Modernizing Producer Protection in Ontario - The Beef Cattle 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 Beef Cattle 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 Livestock 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 the 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 this phase, the Ministry is engaging broadly and 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 and 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 content of the Minister's Regulation.

2. OVERVIEW OF THE CURRENT PROGRAM:

The Program currently operates under the *Livestock and Livestock Products Act*, R.S.O. 1990,

c. L. 20 [the "LLPA"] and the *Farm Products Payments Act*, R.S.O. 1990, [the "FPPA"]. The Program consists of two parts. They are: (1) the licensing of dealers and inspection; and (2) Fund management. Appendix 1 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 sets out proposed changes to the regulatory framework governing the Program. The Ministry is proposing to revoke and consolidate the existing four regulations governing the Program[1] and create a single new Minister's Regulation. Revised Regulations of Ontario, Regulation 727 – Wool ["Reg. 727"] would also be revoked, and the provisions incorporated into a new Minister's Regulation.

The new Minister's Regulation is not intended to be significantly different from the existing regulations. Specifically, the new regulations will continue to set out: (1) the requirements for dealer and operator licensing; (2) fees payables to the Livestock Financial Protection Board [the "Board"]; (3) how payments are paid from the Fund; 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 and dealers. Additionally, the proposed changes would be straight forward to implement and, therefore, are not expected to result in 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 beef cattle as an agricultural product with respect to Part IV (Dealers) and Part VII (Funds and Boards) of the Act. The definition of beef cattle would remain unchanged.** This is consistent with the status quo. The new Minister's Regulation would also make it clear that a person buying cattle for their own consumption is not a dealer.

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 Fund. The Board would remain responsible for managing the Fund and adjudicating any claims made to the Fund. Members of the Board would continue to be appointed by the Minister and be representative of the industry.

3.2 Dealer Licence:

[1] They are: (1) Ontario Regulation 467/19 – Boards' Payment of Expenses ["O. Reg. 467/19"]; (2) Ontario Regulation 560/93 – Fund for Livestock Producers ["O. Reg. 560/93"]; and (3) Ontario Regulation 321/11 – Fees Payable To Boards ["O. Reg. 321/11"], all of which are made under the *Farm Products Payments Act* and Revised Regulations of Ontario, Regulation 725 – Livestock ["Reg. 725"], which is made under the *Livestock and Livestock Products Act*.

Licensing would be continued under the Act (i.e. livestock dealers would continue to require a licence issued by the Director). The Minister has been granted the authority to make changes to the process via a Minister's Regulation. The following are changes proposed to the existing licencing regime.

3.2.1 Content of Agreement to Purchase or Sell

The LLPA and Reg. 725 does not currently have a requirement for a written agreement between a dealer and producer. Written agreements help to protect both parties by adding clarity in the event of a claim. Additionally, stakeholders have raised concerns about accuracy of "check-off fees" being remitted to the Board and have asked that dealers be required to put their licence numbers on invoices. A jurisdiction scan of other provinces shows the following:

- **Alberta** requires a bill of sale and invoice that includes the: date of the sale transaction; names and addresses of the owner of the livestock and the purchaser; description of the livestock (kind, color, number of head); description and location of any brands on the livestock; weight of the livestock if sold by weight; and purchase price, deductions, and sale proceeds.
- **In Saskatchewan**, if livestock is **purchased or sold by weight**, licencees must supply a copy of the scale ticket, computerized scale printout, or other serial-numbered document to the contributor or purchaser, which: date of weighing, weight and description of the livestock, livestock manifest number, name of the contributor or purchaser. If livestock is **sold without being weighed**, licencees must provide a copy of the scale ticket or other serial-numbered document to the contributor and purchaser, which should include the date, description of the livestock, livestock manifest number, and contributor's name. When livestock is accepted on a **consignment basis and sold**, the licencee must provide a signed statement to the contributor, which should include the: total weight of the livestock; full selling price; charges for transportation, sales commission, yardage, or any other costs applicable to the livestock. Additionally, a copy of the scale tickets, serial-numbered documents, or other required documents must be provided to the contributor.

The Act makes it clear that written agreements are required to purchase or sell a Part IV (Dealers) designated product. Cattle would be designated as an agricultural product with respect to Part IV (Dealers). The agreement must be in writing and satisfy any requirements that are prescribed in regulations. The Ministry is proposing that any written document (including an invoice) qualify as an "agreement to purchase or sell" if it contains the following information:

a) the business names and addresses of the parties to the sale;
b) the Dealer's licence number;
c) the date of the sale;
d) a description of or identification for the cattle being sold;
e) the number of head of cattle being sold;
f) the purchase price for the cattle being sold;
g) the "check-off" fee payable to the Board[2]; and
h) the date of payment for the sale.

[2] Note that the "check-of fee" pyable to the Board is different from the "check-of fee" payble to the Beef Farmers of Ontario and the Veal Farmers of Ontario.

