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Protecting Farmers from Non-Payment Act (Regulating Agricultural Product Dealers and Storage Operators), 2023

[S.o. 2023, chapter 9  
Schedule 30](https://www.ontario.ca/laws/statute/s23009)

**Consolidation Period:** From June 8, 2023 to the [e-Laws currency date](http://www.e-laws.gov.on.ca/navigation?file=currencyDates&lang=en).

Note: THIS ACT IS NOT YET IN FORCE. It comes into force on a day to be named by proclamation of the Lieutenant Governor.

No amendments.

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Part I  
Interpretation and Application

Definitions

**1** (1)  In this Act,

“agreement to purchase or sell a designated product” means an agreement to purchase or sell a designated product under section 6; (“entente d’achat ou de vente d’un produit désigné”)

“agreement to store a designated product” means an agreement to store a designated product under section 11; (“entente d’entreposage d’un produit désigné”)

“agricultural product” means cattle, hogs, poultry, or other livestock, eggs, dairy products, wool, grains, seeds, fruit, vegetables, maple products, honey, tobacco, or any class or part of any such product, or any other product designated as an agricultural product by regulation; (“produit agricole”)

“board” means a board established or continued pursuant to this Act; (“commission”)

“dealer” means a person, licensed or not, who engages in the business of buying or selling a designated product as a principal or agent, but does not include a person or a producer buying a designated product for their own personal use; (“marchand”)

“dealer’s licence” means a licence to engage in business as a dealer of a Part IV designated product issued by the Director under Part VIII; (“permis de marchand”)

“delegated authority” means an entity that has been designated under section 79; (“organisme délégataire”)

“designated product” means and agricultural product designated by regulation under clause 2 (1) (a), (b), (c), (d) or (e); (“produit désigné”)

“Director” means a Director appointed under section 3 or 4; (“directeur”)

“fund” means a fund established or continued pursuant to this Act; (“fonds”)

“licence” means a licence under this Act; (“permis”)

“licensed dealer” means a dealer who has been issued a dealer’s licence; (“marchand titulaire d’un permis”)

“licensed storage operator” means a person who has been issued a storage operator’s licence; (“exploitant de services d’entreposage titulaire d’un permis”)

“Minister” means the Minister of Agriculture, Food and Rural Affairs or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the Executive Council Act; (“ministre”)

“owner” means the person who has legal title to a designated product; (“propriétaire”)

“Part IV designated product” means an agricultural product designated by regulation under clause 2 (1) (a); (“produit désigné par la partie IV”)

“Part V designated product” means an agricultural product designated by regulation under clause 2 (1) (b); (“produit désigné par la partie V”)

“Part VI designated product” means an agricultural product designated by regulation under clause 2 (1) (c); (“produit désigné par la partie VI”)

“Part VII designated product” means an agricultural product designated by regulation under clause 2 (1) (d); (“produit désigné par la partie VII”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“producer” means a person who is engaged in the production of a designated product; (“producteur”)

“regulation” means a regulation made under this Act; (“règlement”)

“storage operator” means a person, licensed or not, who engages in the business of storing a designated product; (“exploitant de services d’entreposage”)

“storage operator’s licence” means a licence to store Part V designated products issued by the Director under Part VIII; (“permis d’exploitant de services d’entreposage”)

“Tribunal” means the Agriculture, Food and Rural Affairs Appeal Tribunal continued under the Ministry of Agriculture, Food and Rural Affairs Act. (“Tribunal”)

Existing aboriginal or treaty rights

(2)  For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982.

Part II  
Designation of Agricultural Products

Designation

**2** (1)  The Minister may, by regulation, designate an agricultural product as,

(a) a Part IV designated product, being a designated product with respect to which Part IV applies;

(b) a Part V designated product, being a designated product with respect to which Part V applies;

(c) a Part VI designated product, being a designated product with respect to which Part VI applies;

(d) a Part VII designated product, being a designated product with respect to which Part VII applies; or

(e) a designated product with respect to which two or more of the Parts of this Act referred to in clauses (a) to (d) apply.

Limiting application

(2)  A regulation designating an agricultural product under subsection (1) may provide that a Part referred to in the regulation applies to the designated product subject to such limitations as may be specified in the regulation, and may exclude certain provisions in the Part from applying to the designated product.

Part III  
Administration

Director and Deputy Directors

**3** (1)  Subject to section 4, the Minister shall appoint a Director to carry out the duties and exercise the powers of the Director under this Act.

Deputy Directors

(2)  Subject to section 4, the Minister may appoint one or more Deputy Directors to perform such duties as may be assigned by the Director and to act as Director in the Director’s absence.

Same

(3)  Only one Deputy Director may act as Director in the Director’s absence at any one time.

Powers of inspector

(4)  In addition to the powers described in subsections (1) and (2), the Director and a Deputy Director have all the powers of an inspector under this Act.

Limitation of authority

(5)  In an appointment of a Director or Deputy Director, the Minister may limit the appointment to apply only with respect to a specified designated product or may otherwise limit the authority of the Director or Deputy Director in such manner as the Minister considers advisable.

Delegated authority

**4** (1)  If a delegated authority has been designated by regulation under Part X for the purposes of administering all or part of the Act and regulations with respect to a designated product, the delegated authority,

(a) shall appoint a Director to carry out the duties and exercise the powers of the Director under this Act with respect to the designated product; and

(b) may appoint one or more Deputy Directors to perform such duties as may be assigned by the Director and to act as Director in the Director’s absence with respect to the designated product.

Limitation

(2)  A delegated authority shall not appoint a person as Director or Deputy Director under subsection (1) if the person is a member of the delegated authority’s board of directors or the person is not an employee of the delegated authority.

Application

(3)  Subsections 3 (3), (4) and (5) apply with necessary modifications to a Director or Deputy Director appointed under subsection (1) of this section.

Part IV  
Dealers

Prohibition

**5** (1)  No person shall act as a dealer of a Part IV designated product unless the person holds a dealer’s licence with respect to that designated product.

No transfer of licence

(2)  A licensed dealer shall not transfer their dealer’s licence to another person.

No use of licence by third parties

(3)  A licensed dealer shall not, without the written consent of the Director, allow another person to use the dealer’s licence for the purposes of acting on behalf of the dealer in respect of the sale of a Part IV designated product.

Agreement to purchase or sell a designated product

**6** (1)  A dealer shall not purchase a Part IV designated product from a producer or sell or offer for sale a Part IV designated product on behalf of a producer unless the dealer and the producer have entered into an agreement to purchase or sell a designated product in relation to the designated product.

Same

(2)  An agreement to purchase or sell a designated product shall be in writing and satisfy any requirements that are prescribed by the regulations.

Payments by dealer

**7** (1)  A dealer shall pay for the designated product the dealer purchased from a producer or sold on behalf of a producer at the time the payment becomes due.

Same

(2)  Payments by the dealer shall be made in accordance with the regulations.

Timelines for payments

(3)  Despite subsection (2), if permitted by the regulations, the dealer and producer may enter into an agreement to purchase or sell a designated product that provides when payment for a designated product becomes due and, if they enter into such an agreement, the dealer shall comply with the timeline for payment set out in the agreement to purchase or sell a designated product.

Exemptions for members of a non-governmental organization

**8** (1)  Despite subsection 5 (1), a dealer of a Part IV designated product does not require a licence to act as a dealer of the designated product provided the dealer is a member in good standing of a prescribed non-governmental organization.

Same

(2)  The Minister shall not prescribe a non-governmental organization for the purposes of this section unless,

(a) the non-governmental organization is a not-for-profit corporation incorporated under the laws of Ontario or of Canada; and

(b) the Minister has entered into an agreement with the non-governmental organization.

Same

(3)  The Minister may include such terms and conditions as the Minister believes are reasonably necessary in an agreement referred to in clause (2) (b).

Records, etc.

**9** (1)  A dealer of a Part IV designated product shall keep such books and records as may be required by regulation and shall maintain the books and records in accordance with the regulations.

Provision of information, etc.

(2)  A dealer shall provide the Director with such records and information as the Director may require or as may be prescribed.

Part V  
Storage Operators

Prohibition

**10** (1)  No person shall store a Part V designated product on behalf of the producer or owner of the designated product unless the person holds a storage operator’s licence with respect to that designated product.

Exception

(2)  Despite subsection (1), a storage operator may store a Part V designated product on behalf of the producer or owner of the designated product without a storage operator’s licence if,

(a) the storage operator holds such qualifications as may be prescribed;

(b) the product is stored in a prescribed manner; and

(c) the storage takes place in such circumstances or under such conditions as may be prescribed.

No transfer of licence

(3)  A licensed storage operator shall not transfer the storage operator’s licence to another person.

Agreement to store a designated product

**11** (1)  A storage operator shall not store a Part V designated product on behalf of a producer or owner of the designated product unless the person has entered into an agreement to store a designated product with the producer or owner.

Same

(2)  An agreement to store a designated product shall be in writing and satisfy any requirements that are prescribed by the regulations.

Returning a designated product

**12** Upon the demand of the producer or owner of a Part V designated product, the storage operator of the designated product shall provide the actual designated product or an equivalent amount of the same grade of the designated product to the producer or owner.

Exemption for members of a non-governmental organization

**13** (1)  Despite subsection 10 (1), a storage operator of a Part V designated product does not require a licence to act as a storage operator of the designated product provided the storage operator is a member in good standing of a prescribed non-governmental organization.

Same

(2)  The Minister shall not prescribe a non-governmental organization for the purposes of this section unless,

(a) the non-governmental organization is a not-for-profit corporation incorporated under the laws of Ontario or of Canada; and

(b) the Minister has entered into an agreement with the non-governmental organization.

Same

(3)  The Minister may include such terms and conditions as the Minister believes are reasonably necessary in an agreement referred to in clause (2) (b).

Delivery for storage purposes

**14** (1)  Part V designated products that are delivered to a storage operator shall be deemed to be delivered for storage purposes and not for the purposes of sale, subject to there being written proof of the contrary.

Title to designated product

(2)  Despite any other Act, the property in and the title to Part V designated products that are stored with a storage operator remains at all time with the owner of the designated products.

Quantity of designated product accepted for storage

**15** (1)  A licensed storage operator shall not store, or enter into an agreement to store, any Part V designated product at the storage facility identified in the storage operator’s licence in a greater aggregate quantity than is permitted by the storage operator’s licence.

Additional storage

(2)  Despite subsection (1), a licensed storage operator may enter into agreements to store Part V designated products at the storage facility identified in the storage operator’s licence in a greater aggregate quantity than is permitted in the storage operator’s licence if the storage operator has also entered into an agreement to store the quantity of the Part V designated product that exceeds the amount permitted under the storage operator’s licence with the operator of another storage facility who is licensed under this Act or an Act of the Parliament of Canada.

Same

(3)  For greater certainty, a licensed storage operator wishing to store a greater quantity of the Part V designated product than is permitted under their storage operator’s licence shall not enter into an agreement under subsection (2) to do so with a storage operator who has an exemption under section 13.

Same

(4)  The storage of a Part V designated product under subsection (2) at a storage facility other than the storage facility identified in the storage operator’s licence shall be carried out in accordance with such requirements and conditions as may be prescribed.

Proof of quantity stored

**16** (1)  Upon delivery of a Part V designated product for storage by the producer or owner of the product, a storage operator shall,

(a) create a receipt for the designated product, indicating the quantity of the designated product that has been delivered for storage;

(b) provide the receipt to the producer or owner; and

(c) keep a copy of the receipt for the storage operator’s records.

Receipt

(2)  The receipt referred to in clause (1) (a) shall include such information and meet such requirements as may be prescribed.

Records

(3)  A storage operator shall keep records, in accordance with the regulations, of the quantity of a Part V designated product kept in storage by the storage operator, of the producers and owners on whose behalf the designated product is stored and of any fluctuations in the quantity over time.

Same

(4)  The records referred to in subsection (3) shall provide an accurate account at any given time of the quantity of a Part V designated product that the storage operator is keeping in storage and the location at which the designated product is being stored.

Correspondence with receipts

(5)  Every storage operator shall have at all times in the storage operator’s facilities, or in storage facilities arranged in accordance with subsection 15 (2), an amount of designated product of each kind and grade that is at least equal to the total amounts of outstanding receipts the storage operator has issued.

Shortfall

(6)  Despite subsection (5), the Director may issue a permit to a licensed storage operator permitting the storage operator to operate as a storage operator despite being in a shortfall position, subject to such terms and conditions as may be prescribed.

Storage operator as dealer

**17** (1)  This section applies if,

(a) a designated product is designated both as a Part IV designated product and as a Part V designated product; and

(b) a licensed storage operator for the designated product is also licensed to act as a dealer of that designated product.

Agreement required

(2)  A licensed storage operator referred to in clause (1) (b) shall enter into an agreement to purchase or sell a designated product with a producer or owner of the designated product before the licensed storage operator,

(a) purchases a designated product referred to in clause (1) (a) that is being stored at the licensed storage operator’s facility; or

(b) agrees to sell a designated product referred to in clause (1) (a) on behalf of the producer or owner of the product.

Content of Agreement

(3)  An agreement referred to in subsection (2) shall,

(a) authorize the licensed storage operator to act as a dealer with respect to the sale of any of the designated product that the producer or owner stores with the licensed storage operator; and

(b) meet the requirements set out in subsection 6 (2).

Where storage operator purchases product

(4)  If the agreement to purchase or sell a designated product referred to in subsection (2) provides that the licensed dealer is to purchase the designated product for the purpose of reselling it,

(a) subsection 14 (1) does not apply to the designated product that is delivered to the storage operator by the producer or owner of the designated product; and

(b) unless the regulations provide otherwise, property in and title to the designated product shall remain with the producer or owner of the designated product until the producer or owner has received payment for the designated product in accordance with the terms of the agreement to purchase or sell a designated product.

Application of s. 7

(5)  Section 7 applies with respect to the timing of payments to the producer or owner of the designated product.

Insurance

**18** (1)  Every storage operator of a Part V designated product shall insure and keep insured with an insurer licensed under the Insurance Act all Part V designated products stored with the storage operator against such loss, damage or perils as may be prescribed.

Amount of insurance

(2)  The amount of the insurance required under subsection (1) shall not be less than the full market value of the designated products that are insured and the amount shall be adjusted to correspond with any fluctuations in the value of the designated products.

Place of storage

(3)  The insurance shall cover all designated products stored by the storage operator of a Part V designated product, whether at the facilities identified in a storage operator’s licence or at a storage facility referred to in subsection 15 (2).

