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National Farmers Union Submission to the
Review of the Canada Grain Act and the Canadian Grain Commission

The National Farmers Union (NFU) is pleased to provide input to the federal government's review of the *Canada Grain Act* and the Canadian Grain Commission.

The Canadian Grain Commission (CGC), the *Canada Grain Act* (CGA) and its regulations are foundational to Canada's agricultural economy. The value that the CGC brings to the Canadians in general and to farmers in particular cannot be overstated. The CGC was established in 1912 to bring fairness, transparency, confidence, and order to Canada's grain sector. The mandate of the CGC is "the Commission shall, in the interests of the 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."

The CGC's effective use of its regulatory authority and mandate is the solid foundation upon which the Canadian grain sector's enviable reputation and excellent trade position has been built. The CGC's mandate must not be altered.

Canada's many individual farmers share common interests and they must deal with grain buyers who are fewer, wealthier and much more powerful. The CGC mandate recognizes that the interests of farmers and grain companies are generally in opposition, and that is necessary to balance the lopsided power relationship with effective regulatory authority that safeguards the interests of grain producers.

By growing crops, farmers provide the wealth that supports the whole grain trade and its tens of billions of dollars' worth of annual spin-off multiplier effects in the Canadian economy. The CGC's proper role is to ensure that farmers are treated fairly, not only when they make individual transactions with grain companies, but also by preventing corruption of the grain system as a whole. The CGC's authority to establish and maintain quality ensures that the grain farmers produce has high value, and retains its integrity and thus its value, through to its purchase by an end user.

Envisioning the future

The current review process invites stakeholders to envision the future and consider the role of the CGA and CGC in achieving it. There are some aspects of the future that the CGA and CGC can influence, others will be outside of its control.

We expect existing powerful grain companies will continue to operate within Canada and internationally. Globally, the four largest grain companies, Archer Daniels Midland (USA), Bunge (USA), Cargill (USA), and Louis Dreyfus Commodities (Netherlands) control 90 % of the world's grain trade. Within Canada, Cargill, Viterra, Richardson and G3 own two-thirds of the terminal elevator capacity. Further mergers and acquisitions will likely result in even fewer corporations, each with a larger share of the world's grain trade. These companies are giants, not only in grain markets, but are diversified into transportation, processing, and inputs as well.

We can also expect the digitization of agriculture to continue. As per-acre net returns decline, farmers must farm more land to make the same income. This leads to larger equipment and more automation. Precision agriculture machinery data collection systems are connected to the internet, and while individual farmers may find the data collected on their own farms useful, as the aggregated data from thousands of farms and millions of acres is acquired by grain companies, input sellers, hedge fund managers, etc. it will deployed to further enhance their advantage over farmers.

In the commodity market, grain farmers will continue to be price-takers. Farmers as individuals have no bargaining power with multinational corporations and no capacity to challenge unfair practices in court. The CGC must continue as an effective regulator and arbitrator in the interests of grain producers. Without it, grain companies would extract ever more of the value from agriculture, farm profitability would drop, farm numbers would decline, and eventually independent farmers would be entirely replaced by precarious contractors, tenants and itinerant farm workers.

Trade agreements are likely to continue into the future. Critical agricultural infrastructure has been bargained away in recent deals. Our supply management system has been seriously damaged by CETA and the CPTPP, and CUMSA has attacked our grain system. The CGC must be vigilant in preventing trade negotiators from betraying Canadian farmers and undermining our grain quality standards in future deals.

We know that climate change impacts will become more severe in coming decades even if countries meet their commitments to reduce GHG emissions. Total atmospheric CO2 is already 414 ppm, well above the safe level of 350 ppm. Climate models show that the Prairie Provinces – our primary grain growing area -- will warm even faster than other regions. There is a long time lag between reduction of emissions and reduction of total atmospheric CO2. We know that Canadian growing conditions will become less predictable and less favorable, with impacts on yield and quality. The CGC will need to ensure farmers can objectively demonstrate any quality advantages to obtain the best possible prices under increasingly erratic growing conditions.

