewed or audited financial statement showing at least $500k in allowable net assets (equity less bad receivables and intangibles identified by the Department). Typically, dealers are audited at least once over an 18-month period. Dealers deemed to be higher risks are audited more frequently and may be subject to a working capital audit.
- **In Illinois**, each grain dealer must operate under the speculation limits determined by the Department. The limit is based on the business' net worth. The licencee must maintain certain current assets (such as cash, grain receivables, etc.) in an amount equal to at least 90% of the total value of the outstanding price later contract liability. If applying for a Class II warehouse or Incidental grain dealer licence, a financial statement completed by an independent accountant is acceptable, provided it shows: (1) the adjusted Current Ratio is at least 1:1; (2) the adjusted debt to adjusted equity ratio must not be more than 3:1; and (3) a net worth of $100,000.
- **Canada,** the Canada Grain Commission (CGC) reviews financial statements for each licencee and establishes a financial risk score for each licencee. An applicant (new or existing) is not required to have a specific score or ratio at a specific level. Instead all applicants must post security at the level the CGC deems necessary. For first time applicants, the CGC uses a security formula to establish the security required, while for existing licencees, the CGC monitors their liability reports (outstanding liabilities to grain producers) to see if a security increase is required (when liabilities exceed security). An Audit team also audits licencees to determine reporting accuracy and compliance with the Act and regulations. The financial risk score information is used to determine the frequency of audits and potentially requests for more information.

Qualitative Assessment:

Once the financial score is calculated, a qualitative analysis of other non-quantifiable aspects of the business is conducted to help assess whether the financial score accurately reflects the financial responsibility of the business. A Financial Responsibility Review Committee [“FRRC”], made up of an AgriCorp employee and external financial experts, conducts the qualitative analysis, reviews it against the quantitative score and makes a recommendation to the Chief Inspector about financial responsibility and any licensing terms and conditions.

Factors that may be considered in the qualitative analysis are management expertise and experience, level of risk, quality of financial statement information, age of financial statements, contingent liabilities, trend analysis and the Banker’s Confirmation. If the application fails to prove that the business is financially responsible, the business may choose to pursue other options to prove that the business is financially responsible, including corporate indemnification, personal guarantees, shareholder loan postponement and meeting to discuss financial assessment.

Security Requirements for Dealers:

When the Chief Inspector requires security from a dealer (i.e. where the dealer is not able to provide proof of financial responsibility), it is calculated as 60 percent of the business’ highest month’s purchase from October to January and from February to September.

The 60 percent reflects 18 days out of a month and is an estimate of the purchase amount that could be at risk before action is taken. It takes into account the requirement that a producer notify the Chief Inspector if payment has not been made within 10 days of sale and allowing an additional 8 days for the cheque to clear and the Chief Inspector to follow up / act as necessary.

- Under the ***Canada Grain Act***, licenced grain companies must provide payment security to the CGC to cover money owed to producers for grain deliveries. If a licenced company fails to pay for grain deliveries, the CGC uses the held security to pay producers for eligible claims. For first time applicants, the amount of security is based on forecasted purchases. Once licenced, the CGC monitors liabilities via the monthly liability report and when a licencee incurs a security shortfall (e.g. reported reliabilities exceed posted security), the CGC will determine if a security increase is required. For each annual renewal, which occurs 6 months after a licencee’s fiscal year end, licensing staff review the reports and determine if security needs to be increased.
- ***In Quebec***, the amount of the security of a new buyer is fixed at $50,000. However, it could be adjusted upwards after 4 months of activity based on the purchases made by the buyer. The security covers the period from August 1st to July 31st each year, which corresponds to the period of the licence. Each year the security must be renewed for the new period and its amount is established based on the purchases of grain made during the previous 12 months.
- **Under Ontario’s Livestock Program,** security is based on a sliding scale. When the Director requires security from a dealer (i.e. where the dealer is not able to provide proof of financial responsibility), it is calculated as one week’s average purchases (or sales in the case of an auction market), on a sliding scale (i.e. if applicant receives a score of 45, they post security equivalent to 18% of weekly purchases or sales. A score of 20 would require security equal to 80% of weekly purchases or sales).

Security can be in the form of a letter of credit or bond. In previous discussion papers, the Ministry proposed that acceptable security would be defined in regulation to align with that under the Canada Grain program. This was previously supported by the sector.

Public Feedback Request #6

The Ministry is proposing:

1. 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.
2. To define security to mean letters of credit, bond or payables insurance.

3.2.7 Small Dealer Exception

There is a long standing policy in place that defines a small dealer as a dealer that has monthly purchases of less than $15,000. Small dealers who are renewing their licence may be exempt from providing financial information and/or financial security. Starting in their second year of licensing, as a condition of the annual renewal process, a small dealer must sign a declaration that their monthly purchases will not exceed $15,000. The exemption reduces administrative burden and costs for small dealers and poses little risk to producers and/or the Funds.

