

National Office
2717 Wentz Ave.
Saskatoon, Sask., S7K 4B6
Tel (306) 652-9465
Fax (306) 664-6226



national farmers union

In Union Is Strength

The National Farmers Union's response
to the Canadian Grain Commission's
*Discussion Paper on the
Use of Variety Eligibility Declarations*

March 28, 2003

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1) Variety Eligibility Declarations

“The concept is simple. Every time grain changes hands, samples would be taken, and declarations signed.” (p. 7)

So states the Canadian Grain Commission's January 14, 2003 “Discussion Paper on the Use of Variety Eligibility Declarations.” If the CGC's assessment of simplicity were accurate, the debate over Variety Eligibility Declarations (VEDs) would soon end. But the VED system, simple in concept, will be extraordinarily complex in practice when implemented in the real world of commercial trucks, unit trains, and high-throughput elevators. And this complexity will introduce a multitude of opportunities for system contamination and a multitude of costs for farmers. The following examines the NFU's concerns about VEDs in practice.

a. Commercial trucks

Implicit in a VED concept is the assumption that when a farmer delivers grain to an elevator, the farmer and agent would both sign a VED and collect samples (more precisely, the farmer would collect half of a sample, with the elevator agent retaining the other half, both samples in sealed containers.)

Today, however, most grain moves to elevators on commercial trucks. Thus, in probably the majority of cases, the farmer is not present at the elevator to sign a VED or present to collect his or her part of a sample.

How will a VED/sample system function when grain moves on commercial trucks? At the elevator, will the trucker sign the VED on behalf of the farmer and undertake to return the correct samples and VEDs back to the correct farmers?¹ Anyone who has dealt with trucking

¹ The CGC has not worked out who would actually sign VEDs. In describing the VEDs, it states that those documents would include a “space for the signature of the person declaring the eligibility of the delivery (this could be *the producer of the grain or the trucker...*)” [emphasis added] (p. 9)

companies knows that this would be an unreliable system: totally inadequate in a system where, in isolated instances, the VEDs and their associated samples could be the pivotal evidence in legal proceedings involving millions of dollars.

Alternately, the VED system could deem that the grain “changes hands” when it is transferred from the farmer to the trucker, and require truckers to sign VEDs with both the farmer and the elevator agent. This option is unworkable, however, because it would require truckers (often young, seasonal workers) and their companies (often just neighbouring farmers with one or two commercial trucks) to sign legal documents attesting to the characteristics and purity of grain of which they have no knowledge, to file thousands of VEDs and samples for years, and to occasionally take part in legal and quasi-legal proceedings in the event of contamination.

Perhaps the most probable scenario is that the farmer would send a signed VED to the elevator along with the trucker, or fax in the signed VED. The elevator agent would take the twin samples and return the farmer’s portion along with the counter-signed VED to the farmer by mail. However, would such a system form a firm basis for either regulatory penalties or litigation? What would happen in a million-dollar litigation wherein the evidence of contamination against a farmer was the sealed sample provided to the farmer by the elevator agent. How would the court or the farmer actually know whether the grain in the agent’s sample container (and in the farmers’ duplicate container) was really an accurate sample of the farmer’s grain?

Steps 5 and 6 in the CGC’s proposed VED methodology (p.9 of the CGC’s *Discussion Paper on the Use of Variety Eligibility Declarations*) state:

5. Representative samples, acceptable to both the farmer and the buyer, would be taken from each delivery.
6. Farmers and primary elevator operators would retain samples in sealed, tamperproof containers for a period that that is yet to be determined.

The process outlined in these two steps becomes more difficult and less reliable if the farmer and the buyer/elevator operator do not meet. It is difficult to take representative samples from each delivery that are “acceptable to both the farmer and the buyer” if only the buyer is present. Further, with the farmer not present, it is immaterial that the sample containers are sealed and tamperproof.

b. Seed contamination

Farmers sometimes re-use their own seed and they sometimes buy seed, often “certified” seed. Farmers assume that purchased seed is pure, but often it is not. Recent studies² on canola indicate that the majority of certified seed is contaminated with other varieties. Farm-saved seed and seed purchased from other farmers would be even more highly contaminated.

Moreover, sometimes the problem is not just contamination; sometimes the seed in the bag is totally different than the labels state. In 2000, more than 300 farmers who thought that they had certified seed for AC Avonlea durum actually planted AC Morse because of a labelling error at an Alberta seed growers’ facility.