These are mostly aligned with record keeping requirements currently set out under section 7 of Reg. 725. No concerns were identified during pre-consultation.

Public Feedback Request #1

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

3.2.2 Dealer Licence Fee

Section 4(3) of Reg. 725 sets the livestock dealer licence fee at $25/year. The fee has not been changed since the fee was established in the 1980s. The Ministry is proposing to: 1) increase the licence fee paid to $150/year to better reflect the costs of issuing and renewing licences; and 2) introduce a new fee of $50/year for dealer agents. The proposed increase is based on feedback coming out of the pre-consultation sessions.

The fee is used to offset the costs to deliver the Program. AgriCorp currently collects approximately $3,400 annually from the licence fee. The cost to administer the Program is estimated at $460,000 for 2023-24 (paid from the Fund for Livestock Producers). The licence fees in other jurisdictions are:

- The fee to issue or renew a livestock dealer's licence in Alberta is $100 plus $5.00 GST for a total of $105, while the fee to issue or renew a livestock dealer's agent's licence is $50.00 plus $2.50 GST for a total of $52.50.
- The fee in Saskatchewan to apply for or renew an existing licence is $200. This fee applies to dealer licences, agent licences and brand licences.

Public Feedback Request #2

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

3.2.3 General Terms and Conditions Licences:

Section 16 (1) (m) of the LLPA gives the Lieutenant Governor in Council the authority to make regulations prescribing the terms and conditions under which a licences may be issued. Under section 8 of Reg. 725, a licence is issued on the terms and conditions that the holder of the licence complies with: (1) any repayment arrangement made where a payment is made from the Fund; and (2) provisions regarding payment of fees to the Board and collection and forwarding of such fees. Grain dealers, under the Grain Program, are subject to similar conditions.

Elevator Operators under the Grain Program are also required to forthwith report in writing to the Chief Inspector where there has been a change,in the location of the banking facilities of the licencee;

1. in the nature or form of the ownership of the grain storage elevator in respect of which the licence has been issued;
2. in the control of the grain elevator or of the business operations thereof; and
3. in the persons authorized to sign a grain storage receipt or an agreement to sell.

The new FPP Act provides the Minister with the authority to impose, by regulation, general terms and conditions on all licences.The Ministry is proposing to align the requirements for grain dealers with Elevator Operators under the Grain Program and is seeking feedback regarding whether livestock dealers should also be subject to similar requirements. No concerns were identified during pre-consultation.

Public Feedback Request #3

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

3.2.4 Proof of Financial Responsibility and Security Requirements:

Currently, the LLPA requires that every livestock dealer must furnish security or proof of financial responsibility, as required by the regulations. Reg. 725 sets out the rules regarding livestock dealers providing proof of financial responsibility and/or security. Additionally, Reg. 725 allows the Director to refuse to issue or renew a licence or to suspend or cancel a licence if, the dealer fails to furnish proof of financial responsibility or to deposit any required security.

In recognition of the fact that there are alternatives to the current proof of financial responsibility and security model (e.g. Alberta's and Saskatchewan's security bond model), 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.

While the security bond model allows for greater transparency and may be easier to administer, there are drawbacks to this model in that all dealers (even those that would otherwise be considered to be financially responsible) are required to provide security.

During pre-consultation, stakeholders asked for greater transparency on the current process, including clarity on how financial information is translated into points and how qualitative factors operate. It was noted that the process should consider past financial performance and late payment and that consideration should be given to the use of other mechanisms to demonstrate financial viability and that clear guidelines would improve transparency.

The current process to determine financial responsibility and security requirements is set out below. The Ministry is proposing to maintain the status quo in general. The 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:

The current process for determining financial responsibility is based on a scoring system that allocates up to 80 points for quantitative analysis and 20 points for qualitative factors.

Quantitative Assessment:

A quantitative score is calculated using six ratios that allocates up to 80 points (the point allocation varies depending on the dealer). The point allocation for the ratios is based on a sliding scale with maximum to minimum points.

Ratio	Formula/Description	Point allocation
1. Current	current assets ÷ current liabilities	Zero (ratio of 0.75 and below) to a maximum of 25 points (ratio of 1.51 and above)
2. Debt to Equity	Total debt – Deferred tax / Equity + Deferred tax	Zero (ratio of 3.9 and above) to a maximum of 20 points (ratio between 0 and 1)
3. Return on Equity	net income before tax ÷ total equity	Zero (ratio of 0.0001 and below) to a maximum of 15 points (ratio of 0.2 and above)
4. Working Capital	current assets – current liabilities ÷ average weekly purchases	Zero (ratio of 0.2 and below) to a maximum of 10 points (ratio of 1 and above)
5. Profitability Ratio	net income after tax + interest expense + depreciation ÷ interest expense + annual principal obligations	*For packing plants*: Zero (ratio of 0.0001 and below) to a maximum of 15 points (ratio of 3 and above) *For auction markets*: Zero (ratio of 0.0001 and below) to a maximum of 20 points (ratio of 3 and above) *For country dealers*: Zero (ratio of 0.0001 and below) to a maximum of 10 points (ratio of 3 and above)
6. A/R Collection Period	accounts receivable ÷ net sales ÷ 365 days	*For packing plants:* Zero (ratio of 30 and above) to a maximum of 5 points (10 and below)

The Director may allow dealers to pursue other options to prove they are financially responsible; including shareholder loan postponement; corporate indemnification; or personal guarantee. As an example, a shareholder or related party loan may be considered equity for the purposes of the ratio scoring if it is formally postponed in favour of the Director.