The Ministry is proposing to increase the threshold to be considered a small dealer from $15,000 to $50,000. The $15,000 has been in place since 2013, it represented 93mt of corn or 32mt of soybeans. Using 2022 average yields and market prices, this represents 47mt of corn or 22mt of soybeans. AgriCorp has completed analysis and given increasing crop yields, farm size and higher commodity prices recommends increasing the threshold to $50,000 (equivalent to 155mt of corn or 73mt of soybeans). No concerns were identified during pre-consultation.

Public Feedback Request #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?

3.2.8 Licence Registry for Dealers and Storage Operators:

A list is currently posted publicly with dealer and elevator operator name and address. To align the legislation with practice, the Act provides the Minister with the authority to require the Director to establish a public registry and prescribe in regulation the information that it will contain. The Ministry is proposing to include the following information in the registry:

a) Name and contact information of dealer/operator;

b) Dealers who receive a small dealer exemption;

c) Any Director-imposed conditions the dealer/operator is currently operating under;

d) Compliance actions taken against the dealer/operator (e.g. Compliance Orders and AMPs issued for Type A offences), and

e) Any successful claims against the dealer for failure to pay for the grain that was purchased or against the operator for inability to return the stored grain to its owner upon demand.

This aligns with feedback received during the pre-consultation sessions.

Public Feedback Request #8

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

3.3 Fund Management

The Fund management component is continued under the Act with some changes made to: (1) update Board governance/powers and procedures; (2) give the Board new powers; and (3) administrative and other changes to clarify authorities to align with current practice. The Ministry is seeking feedback on the following regulatory changes being considered to the Fund management component.

3.3.1 Board Membership

O. Reg. 70/12 sets out that the Board shall have no fewer than five members and the Minister may designate one member of the Board as Chair and one or more members of the Board as Vice-Chair. It does not specify which organizations the members of the Board should be from but by convention the Board has been made up of members form the Grain Farmers of Ontario, Ontario Canola Growers Association and the Ontario Agri-Business Association.

The Act sets out that a board shall be composed of at least three and not more than nine members to be appointed by the Minister and gives the Minister the authority to make regulations prescribing the agricultural industry groups that are required to be represented on a board. Stakeholders have asked that representatives of the Board be active members of the industry.

The Ministry is proposing to specify in regulation that:

- The Board must be made up of at least one representative from each of the Grain Farmers of Ontario, Ontario Canola Growers Association, Ontario Agri-Business Association, and such other members as the Minister considers advisable. This would align the Grain Program with the current status under the Livestock Program.

During pre-consultation sessions, stakeholders were supportive of changes to the Board composition but asked for "active" to be defined. The Ministry is proposing to define active as someone who has:

- Produced grain within the last 12 months;
- Purchases or accepts grain for sale within last 12 months; or
- Member of a commodity organization represented on the Board.

Public Feedback Request #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?

3.3.2. Fees Payable to the Board by Producers:

The Grain Board, which is classified as a Trust Agency, is responsible for the administration of the producer Funds that are used to compensate producers in case of a default in payment by a

licenced dealer or if a licenced grain elevator operator does not provide the owner with its grain.

The Funds are supported by a mandatory producer “check-off fee”. As of March 31, 2023, the combined unaudited Fund balances stood at $18.4 million. The producer Funds (comprised of check-off fee and interest earnings) are used to: (1) pay valid producer claims (which are recoverable from the defaulting dealers); and (2) expenses to administer the GA and FPPA.

The Board is required to operate the Funds on an actuarially sound basis. To accomplish this, it is a good governance practice to have regular actuarial reviews conducted.

The Memorandum of Understanding (MOU) between the Minister and the Grain Board sets out that the Board: (1) may undertake an actuarial review at any time in order to ensure the strength of the Funds; (2) shall also undertake an actuarial review of the Fund at the Minister's direction; and (3) shall also undertake an actuarial review of the Fund when either the Agency or the Minister is contemplating a change in the amount of the producer "check-off' fee. The Minister may, on the basis of the Agency's actuarial review, make an adjustment to the producer "check-off" fee. .

- An actuarial review of the Funds completed in 2011 recommended changes to the fees paid by soybean and wheat producers. These changes became effective in July 2013 (the soybean fee was increased from 2 to 10 cents and the wheat fee decreased from 10 to 5 cents). No changes were recommended to the fees payable by grain corn and canola producers.
- No changes were made to the Funds as a result of the 2016 actuarial review.