International agreements will increasingly favour jurisdictions with lower GHG emissions from agriculture, particularly soil emissions of nitrous oxide from fertilizer application. The CGC's ability to establish and maintain high quality standards for Canada's grain will be critical to Canadian farmers' ability to reduce emissions from agricultural production. High quality standards and the higher prices that go hand in hand, will allow Canadian

farmers to profitably use lower-emission production practices. This will allow Canada to retain international market share under increasingly strict GHG mitigation measures. In contrast, without quality standards to differentiate Canadian grain, our farmers will tread a vicious circle, using even more GHG-emitting fertilizer to increase yields and compensate for ever-lower prices and worsening climate conditions. Furthermore, a high-volume strategy would increase total emissions from grain transportation, and lower prices would mean a higher proportion of the grain's value would go to freight costs.

Thanks to the CGC, quality differentiates Canada's grain in the global marketplace. This must continue for Canada to maintain a viable grain sector. Other countries selling into the export markets have lower transportation costs because their grain growing areas are closer to markets and ports. Canadian farmers require a higher price to off-set the cost of transportation, and this can only be achieved if our grain is consistently high quality. Maintaining a consistent market share based on quality provides long-term stability and economic value to the whole of Canada, bringing billions of dollars into the economy every year.

The NFU advocates for food sovereignty – a democratically governed food system that works for people -- and agroecology – agricultural production that works with nature. The CGC is an important institution which can and should function to support both goals by proactively regulating in the interests of grain producers, and by ensuring it is equipped to withstand outside threats to our grain system's integrity. The NFU rejects any suggestion that the CGC should be seen as a mere inspection service provider to grain companies. The role of the CGC in maintaining quality standards is a regulatory function that creates real value for the whole of the Canadian economy.

Governance

The NFU supports the CGC's current structure with three Commissioners appointed for seven year terms. The Act prohibits anyone with an interest in the grain trade or grain transportation, other than farmers, from being appointed as a Commissioner. Any disputes at the head of the organization can be settled by majority decision. The Commissioners' terms are longer than federal election cycles in order to prevent political interference through threat of dismissal when there is a change of government. Prior to 2010, CGC governance also included six Assistant Commissioners who were appointed and paid separately from the Commission, and thus had the independence to raise issues if the Commissioners were acting outside the mandate of the CGC or in some other harmful way. Together, these elements ensured that the CGC was not taken in directions that either harmed farmers or to which it was not intended.

The NFU recommends maintaining the CGC's governance structure headed by three Commissioners, and reinstating the Assistant Commissioner role.

Repeal 2020 Amendments

Allowing US-grown grain to be exported as if Canadian

Bill C-4, the *Canada–United States–Mexico Agreement Implementation Act*, amended certain existing laws to bring them into conformity with Canada's obligations under the CUSMA Agreement. It was passed without adequate debate on the day Parliament was suspended at the onset of the COVID 19 pandemic. Bill C-4's *Canada Grain Act* amendments (Sections 59 to 69 of Bill C-4) enacted substantive changes to Canada's grain

system not negotiated under the trade deal, which were not debated during Committee hearings. These include extending American access to our grain exporting system to all CGC-regulated grains, in addition to wheat, as well as changes to the operations and authority of the CGC that are not in the interests of grain producers and which undermine its control over the quality standards of Canada's grain.

The CGA defines "grain" as "any seed designated by regulation as a grain for the purposes of this Act" (Section 2). Section 5 (1) of the CGA Regulations states: "The following seeds are designated as grain for the purposes of the Act: barley, beans, buckwheat, canola, chick peas, corn, fababeans, flaxseed, lentils, mixed grain, mustard seed, oats, peas, rapeseed, rye, safflower seed, soybeans, sunflower seed, triticale and wheat."

Prior to passing Bill C-4, CGA defined "foreign grain" as "any grain grown outside Canada and includes screenings from such a grain and every grain product manufactured or processed from such a grain" (Section 2). Inspection certificates for grain grown outside Canada must state the country of origin of the grain or identify it as foreign grain (Section 32 (1) (b)). If grain from another country was delivered to a grain elevator as a commodity for potential export though Canada's licenced grain handling infrastructure, it had to be segregated, identified as "foreign grain" and was only eligible for the lowest possible grade.