Qualitative Assessment:

All Dealers are allocated 20 points for qualitative factors and deductions are made by the Director for the type of financial statement and other factors. As an example, a dealer that provides “tax forms” can get a maximum of 10 points and this can be further reduced if other deductions apply.

1. Type of financial statement (maximum of 10 points deducted):
    a. Review Engagement: Deduct 5 points
    b. Compilation Engagements (formerly Notice to Reader): Deduct 8 points
    c. Tax Returns/Balance Sheets: Deduct 10 points

Other factors (**maximum 10 points deducted**) - Other factors considered are level of financial statements, postponement of shareholder loans, consolidated statement analysis, line of credit usage, other bank financial arrangements, number of years in business, management strength, late payment reports/NSF cheques, fee remittance up to date, and general complaints. A general assessment of all the factors is done to see if any apply.

Security Requirements*:*

When an applicant scores 50 points or better, the applicant has met the financial responsibility test and the Director typically does not require security. However, there may be situations where security is required even if the dealer has a passing score because of prior infractions or management strength issues.

- The amount of security required is based on one week's average purchases or sales, on a sliding scale. As an example, if an applicant receives a score of 49 security is equal to 2% of weekly purchases or sales; score of 45 points security equivalent to 18% of weekly purchases or sales; a score of 20 would require security equal to 80% of weekly purchases or sales; a score of 10 and under would require security of 100% of weekly purchases or sales.

Security can be in the form of a letter of credit or bond.

Public Feedback Request #4

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 carity and transparency.
2. To define security to mean a letter of credit or bond.

3.2.5 Small Dealer Exemption:

Currently, a low volume dealer is an applicant who declares $5,000 or less in weekly purchases. While they are still required to submit financial statements, low volume dealers are not required to provide security. If the applicant is a new dealer and has not reported any purchases, they must provide a projection of weekly purchases. Stakeholders were generally not supportive of increasing the threshold.

Public Feedback Request #5

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

3.2.6 Licence Registry:

The LLPA currently does not require a registry. A list of licenced dealers (dealer type, name, address and phone number) is posted publicly.

- Alberta legislation does not specify requirements for a licence registry. A list of licenced dealers is public and includes the following information: dealer corporation name, agents, town and province, and phone number.
- Saskatchewan legislation also does not specify requirements for a licence registry. A list of licenced Saskatchewan livestock dealers can be found online and includes information on: dealer corporation name, agents, licence number, licence status, bond amount, town and province, and phone number.

The Act provides for 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) Business name and contact information of dealer (including individual associated with dealers licence in cases where the dealer is operating under a farm business name or numbered company);
b) Any agent working under a dealer's licence;
c) Any dealer with a small dealer exemption;
d) Any Director-imposed conditions the dealer is currently operating under;
e) Compliance actions taken against the dealer (e.g. Compliance Orders and AMPs issued for Type A offences), and
f) Any successful claims made in respect of the dealer for failure to pay for the cattle purchased.

During pre-consultation, concerns were raised about including information that was only available through a Freedom of Information request made under the *Freedom of Information and Protection of Privacy Act*. However, the Ministry believes this is low risk as none of the information is considered personal and Board decisions are publicly available upon request. Additionally, any compliance order or AMP issued by the Director is subject to an appeal before it becomes final and eligible for posting on the registry as Tribunal decisions are public.

Public posting would encourage dealers to comply with the regulation in order to maintain a good reputation. It also raises awareness among sellers of dealers who do not comply with the regulations.

Public Feedback Request #6

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 Board new powers; and (3) 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

Section 4(1) of O. Reg. 560/93 sets out that the Board shall be composed of at least five members consisting of: (a) one member representing the Beef Farmers of Ontario (BFO); (b) one member representing the operators of community sales under the Livestock Community Sales Act; and (c) such other members as the Minister considers advisable. The current regulation does not take into account other livestock stakeholders that are represented on the Board.

By convention, there has also been one member each from the Veal Farmers of Ontario (VFO), Ontario Livestock Dealers Association (OLDA), Dairy Farmers of Ontario (DFO), Meat and Poultry Ontario (MPO) and an additional member from the BFO on the Board.