Thus, if the CGC can trace contamination back through ports, railways, elevators, trucking companies, and thousands of farmers to find one, individual farmer who purportedly contaminated the system, the real cause may be contaminated or mislabelled seed. In such a case, it is probable that the farmer would face the burden of suing his or her seed company.

The issue of seed contamination becomes extraordinarily important if the government licenses genetically-modified (GM) varieties and the CGC and the grain industry tries to segregate GM varieties using VEDs. Most certified “non-GM” canola seed is contaminated with GM varieties³ and if we introduce GM wheat, the wheat seed supply will become similarly contaminated. Low tolerances for GM contamination coupled with the huge market loss consequences of errors and the uncertainty over seed supply contamination levels will make it nearly impossible for farmers to sign VEDs that contain limits on GM seed contamination levels (more on GM varieties below).

Even without the added complication of new GM varieties, seed impurity will introduce uncertainties into any VED system and create added costs for farmers. One cost will be the need to more often purchase seed. Currently, wheat farmers—with KVD and only a few classes of wheat—can spot any contamination in their saved seed. With KVD in wheat effectively ended and contamination less easy to spot and remedy, farmers will be forced to more often purchase certified seed in order to ensure the purity that they will be forced to attest to on VEDs.

Finally, farmers’ difficulties in attesting to variety purity on VEDs will be increased by the emerging reality that farmers are often prohibited from having their seed tested for contamination. Many of the contracts that farmers sign when growing patented varieties require that farmers take all reasonable measures to ensure that the seed does not come into the possession of third parties. Recently, one company threatened farmers with lawsuits when the farmers gave seed to researchers to test for contamination.

² R. K. Downey and H. Beckie; and an upcoming publication by L. Friesen and R. Van Acker

³ See note 2

c. High-Throughput Elevators

Modern, high-throughput elevators mix grain from many loads and from many farmers in huge bins. And these elevators may go months without completely cleaning out a particular bin. And when they do finally clean out one bin, they may move the remaining grain into another bin, mixing it with other grain. Thus, the grain coming out of an elevator into a rail car may contain amounts of grain delivered by many farmers over many months.

The implication is clear: when contamination is detected at port on November 1 and traced back to an elevator shipment originated on October 1, the CGC will not be looking just at farmers who delivered grain at the end of September, but possibly at all farmers who delivered grain in the previous six months, and if some grain was moved from one bin to another, and if bins filled months ago were mixed into bins filled more recently, the elevator company may need to examine the samples of all farmers who delivered the grain in question for the past year or two.

Simply put, the effort to track down a single incident of contamination at port may fan out over time and distance to include hundreds of farmers and thousands of loads.

d. Railways and VEDs.

As farmers with long experience with railways, we are interested to hear how railways see their responsibilities in a VED/sampling system. It would seem that when grain companies load grain onto trains, the grain “changes hands.” This would seem to require VEDs and twin samples at both ends of the rail haul, especially when the grain is loaded at one company’s elevator but unloaded at a different company’s terminal. Will our railways sign VEDs for each car and take and retain official samples?

e. Ports

Like high-throughput elevators, port terminals also can go for months without completely emptying and cleaning their bins. And, again like elevators, grain from one terminal bin can be cleaned out and dumped on top of grain in another bin. Thus, when contaminated grain is found coming out of a terminal, its source could be any one of hundreds of trainloads that entered the terminal over the past several months, perhaps up to a year ago. Thus, hundreds of country elevators could be implicated. Combine this fact with the fact (detailed in section c., above) that contamination from one high-throughput elevator may implicate hundreds of farmers and thousands of loads, and you understand that finding contamination at a port may lead to a search that includes most of the farmers in western Canada and a significant portion of the grain delivered over the past year or two.

Note also that the grain from a given bin in a high-throughput elevator—and, thus, grain from a given farmer—may be divided between several trainloads and, thus, divided between several terminals. This means that even though the VED system might be able to find some farmers who

delivered contaminated grain, a VED system would not be able to prove that a specific farmer contaminated a specific cargo.

The CGC's Discussion Paper states:

“Documentation and sampling at each transfer point would make it possible to trace a cargo back to each elevator and farmer whose grain would be in a cargo. It follows, then, that it would be possible to detect the point at which unacceptable levels of unwanted varieties entered the system.” (p. 7)

Given the mixing and re-mixing of grain that takes place in the handling system, it will be impossible to actually trace contamination back to an individual farmer. Fortunately, there is an alternative, which we outline in Section 3, below.