Article 3.A.4 (Grain) of CUSMA requires Canada to treat wheat grown in the USA the same as wheat grown in Canada in regard to grading. It also requires that USA-grown wheat no longer be identified as to its country of origin when delivered into Canada's grain system. The effect of this CUSMA Article is that it commits Canada to provide access to Canada's grain handling system for American-grown wheat, allowing it to be treated as if it were Canadian-grown and exported in shipments identified as Canadian. Yet Clause 62 (3) of Bill C-4 amended the CGA so that *all grain* originating in the USA is eligible for the highest possible grade, and is not segregated nor identified by country of origin. Bill C-4 thus overreached CUSMA, giving all US-grown grains access to Canadian grades – and thereby to Canada's entire grain handling system.

As a result of Bill C-4 amendments, American-sourced grains can now be admixed with Canadian-grown grains in shipments destined for export. Grain companies are now able to use US-sourced grain to weaken prices for Canadian farmers by sourcing American wheat, corn, soybeans, barley, etc., at lower prices as a result of US Farm Bill subsidies and other price supports not available to Canadian farmers. The expected acquisition of Kansas City Southern Rail by CN or CP Rail, will make it easier companies to move grain from the US Midwest to Canadian terminals. They can then export the grain as if it originated in Canada and benefit from quality premiums generated by our entire system and its historic reputation. Market access problems and/or lower prices caused by admixture of US-grown grain in Canadian shipments, such as dockage containing herbicide-resistant noxious weed seeds or residue of unregistered chemicals that are not found in Canada, will become more likely and be more difficult, costly or even impossible to address. The many years of work by Canadian trade delegations and institutions to develop and promote Canadian grain, its quality, reliability and the positive brand identity for Canadian grains that has allowed it to obtain premium prices, is threatened by changes that came in with Bill C-4.

When CUSMA negotiators allowed US grain access to our system it created a free-rider problem. The American producers and grain companies that stand to benefit from using our system have contributed nothing to its establishment and upkeep. CUSMA puts Canadian farmers, the CGC and the historic and on-going public

investment in Canada's grain quality system at the service of American free-riders who have paid nothing and who cannot be taxed or otherwise charged to support its upkeep, nor can they be effectively disciplined for fraud or other potential harms resulting from delivering inferior grain into our elevators. Adding insult to injury, these same free-riders are also engaged in the grain trade through the USA, which is competing for the same markets as Canada. In the interests of Canadian grain producers, and in support of maintaining quality standards, the CGC must stand firm against trade deal related intrusions into Canada's grain system.

There was no need to multiply the risks, losses and costs to Canada's farmers, our international reputation and markets by unnecessarily and voluntarily extending full access to our grain handling system to all GCG regulated grains. CUSMA could have been met by amending the definition of "foreign grain" and the requirement to record the location where non-foreign grain is grown on inspection certificates issued when grain is received by a licensed elevator.

We therefore recommend replacing Section 32(1)(a) of the Act before subparagraph (i) with*: (a) if the grain is not foreign grain*; repealing the C-4 amendments to the CGA Interpretation section and amending the Act as follows:

> ***foreign grain*** means any grain grown outside Canada <u>except for wheat grown in the USA</u> and includes screenings from such a grain and every grain product manufactured or processed from such a grain; (*grain étranger*);
> ***eastern grain*** means grain, <u>other than foreign grain</u>, delivered into ~~grown in~~ the Eastern Division; (*grain de l'Est*);
> ***western grain*** means grain, <u>other than foreign grain</u>, delivered into ~~grown in~~ the Western Division. (*grain de l'Ouest*); and

Canadian grades for non-US origin imported grain

Prior to Bill C-4, foreign grain was not eligible for any grade. Now, as a result of Bill C-4 amendments to Sections 32 and 116, the CGA enables the CGC to introduce regulations that would allow inspectors to assign Canadian grades and dockage to grain imported from other countries in addition to the USA. As of July 1, 2020 the CGA includes the following (emphasis added):

> ***32 (1)*** *Subject to this Act, an inspector, after making an official inspection of grain pursuant to this Act, shall issue an inspection certificate in prescribed form,*
>
> > *(b**) if the grain was grown outside Canada or the United States**, stating the country of origin of the grain or stating that the grain is imported grain and, in the prescribed circumstances,*
> >
> > > *(i) assigning to the grain a grade established by or under this Act or, if the grain is eligible to be assigned more than one grade, assigning to the grain the grade constituting the highest level of excellence for which the grain is eligible, and*
> > > *(ii) stating the dockage to be separated from the grain in order that it may be eligible for the grade so assigned.*
>
> ***116 (1) The Commission may, with the approval of the Governor in Council, make regulations***
>
> > *(c.1) prescribing circumstances in which an inspector, under paragraph 32(1)(b**), is to assign a grade to imported grain** and to state the dockage that is to be separated from it;*

These clauses suggest Bill C-4 anticipates future trade agreement negotiators expect to allow grain from additional countries into our licenced handling system where it can be "grainwashed" and exported as if it were grown in Canada by Canadian farmers. This is unacceptable, and clearly in conflict with the CGC's mandate.