Based on feedback received during pre-consultation, the Ministry is proposing to:

1. Update the regulation to specify thatthe Board must be made up of at least one representative from the BFO, OLAMA, VFO, OLDA, DFO, MPO and the Ontario Cattle Feeders' Association (OCFA).
2. Specify that a certain number of appointees must be active in the industry. Active would be defined as: (1) produced, bought or sold beef cattle within last 12 months; or (2) member of a commodity organization represented on the Board.

Public Feedback Request #7
Do you have any concern with the proposed change? If "yes", what are they?

3.3.2 Payment of Fees:

The Fund is funded via the payment of a "check-off fee" based on a per head of cattle sold basis. The regulation sets out the check-off amount and specifies who pays, collects, and remits the fees to the Board.

3.3.2.1 Fees Payable to the Board:

The Board, which is classified as a Trust Agency, is responsible for the administration of the producer Fund that is used to compensate producers in case of a default in payment by a licenced dealer.

The Fund is supported by a mandatory producer "check-off fee". As of March 31, 2023, the unaudited balance of the Fund was $9.2 million. The Fund (comprised of check-off fee and interest earnings) is used to: (1) pay valid producer claims (which are recoverable from the defaulting dealers); and (2) expenses to administer the LLPA and FPPA.

Currently, on the sale of livestock, a fee of 10 cents per head is payable to the Board as follows:[3]

1. In the case of a direct sale by a producer to a licenced dealer, the fee is payable by the producer;
2. In the case of a private treaty sale (i.e. the sale of cattle by a licenced dealer to another licenced dealer or a producer), the fee is payable by the licenced dealer who sells the livestock; and
3. In the case of a sale by consignment, the fee is payable by each of the Consignor and the Consignee (i.e. Auction Market), with each paying a separate fee.

The Board is required to operate the Fund on an actuarially sound basis. The Memorandum of Understanding (MOU) between the Minister and the Board sets out that the Agency: (1) may undertake an actuarial review, at any time, in order to ensure the strength of the Fund; (2) shall undertake an actuarial review of the Fund at the Minister's direction; and (3) shall 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".

In the 2021-22 fiscal year, the Board engaged an Actuary to complete a review. The purpose was to determine the appropriate "check-off fee" required for the Fund under various scenarios

[3] The fee was 20 cents per head at inception and was reduced to 10 cents per head on June 1, 1984. This was followed by a reduction to 5 cents per head on April 4, 1989. The fee was increased to 10 cents per head on February 1, 2016. The levy or check-off fee in Alberta is **10 cents** per head of assured livestock supplied or sold. Saskatchewan does not have a fund.

so that the Fund would remain sustainable to pay expenses and future claims. The Actuary concluded that the current "check-off fee" of ten cents per head of livestock sold is not sufficient to cover all operating expenses and claims expected in the future fiscal years.

During pre-consultation, stakeholders asked for clarity regarding whether the review considered rising interest rates; financial market volatility and impact on investment income; and the unprecedented rise in cattle prices; and whether the increase continues to be justified given these factors.

The Board will continue to monitor the Fund and once consultation on the proposed regulatory amendments is complete and changes (if any) finalized the Board will determine next steps regarding an actuarial review.

3.3.2.2 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 the FPPA and the grounds set out in regulation. There are no express provisions that make out of province producers ineligible for compensation.

During the pre-consultation sessions, there was support for access to out of province dealers and producers, provided that they paid the "check-off fee". However, this is not being recommended given that the policy intent of this Program is to protect Ontario producers and the potential negative impact on the long-term sustainability of the Fund. Additionally, the licencing requirements under the LLPA and its regulation only apply to people acting in Ontario (this would be the same under the new Act).

- For comparison, out of province sellers are ineligible for compensation in Alberta. To be eligible for compensation from the Fund a cattle seller must be a resident of Alberta and the transaction must also take place within Alberta.

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 #8

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

3.3.4 Allow Inspectors Appointed under other Acts to be Appointed as Inspectors for the Program

The Act allows the Director to appoint inspectors appointed under other Acts (such as the *Beef Cattle Marketing Act*) as inspectors under this Act. The Act allows the Director to limit the powers of the inspectors. Stakeholders asked for this change as a way of ensuring that the correct "check-off fee" is being remitted to the Board.

Public Feedback Request #9

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

3.3.5 Clarify Regular vs Designated Producers and Payment Timelines

During pre-consultation, it was determined that amendments are required to further clarify who is a producer and the timelines for producers to pay dealers.

Regular vs Designated Producers:

Under the FPPA regulation, licenced dealers are "designated as producers" (to be eligible to make a claim) when they sell to other licenced dealers, or to a producer or co-operative. This has created confusion. Legislative changes approved under the new Act allows the Minister to specify in regulation who is eligible to make a claim under the Fund. This means that licenced dealers would no longer have to be designated as producers. Instead, licenced dealers would be specified as being able to make a claim when they sell to other licenced dealers, producers or co-operatives.

Payment Timelines:

There appears to be a disconnect between Reg. 725 and O. Reg. 560/93. O. Reg. 560/93 that allows a licenced dealer to make a claim to the Board if that licenced dealer is not paid by a producer (including co-operatives) within 15 days after the day sale.