Terms of insurance contract

(4)  A contract of insurance obtained as required under subsection (1) shall contain such terms and conditions as may be prescribed.

Information provided to the Director

(5)  A storage operator of a Part V designated product shall submit to the Director the information that may be prescribed relating to the insurance of Part V designated products that the storage operator stores and shall so do in accordance with the regulations and at such times as may be prescribed.

Notice to Director

**19** (1)  Every person who intends to take control of a facility used to store a Part V designated product or the business operations of a licensed storage operator shall notify the Director, in writing, of such intention and the location of the facility or premises, as the case may be, prior to taking control of the facility or business operations.

Entry by Director

(2)  Every person who has taken control of a facility used to store a Part V designated product or the business operations of a licensed storage operator shall permit the Director to enter the facility or premises to ascertain the amount of designated product that is stored at the facility or premises.

Removal of designated product

(3)  The Director may, by order issued pursuant to paragraphs 2 or 3 of subsection 68 (1), seize or direct the removal of any or all of the Part V designated product stored in a facility or premises entered into in accordance with subsection (2).

No lien

**20** Unless it is agreed in writing to the contrary, Part V designated products that are stored with a storage operator are not subject to any lien, charge or set-off other than for charges related to the storage or handling of the designated product, including storage charges, conditioning charges, transportation charges, advance payments respecting the designated product and elevation charges, where applicable.

Non-application

**21** The Warehouse Receipts Act and section 2 of the Factors Act do not apply to a Part V designated product that is stored with a storage operator or to a document of title to the designated product.

Part VI  
Trusts

Trust constituted

**22** (1)  Prescribed amounts of monies that are owed to a dealer from the sale of a Part VI designated product, whether or not due or payable, or are received by or on behalf of a dealer on account of the sale of a Part VI designated product shall constitute a trust fund for the benefit of producers of that Part VI designated products who are owed those amounts.

Trustees

(2)  The dealer who is owed or received the funds is the trustee of the trust fund referred to in subsection (1) and, unless permitted by the regulations, the dealer shall not appropriate or convert any part of the trust fund to the dealer’s own use or to any use inconsistent with the trust until the producers are paid all amounts owed to them.

Duties of trustee

(3)  Trustees shall comply with the following requirements respecting the trust fund:

1. The funds the trustee receives shall be deposited into an account in the trustee’s name, and if there is more than one trustee of the trust funds, the funds shall be deposited into an account in all of the trustees’ names.

2. The account referred to in paragraph 1 shall be in,

i. a bank listed in Schedule I or II to the Bank Act (Canada),

ii. a credit union, as defined in the Credit Unions and Caisses Populaires Act, 2020, or

iii. a trust corporation registered under the Loan and Trust Corporations Act.

3. If a person is a trustee of more than one trust under this section, the trust funds may be deposited together into a single account, as long as the trustee maintains the records required under subsection (6) separately in respect of each trust.

Multiple trust funds in a single account

(4)  Trust funds from separate trusts that are deposited together into a single account in accordance with paragraph 3 of subsection (3) are deemed to be traceable, and the depositing of trust funds in accordance with that paragraph does not constitute a breach of trust.

Trust money kept separate

(5)  A dealer shall keep any money held for the dealer’s own benefit separate from every trust fund referred to in subsection (1) in respect of which the dealer is a trustee.

Records

(6)  The trustee shall ensure that written records of transactions on the trust fund referred to in subsection (1) are maintained setting out,

(a) the amounts that are received into the fund, and

(i) the name of the person from whom the amount was received, and

(ii) the name of the producer on whose behalf the amount is held in trust;

(b) the amounts owing to the trust, and

(i) the name of each person who owes the amounts, and

(ii) the name of each producer on whose behalf the amount is owed;

(c) the amounts that are paid out of the trust and the name of each person to whom the amount is paid out;

(d) any transfers made for the purposes of the trust; and

(e) any other prescribed information.

No other amount

(7)  A dealer shall not deposit into a trust fund referred to in subsection (1) any money other than the prescribed amounts that constitute the trust fund referred to in subsection (1).

Payments out of trust account, producers

**23** (1)  The dealer may make payments out of the trust fund referred to in subsection 22 (1) for the purpose of paying producers of Part VI designated products the amount to which they are entitled on account of a sale of the Part VI designated products.

Payments out of trust account, dealers

(2)  If a dealer has purchased Part VI designated products from a producer, the dealer may pay out of the trust fund referred to in subsection 22 (1) the prescribed amounts in the prescribed circumstances.

No pay out for improper purpose

(3)  A dealer shall not pay any amounts out of a trust fund referred to in subsection 22 (1) that does not comply with the requirements of subsections (1) and (2) of this section.

Dispute relating to sale price

(4)  In the event of a dispute between a dealer of and a producer of a Part VI designated product regarding the sale price of the product or any other prescribed matter, the dealer shall keep in the trust fund for the benefit of the producer an amount equal to the sale price set out in the agreement to purchase or sell a designated product.

Same

(5)  The dealer shall keep the funds held, pursuant to subsection (4), in the trust fund referred to in subsection 22 (1) until the dispute regarding the sale price or other prescribed matter, as the case may be, is resolved in accordance with subsections (1) to (3) of this section.

Liability for breach of trust

Corporations

**24** (1)  If a dealer is a corporation and fails to comply with section 22 or 23 with respect to Part VI designated products that are received by the dealer, the following persons may be found liable for breach of trust in an action brought by the producer of the Part VI designated products:

1. The corporation.

2. Every director or officer and any employee or agent of the corporation or any other person who has effective control of the corporation, if the director, officer, employee or agent or other person who has effective control of the corporation assented to, or acquiesced in, conduct that the person knew or ought reasonably to have known amounted to breach of trust by the corporation.

Effective control

(2)  In an action for breach of trust against a dealer with respect to amounts received on account of a sale of Part VI designated products, the question of whether a person has effective control of a corporation is one of fact and, in determining this issue, the court may disregard the form of any transaction and the separate corporate existence of any participant.

Joint and several liability

(3)  If two or more persons are found liable for breach of trust in an action against a dealer with respect to amounts received on account of a sale of Part VI designated products, the persons are jointly and severally liable.

Contribution

(4)  If two or more persons are found liable for breach of trust in an action against a dealer with respect to amounts received on account of a sale of Part VI designated products, one of those persons may bring an action or other proceeding for contribution from any of the other persons found liable for the breach of trust.

Apportionment of liability

(5)  In an action or proceeding for contribution under subsection (4), the court may apportion liability and order,

(a) contribution in such amount as will result in equal contribution by all parties liable for the breach of trust; or

(b) if the court believes that equal contribution by all parties would not be fair, contribution in such amount as the court considers appropriate in the circumstances.

Waiver, etc. void

**25** A written document provided by a producer to a dealer purporting to waive the producer’s rights under, or release the dealer from the requirements provided in, sections 22 and 23 is void.

Part VII  
Funds and Boards

Establishment of Funds and Boards

Establishment of funds

**26** (1)  Where an agricultural product is designated under Part II as a Part VII designated product, the Minister shall establish a fund for the benefit of,

(a) all producers of the Part VII designated product in Ontario; and

(b) any other persons who are entitled to make a claim against the fund by regulation or under section 46.

Fund for more than one designated product

(2)  The Minister may establish a fund under this section with respect to two or more types of Part VII designated products, and the fund shall be for the benefit of,

(a) all producers of any of the two or more types of Part VII designated products in Ontario; and

(b) any other persons who are entitled to make a claim against the fund by regulation or under section 46.

Separate accounting

(3)  If the Minister establishes a fund with respect to two or more types of Part VII designated products under subsection (2), the Minister shall ensure that each type of Part VII designated product is accounted for separately.

Purpose of fund

(4)  The purpose of a fund established under this Part with respect to a Part VII designated product is,

(a) to compensate a producer of the Part VII designated product in accordance with this Part and the regulations for any loss resulting from the failure of a licensed dealer to pay the producer on account of the sale of the Part VII designated product;

(b) to compensate a producer or owner of the Part VII designated product in accordance with this Part and the regulations for any loss resulting from the failure of a licensed storage operator to provide the Part VII designated product to the producer or owner upon demand; and

(c) to compensate any persons who are entitled to make a claim against the fund under the regulation or under section 46.

Establishment of boards

**27** (1)  Where an agricultural product is designated under Part II as a Part VII designated product, the Minister shall, for the purpose of administering the fund established under section 26 with respect to the designated product,

(a) establish a board by regulation; or

(b) designate, by regulation, a delegated authority to act as a board.

Regulation

(2)  A regulation under clause (1) (a) may establish a board to administer two or more funds established under section 26 with respect to two or more Part VII designated products.

Same

(3)  A regulation under clause (1) (a) shall designate the name by which the board shall be known.

Constitution of board

**28** (1)  A board established by regulation under section 27 shall be constituted in accordance with this Part and shall exercise such powers and perform such duties as may be specified in this Part.

Composition of board

(2)  A board shall be composed of at least three and not more than nine members to be appointed by the Minister.

Corporation without share capital

(3)  A board established by regulation under section 27 shall be established as a corporation without share capital.

Crown agent

(4)  A board shall be an agent of the Crown in right of Ontario for all of its purposes.

Powers of natural person

(5)  Except as limited by this Act, a board has the capacity, rights and powers of a natural person for the purposes of carrying out its functions.

Non-application of Acts

(6)  The Not-for-Profit Corporations Act, 2010, the Corporations Information Act and the Insurance Act do not apply to a board established by regulation under section 27, unless the Minister prescribes otherwise.

Application of Business Corporations Act

(7)  The Minister may prescribe provisions of the Business Corporations Act that apply to a board established under this section and those provisions will apply to the board with any necessary modification.

Functions and powers

**29** A board has the following functions and the powers to carry out those functions:

1. To manage and administer its fund or funds.

2. To investigate all claims made to it under this Act and to determine the extent of their validity.

3. To grant or refuse the payment of claims or any part thereof and determine the amounts and manner of payment.

4. To recover any money to which it is entitled under this Act by suit in a court of competent jurisdiction or otherwise.

5. To carry out the functions, and exercise the powers, under this Act or prescribed by regulation.

Board of directors

**30** (1)  The members of the board appointed under subsection 28 (2) shall constitute the board of directors of the board.

Remuneration

(2)  The Lieutenant Governor in Council may fix the remuneration of members of a board who are not public servants employed under Part III of the Public Service of Ontario Act, 2006.

Functions of board of directors

(3)  The board of directors of a board shall manage and supervise the affairs of the board.

By-laws

(4)  The board of directors of a board may, by resolution, make by-laws that are consistent with this Act and the regulations, governing its proceedings and generally for the conduct and management of the affairs of the board, including establishing committees to assist in managing the affairs of the board.

Same

(5)  If a by-law made under subsection (4) is inconsistent with a provision of this Act or the regulations, the by-law is invalid to the extent of the inconsistency.

Delegation

(6)  The board of directors may delegate to a committee of the board, or to an officer or employee of the board, any of the board of director’s powers other than the powers to,

(a) make, amend or repeal the by-laws of the board;

(b) approve the board’s operating budget;

(c) approve the board’s business plan, annual report and financial statements;

(d) adjudicate claims made under section 46; or

(e) do any other thing that may be prescribed.

Conditions

(7)  A delegation made under subsection (6) is subject to such conditions as may be set out in the delegation.

Chair

**31** (1)  The Minister shall designate one of the members of a board as the chair of the board of directors.

Vice-chair

(2)  The Minister may designate one or more members of a board as vice-chairs of the board of directors.

Acting chair

(3)  If the chair is absent or unable to act, or if the office of the chair is vacant, a vice-chair shall act as the chair.

No meeting

(4)  A board shall not conduct a meeting unless the chair or a vice-chair is able to act at the meeting.

Quorum

**32** The majority of the members of a board constitutes a quorum of the board of directors for the conduct of the board’s affairs.

Officers, employees, etc.

**33** (1)  A board may appoint such officers and employees as it considers necessary for the proper conduct of its affairs.

Job categories, etc.

(2)  A board may establish job categories, salary ranges and conditions of employment for its officers and employees, subject to the approval of,

(a) the Lieutenant Governor in Council, in the case of officers and employees who are members of a bargaining unit; or

(b) the Minister, in the case of officers and employees who are not members of a bargaining unit.

Definition

(3)  In this section,

“bargaining unit” has the same meaning as in the Labour Relations Act, 1995.

Experts

(4)  A board may engage persons other than officers and employees to provide professional, technical or other assistance to the board.

Fiscal year

**34** The fiscal year of a board shall begin on April 1 in a year and end on March 31 in the following year.

Audit

**35** (1)  The accounts and financial transactions of a board shall be audited each year by the Auditor General.

Audit report

(2)  The Auditor General shall prepare a report of the audit and submit it to the board and to the Minister.

Annual report

**36** (1)  A board shall prepare an annual report, provide it to the Minister and make it available to the public.

Content of annual report

(2)  A board shall comply with such directives as may be issued by the Management Board of Cabinet with respect to,

(a) the form and content of the annual report;

(b) when to provide it to the Minister; and

(c) when and how to make it available to the public.

Same

(3)  A board shall include such additional content in the annual report as the Minister may require.

Tabling of annual report

(4)  The Minister shall table a board’s annual report in the Assembly and shall comply with such directives as may be issued by the Management Board of Cabinet with respect to when to table it.

Immunity of employees, etc.

**37** (1)  No cause of action arises against, and no action or other proceeding may be instituted against, any of the following persons as a result of any act done in good faith in the performance or intended performance of the person’s duties under this Act or any alleged neglect or default in the performance in good faith of the person’s duties under this Act:

1. A current or former employee of the Crown.

2. A current or former member of a board or a current or former officer of a board.

3. A current or former employee of a board.

Crown liability preserved

(2)  Despite subsection 8 (3) of the Crown Liability and Proceedings Act, 2019, paragraph 1 of subsection (1) of this section does not relieve the Crown of any liability to which it would otherwise be subject.

Liability of boards preserved

(3)  Subsection (1) does not relieve a board of any liability to which it would otherwise be subject.

Dissolution of funds and boards

**38** (1)  The Minister may, by regulation,

(a) dissolve a board previously established or constituted under clause 27 (1) (a) of this Act or subsection 2 (1) of the Farm Products Payments Act and provide for the termination of the fund to which the board relates;

(b) provide for any transitional matter necessary for the effective dissolution of a board, including,

(i) the transfer, without compensation, of any property, including assets, liabilities, rights, obligations, records, databases, accounts and money, that is held by any of the affected boards, and

(ii) the assignment, without compensation, of any contracts that a board has entered into before its dissolution; and

(c) provide for the disposition of amounts remaining in a fund and such other measures as are necessary for the effective termination of a fund.