The check-off fees are set out in Minister’s regulation. Currently, on the sale of grain, the following “check-off fee” is payable to the Grain Board as follows:

1. In the case of canola, 20 cents per tonne sold.
2. In the case of grain corn, 0.1 cent per tonne sold.
3. In the case of soybeans, 10 cents per tonne sold.
4. In the case of wheat, 5 cents per tonne sold.

In the 2021-22 fiscal year, the Board engaged an Actuary to determine the adequacy of the “check-off fees”. The Actuary looked at the future financial position of each of the four Funds under various scenarios over the next five years (as of March 31, 2026) to determine the possible financial outcomes for each Fund. The Actuary concluded that the current “check-off fee” for grain corn and canola is not sufficient and therefore would deplete annually unless the “check-off fees” are increased in the near future.

During the pre-consultation, stakeholders asked for an updated actuarial review given the time that has lapsed since the last actuarial review. Recognizing that actuarial assumptions may have changed since the last actuarial review, the Board plans to re-engage the Actuary to update the model to determine if the initial recommendations continue to be relevant. The Board will engage with stakeholder groups on the scope of the review and the actuarial assumptions.

3.3.3 Treatment of Out of Province Sellers

Under the status quo, it is up to the Board to determine whether to pay a claim based on grounds set out in regulation. There are no provisions that make out of province producers ineligible for compensation. Stakeholders have indicated the treatment of out of province sellers is not clear and have asked for certainty.

Consideration was given to expanding coverage to producers who deliver to Quebec (previously recommended by a stakeholder organization). However, this is not being pursued given that

most stakeholder groups were not supportive, unless Quebec buyers were licenced in Ontario (this is the status quo). Additionally, the licencing requirements under the *Grains Ac*t and its regulation only apply to people acting in Ontario (this would be the same for the new Act). Extending coverage for Ontario producers selling to dealers not licenced in Ontario could potentially increase the risk to the Funds. For comparison, in Michigan, out of state grain producers are eligible for compensation if they are licenced in Michigan and the product is delivered to a licenced dealer. In Quebec, out of province sellers are ineligible for compensation.

Given the feedback received during the pre-consultation sessions, the Ministry is proposing to clarify that:

1. Only sellers that pay the "check-off fees" are eligible for coverage;
2. Producers from outside of Ontario are not eligible for coverage and not required to pay a "check-off fee"; and
3. Ontario sellers that sell to dealers from outside of Ontario that are licenced in Ontario would be eligible for coverage.

Public Feedback Request #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?

3.3.4 Additional Grounds under which the Grain Board may Refuse a Claim

The Board is responsible for adjudicating claims made and determining the payment, if any, to be made from the Funds. The Board also has discretion to refuse payment from the Funds based on grounds enumerated in section 11(1) of O. Reg. 70/12 (Appendix 2).

The Act gives the Minister the power to make regulations prescribing the circumstances in which a board or panel of a board may refuse a claim. The Ministry is proposing to add the following to the current grounds by which the Board may refuse to pay a claim:

I. The producer was required to pay a "check-off fee" to the Board in relation to the sale that resulted in the claim but failed to do so. This is aligned with the proposal 3.3.3 above. Amendments would make it clear that the Board could not refuse to pay a claim where the producer paid the "check-off fee" to the dealer (i.e. the dealer reduced the amount owing to the producer by the appropriate "check-off fee") but the dealer did not remit that fee to the GFO or the OCGA, unless the Board is satisfied that the reason why the dealer did not remit the fee was because of an arrangement that was made between the producer and the dealer.

II. The applicant makes an arrangement with the dealer whereby the latter is given an extension of the time to pay. This is grounds for denial under the Livestock Program. This would not impact producers who have entered into deferred payment agreements and are meeting the requirements set out in the agreement.

III. There is no written agreement to store, or written agreement to sell or purchase the grain.

No concerns were identified during pre-consultation.

Public Feedback Request #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?

3.3.5 Cost Orders and Order To Pay

The Act gives the Board Chair the authority to issue a Cost Order.

- A Cost Order requires the person who receives it to pay the costs set out within, which are based on the costs that the Board incurred to adjudicate the validity of a claim (i.e. administrative, investigation and legal expenses).

The Act also gives the Board Chair the authority to issue an Order To Pay.

- An Order To Pay requires the person who receives it to pay the amount set out within, which is based on the amount that the Board paid on a claim.

The Act sets out the basic requirements for both a Cost Order and an Order To Pay (the amount of the costs that are to be paid, together with a description of each cost and receipts for the costs and the right of the person receiving the order to appeal the order to the Tribunal) and provides for any other conditions to be prescribed in regulation.

The Ministry is proposing that a Costs Order and an Order To Pay also include a statement that: (1) sets out the date payment is due (30 days after the Chair signs the order); and (2) the debt would begin to incur interest after that date if it was not paid by that date.