This implies that producers have an obligation to make a payment to the licenced dealers within 15 days. However, Reg. 725 does not impose such a requirement on producers when buying from a licenced dealer.

The Ministry is proposing a regulatory amendment to clarify the 15-day timeline in situations where producers are buying from licenced dealers.

- The current timelines for dealers to pay producers would remain unchanged. Given the concerns expressed about non-compliance with payment timelines, the Ministry does not recommend changing the timeline for licenced dealers to pay producers (6 or 9 business days) to align with the timeline for producer to pay licenced dealers (15 days).

Public Feedback Request #10

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

3.3.6 Timleines to Apply for payment from the Fund

Under O. Reg. 560/93, claiming timelines to apply for payment from the Board are different depending on who the livestock is being sold to. For reference, the status quo for producers (including co-operatives) and designated producers to apply for the Fund is set out below.

Scenario	Who is eligible to make a claim	Current payment timelines	Timeline to apply to the Board
Licenced dealer sells to producer (including a co-operative)	Licenced dealer selling	15 days after the day of sale	15 - 30 days after the day of sale (15 day window)
Licenced dealer sells to other licenced dealer	Licenced dealer selling	6 or 9 days after the price determination day	30 days after the payment becomes due (30 day window)
Producer sells to licenced dealer	Producer selling	6 or 9 days after the price determination day	30 days after the payment becomes due (30 day window)

During pre-consultation sessions, stakeholders indicated they were supportive of the proposal to standardize the timelines to make a claim to the Board to 30 days after the payment becomes due, if there is no defensible reason for the difference.

Standardizing the timlines to 30 days after the payment becomes due would not result in any changes to the timelines to make a claim for producers or licenced dealers who sell livestock to licenced dealers (i.e. status quo) but would give licenced dealers who sell to producers (including cooperatives) more time to make a claim to the Board.

- Its important to note that producers buying cattle do not go through the licencing process, which includes proving financial viability or providing security. This, in turn, means that these transactions are inherently riskier.

Public Feedback Request #11

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

3.3.7 Payment out of the Fund:

Section 20 of O. Reg. 560/93 sets out that the Board shall pay out of the Fund 95% of the portion of a claim it recognizes as valid on a claim in respect of a dealer. This was increased from 90% in January 2011. The majority of the claims to date fall within this category.

Section 21 (1) and (2) of O. Reg. 560/93 sets out the payment rules on a claim made in respect of a: (1) producer who is not a feeder cattle finance co-operative or a breeder cattle co-operative; and (2) feeder cattle finance co-operative or a breeder cattle co-operative.

- For these claims the Board pays the lesser of 85 per cent of the portion of a claim that it recognizes as valid and $125,000. The Board makes no payment if the portion of a claim that the Board recognizes as valid is $5,000 or less.
- This was increased from the lesser of 70 per cent of the portion of the claim that it recognizes as valid and $75,000 in January 2011.

During pre-consultation, stakeholders asked that consideration be given to making all sellers eligible for 95% (i.e. unless the Ministry can provide appropriate justification) or increasing the cap to $500,000. After further review, the Ministry is proposing to change the payout to the lesser of 95 per cent of of the portion of a claim that it recognizes as valid and $195,000 for claims made in respect of producers, including feeder cattle finance co-operatives and breed cattle co-operatives.

- Anecdotal evidence suggests that the cap was put in place because producers are not licenced and as such do not go through the licencing process, which includes proving financial viability or providing security. This, in turn, means that these transactions are inherently riskier.
- A $500,000 cap may be high based on the 2021-22 actuarial review, where a maximum claim was assumed to be $377,000. Anedotal evidence also suggests that these sales (i.e. dealers selling to producers) would involve smaller transactions.
- The Ministry is proposing that the increase to the cap be based on the increase in cattle prices since 2011 (a 55% increase). An increase to $195,000 (rounded).

Public Feedback Request #12

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

3.3.8 Additional Grounds under which the Board may Refuse a Claim:

The Board is responsible for adjudicating claims and determining the payment, if any, to be made from the Fund. Currently, section 18(1) and 19 of O. Reg. 560/93 set out several grounds in which the Board may refuse to pay a claim from the Fund (whether section 18(1) or 19 of O. Reg. 560/93 is used depends on who the buyer is) – refer to Appendix 2.

- In Alberta, the Livestock Assurance Funds Tribunal may make payments in accordance with legislation and the regulations to eligible participants who make successful claims on the assurance funds in respect of transactions in assured livestock. A claim is only made to the Tribunal if the security bond isn't enough to cover a default (maximum 80% of a loss).
- In Saskatchewan claims are made against a security bond. A claim can be triggered by a court judgment or order against the livestock dealer or livestock agent, or by a written decision from the Minister stating a violation of the Act, regulations, licence terms, or a breach of contract. The Minister investigates and provides the livestock dealer an opportunity to be heard before deciding whether to realize on the security. Once the bond is forfeited, the Minister can issue an order to direct the allocation of the recovered funds.