2) Costs of a comprehensive VED system

a. Who will pay?

The preceding points—and others being raised by other farm and grain industry groups—demonstrate the VEDs, simple in concept, will be unworkable in practice. But leaving this aside, and assuming that we could surmount the problems created by commercial trucking and assuming that elevator companies would file and retrieve hundreds-of-thousands of samples stretching back years, and assuming that all participants would be willing to look through millions of samples when contamination was detected, we can ask: What will the VED/sampling system cost and who will pay?

If trucking companies incur costs for paper work, sampling, sample storage, and occasional legal proceedings, they will charge those costs back to farmers. Grain companies will also charge their additional costs—improved sampling systems, sample and VED filing, and occasional legal costs—back to farmers. Railways, if they participate, will charge farmers. And, of course, there will be farmers' direct costs of sample storage, paperwork, and occasional legal proceedings.

In addition to paying the day-to-day costs of making the system work, farmers will pay the costs of contamination, no matter who is responsible. Even if farmers who contaminate shipments can be located and forced to pay individually in some instances, contamination that is not the fault of farmers, but instead of grain companies or railways, will be charged back to farmers *collectively* because those companies have the market power to force those costs onto farmers.

Thus, farmers will bear the costs of making the system work. And when it fails, farmers will shoulder the costs of contamination, *even when such contamination is caused by grain companies or railways*.

b. What will a comprehensive VED system cost?

Because farmers will pay all the costs of running a VED/sampling system and all the costs of contamination, and because the CGC is mandated to regulate the grain handling system “in the interest of farmers”, the CGC *must* ensure that farmers know the cost of the proposed VED system and the CGC must ensure that the benefits far outweigh those costs.

On June 1996, almost seven years ago, the CWB and CGC published a Discussion Paper entitled “The Future Quality System for Canadian Wheat.” Shortly after, the NFU responded to that Discussion Paper by asking for a complete cost-benefit analysis of the options outlined therein. Seven years have passed, and now the CGC has brought forward new proposals for altering the quality system and supplanting KVD, but the CGC has still not calculated the projected costs.

The NFU recommends that the CGC immediately produce a detailed and comprehensive cost-benefit analysis for its proposed VED/sampling system and that no changes be made to our KVD system until that cost-benefit analysis shows large net benefits for farmers.

3) Maintaining and improving our quality system: Alternatives to a comprehensive VED/sampling system

In critiquing the move toward a comprehensive VED system and away from KVD, the NFU is not clinging to the status quo. The NFU believes that we need to ask, of any system: “Is this the best we can do?” And in the context of Canada’s quality system of grains, notwithstanding the fact that it is unmatched in the world, we need to ask: “Is this the best we can do in terms of satisfying our customers and in terms of raising farmers’ net incomes?”

Technologies and markets change. Farmers change with them. No one who has visited a farm recently—either one that employs the latest direct seeding technology, one that has made the move to organic production to capture higher prices, or one that is now growing new crops such as chickpeas or lentils—can claim that farmers are opposed to change. Farmers, spurred by the farm income crisis, have *transformed* their farms over the past decade.

New technologies and market pressures, however, must not be used as excuses to make changes to Canada’s quality systems for grain that will increase farmers’ costs and decrease their net returns. The proposed VED system would have these negative impacts. Luckily, there are simple, cost-effective ways that we could dramatically-reduce the amount of grain that is misrepresented in the handling system and that threatens to contaminate cargos.

a. Protecting the quality of grain for our customers

One of the main reasons that some would argue that we need a VED system is that a tiny minority of farmers misrepresent their grain. The CGC says:

“Canadian crop production of non-registered varieties, often from the United States, presents a serious problem. The grading system can accommodate non-registered varieties in the lowest grade (i.e., feed wheat) only if they are visually distinguishable from the registered wheat classes. Visually indistinguishable non-registered varieties have the potential to compromise the Canadian quality assurance system if they are misrepresented anywhere within the grain handling system. They can also cause significant financial losses for grain handling companies and marketers.” (p.4)

The arguments against a comprehensive VED system, outlined above, must not be construed to be an argument against the possibility of stopping grain companies and farmers from contaminating our grain supply with unwanted varieties. While a VED system would be a costly and cumbersome way of catching a few farmers, there are more workable ways; these include a combination of the following:

1. Spot checks

The CGC should work with grain companies to conduct spot checks on grain entering and leaving country elevators. This would have a deterrent effect on farmers and grain

companies that may try to pass off one variety as another. This would also provide a cost-effective way of catching many of the farmers and companies who are misrepresenting grain.