No concerns were identified during pre-consultation.

Public Feedback Request #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?

3.4 Compliance:

The Act provides additional compliance tools than are available under the current GA, in the form of Compliance Orders; Administrative Monetary Penalties (AMPs) and Freeze Orders, to strengthen ongoing efforts to deter non-compliance. AMPs and Freeze Order must be operationalized by regulations before they can be "turned on". The Minister has been empowered to designate products for which AMPs and Freeze Orders can be imposed, thereby allowing compliance activities to be more tailored to the specific needs of each sector.

In previous consultations, grain stakeholders indicated they were supportive of the use of Compliance Orders and AMPs for their sector. This would be in addition to existing compliance tools, such as adding terms or conditions to a licence as well as suspending, or revoking a licence. The decision regarding which compliance tool to use in response to a contravention would be made by the Director on a case-by-case basis, using a progressive compliance approach.

3.4.1 Compliance Order

The Act allows the Director (and inspectors in limited circumstances) to issue Compliance Orders. Specifically, where the Director believes on reasonable grounds a person has engaged or is engaging in any activity that contravenes any requirement of the Act, the regulations, or a term or condition on a licence, the Director may issue an order directing the person to cease committing the conduct or to perform such acts as are necessary to remedy the situation (without holding a hearing).

A person who receives a Compliance Order would have 15 days to appeal to the Tribunal. The Compliance Order takes immediate effect unless it provided otherwise. Section 67(3) of the Act sets out the minimum content that must be included in a Compliance Order and allows the Minister to prescribe other requirements via regulation.

The Ministry is proposing that a Compliance Order would include the following additional information:

- A statement that an appeal to the Tribunal does not stay the requirements of the Compliance Order and that if the person to whom the Compliance Order is issued wants the requirements stayed, the person must contact the Director;
- A statement that if the Compliance Order is not appealed within 15 days of receiving it, the Compliance Order will be confirmed, unless the Tribunal extends the time to appeal the Compliance Order; and
- A statement that failure to comply with the requirements set out in the Compliance Order by the date or dates indicated is an offence and could be subject to further compliance or enforcement actions against the person named in the Compliance Order.

No concerns were identified during pre-consultation

Public Feedback Request #13

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

3.4.2 Administrative Monetary Penalties (AMPs)

AMPs are financial penalties established for the purpose of promoting compliance with regulatory requirements. Many regulatory regimes in Canada use AMPs to promote compliance.

As established in the Act, if the Director is satisfied that a person or entity is contravening or not complying with or has contravened or not complied with a requirement established under the Act or the regulations or a term or condition imposed on a licence, the Director **may** impose an administrative penalty on the person. Prescribed contraventions that may attract an AMP are categorized into three categories.

- Type “A” are for more significant contraventions that are linked to non-compliance with the rules that govern realization of the Act’s overall objective.
- Type “B” are for contraventions of the trust requirements and would not apply to the Program.
- Type “C” are for less serious contraventions (i.e. administrative in nature).

The different categories of contraventions are designed to allow the AMP to be tailored to create the appropriate incentives to comply with the regulatory requirements.

Type A	Type C
- Acting as a dealer or operator without a licence - Dealer not paying when the payment becomes due - Payment not made according to regulations or timelines set out in an agreement to purchase or sell a designated product - Not paying the prescribed fees - Providing false or misleading information - Hindering, obstructing or interfering with or attempt to hinder, obstruct or interfere with, the Director or Deputy - Failing to comply with a condition of their licence - Failing to comply with a compliance order; order made with respect to grain stored - Breaking or removing any seal that is placed on a storage container within a storage facility	- Transferring a licence - Allowing another person to use the dealers' licence without the written consent of the Director - No agreement to purchase or sell or store - Not keeping records or not providing the Director with records when requested - Storage operator: (1) storing without a licence and not meeting the conditions set out in Act and regs; (2) storing or entering into an agreement to store greater aggregate quantity than is permitted by the licence; (3) upon delivery of product for storage by the producer or owner not creating and keeping a receipt in accordance to the Act and Regs - Person intending to take control of a facility used to store grain or the business operations of a licenced storage operator not notifying the Director prior to taking control of the facility or business operations - Person working for a delegated authority not keeping information confidential

The Ministry is proposing to operationalize AMPs for the Program in the following way:

- **Scope of the AMP system:** The specific provisions that are subject to an AMP for the Program relate to Type "A" and Type "C" offence provisions in the Act.
- **Methodology For Determining the amount of the AMP:** The Act provides for administrative penalties of up to $10,000 plus any profit the person who was issued the AMP may have earned as a result of the contravention. The Ministry is proposing that the amount of an AMP vary according to the severity of the contravention it addresses and the frequency of the contravention. The ability to vary the amount of the AMP will ensure a fair and appropriate response tailored to the circumstances of the contravention. The Ministry is proposing the following AMP amounts for first, second, third, fourth or subsequent contraventions.