The Act gives the Minister the power to prescribe, by regulation, the circumstances in which a board or panel of a board is required to or may refuse a claim.

The following changes are being considered:

a) The Ministry is proposing to add the following grounds by which the Board may refuse to pay a claim.

1. The claimant 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. Amendments would make it clear that the Board could not refuse to pay a claim where the applicant paid the "check-off fee" to the dealer, but the dealer did not remit that "check-off fee" to the Board unless the Board is satisfied that the reason why the dealer did not pay the "check-off fee" to the Board is because of an arrangement that was made between the producer and the dealer. This is aligned with the proposal 3.3.2.2 above.

2. The claimant failed to notify the Director of the following situations: (1) the claimant had knowledge that the purchaser ceased carrying on business; or (2) the claimant had

knowledge that all or part of its assets placed in the hands of a trustee for distribution under the *Bankruptcy and Insolvency Act* (Canada) or the *Bulk Sales Act* or in the hands of a receiver pursuant to a debenture of similar instrument. Both of these are grounds under the Grain Program.

3. There is no written agreement to sell or purchase livestock.

During the pre-consultation sessions, no concern were identified with the new grounds proposed.

b) The Ministry is proposing an exemption from the "extension of the time to pay" rule for veal producers.

During pre-consultation, concerns were raised about the ability of the Program to provide protection to veal farmers who pay into the Fund. Specifically, the timelines to receive payment as prescribed in the current Program, indirectly increase a veal producers risk for not qualifying for a claim from the Fund.

- Due to the nature of the industry, veal producers often ship cattle more than once a week. However, the selling of additional cattle when payment is past due has been considered by the Board to constitute an arrangement whereby the dealer is given an "extension of the time to pay", which is one of the grounds under which the Board may refuse a claim.
- While new compliance tools (e.g. AMPs) may help to address this issue, the industry believes that additional actions are needed.

To ensure that the Program continues to be relevant for the veal industry, the Ministry is working with the VFO to explore options to address this issue, including regulatory amendments to create an exemption from the "extension of the time to pay" rule for veal producers, without increasing risk to the integrity of the Program or the long term sustainability of the Fund.

- Consideration is being given to providing veal producers with a grace period whereby the Board would not consider a subsequent sale to a buyer where there is a payment past due as an "extension of the time to pay" for the first load. All other conditions for making a claim would have to be met, including the producer notifying the Director promptly; applying to the Board on time etc.

Public Feedback Request #13

a) Are the additional grounds that the Ministry is proposing to allow the Board to refuse a claim sufficient (i.e. failure to pay "check-off fee" and the claimant having knowledge that the purchaser ceased business or filed for bankruptcy and failed to notify the Director, and no written agreement)? If no, which ones should or should not be included?

b) Do you have any concerns with the proposal to include a special exemption to the "extension of credit" rule for the veal sector given the nature of the veal industry? If "yes" What?

3.3.9 Cost Order and Order To Pay

The Act gives the Chair of the Board 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 Chair of the Board 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 #14

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

3.4 *Compliance and Enforcement*:

Under the LLPA, the Director has the authority to add terms and conditions, refuse to renew, suspend or cancel a licence. Additionally, every person who contravenes any of the provisions of the Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than $2,000 for a first offence and not more than $5,000 for any subsequent offence.

- In Alberta, person who is guilty of an offence is liable to a fine of not more than $5,000 for a first offence and not more than $10,000 for a 2nd or subsequent offence. Assaulting, obstructing, or interfering with an inspector carrying out their duties is considered an offence. The offender can be fined up to $10,000 for the first offence and up to $20,000 for subsequent offences.
- In Saskatchewan, offenders are liable to penalties upon summary conviction. For a first offense: a fine of up to $5,000, imprisonment for up to six months, or both. For subsequent offenses: a fine of up to $20,000, imprisonment for up to twelve months, or both. If a person is convicted of an offense under the Act, the Minister may amend, suspend, or cancel any licence issued to that person.

The Act provides additional compliance tools than are available under the current LLPA, in the form of Compliance Orders; Administrative Monetary Penalties (AMPs) and Freeze Orders, to strengthen ongoing efforts to deter non-compliance. AMPs and Freeze Orders 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, livestock 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

3.4.1.1 Compliance Order

The Act allows the Director (and inspectors, in limited circumstances) to issue Compliance Orders. Where the Director believes on reasonable grounds a person has engaged or is engaging in any activity that contravenes any requirement 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 provides otherwise. 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.

Public Feedback Request #15

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

3.4.1.2 Administrative Monetary Penalties (AMPs)

AMPs are financial penalties established for the purpose of promoting compliance with regulatory requirements. Many regulatory regimes in Ontario 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. The decision to issue an AMP in response to a violation, as opposed to using other compliance options, would be made by the Director on a case-by-case basis.

