



National Farmers Union

**Submission to the
Canadian Grain Commission
on the subject of enforcement of licensing
provisions of the *Canada Grain Act***

September 12, 2005

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Introduction

The National Farmers Union welcomes the opportunity to submit comments on the Canadian Grain Commission's policy with regard to enforcement of licensing provisions of the *Canada Grain Act*.

As outlined in the Canadian Grain Commission letter of May 13, 2005, the CGC policy is as follows:

“Simply stated, effective August 1, 2006, grain companies dealing in or handling western grain will either be licensed by the CGC, or lawfully exempted from licensing, or subject to criminal prosecution.”

The NFU strongly endorses this initiative, which we believe is long overdue. Western Canadian farmers have been calling on the CGC to enforce the provisions of the *Canada Grain Act* for a number of years.

The CGC was set up by the federal government as a watchdog agency to ensure Canadian grain quality is not compromised, that farmers are treated fairly by the grain trade, and that the rules are applied equally to all grain companies. For many decades, the CGC fulfilled its obligations and deservedly earned the respect of farmers and other interests in the grain industry. Over the past decade, however, a number of unlicensed grain companies and brokers have taken advantage of lax enforcement measures.

This lack of enforcement has put farmers at risk because they usually assume that if a grain company is in business, it must be licensed. Farmers also assume they have financial protection in the event the company they are dealing with goes out of business, as well as having full access to CGC official inspection certificates for grain grades and tolerance levels.

The reality is, of course, much different. Unlicensed grain companies do not post security, so farmers are left unprotected. Farmers also do not have access to statutory rights under the *Canada Grain Act* guaranteeing fair grading of their grain. Unfortunately, the onus at the present time is completely on farmers, a situation which

harkens back to the “bad old days” of the early 20th century, when grain companies exercised excessive control over the system at the expense of farmers.

Voluntary compliance has not worked

Despite warnings issued periodically by the CGC about the pitfalls of selling to unlicensed brokers and companies, the situation has not improved. In fact, it is apparent that many farmers do not take the warnings seriously because they interpret “lack of enforcement” on the part of the CGC as “implicit endorsement”.

Primary, process and terminal elevators, as well as grain brokers, are well aware of the requirements of the *Canada Grain Act*, and are also well aware of the Canada Grain Regulations, with which they must comply. The fact that many companies have chosen to ignore both the letter and the spirit of the law does not mean the law should be adjusted to suit these companies. It simply means the companies know they can get away with these violations, and take for themselves an unfair advantage over both farmers and their competitors in the marketplace.

It is absolutely critical, therefore, that the enforcement initiative be implemented on a uniform and fair basis as quickly as possible. There is no reason to delay, by a full year, enforcement of licensing requirements which are designed to protect the interests of farmers.

The NFU, therefore, strongly recommends that the effective date of the new licensing policy be significantly earlier than proposed by the CGC. We further recommend that any potential loopholes which put farmers at financial risk should be closed immediately. The CGC must ensure that elevator companies and grain brokers post security to cover producer losses in the event the company cannot cover its payment obligations.

Strengthening the Canadian Grain Commission

The National Farmers Union welcomes the initiative to enforce licensing of grain brokers and elevator companies for an important reason. We are hopeful this move signals a return to the fundamental purpose of the Canadian Grain Commission – that of safeguarding the interests of farmers. If there was ever a time when a watchdog was needed to act on behalf of farmers, that time is now.

Realized net farm income is at an all-time low¹ and farm debt is at an all-time high², while corporate concentration and profits in the agribusiness sector have reached unprecedented levels³. Currently, the global grain business is dominated by a handful of

¹ Realized Net Income (RNI) now averages between negative \$10,000 and negative \$20,000 per farm per year. “Understanding the Farm Crisis: The NFU’s second submission to Hon. Wayne Easter, Parliamentary Secretary to the Minister of Agriculture and Agri-Food, May 26, 2005.

² Farm debt outstanding at December 31, 2004 was \$48.9 billion. Statistics Canada, May, 2005

³ “Understanding the Farm Crisis” *ibid*.

companies, including ADM, Cargill, Bunge and Louis-Dreyfuss. In Canada, a total of four companies control 64% of the market.⁴ While these companies currently comply with the licensing requirements, any additional relaxation of those requirements could profoundly impact the effectiveness of the CGC and the integrity of the *Canada Grains Act* itself.

The CGC has the authority in the *Canada Grain Act* to license elevator or grain companies. While it has long been a requirement that grain companies be licensed, the CGC has not been enforcing this requirement because it lacks the tools to do the job. This fact was made quite plain in the CGC Report on Plans and Priorities 2003-2004. In that review, the CGC paradoxically called for both a “streamlined licensing process to encourage more grain companies to become licensed” while also advocating additional resources to the Licensing Unit.