Sections 32(1) (b) and 116 (1) c.1 must be repealed.

Enabling incorporation by reference of 3rd party documents

Bill C-4's Clause 69 enabled the CGC to create regulations that incorporate by reference documents created by others. Section 118.1 (1) through (4) was added, allowing the CGC to give the force of law to "any document, regardless of its source, either as it exists on a particular date or as it is amended from time to time." This change was not required by CUSMA. It enables unelected third parties to create rules that have the force of law, simply by changing a document that has already been incorporated by reference. This breaks the chain of accountability between the regulation and the democratic process.

Supporters of incorporation by reference say it is efficient, since proposed changes to regulations would not undergo regulatory analysis and public review. We believe the time taken for democratic processes is well-spent, and often reveals significant aspects of the regulation that would not otherwise be considered by the regulator. The CGC has been heavily lobbied by multinational grain companies and seed companies that seek to operate in Canada without constraint. Incorporation by reference risks delegating public regulatory authority to these companies and giving them the opportunity to violate the CGC mandate by amending documents in ways that are not in the interests of grain producers.

Documents incorporated by reference are to be "accessible" – but are not required to be posted in the Canada Gazette where all other CGC regulations are published. The Act provides no definition of "accessible" and thus the CGC cannot ensure that those subject to these regulations are able to know precisely what is incorporated by reference. Documents that are not "accessible" cannot be enforced. This opens the door to third parties choosing to make documents inaccessible if they prefer the regulation not be enforced. It is not in the interests of farmers, nor in the interests of maintaining quality standards for Canada's grain to have arbitrary, unaccountable and non-transparent regulatory measures enabled by the CGA.

Section 118.1 Incorporation by Reference must be repealed.

CUMSA jeopardizes CGC's quality control

The negotiators of CUSMA conceded an unacceptable intrusion into Canada's affairs by agreeing to Article 3.A.4 (3), which requires Canada to discuss our domestic grain grading and grain class system and seed regulatory system with US interests.

CUSMA Article 3.A.4: Grain

3. At the request of the other Party, the Parties shall discuss issues related to the operation of a domestic ***grain grading or grain class system****, including issues related to the seed regulatory system associated with the operation of any such system, through existing mechanisms. The Parties shall endeavor to share best practices with respect to these issues, as appropriate.*

The US Trade Representative's *2021 National Trade Estimate (NTE) Report* outlines what she considers priority trade issues. It indicates intention to act upon this CUSMA article, stating: "However, there are concerns that the variety registration system is slow and cumbersome, and disadvantages U.S. seed and grain exports to Canada. Under the *Canada Grain Act*, only grain of varieties produced from seed of varieties registered under the *Seeds Act* may receive a grade higher than the lowest grade allowable in each class. The USMCA includes a commitment to discuss issues related to seed regulatory systems. The United States will continue to discuss with Canada steps to modernize and streamline Canada's variety registration system."

The CGC has the authority to define grain classes and the varieties that are included in grain classes. When new varieties are being considered for registration under the *Seeds Act*, the CGC has the authority to determine which class the variety is eligible for. There are wheat, barley and flax classes and lists of varieties for each. The CGA also requires that varieties not registered in Canada must be assigned the lowest grade established by regulation for that kind of grain. These powers are integral to upholding quality standards for Canadian grain by preventing inferior varieties from contaminating shipments, harming our international reputation and weakening prices.

US trade officials, acting on behalf of multinational grain and seed companies, view our grain classes and variety designation lists as impediments to their ambitions. If allowed to undermine the CGC's authority in these matters, the condition that grain imported from the US can only be assigned Canadian grades if it is of a registered Canadian variety would no longer have any impact.

This CGA review must diligently uphold the CGC's authority over grades, classes of grain and variety designation, and not be swayed by any pressure by the US government, American commercial interests, Global Affairs Canada or any other party that may have an interest in weakening Canada's variety registration system and its role in upholding the quality standards of Canadian grain and safeguarding the interests of Canadian grain producers.

