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Submission to the Canadian Grain Commission regarding Licensing of Feed Mills

The Canadian Grain Commission is seeking input from feed mills, grain producers, current licensees, and other industry stakeholders on a proposal to license feed mills and to assist in the development of licensing requirements for feed mills. These requirements would ensure that grain producers are covered by the Canadian Grain Commission's producer payment security program in the event of payment failure.

It is proposed that the Canadian Grain Commission expand its producer protection mandate to include deliveries to feed mills in Western Canada, by licensing these operations and applying the security requirement provisions to feed mills as a condition of their license.

It is proposed that all feed mills having purchased grain from a grain producer in Western Canada over the last year for use in the production of feed would be subject to a review for licensing. A feed mill may be defined as an operation where a process or a combination of processes is used to produce or manufacture feed for livestock or poultry consumption. The intent is to assess the feed mill industry in western Canada. Information collected will be considered when determining a threshold for commercial feed mills to be licensed.

The National Farmers Union is generally supportive of the Canadian Grain Commission licensing commercial feed mills, and is opposed to requiring feed mills owned by farmer co-operatives and on-farm feed mills to be licensed. The NFU is opposed to Bill C-48, which amends the Canada Grain Act, and warns of how it would affect farmers if feed mill licensing is adopted.

The NFU supports the licensing of commercial feed mills for the following reasons:

- Commercial feed mills should not be allowed to transfer financial risk to farmers with impunity. By licensing the commercial feed mills the producers who sell grain would be protected by the security bond.

- The CGC's requirement for monthly reports on outstanding liabilities would also provide these mills with an external check on unsustainable operations and possibly induce the mill's management to be proactive, thus may result in fewer failures.

- When commercial feed mills are part of a vertically integrated corporate structure that includes industrial hog operations or feedlots, the security required by the CGC would make it imprudent for the company to shift losses from other parts of its operations onto the farmers who supply grain to its feed mill. By licensing commercial feed mills, farmers who provide grain would become secured creditors in the event of insolvency.

- The NFU would also recommend that the CGC be empowered to increase the frequency of

outstanding liability reporting in situations where monthly reporting might result in a deficiency of the security bond – for example, when a company's risk of default appears to be increasing and when currency, feed, and/or livestock price volatility increases.

- Administration fees for feed mill licensing should be scaled appropriately to encourage smaller mills. If fees were not on a sliding scale, administrative costs would be a disproportionate component of the unit cost of production for small feed mills. If this was the case, it would result in a competitive disadvantage, as the cost of licensing would be passed on to farmers via lower prices paid for feed grains. If smaller feed mills became uncompetitive and went out of business due to the impact of licensing fees it would reduce both employment and opportunities for livestock production in some areas. It would also lead to concentration in the feed mill sector and reduce choices available for farmers selling grain as well as those seeking to purchase feed.

The NFU does not support licensing on-farm and farmer-owned co-operative feed mills for the following reasons:

- Farmers may buy grain from neighbours to produce feed for their own animals. Some may also sell feed produced from their own and purchased grain to neighbours. These kinds of economic relationships are grounded in community reciprocity and personal reputations. The social value of good relationships and the consequences of damaging them, provide adequate producer payment protection.

- Farmer-owned co-operative feed mills are in effect, an extension of on-farm feed mills, as they are owned and managed by the farmers who grow the grain and use the feed. If a farmer-owned co-op failed to pay, it would primarily harm its own members. There is a direct line of accountability between the farmer/member and the co-operative's management, which serves both to reduce the risk of default and to internalize losses.

- It would be unnecessary, onerous and redundant to require on-farm and farmer-owned co-operative feed mills to undergo CGC licensing. Paperwork required for licensing would likely be viewed as an unfair burden. In the event of default, losses from transactions between neighbours or co-op members may be painful to the farmers involved, but would not cause widespread hardship nor significant impacts on the regional economy.

Implications of Bill C-48 for feed mill licensing

Bill C-48, *An Act to amend the Canada Grain Act and to make consequential amendments to other Acts*, is currently before Parliament. The NFU is opposed to Bill C-48 and has serious concerns about how it would interact with the proposed licensing of feed mills if this bill becomes law. We believe our analysis of Bill C-48's implications is relevant to the current discussion.

