Submission by the National Farmers Union to the Manitoba Agricultural Services Corporation

on the Canadian Grain Commission and the issue of potential farmers' liability

March 14, 2008
Portage la Prairie, Manitoba

Submission by the National Farmers Union to the Manitoba Agricultural Services Corporation

on the Canadian Grain Commission and the issue of potential farmers' liability

March 14, 2008 Portage la Prairie, Manitoba

Introduction

The National Farmers Union welcomes this opportunity to present our views on the potential negative impact that changes to the Canada Grain Act and the Canadian Grain Commission will have on Manitoba – and by extension the Manitoba Agricultural Services Corporation.

In December, 2007, legislation was introduced in the House of Commons which, if passed, will have serious implications for Manitoba's farmers and the provincial economy. Bill C-39, An Act to Amend the Canada Grain Act, will effectively restructure the Canadian Grain Commission so that its primary mandate is no longer to operate in farmers' interests, but instead is to function as a facilitator for large grain companies.

It is important to remember that Canada's farmers have not advocated any weakening of the CGC regulatory role, nor have they called for cuts to the CGC's mandate or its resources. The calls for changes to the CGA and the CGC are coming from corporate interests.

Licensing and bonding of grain companies

When the Canada Grain Act was proclaimed in 1912, a primary objective was to ensure that farmers' interests were protected when grain companies went bankrupt. Over the course of several decades, a requirement for licensing and bonding of grain companies was refined and implemented.

Despite a legal obligation requiring grain companies to be licensed and bonded, the Canadian Grain Commission for many years was not fully enforcing this requirement.

Complaints from farmers and farm organizations finally resulted in the following declaration by the CGC in May, 2005:

"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."

At the time, the National Farmers Union strongly endorsed the initiative, noting that 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.

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.

The NFU urged the CGC to immediately step up enforcement of licensing requirements, adding that any potential loopholes which put farmers at financial risk should also be closed immediately. The NFU concluded that licensing and bonding by the CGC is the

most reliable and cost-effective way of ensuring farmers' financial interests are protected in the event a grain company cannot cover its payment obligations.

In 2006, a review of the CGC was conducted by the consulting firm Compas. This review recommended scrapping the licensing and bonding requirement, based on the fact that the requirement had not been fully enforced.

The NFU objected strongly to this recommendation, as well as to a number of other recommendations contained in the Compas Review.

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;
2. Effectiveness and accountability;
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.

Loss of Mandatory Inward Inspection

A recommendation in the Compas Review which has also been incorporated into Bill C-39 is the elimination of inward inspection and weighing.

Inward inspection ensures that:

- The identity of the grain is established before co-mingling;
- The identity of the grain is preserved so that the sample will be available to resolve disputes or facilitate the appeal process;
- Substantive and valuable statistical information is available to: a) establish the basis for warehouse receipts; b) identify current stock positions; c) facilitate future audit processes; and d) predict cargo quality prior to shipment.
- Grain is collected to allow for future reviews of grain grades and specifications.
- The final grade assigned by the CGC can be checked against the grade initially assigned by the elevator manager to ensure consistency in accuracy, and to reduce the incidence of penalties imposed by the Canadian Wheat Board (CWB) for "missed grades;
- The presence of illegal or ineligible varieties is detected before these varieties enter the system;
- CGC-approved automatic sampling systems are monitored;
- Railway freight rates are based on CGC-monitored weights.

These benefits are of primary importance to farmers, who understand the importance of a strong CGC which operates on their behalf. Mandatory, immediate, and on-site inward inspection by CGC inspectors provides substantial benefits to the system. It allows inspectors to "catch" contaminated, off-condition or incorrectly-represented carloads while they are being emptied, weighed, and elevated, and before they are mixed with large quantities of other grain. Even if contaminated or off-spec grain is binned, current inward inspection procedures allow problems to be spotted and isolated almost immediately. If a shipment of grain is contaminated due to the loss of inward inspection, it is highly likely that farmers will end up paying the financial penalty.

Loss of Kernel Visual Distinguishability (KVD)

The potential loss of the Kernel Visual Distinguishability (KVD) system, scheduled for August 1, 2008, holds severe ramifications for producers. Producers will likely be held liable for knowingly or unknowingly misrepresenting a variety that may eventually contaminate a shipment. The only protection farmers may have under this scenario is to ensure they retain a sample obtained on their farm by a licensed inspector.

Farmers may also be at risk financially if they buy a variety that is misrepresented by a seller, and consequently suffer lower yield and/or quality.

The pressure for removing KVD is coming from those interests who stand to benefit from the introduction of lower-quality, higher-yielding varieties, and those who will benefit as a result of contractual control of certain varieties. There is at present no reliable method, other than KVD, for quick and accurate identification of grain varieties. While research needs to be done on **complementing** the KVD system with additional methods of identification, is it in the public interest to spend millions of taxpayer dollars to **replace** a system that has proven its reliability and consistency for more than a century? Identity-preserved systems are not infallible, and in fact may seriously impair Canada's ability to maintain quality standards throughout the system. The KVD system is essential to maintaining the existing grain quality standards for which Canada is justifiably renowned. The NFU has consistently recommended the KVD system for variety identification be retained.

Conclusion

While the NFU is working diligently to educate Members of Parliament in an effort to prevent the passage of Bill C-39, there is a possibility the new legislation may be put in place in the near future. In the case of regulations governing the removal of KVD, the Harper Government's unrealistic timetable calls for the new, untried system to be in place by August 1, 2008. These policies will undoubtedly mean increased liability for farmers. But in the final analysis, whatever problems that farmers encounter as a result of losses due to these changes to the CGC and CGA will eventually filter back to the MASC and become problems for Manitoba taxpayers.

In the event that this new regulatory regime is implemented, farmers will face situations that are not necessarily covered under normal crop insurance circumstances. For example, if a farmer takes out crop insurance under MASC and then applies for assistance, only to discover that his grain is not a registered variety, what happens then? What are the implications for MASC?

In another example, if a farmer suffers a severe financial loss due to an unlicensed grain company declaring bankruptcy, what policies – if any - would MASC implement to offset such an occurrence?

These and other questions need to be taken into account if MASC is to ensure its interests, and the interests of Manitoba farmers, are protected.

All of which is respectfully submitted
By the National Farmers Union – Manitoba region