Producer Payment Protection

Currently, the CGC licenses companies and requires them to hold a bond or other security with government-approved bonding companies. The amount required is set by the CGC and adjusted as necessary based on mandatory monthly reporting of outstanding liabilities (payments owing on grain received) of the companies. In the event a licensed company refuses to pay, becomes insolvent or closes without paying for grain it has received, the CGC uses the security to pay farmers what they are owed.

Under the bond/security system, there have been very few failures to pay and in most cases bond security has been sufficient to cover 100% payouts. Under our bond-based payment security system, the CGC has a direct connection to the company itself and to payments to producers. When a company fails, payouts are administered fairly by the CGC. In most cases, the cause of failure is clear and/or is investigated by the CGC which allows for actions to be taken to prevent similar failures in the future. For example, if a company failed because it could not get timely rail service, this was clearly understood by all parties. Farmers as well as governments could then look for and make changes to improve this factor.

Bonding is a direct discipline on individual companies: their own money is at risk; payouts affect the company's reputation; and the CGC is able to take specific proactive actions to address the company's particular situation when there is a risk of insolvency or insufficient security. The cost of maintaining bond security is something to which all licensed grain companies are subjected, and which can be controlled through prudent business management.

In the 2012 *Budget Implementation Act*, the *Canada Grain Act* was amended to allow an insurance-based system to replace bond security. The insurance proposal was soon found to be fundamentally unsound and efforts to implement it were abandoned. However the Act still includes a clause added at the time which enables the CGC to exempt licensees from the bond security requirement.

> **116 (1**) The Commission may, with the approval of the Governor in Council, make regulations
> **(k)** respecting the security to be obtained, by way of bond, suretyship, insurance or otherwise, for the purposes of subsection 45.1(1); …
> **(k.3)** exempt a licensee from the requirement to obtain security;
>
> **Section 116 (1) (k.3) must be repealed.**

The NFU recommends that bond security system be retained and that the CGC be enabled to increase the frequency of mandatory reporting.

Outward Inspection

Grain leaving Canada by ship to destinations other than the USA must be inspected by the CGC. The "Certificate Final" is then issued, providing an official attestation of the grain's quality. Exporters must pay a fee to the CGC in order to have the shipment inspected and receive the certificate final.

The mandatory CGC inspection is a regulatory function and is necessary to ensure dependable quality of Canada's exports. The fee represents the value of the entire CGC regulatory function upstream of the final inspection. The robust regulatory framework that promotes and creates quality in Canada's grain system as a whole which not only benefits farmers, but provides a trustworthy and reliable product of value for the grain trade. It is appropriate for the final inspection fee to remain adequate to fund the upstream regulatory functions as well as the immediate costs of inspection at port terminals.

As the ship is loaded, representative samples are taken for each 2,000 tonne fraction of the shipment. Prior to 2013, each 2,000 tonne fraction was required to meet the specifications for the entire load. This is called Incremental Loading. In 2013, the CGC began allowing Composite Loading, which means that each 2,000 tonne segment did not have to meet contract specifications, but when averaged together the shipment would meet the contract.

Since the destruction of the Canadian Wheat Board, private grain companies have been hiring private inspection services that also sample and test grain as it is unloaded into ships. They compare the results with their buyer's contract and instruct the elevator operator to adjust the quality being discharged to ensure the entire load does

not exceed the contracted grade or specifications. The companies' goal is to ensure shipment quality is no more than the bare minimum their buyers will accept.

The difference between these two processes is that Incremental Loading guarantees that the quality and specifications of the entire cargo are consistent from the start of unloading to its end, while Composite Loading only guarantees that if the grain in the entire cargo were to be evenly mixed together, then it would meet the minimum specifications. As this is an impossible process to undertake, customers are left with storage batches of uneven quality. This can require customers to sample and track the specifications of each storage batch and adjust their manufacturing processes to match each batch – a time consuming and costly process. This has caused dissatisfaction in our customers, and leads to discounted prices.