Immunity of Crown

(2)  No cause of action arises against the Crown, a minister of the Crown, a Crown employee or a Crown agent as a direct or indirect result of the termination of a fund or the dissolution of a board under subsection (1).

No proceeding

(3)  No proceeding, including but not limited to any proceeding in contract, restitution, tort or trust, shall be instituted against the Crown, a minister of the Crown, a Crown employee or a Crown agent by a person who suffers any damages, injury or other loss as a result of the termination of a fund or the dissolution of a board under subsection (1).

Administration of Funds

By-laws

**39** (1)  As soon as possible after the appointment of the board of directors of a fund, the board of directors shall make by-laws governing the financial management of its fund, including respecting the borrowing, investing and managing of financial risks.

Approval of Minister of Finance

(2)  The by-laws made under subsection (1) are not effective unless they are approved, in writing, by the Minister of Finance.

Grant to new fund

**40** When a fund is established under section 26, the Minister of Finance may make a grant out of the Consolidated Revenue Fund to the board that administers the fund and the grant shall not exceed $25,000.

Fees, producer

**41** (1)  A producer or owner of a Part VII designated product who sells the designated product to a dealer shall pay any prescribed fee with respect to the sale to the board established with respect to the designated product.

Same, owner

(2)  An owner of a Part VII designated product who stores the designated product with a storage operator shall pay any prescribed fee with respect to the storage of that designated product to the board established with respect to the designated product.

Same, prescribed person

(3)  A prescribed person who sells a Part VII designated product to another prescribed person in the prescribed circumstances shall pay any prescribed fee with respect to the sale to the board established with respect to the designated product.

Collection and remittance

(4)  A fee payable under subsection (1), (2) or (3) shall be collected and remitted to the appropriate board in accordance with the regulations.

Payments into funds

**42** (1)  All amounts that a board is entitled to receive under this Act shall be paid into the fund that it administers.

Consolidated Revenue Fund

(2)  Despite Part I of the Financial Administration Act, the fees payable to a board under section 41 of this Act and any revenue, income and assets that a board receives from the management of a fund or otherwise under this Act do not form part of the Consolidated Revenue Fund.

Loans

**43** (1)  If the amount standing to the credit of a fund is not sufficient for the purposes of making a payment for a claim made against the fund,

(a) upon the recommendation of the Minister, the Lieutenant Governor in Council may, by order, authorize the Minister of Finance to make loans to the board that administers the fund in an amount of up to $250,000;

(b) the board may borrow such sums as are necessary for the purposes of paying any claims from a bank listed in Schedule I or II of the Bank Act (Canada), a loan corporation or trust corporation registered under the Loan and Trust Corporations Act, a credit union within the meaning of the Credit Unions and Caisses Populaires Act, 2020 or another person; and

(c) in the case of a board that administers more than one fund, the board may borrow money from another fund that it administers, subject to such conditions and requirements as may be prescribed.

Same

(2)  A loan made under clause (1) (a) does not bear interest and shall be made on such terms as the Lieutenant Governor in Council directs.

Guarantee of loans

(3)  Upon the recommendation of the Minister, the Lieutenant Governor in Council may guarantee the payment of any loan made to a board under clause (1) (b) in an amount not exceeding $1,000,000, on such terms as the Lieutenant Governor in Council considers proper.

Amounts included in guarantee

(4)  A guarantee given under subsection (3) may, in addition to guaranteeing the payment of the principal amount of the loan, guarantee the payment of the following amounts with respect to the loan:

1. Any interest owing on the loan.

2. Fees, disbursements, allowances or charges owing by the board to its solicitor with respect to matters for which costs may be taxed under the Rules of Court.

3. Any other expenses that are reasonably and necessarily incurred in the course of collecting or attempting to collect money payable.

Form of guarantee

(5)  A guarantee given under subsection (3) shall be in a form and manner approved by the Lieutenant Governor in Council.

Same

(6)  A guarantee given under subsection (3) shall be signed by the Minister of Finance, or such other officer or officers as are designated by the Lieutenant Governor in Council, and, upon being signed, the Province of Ontario is liable for the payment of the loan or part thereof and other amounts in accordance with the terms of the guarantee.

Payment of guarantee

(7)  Payments to satisfy the liability of the Province of Ontario under a guarantee given under subsection (3) shall be made in accordance with section 12 of the Financial Administration Act.

Payments out of fund

**44** A board may make payments out of a fund only for the following purposes:

1. The payment of any claims made against the fund and permitted under this Act.

2. The payment of prescribed expenses that are incurred in the administration of this Act.

3. The repayment of any loans made to the board under clause 43 (1) (a) or (b).

4. The repayment of any payment made by the Province of Ontario as guarantor of a loan under a guarantee given under subsection 43 (3).

Additional funds

**45** (1)  Despite section 43, if at any time the amount standing to the credit of the fund is insufficient for the purpose of paying claims, the Lieutenant Governor in Council may, upon the recommendation of the Minister, authorize the Minister of Finance to make a grant to a board, provide a loan to a board or guarantee a loan made to a board out of money appropriated for such purposes by the Legislature.

Terms and conditions

(2)  A grant, loan or guarantee authorized pursuant to subsection (1) shall be on such terms and conditions as the Lieutenant Governor in Council directs.

Grant discretionary

(3)  Nothing in this Act or the regulations requires the Lieutenant Governor in Council to authorize the Minister of Finance to do anything under subsection (1).

Claims against Funds

Claims against funds

Application for payment from a fund

**46** (1)  The producer of a Part VII designated product that is sold by or on behalf of the producer may make a claim for payment out of the fund with respect to the Part VII designated product if,

(a) the dealer has not paid the producer the price payable under the agreement to purchase or sell a designated product within the prescribed time; or

(b) a proceeding under the Bankruptcy and Insolvency Act (Canada) or the Companies’ Creditors Arrangement Act (Canada) has been initiated against the dealer.

Same

(2)  The producer or owner of a Part VII designated product that has been stored with a storage operator may make a claim for payment out of the fund established with respect to that Part VII designated product if one of the following events has occurred:

1. The storage operator failed to deliver all or part of the stored Part VII designated product upon demand by the producer or owner.

2. A proceeding under the Bankruptcy and Insolvency Act (Canada) or the Companies’ Creditors Arrangement Act (Canada) has been initiated against the storage operator.

3. All or any part of the storage operator’s assets have been placed in the hands of a trustee for distribution under the Bankruptcy and Insolvency Act (Canada) or in the hands of a receiver for distribution pursuant to a debenture or like instrument and the trustee or receiver fails to deliver to the producer or owner all or any part of the Part VII designated product upon demand by the producer or owner.

Claims by prescribed persons

(3)  A prescribed person may make a claim for payment out of a fund established with respect to a Part VII designated product in the prescribed circumstances.

Claims

**47** A person who wishes to make a claim for payment out of a fund under section 46 shall, in accordance with the regulations, submit the claim to the board that administers the fund.

Hearing of claims

**48** (1)  If a claim for payment out of a fund is submitted to the board that administers the fund in accordance with the regulations, the chair of the board may appoint a panel to hear the claim.

Panel

(2)  The panel shall be composed of at least three members of the board who have knowledge of the designated product to which the claim relates.

Same

(3)  For greater certainty, the panel may be comprised of all of the members of the board.

Chair of panel

(4)  The chair of the board shall designate one of the members of the panel to be the chair of the panel.

Same

(5)  If the panel is comprised of all members of the board and the chair of the board does not designate another member of the panel to be the chair of the panel, the chair of the board shall be the chair of the panel.

Member’s resignation or expiration of term

(6)  If, before the panel renders its decision with respect to a claim, a member of the panel resigns as a member of the board or the term of office of the member expires, the member may carry out and complete any duties or responsibilities and exercise any powers as a member of the panel in connection with the claim until the decision is rendered.

Simultaneous panels

(7)  The members of the board may sit in two or more panels simultaneously.

Decision

(8)  The decision of the majority of the members of the panel constitutes the decision of the board and if there is no majority, the decision of the chair of the panel constitutes the decision of the board.

Procedures

**49** (1)  In determining a claim under section 48, a board and a panel of the board shall follow such rules of practice and procedures as may be prescribed or determined by resolution of the board of directors of the board.

Practice and procedures established by board of directors

(2)  The board of directors of a board may, by resolution, determine its own rules of practice and procedures for hearing claims, including procedures for dealing with claims that are frivolous, vexatious or made in bad faith without holding a full hearing on the merits of the claim.

Conflict

(3)  In the event of a conflict between the rules of practice and procedures passed by resolution of a board of directors and the rules of practice and procedures prescribed by the regulations or provided for in this Act, the rules of practice and procedures prescribed by regulation or provided for in this Act shall prevail.

Statutory Powers Procedure Act

(4)  The Statutory Powers Procedure Act, except for sections 4.2, 4.3 and 4.8 of that Act, applies to the adjudication of claims by a board.

Payment of claims

**50** (1)  If a board or a panel of a board determines that all or part of a claim is valid, the board shall pay only the portion of the claim it found to be valid, subject to the regulations.

No payment for invalid claims

(2)  For greater certainty, a board or panel of a board shall not pay for any claim or portion of a claim that it determines is invalid.

Refusal of claim

(3)  A board or panel of a board shall refuse a claim in such circumstances, and subject to such conditions, as may be prescribed.

Amount of payment

(4)  A board or panel of a board that hears a claim shall determine the amount that may be paid out of the fund to satisfy the claim in accordance with the regulations and subject to such limitations and conditions as may be prescribed by the regulations.

Refund

**51** If a claimant has received a payment from a fund and also receives a payment from or on behalf of a dealer, storage operator or other person in full or partial satisfaction of the same debt for which payment was made from the fund, the claimant shall pay to the board that administers the fund the lesser of,

(a) the amount the claimant received from or on behalf of the dealer, storage operator or other person; or

(b) the amount the claimant received from the fund.

Orders by board

**52** (1)  Where a board pays a claim out of a fund as a result of the failure of a dealer, storage operator or prescribed person to pay a debt owing to the claimant, the chair of the board may issue to the dealer, storage operator or prescribed person,

(a) an order to reimburse the board for the amount of the claim that was paid by the board to the claimant; and

(b) an order to pay the costs of the board associated with conducting the claims proceeding.

Content of order to reimburse

(2)  An order to reimburse a claim issued under clause (1) (a) shall set out,

(a) the amount that is to be reimbursed;

(b) the time by which the reimbursement is to be paid; and

(c) any other matter that may be prescribed.

Order for claimant to pay costs

(3)  The chair of a board may order a claimant to pay the costs of the board associated with conducting a hearing or other proceeding relating to the claim if,

(a) the claim was refused by the board or panel of the board that heard the claim; and

(b) the board or panel of the board that heard the claim found that the claim was frivolous, vexatious or made in bad faith.

Content of order to pay costs

(4)  An order to pay costs issued under clause (1) (b) or subsection (3) shall set out,

(a) the amount of the costs that are to be paid, together with a description of each cost and receipts for the costs;

(b) the right of the person receiving the order to appeal the order to the Tribunal under section 53; and

(c) any other matter that may be prescribed.

Appeal to Tribunal

**53** (1)  Within 15 days after an order to pay costs under clause 52 (1) (b) or subsection 52 (3) is issued, the person against whom the order is made may appeal the order to the Tribunal by serving notice of the appeal on the board who issued the order and on the Tribunal.

Appeal hearing

(2)  Upon receiving notice of an appeal under subsection (1), the Tribunal shall set a date for and hold a hearing to review whether the decision of the chair of the board to issue the order was reasonable.

Extension of time for appeal

(3)  The Tribunal may extend the time for serving notice of appeal, either before or after the end of the 15-day period referred to in subsection (1), if the Tribunal is satisfied that there are reasonable grounds for granting the extension.

Stay

(4)  The serving of a notice of appeal under subsection (1) operates as a stay of the order that is the subject of the appeal until the disposition of the appeal.

Record of proceeding

(5)  The chair of the board that made the order that is the subject of an appeal under this section shall provide the Tribunal with a copy of the order as soon as practicable after receiving notice of the appeal under subsection (1).

Powers on appeal

(6)  After holding a hearing to review the chair of the board’s decision to issue the order, the Tribunal shall,

(a) if it finds that the decision was reasonable, confirm the decision; or

(b) if it finds that the decision was not reasonable, determine a reasonable amount for the appellant to pay and order that the appellant to pay that amount.

Burden of proof

(7)  The burden of proof in an appeal under this section rests with the appellant to prove, on the balance of probabilities, that the amount that the appellant is required to pay under the order that is the subject of the appeal is not reasonable.

Decision final

(8)  The decision of the Tribunal in an appeal under this section is final.

Payment of ordered amounts

**54** (1)  A person who is ordered to reimburse a claim or to pay the costs of a claim proceeding under section 52 shall pay the amount ordered,

(a) within the time set out in the order, if the person was ordered to reimburse a claim; or

(b) if the person gives notice of an appeal of the order under section 53, within 30 days after the Tribunal issues a decision on the appeal that upholds all or part of the order to pay the costs of a claim proceeding.

Enforcement of order

(2)  If a person fails to pay an amount payable under an order made under section 52 within the times required under subsection (1) of this section, the chair of the board that issued the order may file the order with a court of competent jurisdiction and enforce it as if it was an order of the court.

Failure to pay order

(3)  If an order under section 52 was made against a licensed dealer or licensed storage operator and the licensed dealer or licensed storage operator fails to pay the amount payable under the order within the time required under subsection (1) of this section, the chair of the board that issued the order may inform the Director of the outstanding debt owing.

Same

(4)  Where the Director receives information from the chair of the board under subsection (3),

(a) if more than 30 days have elapsed after the time for paying the order specified in subsection (1) and no available appeal of the order has been made to the Tribunal, the Director shall,

(i) pay the amount payable under the order to the board out of any security that the Director holds from the licensed dealer or licensed storage operator, and

(ii) require the licensed dealer or licensed storage operator to deposit as security with the Director the amount paid by the Director under subclause (i) in order to restore the amount of security to its previous level;

(b) if more than 30 days have elapsed after the time for paying the order specified in subsection (1) and no available appeal of the order has been made to the Tribunal, the Director shall suspend or refuse to renew any dealer’s licence or storage operator’s licence issued to the dealer or storage operator until such time as the dealer or storage operator, as the case may be, has paid the debt owing or entered into a repayment plan with the board to repay the debt owing that is satisfactory to the chair; and

(c) in the event a dealer or storage operator has entered into a repayment plan with the board under clause (b) and commits a breach of any terms or conditions of the repayment plan, the Director shall suspend or refuse to renew any dealer’s licence or storage operator’s licence issued to the dealer or storage operator until such time as the dealer or storage operator, as the case may be, has paid the debt owing or remedied the breach of the existing repayment plan with the board.