Description of Contravention	First Contravention	Second Contravention	Third contravention	Fourth or subsequent contravention
Type A Contravention	$1,000	$3,000	$6,000	$10,000
Type C Contravention	$500	$1,500	$3,000	$5,000

No concerns were identified during pre-consultation.

Public Feedback Request #14

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

The Ministry is proposing a retention period of two years after an AMP has been issued. The retention period is the length of time that the Director will consider a previous contravention of a particular provision when issuing a new AMP for a contravention of the same provision by the same person.

- Retention periods are used for penalty calculation purposes only, to determine whether a penalty will be imposed as a first, second, third or subsequent contravention.
- Where a contravention can be linked to specific dates, the retention period is two years from the date the particular contravention that resulted in the penalty occurred. Where a contravention cannot be linked to a specific date, the retention period is two years from the date of the notice of penalty imposition was issued for the particular contravention.
- Each contravention has a separate retention period. For example, a previous AMP for one contravention of a particular section of the Act its regulations or a term/condition of a licence during the previous two years, would not be considered when determining the penalty amount for a contravention of a different section of the Act, its regulations or a term/condition of a licence.
- If the retention period for a particular contravention expires and the contravention occurs again, the penalty amount for a first contravention will apply to the first subsequent contravention.
- The retention period expires when it has been two years since the last occurrence of a particular contravention or two years since the last notice of penalty imposition was issued for an occurrence of the particular contravention.

Public Feedback Request #15

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

3.5 Enforcement

The Act authorizes the courts to consider aggravating factors of an offence and increase any fines to account for those aggravating factors. The Act would allow the Minister to prescribe, in regulation, aggravating factors (i.e. circumstances that resulted in an increase to the gravity of the offence) for which the court would be able to increase penalties.

The Ministry is proposing to prescribe the following as aggravating factors; the person: (1) who committed the offence profited from committing the offence; and (2) caused the victim to miss making a payment owing to the third party as a result of committing the offence.

No concerns were identified during pre-consultation.

Public Feedback Request #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?

3.6 Methods of Serving of Documents

This section sets out proposed methods of serving documents (i.e. how they can be served and when service will be deemed effective). This is important because under the Act appeals must

be made to the Tribunal within a certain amount of time. Knowing when a document is served and received ensures that any appeal that is made is made in time.

The Act authorizes the Minister to make Regulations governing the service of documents, including when they are deemed to be received. The Ministry is considering the following in relation to the service of documents to licenced dealers, operators, or producers:

- **a)** Personal Service – deemed received next business day after given;
- **b)** Regular mail – deemed received 5 business days after mailed;
- **c)** Courier – deemed received 2 business days after given to courier;
- **d)** Email – deemed received next business day after sent; and
- **e)** Fax – deemed received next business day after sent.

The service provisions would also include a provision setting out that service would not be deemed to have been made if the person who was to receive the document proves, through no fault of their own that they did not receive the document. In this case, the document would be deemed to be served when the person claims that they actually received the document.

No concerns were identified during pre-consultation.

Public Feedback Request #17

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

Appendix 1: Overview of the Legislative Provisions and the Key Changes

Program	Current Key Provisions Grains Act (GA) and Farm Products Payments Act (FPPA)	Key Changes if *Protecting Farmers From Non-Payment Act* (the Act) is Proclaimed
Licensing	• Any person who purchases corn, canola, soybeans or wheat from a producer, other than for personal use, must have a dealer's licence. Any person who operates a grain elevator and stores grain other than their own must have a grain elevator operator's licence. • To obtain a dealer's licence, the applicant must prove that they are financially responsible and/or provide security. Dealers are required to pay producers within the prescribed requirements. • Elevator operators are required to have insurance and at all times have amounts of grain that's equal to outstanding storage receipts and weigh tickets, unless the operator has a shortfall permit issued by the Chief Inspector. Elevator operators shall issue a weigh ticket that meets the prescribed requirements for every delivery.. • Title to grain stored remains at all times in the owner of the grain. An agreement to sell is required for the sale of grain that is stored or to be stored. Title to grain subject to an agreement to sell remains in the owner of the grain until the owner has received the price agreed upon. • The GA requires the Chief Inspector to issue a licence unless the person meets one of the prescribed reasons why a licence should not be issued. • A licence may be transferred, subject to the approval of the Chief Inspector. The names of all licenced dealers or elevator operators are posted online.	If proclaimed, the Act would not result in any major changes to the current licencing process for dealers and operators. Key changes are as follows: • Allow the Director to refuse to issue or renew a licence if: (1) the Director believes (based on past conduct) that the operations authorized by the licence would not be carried out in accordance with any conditions imposed; or (2) 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); • Give the Minister the authority to define the types of security acceptable under the Program; • Give the Minister the ability to prescribe whether a dealer must show whether they are financially responsible; • Allow the Director to issue multi-year licences if certain conditions are met; • Prohibit the transfer of a licence and move some commodity specific requirements to regulation (e.g. weigh tickets and grain storage receipts); • Make it clear that written agreements are required to sell or store agricultural products; and • Allow the Director to create a registry to allow for specific dealer and operator information to be made available to the public
Inspection Powers	The Agency may appoint a Chief Inspector and other inspectors as need to enforce the Act and regulation. The Inspectors may: • Enter and inspect any premises, land or conveyance used for processing or storing grain; inspect any grain, equipment or documents related to grain; • Demand that the person produce any document related to grain; and • Obtain samples at the expense of the owner.	• There has been no material change to inspector powers under the Act. Commodity specific provisions moved to regulation. For example, provision dealing with the taking of samples. The Act now allows the Minister to make regulations governing the taking of sample and prescribing which products may be sampled.