It is in this context that grain companies have been lobbying to replace the CGC's final inspection with private inspection, claiming CGC inspection is an unnecessary duplication. Their position is a misrepresentation of the value and the role of the CGC. The Certificate Final can be likened to the keystone of an arch: it provides the structural integrity that gives the edifice strength. When the keystone is removed, the archway can no longer bear weight and eventually becomes a mere pile of rocks. Without mandatory final inspection of export shipments by CGC inspectors, Canada's export grain quality will be eroded by creeping self-interest, then will tumble altogether, as private inspectors would be induced to turn a blind eye to discrepancies that benefit their clients. Eventually customers would lose trust in Canadian grain, as is already happening due to composite loading. Multinational grain companies may still be happy with lower quality Canadian grain and weaker prices, as they operate around the world and make their money on margins – but Canadian farmers need to have strong grain prices to cover their production and transportation costs.

We recommend that CGC Outward Inspection and issuance of the Certificate Final continue to be mandatory, that Incremental Loading be mandatory, and that the Certificate Final must be supplied to the export customer as well as to the shipper.

Re-establish Mandatory Inward Inspection by the CGC

Mandatory inward inspection by CGC inspectors was eliminated in 2013. Grain companies can now hire third parties to inspect grain received at their terminals.

CGC inward inspection involved taking official samples of grain arriving at terminal elevators and transfer elevators to determine grade and dockage and to determine financial compensation to be credited to the shipper. It served as a continuous audit so that grades and volumes issued at primary elevators matched those at terminal position. It was also essential to the functioning of producer cars so that they were graded when they arrived at the terminals.

Inward inspection supported Canada's grain quality and quality assurance systems; protected the integrity of grain transactions; and supported producer protection.

Inward inspection ensured that:

- The identity of the grain was established before co-mingling;

- The identity of the grain was preserved so that the sample will be available to resolve disputes or facilitate the appeal process;
- Substantive and valuable statistical information was available to:
    - establish the basis for warehouse receipts;
    - identify current stock positions;
    - facilitate future audit processes; and
    - predict cargo quality prior to shipment;
- Grain was collected to allow for future reviews of grain grades and specifications;
- The final grade assigned by the CGC could be checked against the grade initially assigned by the elevator manager to ensure consistency in accuracy
- The presence of illegal or ineligible varieties was detected before these varieties enter the system;
- CGC-approved automatic sampling systems were monitored; and
- Railway freight rates were based on CGC-monitored weights.

Mandatory, immediate, and on-site inward inspection by CGC inspectors provided substantial benefits to the system by isolating carloads that were not in compliance before they could be elevated comingled with large quantities of grain and contaminate shipments. Inward inspection by CGC personnel, as opposed to a private company contracted by the grain company, avoided the conflict of interests that could skew results in favour of the company.

Today, as a result of the CUSMA trade agreement, US grown grain is allowed to enter Canada's grain handling system if it is of a variety that is registered in Canada. Grain companies may refuse unregistered varieties, but they are not prohibited from accepting them. A company seeking to increase profits by cutting costs could turn a blind eye to the rules and buy unregistered varieties from the USA at lower prices than registered Canadian varieties, leading to loss of quality and lower prices for Canadian farmers. Without inward inspection, the presence of unregistered US varieties illegally using our system would only be revealed upon final inspection – too late to prevent comingling and loss of integrity for the shipment.

We recommend the re-establishment of mandatory Inward Inspection by the CGC

Price reporting

Farmers do not currently have access to current and actual price reporting, which they need to make the best decisions about selling their crops. It would be in the interests of grain producers for the CGC to collect and report for each CGC-regulated commodity daily sale prices to exports at each port and overland US buyers and to processing locations in Canada.

We recommend that the CGC make daily grain sale price reporting mandatory, and that the reported prices be made publicly available to farmers online and also posted at country elevators.

Access to binding determination

The CGC's authority to enforce grade and dockage through binding determination in the event of a dispute provides farmers with a power-balancing force against companies that are able to unfairly downgrade and thereby discount grain delivered to the country elevator.

In 2017 the NFU surveyed farmers regarding their use of "subject to inspector's determination of grade and dockage" in the event of a dispute. Farmers who use it find it an extremely valuable tool. However, several said they were aware of it but did not use it for fear of reprisals, even when the elevator had unmistakably cheated them. Some had experienced retaliation after using binding determination. Some elevators agreed to the farmer's price to avoid going to the CGC. For those who used CGC binding determination, results were in the farmer's favour slightly more often than the reverse. Thus, there is a need to encourage, normalize and expand the use of binding determination to promote fairness.