2. Systematic sampling at selected elevators

Once the CGC finds contamination or misrepresented grain at a particular elevator, the CGC could conduct more systematic sampling for the next few months. This would allow the CGC to quickly and accurately reveal the identity of any farmers involved. Initially, this would allow the CGC to warn individual farmers of the consequences of contaminating cargos and it would allow the CGC to more closely monitor individual farmers and delivery points, paving the way for future prosecution of repeat offenders. Again, in addition to the investigative and prosecutorial benefits, this would have a deterrent effect.

3. The CGC needs the ability to assess and enforce penalties

The CGC needs the power to assess graduated penalties for farmers and grain companies who repeatedly misrepresent grain and contaminate the system.

4. Education

The CGC needs to use the media and other avenues to help farmers understand how they, collectively and individually, can suffer when some farmers contaminate the system. This information needs to be focused on farmers who are growing unlicensed varieties and on farmers in regions where such varieties are widely grown.

5. Limits on the growing of unregistered varieties

Part of the stress on the current KVD system is caused by unregistered, non-KVD wheat varieties such as Grandin and Oxen. The CGC should investigate limits and controls on these wheats. This could range from a simple permit to grow these varieties (so that the CGC would know who is growing them and where) to an outright ban on such varieties.

The preceding measures focus on education and deterrence. Whenever possible, problem grain must be stopped before it contaminates shipments, not after the problems are spotted.

A comprehensive VED system would force all farmers—the vast majority of whom never misrepresent grain—to take millions of samples and sign millions of forms. This is the grain system equivalent of gun control: simple in concept, complex and expensive in practice, burdensome on the honest, and unlikely to catch the “criminals.” Curbing contamination does not require such a cumbersome system. Simpler, cheaper, and more effective alternatives exist.

The NFU recommends that the CGC prepare a Discussion Paper focused on a low-cost, workable plan to deter grain contamination based on spot checks, penalties, education, and controls on unlicensed varieties.

b. Facilitating new varieties and higher profits for farmers

In addition to stopping contamination, the CGC notes a second rationale for its VED system and that is: staying with KVD will slow the introduction of new varieties of grain; and a VED system could speed that introduction and, it is implied, increase farmers' incomes. The CGC says:

“Although KVD is still an effective tool for segregating wheat, we are entering a period where additional tools are required. Despite its advantages, there are some costs associated with maintaining KVD. Wheat breeders have said that one of the most significant of these is the constraint in places on their ability to quickly improve agronomic and quality characteristics.” (p. 4)

“Producers are looking for improvements in yield, disease resistance, maturity rate, and tolerance to drought and cold. However, KVD requirements make it more difficult for breeders to make these improvements. For example, a Fusarium-resistant feed wheat (variety HY644) was recently denied registration, in part, because it was not visually distinguishable from Canada Western Red Spring wheat.” (p. 5)

These statements imply certain questions: Are our customers demanding improved varieties? Are there examples of varieties that are not able to be registered (because of KVD) but would have financial benefit for farmers? If so, how large are those financial benefits?

Clearly, the place to deal with the argument that KVD prevents innovation and, thus, threatens to reduce farmers' incomes is in a cost-benefit analysis. When the CGC prepares a cost-benefit analysis of its VED/sampling proposal, it should quantify the benefits that would result from the introduction of these new varieties.

It is critical, however, that the CGC make an accurate assessment of the real, net benefits to farmers of new, patented varieties. Diligent researchers have produced many, many new grain varieties over the past generation. These new varieties have helped grain farmers dramatically increase production overall and per-acre. Despite this increase in gross production and despite a multitude of new varieties, grain farmers face the worst farm income crisis since the 1930s. This is because the market power of fertilizer and chemical makers and of grain companies, processors, and retailers have allowed these corporations to snatch away from farmers the financial benefits of higher production, increased efficiency, and new technology.

Farmers' experience is that there are indeed financial benefits from new technologies, including new grain varieties, but that others capture these benefits. In seeking to restructure the grain quality system to make way for these new varieties, it is critical that the CGC understand where costs and benefits actually go—farmers will pay the full costs of any new VED system, but others will likely reap the rewards from the introduction of higher-yielding varieties.