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"** contraventions are for breaches of the trust requirements and would not likely apply to the Program.
- **Type "C**" are for less serious contraventions (i.e. administrative in nature).

Type A	Type C
- Acting as a dealer without a licence - Dealer not paying when the payment become due - Payment not made according to regulation	- Transferring a dealer licence - Allowing another person to use the dealers' licence without Director approval

Type A	Type C
- 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 Director in fulfilling their duties - Failing to comply with a licence condition - Failing to comply with a compliance order	- No written agreement - Dealer not keeping records or not providing the Director with records when requested - Person working for a delegated authority not keeping information confidential

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.

Methodology for Determining the amount of the AMP:
The Act provides for administrative penalties of up to $10,000 for each day or part of a day on which the contravention occurs. The amount of penalty may also include any profit the person who was issued the AMPs 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 each day or part of a day the contravention occurs.

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

Retention Period:

The Ministry is proposing a retention period of two years after the 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 contravention, a second contravention or a third or subsequent contravention.
- Where a contravention can be linked to a specific date, the retention period is two years from the date of the particular contravention that resulted in the AMP. Where a contravention cannot be linked to a specific date, the retention period is two years from the date 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.

No concerns were identified with the amount of the AMP or the retention period during pre-consultation.

Public Feedback Request #16

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

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

3.4.2: 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 #17

Do you support the Ministry's proposed approach for dealing with aggravating factors? If "no", what do you not support?

Should the Ministry consider additional aggravating factors? If "yes", what additional aggravating factors should be considered?

3.5 Methods of Serving 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 to the Tribunal must be made 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 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.

There was a preference for the personal service and courier options during pre-consultation. However, the Ministry believes that a wide range of options should be available and the proposed change is consistent with the status quo.

Public Feedback Request #18

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

Appendix 1: Overview of Key Changes to the Acts

Program Component	Key Provisions Livestock and Livestock Products Act (LLPA) and Farm Products Payments Act (FPPA)	Key Changes if Protecting Farmers From Non-Payment Act (the Act) is Proclaimed
Licensing	• The licensing component of the Program is governed by the requirements set out under the LLPA and Revised Regulations of Ontario, 1990, Regulation 725 – Livestock ["Reg. 725"], made under the LLPA. • A livestock dealer means a person engaged in the business of buying or selling livestock as a principal or as an agent; • A dealer must have a licence issued by a Director appointed under the LLPA to purchase beef cattle ["cattle"] from producers. It is an offence to purchase cattle without a licence. • To obtain a licence, a person must apply to the Director. Part of the application requires the person to demonstrate to the Director that he/she/it is financially responsible. If this cannot be done, the Director is empowered to request the person provide the Director with security in a form and amount satisfactory to the Director. • The LLPA requires the Director to issue or renew a licence unless the person meets one of the prescribed reasons why a licence should not be issued or renewed, in which case the Director can refuse to issue or renew a licence, provided the Director first holds a Hearing.	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 Fund (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 (provides the Minister with flexibility to make changes); • Allow the Director to issue multi-year licence if certain conditions are met; • Require that the use of Licence by an agent be approved by the Director; • 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 information to be made available to the public.
Inspection Powers	The Minister may appoint inspectors to enforce the Act and regulation. The Inspectors may: • Enter any place premises or vehicles containing or used for storing/carrying livestock; on a highway stop and inspect vehicles that contains livestock or livestock product; take samples as prescribed; delay the shipment of nay livestock or livestock product as needed to complete inspection; refuse to inspect or mark or give any certificate respecting livestock or livestock product if held in a place considered to be unsanitary or unsuitable for inspection purposes; seize and detain any livestock or livestock product that hasn't being manufactured, packed, labelled, marked, transported in alignment with he Act.	• Inspection powers updated to align with practice. Inspection is administrative in nature and focused on ensuring compliance with the Act and regulations. Powers includes: examining records; demanding production of records: taking photographs; inquiring into all financial transactions, records and other matters that are relevant to the inspection • Allow the Director to appoint inspectors appointed under other Acts as inspectors – an agreement must be in place that includes provisions set out in the Act.