No appeal

(5)  The actions of the Director under subsection (4) cannot be appealed to the Tribunal.

Failure to pay after 45 days

(6)  If more than 45 days have elapsed after the time for paying the order specified in subsection (1) and the person against whom the order was made has not yet paid the debt owing, the chair of the board that issued the order may,

(a) disclose to a consumer reporting agency the name of the person who has failed to pay under the order, the amount that is payable under the order and the day on which the payment was due; or

(b) issue an order creating a lien against the property of the person who has failed to pay under the order.

Information to consumer reporting agency

(7)  If the chair of a board discloses information about a person who has failed to pay an amount payable under an order made under section 52 to a consumer reporting agency and the person subsequently pays the amount payable under the order in full, the chair of the board shall notify the consumer reporting agency within 10 days after the amount is paid.

Lien on personal property

(8)  If a lien is created under clause (6) (b) against personal property, the Personal Property Security Act, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act, and,

(a) the lien shall be deemed to be a security interest that has attached for the purposes of the Personal Property Security Act; and

(b) the chair of the board that created the lien may perfect the security interest for the purposes of the Personal Property Security Act by registration of a financing statement.

Lien on real property

(9)  If a lien is created under clause (6) (b) against real property, the chair of the board that created the lien may register the lien against the real property in the proper land registry office and on registration, the obligation under the lien becomes a charge on the property.

Same

(10)  If a lien against real property is registered in the proper land registry office under subsection (9), no proceedings against the lien shall be initiated.

Payment of amounts ordered

(11)  If a lien is created under subsection (8) or (9) and the person pays in full the amount payable under the order made under section 52 that led to the lien being created and any costs incurred to register the lien, the chair of the board that created the lien shall, within 10 days of the chair learning that the amount has been paid,

(a) in the case of a lien against personal property, discharge the registration of any financing statement; and

(b) in the case of a lien against real property, register a discharge of the lien in the proper land registry office.

Interest

(12)  Money owing under an order made under section 52 bears interest at a rate that shall be determined in accordance with section 129 of the Courts of Justice Act as though the order under section 52 was an order under that Act.

Money received under order

(13)  All amounts, including interest and reimbursement of any collection costs, paid under an order made under section 52 to a board shall be deposited into the fund that it administers with respect to the relevant Part VII designated product.

Part VIII  
Licences

Application for a licence

**55** A person who wishes to apply for a dealer’s licence or a storage operator’s licence shall submit an application to the Director in accordance with this Act and the regulations and may be required to pay a prescribed fee.

Issuance of licences

**56** (1)  The Director shall issue a licence to an applicant who satisfies the prescribed requirements, unless the Director believes, on reasonable grounds, that,

(a) based on past conduct of the applicant, any officers, directors or representatives of the applicant or any other person having effective control of the applicant’s operations, the operations that would be authorized by the licence will not be carried out in accordance with this Act, the regulations or any conditions the Director may impose on the licence;

(b) the applicant, any officers, directors or representatives of the applicant or any other person having effective control of the applicant’s operations is or are not competent to carry on the business to which the licence relates;

(c) the applicant will not have available at its place of business the facilities and equipment necessary to carry out the business authorized by the licence in accordance with this Act or the regulations;

(d) the applicant, any officers, directors or representatives of the applicant or any other person having effective control of the applicant’s operations owe money to a fund established under section 26, unless the applicant, or any officers, directors or representatives of the applicant, has or have a repayment plan and is or are in good standing regarding payments under that repayment plan;

(e) the applicant, any officers, directors or representatives of the applicant or any other person having effective control of the applicant’s operations is or are not suitable to be licensed having regard to such circumstances as may be prescribed; or

(f) any prescribed grounds exist that disentitle the applicant to the issuance of a licence.

Proposal to refuse application

(2)  If the Director proposes to refuse to issue a licence to the applicant, the Director shall take the steps required by section 61.

Renewal of licence

**57** (1)  A person who has a licence may apply to the Director to renew the licence.

Application

(2)  The applicant shall submit the application for renewal to the Director in accordance with this Act and the regulations and shall,

(a) pay any prescribed fee; and

(b) meet any other prescribed requirements.

Deadline

(3)  The application must be made within the prescribed period or, if no period is prescribed, before the expiry date of the licence.

Renewal

(4)  The Director shall renew the licence of an applicant who satisfies the prescribed requirements unless the Director believes, on reasonable grounds, that,

(a) any grounds or circumstances exist that would disentitle the applicant to the issuance of a licence under subsection 56 (1);

(b) the premises, facilities and equipment used in the operations authorized by a licence do not comply with this Act or the regulations;

(c) the applicant, any officers, directors or representatives of the applicant or any other person having effective control of the applicant’s operations has or have contravened any provision of this Act, the regulations or any conditions attached to the licence and such contravention warrants a refusal to renew the licence;

(d) the applicant has permitted any person under the applicant’s control or direction in connection with the operations authorized by the license to contravene any provision of this Act, the regulations or any conditions attached to the licence, and such contravention warrants a refusal to renew the licence;

(e) the applicant, any officers, directors or representatives of the applicant or any other person having effective control of the applicant’s operations is or are not suitable to be licensed having regard to such circumstances as may be prescribed; or

(f) any prescribed grounds exist that disentitle the applicant to the renewal of a licence.

Conditions

(5)  Upon renewal, the licence may be made subject to different conditions than those to which it was subject before the renewal.

Proposal to refuse application

(6)  If the Director proposes to refuse to renew a licence, the Director shall take the steps required by section 61.

Continuation pending renewal

(7)  If the application for renewal is made by the deadline described in subsection (3) and meets the requirements set out in subsection (2), the licence continues in effect after the expiry date until,

(a) the Director notifies the applicant that the licence is renewed; or

(b) if the Director proposes to refuse the renewal, until the earliest of,

(i) the day the appeals process under this Part is concluded,

(ii) the expiry of the period for requesting a hearing about the proposal, if no request for such hearing is made under subsection 61 (4), or

(iii) the day the applicant informs the Director that the applicant does not require a hearing.

Exception

(8)  Despite subsection (7), a licence will not continue to be in effect after the expiry date if the Director determines that the licensee has contravened the Act, the regulations or a condition of their licence during the term of the licence.

Conditions and amendments

**58** (1)  The Director may at any time, by order and without first holding a hearing,

(a) impose conditions on a licence that the Director considers appropriate; or

(b) amend a licence in any manner the Director considers appropriate.

Conditions of licence

(2)  A licence is subject to those conditions to give effect to the purposes of this Act that,

(a) are imposed by virtue of this Part; or

(b) are imposed under this Act or that are required to be imposed under the regulations.

Timing

(3)  An order under subsection (1) takes effect immediately upon the order being served.

Removal of conditions

(4)  The Director may, on the application of a licensee, remove or vary a condition attached to the licence and, if the Director proposes to refuse to remove the condition attached to the licence, section 61 applies.

Process

(5)  If the Director issues an order under subsection (1), the Director shall take the steps required by section 61.

Interim order to suspend without hearing

**59** (1)  The Director shall, without first holding a hearing, impose an interim order to suspend a licence if,

(a) the Director believes on reasonable grounds that the suspension is necessary for the immediate protection of,

(i) the safety or health of any person or the public,

(ii) the interests of persons selling designated products,

(iii) the interests of persons storing designated products, or

(iv) any fund established under section 26; or

(b) one of the prescribed conditions for issuing the order has been met.

Process

(2)  If the Director issues an order under subsection (1), the Director shall take the steps required by section 61.

Timing

(3)  An interim order to suspend a licence under subsection (1) takes effect immediately upon the order being served.

Effect

(4)  During the suspension, the licensee is not authorized to carry on the operations authorized by the licence.

Revocation

(5)  The Director may revoke an interim order to suspend a licence at any time.

Suspension or revocation of licence

**60** (1)  The Director may by order suspend or revoke a licence for any reason that would disentitle the licensee to the renewal of the licence under subsection 57 (4).

Proposal to suspend

(2)  If the Director proposes to suspend or revoke a licence without the licensee’s consent, the Director shall take the steps required by section 61.

Appeals to Director

Application

**61** (1)  This section applies if the Director does any of the following:

1. Proposes to refuse to issue a licence.

2. Proposes to refuse to renew a licence.

3. Proposes to suspend or revoke a licence.

4. Proposes to refuse to remove a condition on a licence.

5. Issues an order imposing conditions on a licence.

6. Issues an order amending a licence.

7. Issues an interim order suspending a licence.

Notice

(2)  The Director shall give the applicant or licensee written notice of a proposal referred to in paragraphs 1 to 3 of subsection (1).

Content of notice or order

(3)  A notice provided under subsection (2) or an order issued under this Part shall include the following information:

1. The reasons for the proposal or order, as the case may be.

2. Information indicating that the applicant or licensee can request a hearing by the Director about the order and informing the applicant or licensee about the process for requesting such a hearing.

3. Any prescribed information for that proposal or order.

Right to hearing

(4)  If the applicant or licensee requests a hearing in writing within 15 days after the notice or order is received, the Director shall hold a hearing.

Opportunity to show or achieve compliance

(5)  An applicant or licensee who receives a notice or is issued an order and who requests a hearing shall be provided with the opportunity to show or achieve compliance before the hearing with the Director.

Examination of documentary evidence

(6)  Before the hearing with the Director, the applicant or licensee shall be provided with the opportunity to examine any written or documentary evidence that will be produced or any report, the contents of which will be given in evidence at the hearing.

Powers of the Director

(7)  If the Director has received a written request under subsection (4), the Director may make the following decisions:

1. Before holding the hearing, the Director may decide to vary or rescind the proposal or order, as the case may be, if the decision would not adversely impact the interests of the applicant, the licensee or a person who has an interest in the licence.

2. After holding the hearing, the Director may make any decision that the Director considers reasonable.

Notice of decision

(8)  The Director shall give to the applicant or licensee written notice of the decision that includes the following information:

1. The reasons for the decision.

2. Information indicating that the applicant or licensee can request a hearing by the Tribunal about the decision and informing the applicant or licensee about the process for requesting such a hearing.

3. Any prescribed information.

Hearing not requested

(9)  If the applicant or licensee does not request a hearing with the Director or does not make the request in accordance with subsection (4), the Director may carry out the proposal or the order will remain in effect, as the case may be.

No appeal

(10)  An order that remains in effect pursuant to subsection (9) or the decision of the Director to carry out the proposal under subsection (9), as the case may be, cannot be appealed.

Appeal to Tribunal

Right to review

**62** (1)  If the applicant or licensee requests a review hearing in writing of the Director’s decision under subsection 61 (7) and informs the Director of this request, within 15 days after the notice under subsection 61 (8) is received the Tribunal shall hold a hearing to review the Director’s decision.

Extension of time to appeal

(2)  The Tribunal may extend the time for requesting a hearing either before or after the expiration of the 15 days if the Tribunal is satisfied that there are reasonable grounds for applying for the extension.

Documentary evidence

(3)  As soon as reasonably possible after receiving a notice to request a hearing, the Director shall provide the Tribunal with a record of the proceeding in which the Director made the decision.

New evidence

(4)  The Tribunal may consider evidence the Director did not consider if the Tribunal is satisfied that it was not possible to present that evidence to the Director during the Director’s hearing.

Immediate effect

(5)  Even if the applicant or licensee requests a hearing, the Director’s decision takes effect immediately, unless the order provides otherwise, and the Tribunal may only grant a stay at the direction of the Director.

Parties

(6)  The Director, the applicant or licensee and any other party specified by the Tribunal are parties to the hearing.

Powers of Tribunal

(7)  After holding the hearing to review the Director’s decision, the Tribunal shall,

(a) if it finds that the Director’s decision was reasonable, confirm the Director’s decision; or

(b) if it finds the Director’s decision was not reasonable,

(i) substitute its opinion for that of the Director and impose such conditions as it considers appropriate, or

(ii) direct the Director to alter the decision.

Appeal to Court

**63** (1)  A party to a hearing held by the Tribunal may appeal the order of the Tribunal to the Divisional Court.

Standard of review

(2)  In any review of a decision of the Tribunal, the decision of the Tribunal that has been appealed shall not be altered or set aside unless it is not reasonable.

Immediate effect

(3)  Even if the applicant or licensee appeals a decision of the Tribunal, the decision takes effect immediately, unless the Tribunal decides otherwise.

Minister to be heard

(4)  If an appeal is made under this section, the Minister is entitled to be heard on the appeal.

Record to be filed in Court

(5)  The chair of the Tribunal shall file with the Court the record of proceedings before the Tribunal which, together with a transcript of the evidence before the Tribunal if it is not part of the Tribunal’s record, shall constitute the record in the appeal.

Powers of Court

(6)  Upon hearing the appeal of the Tribunal’s decision, the Court shall,

(a) if it finds that the Tribunal’s decision was reasonable, confirm the Tribunal’s decision; or

(b) if it finds the Tribunal’s decision was not reasonable,

(i) substitute the Court’s opinion for that of the Tribunal and impose such conditions as the Court considers appropriate,

(ii) direct the Director to alter the decision, or

(iii) direct the Tribunal to reconsider the decision.

Licence Registry

**64** The Minister may, by regulation,

(a) require the Director to establish a publicly available licence registry, which may also include the names of people who are exempted from requiring a licence;

(b) prescribe the manner of establishing the registry and the form and location of the registry;

(c) prescribe the information to be included in the registry.

Part IX  
Inspections and Enforcement

Inspections

Inspectors

**65** (1)  The Director may, for the purpose of ensuring compliance with this Act and the regulations, designate persons as inspectors in accordance with the following:

1. If the Director is appointed by the Minister, the Director may designate only persons employed by the Ministry.

2. If the Director is appointed by the delegated authority, the Director may designate only persons employed by the delegated authority.

Designation of inspectors under other Acts

(2)  Despite subsection (1), the Director may designate an inspector under another Act who is not employed by the Ministry or the delegated authority as an inspector for the purposes of this Act if, prior to the designation, the inspector and the Minister or delegated authority, as the case may be, enter into an agreement that includes the prescribed information.

Limitation on inspectors

(3)  The Director shall not designate as an inspector a member of the board of directors of the delegated authority.