Bill C-48 would change the CGC's mandate from carrying out its function "subject to this Act and any directions to the Commission issued from time to time under this Act by the Governor in Council or the Minister, the Commission shall — in the interests of grain producers — establish and maintain standards of quality for Canadian grain and regulate grain handling in Canada to ensure a

dependable commodity for domestic and export markets" to "… — in the interests of Canadians and grain producers — " This means that the CGC would not be able to differentiate between the interest of farmers and the interests of commercial feed mills, for example. This may affect how feed mill licensing is administered, to the detriment of farmers.

Bill C-48 enables the government to replace the current bond security Producer Payment Protection system with an insurance-based system that would be operated by the federal government. In the proposed insurance-based system the federal government would collect fees from licensed elevators and grain dealers to provide revenue for the insurance fund. The federal government would determine each company's fee (which could be $0.00) based on an assessment of its risk of default. There is no guarantee that the fund would be adequate to fully compensate farmers when a default occurs. If one company was unable to, or refused to pay its farmer-suppliers for grain delivered, it could potentially cause depletion of the whole fund, even though its fees contributed only a small part of the fund's total revenues. The NFU recommends that the current bond system be maintained because the individual company bonds properly connect liability for payment to the specific company that incurs the risk of default, and because it is designed to provide 100% of any money owed to farmers.

Bill C-48 amends Section 58 of the *Canada Grain Act* so that licensed elevators are allowed to refuse delivery of any grain that is produced from seed of a variety that is not registered under the *Seeds Act* for sale in or importation into Canada. This provision, combined with the recent change to *Seeds Act Regulations* that allow the variety registrant to de-register varieties on demand, could be used to limit markets for farmers who might grow unregistered varieties for various legitimate reasons. Farmers may use unregistered varieties because of their nutritional benefits, their agronomic properties, availability and low cost. Feed mills currently provide a market for unregistered varieties. If Bill C-48 passes and feed mills are also licensed, this provision could reduce farmers' choices regarding seed varieties by pressuring farmers into using more expensive seed to ensure it will be marketable.

Section 88 of Bill C-48 would empower CGC inspectors to enter premises of any facility they believe is being operated without the licence that is required under the Act for the purpose of verifying compliance with the Act, and allows the inspector to "(a) examine the premises and any equipment, grain, grain products and screenings found in the premises and take samples of the grain, grain products or screenings; and (b) examine any books, records, bills of lading and other documents that the inspector has reasonable grounds to believe contain any information relevant to verifying compliance with this Act and make copies of them or take extracts from them." This provision, along with Bill C-48's change to the CGC mandate could result in the Commission being directed by Cabinet or the Minister to use samples, information and records for purposes that are not in the interests of grain producers.

Future regulations or amendments to the Act may tie the CGC's duty to maintain "standards of quality" to the recently amended Plant Breeders Rights Act, for example, and thus facilitate legal action by seed companies against farmers and/or feed mills they suspected of infringement. Furthermore, the proposed Canada-European Union Comprehensive Economic and Trade Agreement (CETA) includes a commitment by Canada to adopt intellectual property rights enforcement measures that would empower the courts to use precautionary seizure of assets when infringement is merely suspected and not yet proved. If the CGC proceeds with the licensing of feed

mills, these mills would become subject to increased oversight and scrutiny and would be unlikely to risk accepting unknown varieties of grain for fear of prosecution. This in turn would limit farmers' choices and pressure them to use only more expensive, purchased seed in order to document the variety used. Economic and legal pressures exerted via trade agreements and seed companies are not aimed at maintaining the quality of Canada's grain but are rather methods of advancing the property rights of powerful corporations.

In the context of Bill C-48 licensing of feed mills becomes a much more complex question. The government-run insurance based producer payment protection system is much less reliable than the current bond system. Bill C-48 would reduce the value of licensing in the event of default. Bill C-48 would also create the potential for feed mills to limit farmers' choice of seed varieties to grow and thereby increase their costs. By changing the mandate of the CGC to acting "in the interests of Canadians and grain producers" it removes the confidence that the CGC will protect farmers interests when they conflict with the interests of corporations such as vertically-integrated livestock operation and multinational seed companies.

The net benefit of licensing commercial feed mills is diminished, if not eliminated, by Bill C-48. NFU urges the CGC to delay its decision on feed mill licensing until the fate of Bill C-48 is known.