Program	Current Key Provisions Grains Act (GA) and Farm Products Payments Act (FPPA)	Key Changes if *Protecting Farmers From Non-Payment Act* (the Act) is Proclaimed
Licence Hearings and Appeals	The Chief Inspector has the authority to: (1) attach terms or conditions to a licence, and on the application of a licenscee, remove any terms or conditions; (2) refuse to issue a licence; or (3) refuse to renew, suspend or revoke a licence. Where the Chief Inspector proposes to take any of these action the Chief Inspector must serve notice of proposal together with written reason. A notice of proposal must inform the applicant or licencee that: (1) he/she/it is entitled to a Hearing, if requested within 15 days after the notice is served; and give the applicant or licencee an opportunity to comply. Where an applicant or licencee does not require a hearing by the Chief Inspector, the chief inspector may carry out the proposal stated in the notice. The Chief Inspector may, without a hearing, provisionally suspend or refuse to renew a licence if they are of the opinion, it is necessary for immediate protection of: (1) the safety or health of any person, (2) the interests of persons selling grain to the licencee or storing grain with the licencee; or (3) a Fund for producers of grain. The Chief Inspector is required to hold a Hearing after provisionally suspending a licence to determine whether the suspension should be lifted, continued or the licence should be cancelled. If a person is not satisfied with the Chief Inspector's decision regarding their licence, the person may appeal the Chief Inspector's decision to the Tribunal. The Tribunal shall hear the appeal by way of a new hearing. If not satisfied with the Tribunal's decision, the person may appeal the Tribunal's decision to the Divisional Court.	The hearing process is unchanged for grain licencees, except as follows: 1) If no hearing is requested, and the Director takes action as set out in the notice of proposal, there would be no appeal of the Director's decision; and 2) The Act removes the requirement that the Tribunal must hold a new hearing and now requires the Tribunal to review the Director's decision on the basis of whether it is reasonable. • The Tribunal may consider new evidence the Director did not consider if satisfied that it was not possible to present that evidence to the Director during the Director's hearing. • A similar change has been made on an appeal to the Divisional Court from a decision of the Tribunal (i.e. reasonableness standard).
Powers of Chief Inspector	Where the Chief Inspector believes that it is necessary for the protection of the interests of the owners of grain, and in particular where the Chief Inspector believes that the operator: has failed to comply with the GA or regs; is insolvent or is in receivership or is about to become insolvent or enter into receivership; has abandoned an elevator; or grain elevator operator does not have grains equal total amounts of grain storage receipts and weigh tickets. The Chief Inspector may: (a) order the elevator to cease until the actual amount of grain can be ascertained and, cause any storage	The Act updates the Directors powers to better protect owners of stored commodities, including: • Removes the provisions that limits when action can be taken; • Allows the Minister to prescribe additional actions that the Director may take; • Requires the Director to provide a written order when action is taken; and. • New provision allows the Director to issue a Cost Order to recover costs against the operator for any costs incurred to take action to protect the interest of owners of the agricultural