Certificate of designation

(4)  A person designated under subsection (1) or (2) who is acting as an inspector under this Act shall, on request, produce their certificate of designation.

Limitation on powers

(5)  The Director may limit the powers of an inspector and such limitation shall be included in the certificate of designation.

Inspections

**66** (1)  For the purposes of carrying out an inspection, an inspector may enter any place or conveyance used for the business of buying, selling or storing a designated product.

Dwellings

(2)  The power to enter and inspect under this section shall not be exercised as a power to enter and inspect a place or conveyance or a part of a place or conveyance that is used as a dwelling unless a warrant under section 158 of the Provincial Offences Act has been issued.

Powers of inspector

(3)  An inspector conducting an inspection may,

(a) examine records or anything else that is relevant to the inspection;

(b) demand the production of a record or any other thing that is relevant to the inspection;

(c) on issuing a written receipt for it, remove a record or any other thing that is relevant to the inspection for review, examination or testing;

(d) on issuing a written receipt for it, obtain and remove a designated product at the expense of the owner of the designated product;

(e) on issuing a written receipt for it, remove a record or any other thing that is relevant to the inspection for copying;

(f) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place;

(g) take photographs or make any other kind of recording;

(h) inquire into all financial transactions, records and other matters that are relevant to the inspection; and

(i) carry out any other prescribed activity.

Obligation to produce and assist

(4)  If an inspector demands that a record or any other thing be produced under this section, the person who has custody of the record or thing shall produce it immediately upon demand and, in the case of a record, shall, on request, provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

Records and things removed from place

(5)  A record or other thing that has been removed for review, examination, testing or copying,

(a) shall be made available, on request, to the person from whom it was removed and at a time and place that are convenient for the person and for the inspector; and

(b) shall be returned to the person within a reasonable time, unless, in the case of a thing that has been subject to testing, the thing has been made unsuitable for return as a result of the testing.

Enforcement

Compliance orders

**67** (1)  This section applies if the Director or an inspector that is permitted by the regulations to issue compliance orders is of the opinion that,

(a) a person is committing any act or pursuing any course of conduct that contravenes or does not comply with a requirement established under this Act, the regulations, a licence or a term or condition on a licence;

(b) a person is committing any act or pursuing any course of conduct that might reasonably be expected to result in a state of affairs that would contravene or not comply with a requirement established under this Act, the regulations, a licence or a term or condition on a licence; or

(c) a person has committed any act or pursued any course of conduct that contravenes or does not comply with a requirement established under this Act, the regulations, a licence or a term or condition on a licence.

Order

(2)  The Director or, in the prescribed circumstances, an inspector may, without holding a hearing, issue an order to the person to cease committing or cease pursuing a course of conduct identified by the Director or inspector or to perform such acts as, in the opinion of the Director or inspector, are necessary to remedy the situation.

Content of order

(3)  An order issued under subsection (2) shall include the following information:

1. Any timelines in which the person against whom the order is made is required to comply.

2. The reasons for the order.

3. Information indicating that the person can request a hearing by the Tribunal about the order and informing the person about the process for requesting such a hearing.

4. Any prescribed information.

Right to hearing

(4)  Whether an order was issued by the Director or an inspector, if a person requests a hearing in writing, and informs the Director of this request, within 15 days after the order is received, the Tribunal shall hold a hearing to review the order.

Extension of time to appeal

(5)  The Tribunal may extend the time for requesting a hearing either before or after the expiration of the 15 days if the Tribunal is satisfied that there are reasonable grounds for applying for the extension.

Documentary evidence

(6)  As soon as reasonably possible after receiving a notice to request a hearing, the Director or inspector shall provide the Tribunal with all documentary evidence the Director or inspector relied upon when issuing the order.

New evidence

(7)  The Tribunal may consider evidence the Director or inspector did not consider if the Tribunal is satisfied that it was not possible to present that evidence to the Director or inspector before the Director or inspector issued the order.

Immediate effect

(8)  Even if a person requests a hearing, the order takes effect immediately, unless the order provides otherwise, and the Tribunal may only grant a stay at the direction of the Director.

Parties

(9)  The Director, the inspector if the order was issued by an inspector and the person who requested the hearing are parties to the hearing.

Powers of Tribunal

(10)  After holding the hearing to review the decision of the Director or inspector to issue the compliance order, the Tribunal shall,

(a) if it finds that the decision was reasonable, confirm the decision; or

(b) if it finds that the decision was not reasonable, rescind the decision.

Burden of proof

(11)  The person that requested the hearing has the burden of proving that on the balance of probabilities the decision to issue the compliance order was not reasonable.

No appeal

(12)  The decision of the Tribunal cannot be appealed.

Enforcement re stored designated products

**68** (1)  The Director may, by order, take the following actions if the Director believes, on reasonable grounds, that such actions are needed to protect the interests of a producer or owner of a designated product being stored with a storage operator:

1. Require the storage operator to cease operating and, if necessary, seal any storage containers, until the amount of the designated product in storage can be ascertained.

2. Seize some or all of the designated product from the storage operator.

3. Move some or all of the designated product to the control of a different storage operator.

4. Distribute the designated product, on a proportionate basis, to the producers or owners of the designated product.

5. Sell some or all of the designated product and distribute the proceeds, on a proportionate basis, to the producers or owners of the designated product.

6. Insure the designated product with an insurer licenced under the Insurance Act.

7. Any prescribed actions.

Director’s order

(2)  An order issued under subsection (1) shall include the following information:

1. If applicable, the actions the Director will take or the actions the Director is requiring the storage operator to take, as the case may be.

2. Any timelines in which the storage operator is required to comply.

3. The reasons for the order.

4. Information indicating that the storage operator can request a hearing by the Tribunal about the order and informing the storage operator about the process for requesting such a hearing.

5. Any prescribed information.

Costs order

(3)  The Director may issue a costs order against the storage operator to recover any costs the Director incurs by taking actions described in paragraphs 2 to 7 of subsection (1).

Contents of costs order

(4)  An order issued under subsection (3) shall include,

(a) the amount the storage operator is required to pay;

(b) a description of the costs being charged;

(c) copies of receipts for the costs being charged; and

(d) any other prescribed information.

Payment

(5)  The debt owing pursuant to a costs order is payable to,

(a) His Majesty the King in Right of Ontario if the Minister appointed the Director; or

(b) The delegated authority if the delegated authority appointed the Director.

No appeal

(6)  The costs order is final and cannot be appealed.

Freeze orders

Application

**69** (1)  An order under this section can be made only with respect to a designated product.

Freeze order

(2)  Upon request of a producer or owner or on the Director’s own initiative, and if any of the conditions in subsection (3) are met, a Director may, in writing,

(a) order any person having on deposit or controlling any assets or trust funds of a licensed dealer or licensed storage operator to hold those assets or funds;

(b) order a licensed dealer or licensed storage operator to refrain from withdrawing any asset or trust fund from a person having it on deposit or controlling it; or

(c) order a licensed dealer or licensed storage operator to hold any asset or trust fund of a producer or owner in trust for the person entitled to it.

Conditions

(3)  The Director may issue an order under subsection (2) if,

(a) a dealer is late in making a payment owing to a producer;

(b) a dealer, producer or prescribed person owes money to a fund established under Part VII; or

(c) a storage operator is late in returning all or part of the designated product to its owner.

Contents of order

(4)  An order issued under subsection (2) shall include the following information:

1. Any timelines in which the person against whom the order is made is required to comply.

2. The reasons for the order.

3. Information indicating that the person can request a hearing by the Tribunal about the order and informing the person about the process for requesting such a hearing.

4. Any prescribed information.

Limitation

(5)  In the case of a bank or authorized foreign bank as defined in section 2 of the Bank Act (Canada), a credit union within the meaning of the Credit Unions and Caisses Populaires Act, 2020 or a loan corporation or trust corporation registered under the Loan and Trust Corporations Act, the order under subsection (2) of this section applies only to the offices and branches named in the order.

Payment of damages

(6)  If the Director makes an order upon the request of a producer or owner and the Tribunal determines that the request was frivolous, vexatious or in bad faith and awards damages against the person that requested the order,

(a) the Director shall pay for any damages the order caused to the person against whom the order was made out of any security the Director held on behalf of the producer or owner; and

(b) the person that requested the order shall pay any debt owing after the Director’s payment.

Release of assets

(7)  The Director may,

(a) consent to the release of any particular asset or trust fund from the order; or

(b) wholly revoke the order, unless the Director made the order on the request of a producer or owner and,

(i) that producer or owner files a prescribed security with the Director,

(ii) the amount of the security is acceptable to the Director, and

(iii) the security is filed in a manner that is acceptable to the Director.

Notice on title

(8)  If an order is made under this section, the Director may register in the appropriate land registry office a notice on title that an order under subsection (2) has been issued and that the order may affect land belonging to the person specified in the notice.

Effect of notice

(9)  The notice registered under subsection (8) has the same effect as the registration of a certificate of pending litigation except that the Director may, in writing, revoke or modify the notice.

Cancellation or discharge application

(10)  A person against whom an order has been made under subsection (2) or any person having an interest in land in respect of which a notice is registered under subsection (8) may apply to the Tribunal for cancellation in whole or in part of the order or for discharge in whole or in part of the registration.

Same

(11)  Subsections (14) to (21) apply, with necessary modifications, with respect to a hearing in respect of a notice on title pursuant to subsection (8).

Application to Superior Court of Justice

(12)  An application may be made to the Superior Court of Justice for a determination in respect of the disposition of an asset or trust fund,

(a) by a person in receipt of an order under subsection (2), if that person is in doubt as to whether the order applies to the asset or trust fund; or

(b) by a person who claims an interest in the asset or trust fund subject to the order.

Same

(13)  The Director may apply to the Superior Court of Justice for a determination in respect of the disposition of an asset or trust fund or in respect of a notice on title registered pursuant to subsection (8).

Right to hearing

(14)  If a dealer or storage operator requests a hearing in writing, and informs the Director of this request, within 15 days after the order under subsection (2) is received, the Tribunal shall hold a hearing to review the Director’s decision to issue a freeze order.

Extension of time to appeal

(15)  The Tribunal may extend the time for requesting a hearing either before or after the expiration of the 15 days if the Tribunal is satisfied that there are reasonable grounds for applying for the extension.

Immediate effect

(16)  Even if a person requests a hearing, the order takes effect immediately, unless the order provides otherwise, and the Tribunal may only grant a stay at the direction of the Director.

Parties

(17)  The Director, the person against whom the order is made and the person who requested the Director to issue the order are parties to the hearing.

Powers of Tribunal

(18)  After holding the hearing to review the Director’s decision to issue the order, the Tribunal shall,

(a) confirm the Director’s decision if the Tribunal finds that the decision was reasonable to protect the producer or owner of the designated product; or

(b) rescind the Director’s order if the Tribunal finds that the order,

(i) was not reasonable to protect the producer or owner of the designated product, or

(ii) unduly prejudiced the interests of the dealer, storage operator or any other person who has an interest in land on which the order was registered against.

Same

(19)  If the Tribunal determines that the request by a producer or owner for a freeze order was frivolous, vexatious or in bad faith, the Tribunal may award damages against that producer or owner.

Burden of proof

(20)  The person that requested the hearing has the burden of proving that on the balance of probabilities the requirements in subsection (18) have or have not been met, as the case may be.

No appeal

(21)  The decision of the Tribunal is final and cannot be appealed.

Administrative Penalties

Administrative penalties

**70** (1)  An administrative penalty can be imposed only with respect to designated products.

Interpretation

(2)  In sections 71 to 78,

“appeal body” means the prescribed appeal body or, if no appeal body is prescribed, the Tribunal.

Statutory Powers Procedure Act

(3)  If an appeal body is prescribed, the Statutory Powers Procedure Act does not apply to a hearing held by the appeal body.

Purposes

**71** (1)  An administrative penalty may be imposed under section 70 for the following purposes:

1. To promote compliance with the requirements established under this Act and the regulations.

2. To prevent a person or entity from deriving, directly or indirectly, any economic benefit as a result of contravening or failing to comply with a requirement established under this Act.

No limit on other regulatory measures

(2)  An administrative penalty may be imposed alone or in conjunction with any other regulatory measure provided by this Act, including any orders or the imposition of conditions on, amendments to or suspension or revocation of a licence.

Order

(3)  If the Director is satisfied that a person is contravening or not complying with or has contravened or not complied with a requirement established under this Act or the regulations or a term or condition imposed on a licence, the Director may, by order, impose an administrative penalty on the person in accordance with this Part and the regulations.

Payment

(4)  The debt owing pursuant to an administrative penalty is payable to,

(a) His Majesty the King in Right of Ontario if the Minister appointed the Director; or

(b) the delegated authority if the delegated authority appointed the Director.

Contents of the order

(5)  An order issued under subsection (3) shall include the following information:

1. The amount of the penalty and the payment requirements.

2. The reasons for the order.

3. Information indicating that the person or entity can request a hearing by the appeal body about the order and informing the person about the process for requesting such a hearing.

4. Any prescribed information.

Limitation

(6)  The Director shall not issue an order under subsection (3) more than two years after the day the Director became aware of the contravention or failure to comply.

Absolute liability

(7)  An order made under subsection (3) imposing an administrative penalty against a person applies even if,

(a) the person took all reasonable steps to prevent the contravention on which the order is based; or

(b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

No hearing required

(8)  The Director is not required to hold a hearing or to afford a person an opportunity for a hearing before making an order under subsection (3) against the person.

Non-application of other Act

(9)  The Statutory Powers Procedure Act does not apply to an order made under subsection (3).

Right to appeal

**72** (1)  If a person requests a hearing in writing, and informs the Director of this request, within 15 days after the order under subsection 71 (3) is received, the appeal body shall hold a hearing to review the Director’s decision to issue the order.

Extension of time to appeal

(2)  The appeal body may extend the time for requesting a hearing either before or after the expiration of the 15 days if the appeal body is satisfied that there are reasonable grounds for applying for the extension.

Effect of appeal

(3)  If a person requests a hearing, the requirement to pay the penalty is stayed until the appeal body makes a decision.

Parties

(4)  The Director and the person who requested the hearing are parties to the hearing.

Powers of appeal body

(5)  After holding the hearing to review the Director’s decision to issue the order, the appeal body shall,

(a) if it finds that the Director’s decision was reasonable, confirm the order; or

(b) if it finds that the Director’s decision was not reasonable, rescind the order.

Burden of proof

(6)  The person that requested the hearing has the burden of proving that on the balance of probabilities the Director’s decision to issue the order was not reasonable.