Program Component	Key Provisions Livestock and Livestock Products Act (LLPA) and Farm Products Payments Act (FPPA)	Key Changes if Protecting Farmers From Non-Payment Act (the Act) is Proclaimed
	• Require the production of books, records or other documents relating to livestock or livestock or the furnishing of copies of or extracts from such books, records or other documents.	
Licence Hearings and Appeals	The Director has the authority to: (1) impose terms or conditions to a licence, and on the application of a licencee, remove any terms or conditions; (2) refuse to issue a licence based on past conduct or where the applicant is not in position to carry out provisions of Act or regulation; or (3) refuse to renew, suspend or cancel a licence after a hearing. The Director may, without a Hearing, provisionally suspend or refuse to renew a licence if the Director is of the opinion provisionally suspending a licence is necessary for the immediate protection of the health and safety of the public, producers selling cattle or the Fund. The Director is required to hold a Hearing after provisionally suspending a licence to determine whether the suspension should be lifted, continued or the licensce should be cancelled. The Director must hold a Hearing before suspending or cancelling a licence. If a person is not satisfied with a Director's decision regarding his/her/its licence, the person may appeal the Director's decision to the Agriculture, Food and Rural Affairs Tribunal [Tribunal"]. If not satisfied with the Tribunal's decision, the person may appeal the Tribunal's decision to the Divisional Court.	Proposed changes require a person to request the Director to hold a Hearing as opposed to requiring the Director to hold a Hearing before refusing to renew, suspend or cancel a licence. This is consistent with process under the Grain Program. 1) If no hearing is requested and the Director acts, there would be no appeal of the Director's decision. 2) The Act removes the requirement that the Tribunal has to hold a new hearing and require the Tribunal to review the Director's decision on the basis of whether it is reasonable (as opposed to correct). • 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. 3) A similar change has been made on an appeal to the Divisional Court from a decision of the Tribunal (i.e. reasonableness standard). Additionally the Courts have been authorized to: • Consider aggravating factors in regard 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 proceedings.
Offence	It is an offence under the LLPA to contravene any provisions of the Act or any regulations made thereunder and upon conviction, a person is liable to a fine of not more than $2,000 for a first offence and not more than $5,000 for each subsequent offence. It is also an offence under the LLPA to purchase cattle without a licence and upon conviction, a person is liable to a fine of not more than $2,000 for a first offence and not more than $5,000 for each 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); • $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.

Program Component	Key Provisions Livestock and Livestock Products Act (LLPA) and Farm Products Payments Act (FPPA)	Key Changes if Protecting Farmers From Non-Payment Act (the Act) is Proclaimed
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 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 Ministry of Fiance to provide loans to the Board that do not bear interest and do not exceed $250K. No member of a board is personally liable for anything done in good faith.	The Act updates Board governance powers and make 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: (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 Board's 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.

Program Component	Key Provisions Livestock and Livestock Products Act (LLPA) and Farm Products Payments Act (FPPA)	Key Changes if Protecting Farmers From Non-Payment Act (the Act) is Proclaimed
		• 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 Authority (DAA)	The Minister may designate a DAA to administer the fund management component of the program.	Both the fund management and licensing components may be delivered by a DAA

Appendix 2: Grounds for under which Board may Refuse a Claim

Section 18. (1)	Section 19
18. (1) The Board may refuse to pay a claim made in respect of a dealer in the following circumstances: 1. The applicant's claim for payment is in respect of a dealer who is not a dealer licenced under the *Livestock and Livestock Products Act*. 2. The applicant presents a cheque for payment later than five business days after it is received from the dealer and the cheque is dishonoured by non-acceptance or non-payment. 3. The applicant does not apply within the time prescribed in section 11. 4. The applicant makes an arrangement with the dealer whereby the latter is given an extension of the time to pay. 5. The applicant does not notify the director promptly of the failure to pay. 6. It would be inequitable in all the circumstances to pay the claim because there is an association between the applicant and the dealer and the applicant's conduct or, if the applicant is a corporation, the conduct of an officer or director of the applicant or that of a person having power to direct the applicant's management, caused the failure to pay (2) In exercising its discretion under paragraph 1 of subsection (1), the Board shall take into account whether or not the applicant knew that the dealer was, at the time of the sale, unlicenced on account of the expiry, suspension, cancellation or non-renewal of the licence. (3) When determining whether to refuse to pay a claim under subsection (1) made by an applicant who is a feeder cattle finance co-operative or a breeder co-operative, the Board shall take into account the actions of the member of the co-operative who sold the cattle on behalf of the co-operative	**19.** The Board may refuse to pay a claim made in respect of a producer in the following circumstances: 1. Subject to paragraph 2, in cases where the producer paid the applicant by cheque and the cheque is dishonoured by non-acceptance or non-payment, the applicant presented the cheque for payment at or later than 2 p.m. on the second business day after the cheque is received. 2. In the case of a sale to a feeder cattle finance co-operative or a breeder cattle co-operative where the producer paid the applicant by cheque and the cheque is dishonoured by non-acceptance or non-payment, the applicant presented the cheque for payment at or later than 2 p.m. on the tenth day after the date of the sale. 3. The applicant does not apply within the time prescribed in section 12. 4. The applicant does not notify the director promptly of the failure to pay. 5. The applicant is a producer designated as such under subsection 6 (1) and does not agree in writing to reimburse the Board the full amount of any money the applicant may receive from the buyer in respect of which the applicant made the claim, up to the amount paid from the Fund to the applicant. 6. It would be inequitable in all the circumstances to pay the claim because there is an association between the producer and the applicant and the applicant's conduct, or if the applicant is a corporation, the conduct of an officer or director of the applicant or that of a person having power to direct the applicant's management, caused the failure to pay.