Over the past half-decade, the CGC has pursued a direction that varies considerably from its original mandate of safeguarding farmers’ interests and grain quality standards. Since 1999, when the CGC published its Program and Governance Reviews, we have detected a push to move the CGC away from being a *regulator* of the grain industry, which works on behalf of farmers, to a passive *service provider* which provides grading, weighting and inspection services to grain companies for a specified fee. This gradual transformation from industry *regulator* to industry *servant* has accelerated in recent years.

Canada’s 100,000 family farmers, who depend on the CGC to effectively regulate the industry and maintain high quality grain standards for domestic and export markets, have not been pressing for changes to the *Canada Grain Act*. They have not advocated any weakening of the CGC regulatory role, or called for cuts to the CGC’s mandate or its resources. Indeed, the NFU, on behalf of family farmers, has consistently called for a strengthening of the Grain Commission’s watchdog function and tougher enforcement of regulations for grain companies. Ever since the *Canada Grain Act* was enacted in 1912, the nation has benefited from the fair and independent assessment of grade and dockage, licensed and bonded elevators, a transparent and regulated grain exchange, and the right of farmers to load their own producer cars. These innovations have allowed Canada to gain and maintain world market share based on high quality grains.

Enforcement essential to ensure fairness and equity

The NFU believes the licensing principles currently contained in the CGC’s legislated mandate are the best means of achieving production protection and grain quality and quantity assurance. These principles include:

1. *Producer protection*, including reduction of farmers’ financial risk and ensuring access to statutory rights under the *Canada Grain Act*;
2. *Effectiveness and accountability*;

⁴ These companies include Agricore United (part owned by ADM) at 23% market share; Saskatchewan Wheat Pool at 22.9% market share; Pioneer Grain at 10.3% market share and Cargill Grain at 8.2% market share. “Grain handling storage capacity and market share, 2003”, prepared by the National Farmers Union, www.marketsharematrix.org, January 2005

3. *Fairness and equity* through consistent application of requirements for all companies involved in the grain trade;
4. *Cost efficiency*;
5. *Transparency* in the form of clear definitions of licensing criteria and requirements;
6. *Enforcement and compliance*. The *Canada Grain Act* and Canada Grain Regulations are only effective if all players involved in the industry comply with the law. Voluntary compliance has clearly not worked in the past. The integrity of Canada's grain quality system, and the rights of farmers, depend on effective enforcement.

The NFU recommends, therefore, that the CGC retain the minimum security requirement for grain companies and dealers. Allowing selected companies to waive the minimum security requirement creates unfair relations in the marketplace, and creates situations where farmers may once again unknowingly risk losing their statutory rights under the *Canada Grain Act*.

We further recommend that the CGC reject the idea of implementing “flexible licensing terms”. As stated earlier, the principle of fairness and equity, as well as transparency, is fundamental to the operations of the CGC.

The exemption from licensing under the Canada Grain Act for producer car loading facilities is a legitimate exemption which must be continued. In the case of producer car shipments, farmers take responsibility for their own grain shipments, and the facilities through which they load must also pay specific fees and abide by specific rules laid down under the *Canada Grain Act*.

The CGC estimates that licensing compliance is expected to increase CGC net licensing costs by about \$0.4 million, bringing the total projected CGC licensing program cost to approximately \$2.1 million by the 2006-07 fiscal year. The CGC estimates the current collective cost of licensing for licensees is about \$4.1 million, or approximately 13 cents per tonne, based on an average of all grains. The cost to unlicensed operators to comply with the requirements is estimated to cost \$1 million, or \$1.30 per tonne – approximately the same cost currently being incurred by licensees handling high-value special crops.

Clearly, the additional costs will be passed on to producers. This will effectively eliminate the unfair competitive advantage currently being exploited by unlicensed companies. In the end, however, the financial protection afforded to farmers with regard to risk management, as well as the ability to access the quality and quantity assurance system guaranteed them under the *Canada Grain Act*, will more than compensate producers for any additional costs.

While advances in communications technology should be used to the greatest effect to reduce unnecessary or redundant administrative costs, the call for “streamlining” licensing procedures, such as application forms and monthly liability reporting, should not be used as a pretext for relaxing compliance with licensing requirements.

While production of special crops in western Canada has increased significantly over the past decade, the CGC has chosen not to enforce licensing requirements for grain companies and dealers which handle, market and process these grains. Attempts to circumvent the licensing requirements through “voluntary, producer-funded insurance plans” have failed because of lack of participation. **The NFU strongly recommends against any voluntary, producer-funded insurance scheme which absolves the grain companies of their obligation to post security.**

Conclusion

The CGC must take its role as licensing agency seriously, both with regard to licensing varieties of grain, and also with regard to licensing of grain companies. Both functions are essential components of a system aimed at protecting farmers’ ability to produce and market high-quality grains in a highly-competitive global market. Failure on the part of the CGC to perform either function will invariably mean that farmers, and the nation as a whole, will ultimately pay the price.

All of which is respectfully submitted by
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