No appeal

(7)  The decision of the appeal body cannot be appealed.

Maximum administrative penalty

**73** (1)  The amount of an administrative penalty shall reflect the purpose of the penalty, but the amount of the penalty shall not exceed $10,000 for each day or part of a day on which the contravention occurs or continues.

Same

(2)  Despite subsection (1), if a person has profited as a result of a contravention, the amount of the administrative penalty may include the amount earned in profit.

Timing of payment

**74** A person is required to pay the administrative penalty,

(a) at the time set out in the order issued under subsection 71 (3) if no request for hearing is made; or

(b) 30 days after the day the appeal body makes a decision if the decision is to order the Director to impose the proposed administrative penalty.

Effect of payment

**75** If a person against whom an order imposing an administrative penalty is made pays the penalty in accordance with the terms of the order, the person cannot be charged with an offence under this Act in respect of the same contravention on which the order is based.

Enforcement

**76** (1)  If a person fails to pay an administrative penalty imposed under this Part in accordance with the terms of the order imposing the penalty, the Director may file the order with a court of competent jurisdiction and the order may be enforced as if it were an order of the court.

Date of order

(2)  For the purposes of section 129 of the Courts of Justice Act, the day on which the order is filed with the court shall be deemed to be the date of the order.

Additional remedies

(3)  Without limiting the availability of any other remedies, if a person fails to pay an administrative penalty imposed under this Part in accordance with the terms of the order imposing the penalty, the Director may take one or more of the following actions:

1. Pay the administrative penalty from any security the Director holds on behalf of the licenced dealer or licenced storage operator and require a licenced dealer or licensed storage operator to deposit with the Director such additional security as is required to restore the amount of security to its previous levels.

2. If payment is not made in accordance with the terms of the order within 30 days after an administrative penalty was due to be paid, suspend any licence the person holds pursuant to this Act until the administrative penalty is paid and there is no appeal to the Tribunal of such a suspension.

3. If payment is not made in accordance with the terms of the order within 30 days after an administrative penalty was due to be paid, refuse to renew the licence of the person until the administrative penalty is paid and there is no appeal to the Tribunal of such a refusal.

4. If payment is not made in accordance with the terms of the order within 45 days after an administrative penalty was due to be paid, disclose to a consumer reporting agency the name of the person who failed to pay the order, the amount that is payable under the order and the day on which the payment was due to be paid and if the Director takes such action, the Director shall notify the consumer reporting agency within 10 days of having received notice the administrative penalty has been paid.

5. If payment is not made in accordance with the terms of the order within 60 days after an administrative penalty was due to be paid, the Director may issue an order creating a lien against the property of the person.

Same, lien

(4)  If the Director issues an order creating a lien under paragraph 5 of subsection (3), the following rules apply:

1. If the lien relates to personal property,

i. the Personal Property Security Act, except Part V, applies with necessary modifications to the lien despite clause 4 (1) (a) of that Act,

ii. the lien shall be deemed to be a security interest that has attached for the purposes of the Personal Property Security Act, and

iii. the Director may perfect the security interest for the purposes of the Personal Property Security Act by the registration of a financing statement under that Act.

2. If the lien relates to real property,

i. the Director may register the lien against the real property of the person liable to pay in the proper land registry office and on registration, the obligation under the lien becomes a charge on the property,

ii. no proceedings against the lien shall be initiated, and

iii. the Director shall, within 10 days of learning of the payment of the debt owing under the administrative penalty, discharge the registration of any financing statement or register a discharge created on title.

Proceeds

**77** The following rules apply with respect to the proceeds from the payment of an administrative penalty:

1. If the administrative penalty was imposed by a Director appointed by the Minister or by a delegated authority that is a Crown Agent, the proceeds shall be placed in,

i. a fund established for the designated product to which the penalty relates, or

ii. if no fund has been established, the Consolidated Revenue Fund.

2. If the administrative penalty was imposed by a Director appointed by a delegated authority that is not a Crown Agent, the proceeds shall be placed in,

i. a fund established for the designated product to which the penalty relates, or

ii. if no fund has been established, the account of the delegated authority.

Transition

**78** (1)  The Director shall not impose an administrative penalty in respect of any contravention or non-compliance that occurred before section 70 came into force.

Deeming

(2)  A contravention that started before and continued after section 70 came into force is deemed to have started on the day section 70 came into force for the purposes of determining the amount of an administrative penalty.

Part X  
Delegated Authority

Delegated Authority

Delegated authority

**79** (1)  If the requirements of sections 80 and 81 are met, the Minister may, by regulation,

(a) designate a corporation as the delegated authority for the purposes of this Act to administer the delegated provisions; and

(b) subject to subsection (3), prescribe the delegated provisions of this Act and the regulations for which a delegated authority is to be delegated authority to administer.

Restrictions

(2)  A delegation described in clause (1) (b) may be restricted to,

(a) specified aspects or purposes of the specified provisions;

(b) specified persons or classes of persons to whom the specified provisions apply;

(c) specified programs or parts of programs;

(d) specified parts of Ontario; and

(e) specified time periods.

**Excepted provisions**

(3)  The following provisions of this Act shall not be prescribed as delegated provisions:

1. The provisions in this Part.

2. Sections 116 and 117.

3. Where the delegated authority is a Crown Agency, the following provisions:

i. Section 118.

ii. The provisions of Part XIII.

More than one delegated authority

(4)  Two or more corporations may be prescribed,

(a) to administer different specified provisions of this Act; or

(b) to administer the same specified provisions, but with respect to,

(i) different specified aspects or purposes,

(ii) different specified persons or classes of persons,

(iii) different specified programs or parts of programs,

(iv) different specified parts of Ontario, or

(v) different specified time periods.

More than one designated product, fund

(5)  The same corporation may be prescribed as the delegated authority to administer specified provisions with respect to more than one designated product and more than one fund.

Previous administration

(6)  Nothing in a delegation of provisions,

(a) invalidates anything that was done under the delegated provisions before the day on which the regulation delegating the provisions comes into force, including, without limitation, regulations, appointments and registrations;

(b) invalidates anything that was done under the Farm Products Payments Act, the Grains Act or the Livestock and Livestock Products Act or their respective regulations before the day on which the regulation delegating the provisions comes into force; or

(c) affects inspections, investigations or proceedings begun under the delegated provisions before the day on which the regulation delegating the provisions comes into force.

Persons bound

(7)  A delegated provision binds all persons whom it would bind if it had not been delegated.

Eligibility as delegated authority

**80** A corporation may be prescribed as the delegated authority if it is,

(a) a Crown Agency; or

(b) a not-for-profit corporation without share capital that is not a Crown Agency and that is incorporated under the laws of Ontario.

Requirement for administrative agreement

**81** (1)  A corporation may be prescribed as a delegated authority only if the Minister and the corporation have entered into an administrative agreement with respect to the delegated provisions.

Contents

(2)  The administrative agreement shall include all matters that the Minister considers necessary for delegating the administration of the delegated provisions to the delegated authority, including, at a minimum,

(a) requirements relating to the governance of the delegated authority, unless the delegated authority is a Crown Agency;

(b) requirements with which the delegated authority shall comply in connection with its administration of the delegated provisions, including a requirement for adequate insurance against liability arising out of that administration; and

(c) the financial terms of the delegation, including payments to the Crown, licence fees, royalties and reimbursements for transfer of assets.

Amendment by Minister

(3)  If the delegated authority is not a Crown Agency, the Minister may unilaterally amend the administrative agreement, after giving the delegated authority the notice that the Minister considers reasonable in the circumstances.

Revocation of designation and restriction of delegation

**82** (1)  If the delegated authority is a Crown Agency, the Minister may, by regulation, revoke the designation of the delegated authority made under clause 79 (1) (a) or restrict the delegation made under clause 79 (1) (b), if the Minister considers it reasonable to do so.

Notice

(2)  If the Minister intends to make a regulation under subsection (1), the Minister shall provide notice to the delegated authority before filing the regulations.

Duty to administer delegated provisions

**83** A delegated authority shall administer its delegated provisions in accordance with this Act and the administrative agreement and shall comply with this Act, the regulations, other applicable law and the administrative agreement.

Duty to advise the Minister

**84** (1)  The delegated authority shall promptly inform and advise the Minister with respect to,

(a) any material fact that could affect the delegated authority’s ability to perform its duties under this Act or the regulations; or

(b) any urgent or critical matter that is likely to require action by the Minister to ensure that the administration of the delegated provisions is carried out properly.

Same

(2)  The delegated authority shall advise or report to the Minister on any matter that the Minister refers to it and that relates to this Act or the administration of the delegated provisions.

Conflicts

**85** In the event of conflict, this Act and the regulations shall prevail over,

(a) the administrative agreement;

(b) the delegated authority’s constating documents, by-laws and resolutions; and

(c) the Not-for-Profit Corporations Act, 2010, the Corporations Information Act or a regulation made under either of those Acts.

Liability and indemnification

No Crown liability

**86** (1)  No cause of action arises against the Crown or a Crown employee as a direct or indirect result of any act or omission that a person who is not a Crown employee takes or makes in the execution or intended execution of any of the person’s powers or duties under this Act, the regulations or a Minister’s order.

No proceeding against the Crown

(2)  No action or other proceeding for damages, including but not limited to a proceeding for a remedy in contract, restitution, tort or trust, shall be instituted against the Crown or a Crown employee in connection with any cause of action described in subsection (1).

Application

(3)  Without limiting the generality of subsection (2), that subsection applies to any action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, including loss of revenue and loss of profit, or any other remedy or relief, and includes a proceeding to enforce a judgment, order or award made by a court, tribunal or arbitrator outside of Canada.

No personal liability, Crown employee

(4)  No action or other proceeding shall be instituted against a current or former Crown employee for an act done in good faith in the execution or intended execution of a duty under this Act or the regulations or for an alleged neglect or default in the execution in good faith of the duty.

Tort by Crown employee

(5)  Despite subsection 8 (3) of the Crown Liability and Proceedings Act, 2019, subsection (4) of this section does not relieve the Crown of liability in respect of a tort committed by an employee of the Crown to which it would otherwise be subject.

Revocation

(6)  Subsections (1) to (5) apply, with necessary modifications, in respect of a direct or indirect result of the revocation of a designation under section 90 or of any regulation made under section 90.

Indemnification of the Crown

(7)  A delegated authority that is not a Crown Agency shall indemnify the Crown in accordance with the administrative agreement, in respect of damages and costs incurred by the Crown for any act or omission of the delegated authority or its members, officers, directors, employees or agents in the execution or intended execution of their powers and duties under this Act, the regulations, a Minister’s order or the administrative agreement.

No personal liability, board members and others

(8)  No action or other proceeding shall be instituted against any of the following persons, or a person who was formerly one of the following persons, for an act done in good faith in the execution or intended execution of any of the person’s powers or duties under this Act or the regulations or for an alleged neglect or default in the execution in good faith of that power or duty:

1. Members of the board of directors of the delegated authority.

2. Persons who perform functions under this Act or the regulations as employees or officers of the delegated authority.

3. The Director or any Deputy Directors.

4. Inspectors.

Liability of delegated authority

(9)  Subsection (8) does not relieve the delegated authority of liability to which it would otherwise be subject.

Consolidated revenue fund

(10)  Despite Part 1 of the Financial Administration Act, where the delegated authority is a Crown Agency the money the delegated authority collects or receives as well as any other assets or revenues it derives in carrying out its powers and duties under this Act do not form part of the Consolidated Revenue Fund.

Minister’s policy directions

**87** (1)  The Minister may issue policy directions to the delegated authority relating to its administration of the delegated provisions, after giving the delegated authority the notice that the Minister considers reasonable in the circumstances.

Part of administrative agreement

(2)  The policy directions are deemed to form part of the administrative agreement.

Compliance

(3)  The delegated authority shall comply with the policy directions and shall implement measures to do so as soon as is reasonably possible.

Conflict

(4)  In the event of conflict, a policy direction issued under subsection (1) shall prevail over a constating document, by-law or resolution of the delegated authority.

Application of ss. 89 to 105

Application

**88** Sections 89 to 105 apply where the delegated authority is not a Crown Agency.

Delegation

Minister’s authority to require reviews

**89** (1)  The Minister may, by order,

(a) require that policy, legislative or regulatory reviews related to the delegated provisions, the powers and duties of the delegated authority and the administrative agreement be carried out,

(i) by or on behalf of the delegated authority, or

(ii) by a person or entity specified by the Minister; or

(b) require that reviews of the delegated authority, of its operations, or of both, including, without limitation, performance, governance, accountability and financial reviews, be carried out,

(i) by or on behalf of the delegated authority, or

(ii) by a person specified by the Minister.

Access to records and information

(2)  When a review is carried out under subclause (1) (a) (ii) or (1) (b) (ii), the delegated authority shall give the person specified by the Minister and the person’s employees or agents access to all records and other information required to conduct the review.

Revocation of designation and restriction of delegation

Public interest

**90** (1)  The Minister may, by regulation, revoke the designation of the delegated authority made under clause 79 (1) (a) or restrict the delegation made under clause 79 (1) (b) if the Minister considers it advisable to do so in the public interest.

Non-compliance

(2)  The Minister may, by regulation, revoke the designation of the delegated authority made under clause 79 (1) (a) or restrict the delegation made under clause 79 (1) (b) if,

(a) the delegated authority has failed to comply with this Act, the regulations, other applicable law or the administrative agreement;

(b) the Minister has given the delegated authority an opportunity to remedy the default within the period that the Minister considered reasonable under the circumstances; and

(c) the delegated authority has failed to remedy the default to the Minister’s satisfaction within that period.

No restriction on subs. (1)

(3)  Nothing in subsection (2) restricts the ability of the Minister to act under subsection (1).

On request

(4)  The Minister may, by regulation, revoke the designation of the delegated authority or restrict the scope of the delegation on terms that the Minister considers advisable in the public interest if the delegated authority requests the revocation or restriction.

Statutory Powers Procedure Act

(5)  The Statutory Powers Procedure Act does not apply to the exercise by the Minister of a right under this section to revoke the designation of a delegated authority.

Transition

(6)  If the Minister revokes the designation of the delegated authority or restricts the scope of the delegation under this section, the Minister may, by regulation, provide for any transitional matter necessary for the effective implementation of the revocation or restriction including,

(a) the transfer, without compensation, of any property, including assets, liabilities, rights, obligations, records, databases, accounts and money, that the delegated authority holds in respect of carrying out its activities; and

(b) the assignment, without compensation, of any contracts that the delegated authority has entered into before the revocation.