The NFU recommends that the CGC's cost-benefit analysis of its proposed VED system include an analysis of the introduction of new varieties that the VED system would facilitate and include a realistic appraisal of the net financial benefits those new varieties will bring to farmers.

c. The role of the CGC

The Canadian Grain Commission has two roles: 1) to regulate the grain handling industry and establish grain quality standards “in the interests of grain producers”; and 2) to ensure that our valued customers continue to receive the consistent, high-quality grains and oilseeds that they have come to expect from Canada. The incomes and existences of over 100,000 family farms across Canada depend on the CGC effectively executing both roles.

Over the past few years, the CGC has drifted, unable to come to grips with its legitimate role as a regulator of grain companies and a protector of farmers’ interests. Instead, in documents such as the *Program Review* and *Governance Review*, we saw a confused agency seeking to weaken itself and to turn regulation of the grain handling system over to the grain companies themselves.

The NFU and farmers hope that this unfortunate phase at the CGC is over and we trust that the new leadership in the CGC will restore the agency to its proper role in ensuring that farmers’ interests are protected and in ensuring, through strong CGC action and not through industry self-regulation, that our overseas customers continue to receive the highest quality grain in the world.

The NFU applauds the CGC for moving forward to tackle the problem of grain contamination and variety misrepresentation. While it is clear that the proposed VED system will not work, we look forward to another proposal by the CGC wherein its regulatory powers are used to prevent grain companies and a small minority of farmers from contaminating the system and risking markets for all farmers.

The NFU recommends that any system to stop grain misrepresentation and contamination be administered by the CGC and delivered by GCG grain inspectors and employees. Because contamination is sometimes caused by farmers and sometimes by grain companies, grain company self-regulation would be highly inappropriate and prejudicial against farmers.

4) GM wheat

There are many farmers who suspect that the VED system proposed by the CGC is largely designed to pave the way for the introduction and “segregation” of genetically-modified (GM) wheat and other GM crops on the horizon. If so, the VED system would fail.

Moreover, many of Canada’s best customers for wheat say that if Canada introduces GM wheat varieties, they will stop buying Canadian wheat altogether, GM and non-GM alike, regardless of whether we try to segregate. Even an effective segregation system will lead to market loss, and the VED system is an extraordinarily ineffective segregation system.

The NFU recommends that GM wheat not be introduced into Canadian food or fields. The NFU further recommends that all evidence indicates that segregation of GM and non-GM wheat is impossible and even if effective segregation were possible, market loss would still result. Thus, the NFU recommends that the CGC refrain from altering the current quality system in order to accommodate GM wheat.

5) Conclusion

The Canadian Grain Commission, Canadian Wheat Board, Canadian farmers, and the companies that make up the grain industry have forged a reputation for grain quality and consistency that is number one in the world. This reputation is not an accident, but rather the result of decades of work to build a set of interlocking and mutually-supporting systems to improve and ensure grain quality. These interlocking components of our quality system include research agencies, plant breeders, seed growers, our variety registration system, farmers, our CGC-administered quality system based on grades and KVD, blending, marketing, the Canadian Wheat Board, and the CGC at working port. We have built a cost-effective, simple, robust, and failure-resistant system that is the envy of other exporters.

Our Canadian system, unlike systems in the U.S. and elsewhere, is able to consistently segregate grain according to class, type, and grade and it is able to make fine distinctions among factors such as protein levels. This tremendous success at matching grain to precise specifications gives our customers confidence that the grain they buy from us will have consistent processing qualities.

Canada's reputation for quality, and the current quality system upon which it is based, benefits farmers. It puts hundreds of millions of dollars in their pockets. It allows us to make sales into crowded international markets on the basis of quality.

The NFU recognizes that pressure from grain companies, plant breeders, and even from some farmers, forces all parties to consider changes to the current system. That said, it is critical that any changes to the current system increase farmers' net revenues and at the same time maintain Canada's premier reputation for grain quality.

The proposed VED/sampling system is complex, unworkable, failure-prone, and likely to heap costs and uncertainties onto farmers. It seems unlikely to significantly increase customer satisfaction with our grain. And it seems likely to fail in one of its two major objectives: tracing contamination back to the farmers or the industry participants that caused the contamination.

The National Farmers Union recommends that the government of Canada and the CGC shelve the VED proposal and pursue superior alternatives that will, in a much more reliable and cost-effective way, allow Canada to safeguard its grain quality system from unwanted contamination.

**Respectfully submitted
by
The National Farmers Union**