Program	Current Key Provisions Grains Act (GA) and Farm Products Payments Act (FPPA)	Key Changes if *Protecting Farmers From Non-Payment Act* (the Act) is Proclaimed
	bins to be sealed; (b) seize the grain and arrange for its storage in another licenced grain elevator; (c) distribute the stored grain to the owners on a proportionate basis; (d) sell the seized grain and distribute the proceeds proportionately among the owners; and (e) insure the grain.	products being stored. The costs order is final and cannot be appealed.
		The Act gives the Director the power to issue*:* (1) **Compliance Orders** where there are reasonable grounds that a person has engaged or is engaging in any activity that contravenes or does not comply with any requirement under the Act, regulation, or a term or condition on a licence. • A person who receives a Compliance Order would have 15 days to appeal to the Tribunal. The decision of the Tribunal cannot be appealed. (2) **Administrative Monetary Penalties** (AMPs) which allows monetary penalty of up to $10,000 plus the ability to require payment of any profit earned from the activity that resulted in the AMP. • AMPs can be issued no later than two years after the day the Director became aware of the contravention or failure to comply. • The Director is not required to hold a hearing or to afford a person an opportunity for a hearing before making an order. • A person issued an AMP has 15 days to request that the tribunal hold a hearing to review the Directors decision to issue an AMP. The decision of the Tribunal is final and cannot be appealed. • Person receiving an AMP must pay by the date set by the Director; or 30 days after the Tribunal decision • Provisions to allow the Director to enforce, if the monetary penalty is not paid; including: (1) filing the order with a court and the order may be enforced as if it was an order of the court; (2) taking it from security and requiring a “top up” of security; (3) licence suspension; refusing to renew a licence after 30 days after the AMPs was due to be paid; (4) disclosing to a consumer reporting agency after 45

Program	Current Key Provisions Grains Act (GA) and Farm Products Payments Act (FPPA)	Key Changes if *Protecting Farmers From Non-Payment Act* (the Act) is Proclaimed
		days of non-payment; and (5) lien against property after 60 days of non-payment • Proceeds goes into the respective Fund • The Minister has the authority to prescribe which agricultural products are subject to AMPs (3) **Freeze Orders** (i.e. freeze assets of those who owe money) upon request of a producer or owner or on the Director's own initiative to any person holding assets or Funds for a dealer/operator (dealer or operator would not be able to withdraw from it). • The Director may make an order if a dealer is late making a payment to a producer, a dealer, producer or prescribed person owes money to a Fund; or a storage operator is late retuning a designated product to its owner. • Person requesting the freeze order is liable for any damages if request made in bad faith • If Freeze Order issued to a bank it would only apply to offices and branches named in the order • Freeze order may also be registered at a land registry office (i.e. may affect land belonging to Dealer/Operator) • Dealer/Operator has 15 days after being served to requests that the Tribunal hold a hearing to review the Directors decision to issue a freeze order. The decision of the Tribunal is final and cannot be appealed. • The Minister has the authority to prescribe which agricultural products are subject to the Freeze Order
Offence	It is an offence under the GA to knowingly furnish false information, contravene any provisions of the Act or any regulations, or any order issued to a grain elevator to cease until the actual amount of grain in storage can be ascertained, or remove any seal applied to a storage bin for such purposes. Under the GA, the fine if found guilty is not more than $10,000 for a first offence, and a fine of not more than $25,000 or a term of imprisonment of not more than one year for any subsequent offence.	• Creates a list of offences for which non-compliance by dealers and operators can be fined; and establishes three bands for fines, with fines increasing based on severity of offence: • $2K (first offence)/$5K (subsequent offence) for minor offence (e.g. not keeping records); • $10K/$25K for more significant offences (e.g. acting as a dealer without a licence);

Program	Current Key Provisions Grains Act (GA) and Farm Products Payments Act (FPPA)	Key Changes if *Protecting Farmers From Non-Payment Act* (the Act) is Proclaimed
		• $25K/$50K for breaching the trust requirements (e.g. not depositing money into a trust account). Fines relating to trust provisions will only impact sectors with trust provisions in effect. • Removes the potential for imprisonment for grain dealers, operators found guilty of a subsequent offence under the GA. • The Courts have been authorized to: • Consider aggravating factors in regards to an offence that was committed and increase any fines to account for those aggravating factors; and • Make Restitution Order requiring the person found guilty of the offence to pay damages to the person named in the Order as a result of the commission of the offence. A Restitution Order would only be made if: (1) requested by the Prosecutor; (2) the person who suffered the loss or damage consents to the order being made; (3) the loss or damage that are the object of the order are readily ascertainable. A Restitution Order survives bankruptcy proceeding
Fund Management	The compensation component of the Program is governed by the requirements set out under the FPPA and its regulations. The FPPA provides authority for the Lieutenant Governor in Council (LGIC) to establish Funds and Boards to manage the Funds, investigate claims, grant or refuse the payment of claims, recover money, and carry out functions prescribed. The LGIC may dissolve a board and provide for the disposition of its assets and any Fund administered by it. The Minister may appoint the members of the Board. The Minister may (amongst other things) make regulations requiring dealers or producers to pay fees to a board; providing procedures for the determination and payment of claims including the grounds upon which a board may pay or refuse to pay claims; and limiting the amount that may be paid out of a Fund. A Board may engage experts to provide professional, technical or other assistance to or on behalf of the board. A Board shall pay, out of the Fund it administers, any expenses that	The Act updates the Board's governance powers and makes administrative changes to align the Act with more modern Acts, including: (1) Allowing the Minister (instead of the LGIC) to establish dissolve Board/Funds; (2) Allowing one Board to manage more than one Fund; (3) Allowing flexibility to require owners to pay a check-off fee; (4) Clarifying that Boards are Crown agencies; (5) Allowing the Boards to delegate non-adjudicative decision-making powers to a Committee of the Board; (6) Requiring financial bylaws to be approved by the Minister of Finance before taking effect; (7) Setting out the maximum size of the Board (nine); (8) Giving boards natural person powers; and (9) Updating liability provisions. Give the Board new powers, including allowing:

Program	Current Key Provisions Grains Act (GA) and Farm Products Payments Act (FPPA)	Key Changes if *Protecting Farmers From Non-Payment Act* (the Act) is Proclaimed
	are incurred in the administration of the FPPA and GA that are prescribed by the regulations. In addition to claims and repayment of any advances or loans. The LGIC may authorize the MOF loans that do not bear interest and do not exceed $250K. No member of a Board is personally liable for anything done in good faith.	(1) The Board to obtain loans and loan guarantees from the province (currently limited to the Livestock Board). (2) The Board Chair to assign panels to hear claims as opposed to the entire Board. Panel must be composed of at least three members, who have knowledge of the designated product to which the claim relates. The panel may be comprised of all members of the board. (3) Borrowing between the Funds managed by a Board it is responsible for administering if the amount standing to the credit of one Fund is insufficient for the payment for a claim. (4) Boards to create processes to "weed out" frivolous or vexatious claims as well as claims made in bad faith and claims where the producer or owner fails to cooperate. (5) Boards to issue a Cost Order to cover costs to adjudicate a claim; and an Order To Pay against any dealer or operator whose claim they have paid (i.e. instead of having to sue before taking collection actions). • Anyone that receives a Cost Order or an Order To Pay would have 15 days to appeal to the Tribunal. The decision of the Tribunal in an appeal under this section is final. • Person issued an Order must pay by the time in the Order or 30 days after the Tribunal's decision. • In the case of non-payment and where the Director receives information from the Chair: • After 30 days of nonpayment – the Director shall pay the amount payable out of any security and require the dealer or operator to "top up"; suspend a licence; or refuse to renew a licence until any debt owing has been paid or a repayment plan entered in to with the board. • After 45 days of non-payment the Board Chair may disclose to a consumer reporting agency; and may issue an order creating a lien against the property. • Proceeds from the Costs Order and the Order to Pay would go into the respective Fund
Delegated Administrative	The Minister may designate a DAA to administer the Fund management component of the program.	Changes allow the licensing component to be delivered by a DAA as well as the Fund management component

Program	Current Key Provisions Grains Act (GA) and Farm Products Payments Act (FPPA)	Key Changes if *Protecting Farmers From Non-Payment Act* (the Act) is Proclaimed
Authority (DAA)		

Appendix 2: Grounds under which the Grain Board may refuse a Claim

The Board may refuse to pay a claim for payment from a Fund if,

(a) subject to subsection (2), the applicant makes the claim in respect of a dealer who is not a licenced dealer or an operator who is not a licenced operator;

(b) subject to subsection (3), the applicant did not apply to the Board within the time period specified in subsection 9 (4);

(c) the applicant is a producer, but not the producer of the grain in respect of which the claim is made;

(d) the applicant is a producer who receives a cheque from the dealer that is dishonoured by non-acceptance or non-payment but the applicant did not present the cheque for payment within five banking days of the date the cheque is made payable;

(e) the applicant is a producer who sells grain to a dealer under a delayed price contract but the contract is not in writing and is not signed by both the producer and the dealer;

(f) the applicant is a producer who sells grain to a dealer under a deferred payment arrangement but the arrangement is not set out in writing or, if it is set out in writing, it does not contain the following information:

(i) the date on which the deferred payment arrangement was entered into,

(ii) the date or dates on which payment is to be made, and

(iii) the amount of each payment and the total amount of all payments;

(g) the applicant has failed to notify the chief inspector in accordance with section 6; or

(h) the following conditions are met:

(i) the applicant is associated in any way with the dealer or operator in respect of whom the applicant makes the claim,

(ii) the conduct of the applicant or, if the applicant is a corporation, the conduct of an officer or director of the applicant or a person having power to direct the management of the applicant, caused,

(A) the dealer to default in paying the sale price, if the claim is in respect of a dealer, or

(B) the operator to fail to deliver the grain, if the claim is in respect of an operator, and

(iii) in the circumstances, it would be inequitable to make a payment from the Fund.