Powers and Duties

Duty to comply with orders, directions

**91** (1)  If the Minister issues a directive, order or policy direction, the delegated authority shall comply with such directive, order or direction.

Additional activities

(2)  The delegated authority may carry out other activities in accordance with its objects or purposes, subject to subsection (3).

Commercial activity

(3)  The delegated authority shall not engage in commercial activity through an individual, corporation or other entity that is related to the delegated authority unless approved by the Minister, and the Minister may impose any conditions the Minister considers appropriate in such circumstances.

Restriction on use of money

(4)  Despite any order or policy direction issued by the Minister, the delegated authority shall use any money obtained in the administration of the delegated provisions only for the purpose of administering the delegated provisions.

Provision of services in French

**92** (1)  A person has the right to communicate in French with and to receive available services in French from the delegated authority.

Board to ensure

(2)  The board of directors of the delegated authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to communicate in French and receive services in French given by this section.

Limitation

(3)  The right to communicate in French and receive services in French given by this section is subject to the limits that are reasonable in the circumstances.

Definition

(4)  In this section,

“service” means any service or procedure that is provided to the public by the delegated authority in administration of the delegated provisions and includes responding to inquiries from members of the public and any other communications for the purpose of providing the service or procedure.

Accessibility for Ontarians with Disabilities Act, 2005

**93** The Accessibility for Ontarians with Disabilities Act, 2005 applies to a delegated authority as though it were an organization providing services for the purposes of that Act.

Forms and fees

**94** (1)  A delegated authority may,

(a) establish forms related to the administration of its delegated provisions and provide for their content;

(b) set and collect fees, costs or other charges related to the administration of the delegated provisions, in accordance with processes and criteria established by the delegated authority and approved by the Minister; and

(c) make rules governing the payment of the fees, costs and charges described in clause (b).

Setting fees

(2)  In setting the fees, costs and charges described in clause (1) (b), the delegated authority may, subject to the approval of the Minister, specify the amounts or the method for determining the amounts.

Publication of fee schedule

(3)  The delegated authority,

(a) shall publish the fees, costs and charges, the processes and criteria and the rules on its website and in any other way described in the administrative agreement; and

(b) may publish them in any other format the delegated authority considers advisable.

Requirement of advisory council, advisory process

**95** The Minister may require the delegated authority to,

(a) establish one or more advisory councils;

(b) include as members of an advisory council representatives of the public, producers, dealers, agricultural commodity groups, government organizations and other persons the Ministers considers appropriate; and

(c) undertake an advisory process in which it ensures that the advisory council seeks advice from one or both of the public and persons with experience or knowledge relating to this Act and the delegated provisions.

Public access to information

**96** (1)  The delegated authority shall, within the prescribed time, make available to the public on its website,

(a) the prescribed information relating to the compensation of board members, officers and employees and relating to any other payments that it makes or is required to make to them;

(b) its corporate by-laws; and

(c) any other information that is prescribed.

Same, transition

(2)  For a board member or officer who is in office on the day this section comes into force, or an individual who is an employee on the day this section comes into force, the regulation may require the disclosure of information relating to compensation for a period that began before the day on which this section comes into force.

Process and procedures

(3)  The delegated authority shall follow the prescribed processes and procedures with respect to providing access to the public to records of the authority and with respect to managing personal information contained in those records.

Effect of disclosure

(4)  The disclosure of information relating to compensation in accordance with this section, or in the reasonable belief that the disclosure is required by this section, shall not be deemed by any court or person,

(a) to contravene any Act or regulation enacted or made before or after the coming into force of this section; or

(b) to be in breach of or contrary to any agreement that purports to restrict or prohibit that disclosure, regardless of whether the agreement is made before or after the coming into force of this section.

Corporate Matters

Minister’s authority regarding change to objects or purposes

**97** (1)  The Minister may require that the delegated authority make a specified change to its objects or purposes if the Minister is of the opinion that it is reasonable to do so.

Same

(2)  No change shall be made to a delegated authority’s objects or purposes unless the Minister’s written approval is obtained in advance.

Minister’s authority re board of directors, eligibility and nomination

**98** (1)  The Minister may,

(a) by order, establish competency criteria for members of the board of directors of the delegated authority; and

(b) by regulation, with respect to the board of directors of the delegated authority, establish rules about the nomination of members, the appointment or election process, the length of their terms and whether they may be reappointed or re-elected.

Eligibility for appointment, etc.

(2)  A person is qualified to be appointed or elected as a member of the board of directors of the delegated authority only if the person meets the competency criteria established under clause (1) (a).

Appointment by Minister

(3)  The Minister may appoint one or more members of the board of directors of the delegated authority for a term specified in the appointment, but the Minister cannot appoint sufficient members to form a majority of the board of directors of the delegated authority.

Representatives

(4)  The members appointed by the Minister to the board of directors of the delegated authority may include representatives of the public, of sellers or purchasers of agricultural products, of storage operators, of agricultural organizations, of government organizations and of such other interests as the Minister considers to be appropriate.

Change in numbers of directors

(5)  The Minister may, by regulation, increase or decrease the number of members of the board of directors of the delegated authority.

Composition of the board

(6)  The Minister may, by regulation, provide that no more than a fixed percentage of members of the board of directors of the delegated authority shall be drawn from among the prescribed persons or classes of persons.

Appointment of chair of the board

(7)  The Minister may appoint a chair of the board of directors of the delegated authority from among the members of the board of directors of the delegated authority.

Vice-chair

(8)  The vice-chair, appointed by the members of the board directors, may act in place of the chair of the board of directors of the delegated authority if the chair is unable to act.

Power re employees

**99** (1)  The delegated authority may, subject to the administrative agreement, employ or retain the services of any qualified person to carry out any of its powers or duties relating to the administration of the delegated provisions.

Not Crown employees

(2)  The following persons are not employees of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained under subsection (1).

2. Members, officers and agents of the delegated authority.

3. Members of the board of directors of the delegated authority, including those appointed by the Minister.

Not Crown agency

**100** (1)  Despite the Crown Agency Act, the delegated authority is not an agent of the Crown for any purpose and shall not hold itself out as such.

Same

(2)  The following persons are not agents of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained under subsection 99 (1).

2. Members, officers and agents of the delegated authority.

3. Members of the board of directors of the delegated authority, including those appointed by the Minister.

Not public money

**101** (1)  The delegated authority is not a public entity and the money that it collects in carrying out the administration of its delegated provisions is not public money within the meaning of the Financial Administration Act.

Same

(2)  The delegated authority may use the money described in subsection (1) to carry out activities in accordance with its objects, subject to,

(a) subsection 42 (1) (payments into funds); and

(b) the administrative agreement.

Audit by Auditor General

**102** (1)  The Auditor General appointed under the Auditor General Act may conduct an audit of the delegated authority, other than an audit required under the Not-for-Profit Corporations Act, 2010.

Access to records and information

(2)  When the Auditor General conducts an audit under subsection (1), the delegated authority shall give the Auditor General and employees of the Auditor General access to all records and other information required to conduct the audit.

Report

**103** (1)  Each year and at any other time the Minister requires, the board of directors of the delegated authority shall report to the Minister on its activities and financial affairs as they relate to the Act and the administrative agreement.

Form and contents

(2)  The report shall be in a form that is acceptable to the Minister and shall provide the information that the Minister requires.

Disclosure by board

(3)  The board of directors of the delegated authority shall publish the report on the delegated authority’s website and by any other method within the period and in the manner the Minister requires.

Minister’s authority to appoint administrator

**104** (1)  The Minister may, by order, appoint an individual as an administrator of a delegated authority for the purposes of assuming control of it and responsibility for its activities under the delegated provisions if the Minister is of the opinion that it is advisable to do so in the public interest because at least one of the following conditions is satisfied:

1. The exercise of the power is necessary to prevent serious harm to the interests of producers or owners of a designated product or a fund the delegated authority is responsible for administering.

2. An event of force majeure has occurred.

3. The delegated authority is facing a risk of insolvency.

4. The number of members of the board of directors of the delegated authority is insufficient for a quorum.

Notice of appointment

(2)  The Minister shall give the board of directors of the delegated authority the notice that the Minister considers reasonable in the circumstances before appointing the administrator.

Immediate appointment

(3)  Subsection (2) does not apply if there are not enough members on the board of directors of the delegated authority to form a quorum.

Term of appointment

(4)  The appointment of the administrator is valid until the Minister makes an order terminating it or revokes the order made under subsection (1).

Powers and duties of administrator

(5)  Unless the order appointing the administrator provides otherwise, the administrator has the exclusive right to exercise all the powers and perform all the duties of the directors, officers and members of the board of the delegated authority.

Same

(6)  For greater certainty, the administrator’s powers under subsection (5) include the authority to,

(a) adjudicate any claims made to any fund the delegated authority was responsible for; or

(b) appoint one or more persons to adjudicate such claims.

Same

(7)  In the order appointing the administrator, the Minister may specify the administrator’s powers and duties and conditions governing them.

Adjudication of claims

(8)  If the administrator adjudicates a claim made to any fund or appoints one or more persons to do so, subsections 48 (2) and 49 (1) apply with necessary modifications.

Right of access

(9)  The administrator has the same rights as the board in respect of the delegated authority’s documents, records and information.

Report to Minister

(10)  The administrator shall report to the Minister as the Minister requires.

Minister’s directions

(11)  The Minister may issue directions to the administrator with regard to any matter within the administrator’s jurisdiction, and the administrator shall carry them out as soon as reasonably possible.

No personal liability

(12)  No action or other proceeding shall be instituted against the administrator for an act done in good faith in the execution or intended execution of a duty or power under this Act, the regulations, the delegated provisions, a Minister’s order or the appointment under subsection (1), or for an alleged neglect or default in the execution in good faith of that duty or power.

Crown liability

(13)  Despite subsection 8 (3) of the Crown Liability and Proceedings Act, 2019, subsection (12) does not relieve the Crown of liability to which it would otherwise be subject.

Liability of delegated authority

(14)  Subsection (12) does not relieve the delegated authority of liability to which it would otherwise be subject.

Status of board during administrator’s tenure

**105** (1)  On the appointment of an administrator under section 104, the members of the board of directors of the delegated authority cease to hold office, unless the order provides otherwise.

Same

(2)  During the term of the administrator’s appointment, the powers of any member of the board of directors of the delegated authority who continues to hold office are suspended, unless the order provides otherwise.

No personal liability

(3)  No action or other proceeding shall be instituted against a member or former member of the board of directors of the delegated authority for anything done by the administrator or the delegated authority after the member’s removal under subsection (1) or while the member’s powers are suspended under subsection (2).

Crown liability

(4)  Despite subsection 8 (3) of the Crown Liability and Proceedings Act, 2019, subsection (3) of this section does not relieve the Crown of liability to which it would otherwise be subject.

Liability of delegated authority

(5)  Subsection (3) does not relieve the delegated authority of liability to which it would otherwise be subject.

Part XI  
Prohibitions and Offences

Prohibition re false or misleading information

**106** No person shall give false or misleading information to the Director, a Deputy Director, an inspector or any other person in the performance of their duties under this Act.

Prohibition re obstruction

**107** No person shall hinder, obstruct or interfere with or attempt to hinder, obstruct or interfere with,

(a) the Director or Deputy Director in fulfilling the duties of the Director or Deputy Director under this Act; or

(b) an inspector conducting an inspection.

Type A offences

**108** (1)  Every person who contravenes or fails to comply with any of the following provisions is guilty of a Type A offence:

1. Subsection 5 (1).

2. Section 7.

3. Subsection 10 (1).

4. Section 12.

5. Subsections 41 (1), (2) and (3).

6. Section 106.

7. Section 107.

8. Any other provision of this Act or the regulations prescribed as a Type A offence.

Same re conditions of licence

(2)  Every person who fails to comply with a condition of their licence is guilty of a Type A offence.

Same re orders

(3)  Every person who fails to comply with an order made under section 67, 68 or 69 is guilty of a Type A offence.

Same re seals

(4)  Every person who breaks or removes any seal that is placed on a storage container within a storage facility pursuant to paragraph 1 of subsection 68 (1) is guilty of a Type A offence.

Type B offences

**109** Every dealer, or if the dealer is a corporation, every director, officer, employee or agent of the corporation or other person who has effective control of the corporation, who contravenes or fails to comply with any of the following provisions is guilty of a Type B offence:

1. Subsections 22 (2), (3), (5), (6) and (7).

2. Subsections 23 (3), (4) and (5).

3. Any other provision of this Act or the regulations prescribed as a Type B offence.

Type C offences

**110** Every person who contravenes or fails to comply with any of the following provisions is guilty of a Type C offence:

1. Subsections 5 (2) and (3).

2. Section 6.

3. Section 9.

4. Subsections 10 (2) and (3).

5. Section 11.

6. Subsections 15 (1) and (3).

7. Subsections 16 (1) to (4) and, unless the Director has issued a shortfall permit, subsection (5).

8. Subsection 17 (2) and clause 17 (3) (b).

9. Section 18.

10. Subsection 19 (1).

11. Section 114.

12. Any other provision of this Act or the regulations prescribed as a Type C offence.

Penalties

Type A offences

**111** (1)  A person who is convicted of a Type A offence under this Act is liable to a fine of,

(a) for a first offence, not more than $10,000; and

(b) for any subsequent offence, not more than $25,000.

Type B offences

(2)  A person who is convicted of a Type B offence under this Act is liable to a fine of,

(a) for a first offence, not more than $25,000; and

(b) for any subsequent offence, not more than $50,000.

Type C offences

(3)  A person who is convicted of a Type C offence under this Act is liable to a fine of,

(a) for a first offence, not more than $2,000; and

(b) for any subsequent offence, not more than $5,000.

Increased penalties

(4)  If a person is convicted of an offence and the court finds that the offence was committed in prescribed circumstances that resulted in an increase to the gravity of the offence, the amount of the penalty may be increased in accordance with the regulations.

Decision not to increase

(5)  If a court determines that the amount of a penalty should not be increased despite the existence of prescribed circumstances mentioned in subsection (4), the court shall include the reasons for this determination in its decision.

Restitution order

**112** (1)  If a person is convicted of an offence for contravening or failing to comply with section 7, 12 or 41 and the offence resulted in another person suffering damages, the court may make a restitution order against the person convicted of the offence in favour of the person who suffered damages.

Board deemed to be person

(2)  Where a board or a delegated authority has not received a fee it is entitled to receive under section 41, or has paid a claim in relation to a Part VII designated product or incurred expenses to adjudicate a claim in relation to a Part VII designated product, the board or delegated authority, as the case may be, is deemed to be a person who has suffered damages for the purposes of subsection (1).

Limits on restitution order

(3)  A court may make a restitution order under subsection (1) only if,

(a) the restitution order is requested by the prosecutor;

(b) the person who suffered damages consents to the order being made; and

(c) the damages that are the object of the restitution order are readily ascertainable.

More than one person convicted

(4)  If more than one person is convicted of an offence for contravening or failing to comply with section 7, 12 or 41, all such persons shall be jointly and severally liable for any damages payable under a restitution order.

Civil action

(5)  A restitution order made under subsection (1) extinguishes the right of the person who suffered the damages to bring a civil action for damages against the person convicted of the offence based on the same facts that led to the conviction for the offence unless,

(a) the amount of damages ordered by the court in the restitution order is less than the value of the damage actually suffered; and

(b) at the time the restitution order was made, the court could not have reasonably known the extent of the damages.

Same

(6)  The failure of a prosecutor to request a restitution order under subsection (1) or a refusal by a court to make the order does not affect a right to bring a civil action for damages arising out of the same facts.

Same

(7)  If a civil action for damages is brought against a person based on the same facts that resulted in the person being found guilty for contravening or failing to comply with section 7, 12 or 41, the conviction under this Act shall be sufficient proof of the liability of the person and the only issue to be determined in the civil action shall be the quantum of damages.

No double recovery

(8)  Where a board or delegated authority has paid a claim in relation to a Part VII designated product or incurred expenses to adjudicate a claim in relation to a Part VII designated product,

(a) a restitution order made under subsection (1) shall not include any amount the Board or delegated authority paid in relation to the Part VII designated product or already recovered; and

(b) as soon as practicable after a restitution order is made under subsection (1), the chair of the board or the chair of the board of directors of the delegated authority, as the case may be, shall rescind any orders made under section 52.

Enforcement of restitution order

**113** A restitution order made under section 112 may be filed in a court of competent jurisdiction and the order may be enforced as if it were an order of the court.

Part XII  
Miscellaneous and Regulations

Miscellaneous

Confidentiality

**114** Any person working for a delegated authority who obtains information in the course of exercising a power or carrying out a duty related to the administration of the delegated provisions shall keep that information confidential except,

(a) as required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;

(b) if the Minister requests the person provide such information to the Minister;

(c) as authorized by the Regulatory Modernization Act, 2007;

(d) if required by law to provide the information to a law enforcement agency;

(e) where the person is providing the information to their legal counsel;

(f) with the consent of the person or entity to whom the information relates;

(g) to provide the information to a prescribed entity or organization that is authorized by law to collect and use the information; or

(h) in any other prescribed situation or for any other prescribed purposes.

Testimony

**115** No person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations.

Service

**116** (1)  Any notice, order or document is sufficiently given or served if it is given or served in accordance with the regulations.

Deemed service

(2)  If service is made within the prescribed time and in the prescribed manner, the service shall be deemed to be made in accordance with the regulations, unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person’s control, receive the notice, order or document until a later date.

Matters of evidence

**117** (1)  For the purposes of any proceeding, a certificate of service that appears to have been signed by the Minister, the Director or an inspector is evidence of service without proof of the signature if the Minister, Director or inspector, as the case may be,

(a) certifies that the copy of the document is a true copy of it;

(b) certifies that the document was served on the person; and

(c) sets out in it the method of service used.

Same

(2)  A licence, order or record made or issued under or in accordance with this Act that purports to be signed by the Minister, the Director or an inspector is evidence of the facts contained in it without proof of the signature.

Same

(3)  A copy of a document or record that purports to be certified by the Director or a person designated by the Director as a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Regulations

General

**118** (1)  The Minister may make regulations for the purposes of this Act,

(a) prescribing anything that is referred to in this Act as prescribed;

(b) defining any word or expression used in this Act that is not already defined in this Act;

(c) exempting any person or class or person from all or any part of this Act or the regulations and setting out conditions for the exemption;

(d) governing the taking of samples of any designated product, including prescribing which designated products may be sampled and governing of the operation of sampling;

(e) prescribing forms and providing for their use;

(f) prescribing fees that are payable under this Act with respect to licencing, late filings and other administrative matters;

(g) governing agreements and contracts under this Act, including prescribing the requirements the agreements and contracts must meet and terms and conditions they must include;

(h) governing orders and notices under this Act including prescribing information to be included in any orders or notices under this Act;

(i) governing the service of any notice, order or other document, including deeming service to have been effected on a date determined in accordance with the regulations, and authorizing service outside Ontario;

(j) respecting any matter that is necessary or advisable to implement this Act effectively.

Regulations: Part II (Designation of Agricultural Products)

(2)  The Minister may make regulations designating agricultural products for the purposes of subsection 2 (1).

Regulations: Part IV (Dealers)

(3)  The Minister may make regulations for the purposes of Part IV,

(a) governing the timing, manner and conditions under which a dealer is required to make payments for designated products purchased from producers;

(b) providing that a dealer and producer may enter into an agreement to purchase or sell a designated product for the purposes of subsection 7 (3), setting out preconditions under which such agreements may be entered into and governing such agreements;

(c) requiring producers or dealers to be members of non-governmental organizations for the purposes of section 8;

(d) prescribing the books and records to be kept by dealers and the manner in which they shall be maintained for the purposes of subsection 9 (1).

Regulations: Part V (Storage Operators)

(4)  The Minister may make regulations for the purposes of Part V,

(a) governing the standards for the establishment and operation of premises, facilities and equipment used for the storage of Part V designated products;

(b) prescribing the qualifications a storage operator must hold, the manner in which the designated product must be stored and the circumstances and conditions in which the storage takes place for the purposes of subsection 10 (2);

(c) requiring producers, owners or storage operators to be members of non-governmental organizations for the purposes of section 13;

(d) prescribing the requirements and conditions for the storage of a designated product for the purposes of subsection 15 (4);

(e) prescribing the information to be included in a receipt and governing the requirements of such receipts for the purposes of subsection 16 (2);

(f) governing the records of the quantity of designated product that a storage operator must keep for the purposes of subsection 16 (3);

(g) prescribing the terms and conditions that must be met for the Director to issue a shortfall permit for the purposes of subsection 16 (6);

(h) governing property in and title to a designated product for the purposes of clause 17 (4) (b);

(i) prescribing loss, damage and perils for the purposes of subsection 18 (1);

(j) prescribing the information that a storage operator is required to submit for the purposes of subsection 18 (5) and the manner and timing of the submissions.

Regulations: Part VI (Trusts)

(5)  The Minister may make regulations for the purposes of Part VI,

(a) prescribing amounts of monies that are required to be deposited into a trust for the purposes of subsection 22 (1);

(b) providing that a dealer may appropriate or convert part of a trust fund to the dealer’s own use, or to any use inconsistent with the trust, before the producers are paid all amounts owed to them and prescribing the circumstances in which the dealer may do so for the purposes of subsection 22 (2);

(c) governing records of transactions for the purposes of subsection 22 (6), including prescribing information to be included in such records;

(d) governing payments out of a trust fund for the purposes of subsection 23 (2);

(e) governing disputes and prescribing matters that can be the subject of a dispute for the purposes of subsection 23 (4).

Regulations: Part VII (Funds and Boards)

(6)  The Minister may make regulations for the purposes of Part VII,

(a) governing the establishment of funds and prescribing persons who are entitled to make claims against such funds;

(b) governing the compensation of producers and owners for the purposes subsection 26 (4);

(c) establishing boards and designating delegated authorities for the purposes of subsection 27 (1);

(d) prescribing the agricultural industry groups that are required to be represented on a board;

(e) prescribing functions and powers of a board for the purposes of paragraph 5 of section 29;

(f) governing the by-laws of the board of directors of a board for the purposes of subsection 30 (4);

(g) providing the powers the board of directors of a board cannot delegate, for the purposes of clause 30 (6) (e);

(h) governing the dissolution of boards, including transitional matters relating to the dissolution of boards, for the purposes of section 38;

(i) governing fees for the purposes of section 41;

(j) governing the collection and remittance of fees for the purposes of subsection 41 (4);

(k) prescribing the conditions and requirements under which a board may borrow money from another fund that it administers for the purposes of clause 43 (1) (c);

(l) governing the submissions of claims to a board for the purposes of section 47;

(m) governing the payment of valid claims for the purposes of subsection 50 (1) including prescribing the grounds upon which a board or panel of a board may pay a claim that is determined to be valid;

(n) governing the refusal of claims for the purposes of subsection 50 (3), including prescribing the circumstances in which a board or panel of a board is required to or may refuse a claim;

(o) governing the determination of amounts to be paid out of a fund for the purposes of subsection 50 (4).

Regulations: Part VIII (Licences)

(7)  The Minister may make regulations for the purposes of Part VIII,

(a) governing applications for dealer’s licences and storage operator’s licences and the terms of such licences;

(b) governing the requirements that applicants must meet in order to obtain or renew a licence, including requirements related to financial security of the applicant and security that an applicant is required to provide;

(c) governing the administration, forfeiture and disposition of any security that is provided by an applicant;

(d) governing the grounds the Director shall consider in determining whether to refuse to issue or renew a licence;

(e) governing the submission of applications to renew a licence for the purposes of subsection 57 (2) and prescribing information to be included in an application;

(f) prescribing the deadline to submit an application to renew a licence for the purposes of subsection 57 (3);

(g) governing conditions to be imposed on individual licences or on all licences, prescribing the circumstances in which those conditions are to be imposed and governing appeals of conditions imposed on all licences;

(h) prescribing conditions for issuing an interim order to suspend a licence for the purposes of clause 59 (1) (b);

(i) requiring the Director to establish a publicly available licence registry for the purposes of section 64 and prescribing the manner of establishing the registry, the form and location of the registry and the information to be included in the registry.

Regulations: Part IX (Inspections and Enforcement)

(8)  The Minister may make regulations for the purposes of Part IX,

(a) governing the designation of inspectors;

(b) providing additional powers of an inspector;

(c) governing the circumstances in which an inspector is permitted to issue compliance orders under section 67;

(d) prescribing actions the Director may take for the purpose of paragraph 7 of subsection 68 (1);

(e) designating products with respect to which a freeze order may be made for the purposes of subsection 69 (1);

(f) designating products with respect to which an administrative penalty can be imposed for the purposes of section 70;

(g) prescribing an appeal body for the purposes of the definition of “appeal body” in subsection 70 (2);

(h) governing the process by which a Director may impose an administrative penalty for the purposes of subsection 71 (3).

Regulations: Part X (Delegated Authority)

(9)  The Minister may make regulations for the purposes of Part X,

(a) governing the revocation of the designation of a delegated authority and governing any transitional matters that may arise from revoking the designation of a delegated authority or restricting the scope of the delegation;

(b) establishing and governing rules about the nomination of members, the appointment or election process, the length of their terms and whether they may be reappointed or re-elected for the purposes of clause 98 (1) (b);

(c) increasing or decreasing the number of members of the board of directors of the delegated authority for the purposes of subsection 98 (5);

(d) prescribing persons or classes of persons for the purposes of subsection 98 (6) and providing a maximum fixed percentage of members of the board of directors of the delegated authority that shall be drawn from such persons or classes of persons.

Regulations: Part XI (Prohibitions and Offences)

(10)  The Minister may make regulations for the purposes of Part XI,

(a) prescribing Type A offences for the purposes of subsection 108 (1);

(b) prescribing Type B offences for the purposes of section 109;

(c) prescribing Type C offences for the purposes of section 110;

(d) governing the increase of penalties for the purposes of subsection 111 (4).

Regulations: grading

(11)  The Minister may make regulations,

(a) establishing and describing standards for the purpose of grading any agricultural products;

(b) providing for the issue of grading certificates and prescribing the form of such certificates;

(c) prescribing the manner in which samples of any agricultural product may be taken for inspection;

(d) providing for and prescribing the manner and conditions of grading, inspection, packing, branding and marking of any agricultural product;

(e) prescribing the manner in and the conditions under which any agricultural product shall be stored, transported, delivered, shipped, advertised, purchased, sold, offered or displayed for sale and the types, sizes, branding, marking and labelling of packages or containers in which any agricultural product shall be contained;

(f) prescribing the manner in which the seller or shipper of ungraded agricultural products shall identify, for purposes of grading, individual producer’s lots in any shipment;

(g) prescribing the manner in which a receiver shall make returns and prepare for presentation to the seller or shipper the statements of account of purchase of any agricultural product and for the investigation of such statements and the transactions represented in the statements;

(h) prescribing the manner in which receipts, classifications, weights and purchase prices shall be recorded at assembling points and abattoirs and made available to the Minister.

Rolling incorporation

(12)  A regulation made under this section that incorporates another document by reference may provide that the reference to the document includes amendments made to the document from time to time after the regulation is made if,

(a) the regulation, by reference to the document, establishes any grade name, standard or grade; and

(b) the document is incorporated by reference in a regulation made under an Act of Canada that also provides that the reference to the document includes amendments made to the document from time to time after the regulation is made.

Part XIII  
Transition

Transition, regulation

**119** (1)  The Minister may make regulations providing for transitional matters as the Minister considers necessary or advisable to,

(a) facilitate the implementation of this Act; and

(b) address any transitional matters arising as the result of the repeal of the Farm Products Payments Act, the Grains Act and the Livestock and Livestock Products Act.

Same

(2)  A regulation made under this section may,

(a) establish a transition period before the repeal of the Farm Products Payments Act, the Grains Act and the Livestock and Livestock Products Act during which the application of those Acts will be phased out;

(b) provide that a provision or requirement of the Farm Products Payments Act, the Grains Act or the Livestock and Livestock Products Act ceases to apply, applies in a modified way or only applies, either as written or in a modified way, to specified geographic areas or specified persons or for a specified period during the transition period;

(c) govern the continuation or conclusion of hearings commenced under the Farm Products Payments Act, the Grains Act and the Livestock and Livestock Products Act before their repeal;

(d) govern other transitional matters that may arise due to the anticipated repeal of the Farm Products Payments Act, the Grains Act and the Livestock and Livestock Products Act.

Conflicts

(3)  If there is a conflict between a regulation made under this section and a provision of this Act or a regulation made under this Act, the regulation made under this section prevails.

Part XIV (OMITTED)

120-122Omitted (amends, repeals or revokes other legislation).

123 Omitted (provides for coming into force of provisions of this Act).

124Omitted (enacts short title of this Act).

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