Changes in how grain is delivered have made it more difficult for a farmer to request binding determination at the time of delivery. With some delivery options farmers are not present and may not be immediately informed of the grade and dockage offered by the licensee. This should not nullify farmers' ability to obtain binding determination.

Farmers' access to binding determination of grade and dockage should extend to all licensees that receive grain from farmers. Farmers who do not deliver directly to primary elevators should not be denied binding determination. Making it accessible regardless of licensee type would promote fairness throughout the system.

To achieve the necessary access, representative and tamper-proof samples of all deliveries should retained for at least 30 days, to allow the farmer to request binding determination after delivery in the event of a dispute. If the farmer is not present when the grain is delivered, the licensee must provide documentation by email within 24 hours, and provide the farmer with at least an additional 48 hours to dispute the results. In the event a farmer exercises their right to involve the CGC, the licenced elevator will immediately pay the farmer 80% of the agreed price on delivery, with the balance subject to being determined by the CGC. This initial mandatory payment would reflect the fact the grain company has the grain in its possession and will give the company a strong incentive to make sure its agents give a proper grade in the first place and the farmer is not penalized for exercising their right.

In addition, we recommend that farmers should have access to binding CGC determination of any or all specifications included in their contracts, since contract specifications are used to price grain and therefore have the same effect as grading factors. Access to CGC's binding determination on all specifications would be a deterrent to companies using superfluous specifications as a tactic for imposing price discounts, and would ensure the use of contract specifications does not function as a loophole for avoid binding determination.

When the CGC held a public consultation on whether to add Falling Number and deoxynivalenol (DON) as official grain grading factors, the NFU concluded that this would increase risks of unfair downgrading, and would potentially reduce the value of graded grain. We recommended that the CGC use its authority to provide a binding determination in the event of a dispute in cases where companies voluntarily use Falling Number and/or DON to value grain delivered.

There should be no fee charged for using CGC binding determination for grade, dockage or any contract specification, and contracts must be prohibited from implying that any other agency or grader's assessment supersede the CGC's determination.

Cash Purchase Tickets and Receipts

The CGA requires licensees to provide farmers with a cash purchase ticket or receipt stating the grade name, grade and dockage of the grain when they deliver grain. The official cash ticket form provides a space where other deductions or additions can be explained, but there is no requirement to do so. This needs to be remedied so that farmers know what they are being paid, and what they are paying for.

Grain companies claim that CGC inspection is a duplication of their contracted private inspections and an unnecessary expense, particularly when the grain is moved between the same company's country elevator and its port terminals. It has to be recognized that it is the grain companies' choice to add the private inspection process, and thus incurring its cost is also their decision. Mandatory CGC inward and outward inspection were put in place to prevent fraud, and have functioned to protect farmers against cheating by grain companies, which was rampant before the CGC was established in 1912, and would likely resume if mandatory CGC outward inspection was eliminated. Companies bury CGC weighing and inspection costs in their basis charges without itemizing them, as they do with the cost of private inspections. Companies routinely exaggerate the cost of CGC inspection to farmers in their efforts to weaken public support for the CGC and the CGA. Farmers are currently unable to know how much of any basis discount is due to compulsory CGC fees, how much is due to companies' voluntary use of private inspection, and how much is an arbitrary charge unrelated to any costs.

The Act should be amended to require freight and elevation costs, and any and all other deductions, be itemized and printed on grain cash tickets.

Licensing

We are happy with the current CGA licensing system based on the type of facility or business. It provides clarity, transparency and stability, which are important for farmers.

We recommend that a class of license that covers container shipper loading facilities other than producer car loading facilities be added. Companies using container shipping should not be exempt from the obligations and responsibilities required of other companies or facilities; and farmers selling to buyers that use container shipping should not be denied the CGC's payment protection or access to binding determination.

We also recommend ending the exemption from licensing for commercial feed mills other than co-operative feed mills owned and operated by the farmers who deliver to the mill.

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.

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 would also recommend that the CGC increase the frequency of outstanding liability reporting for all classes of licensees 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, commodity, feed, and/or livestock price volatility increases or when there are actual or threatened market disruptions.

The methods of compliance and enforcement mentioned in the Act, namely the power to refuse to issue a licence and the power to put conditions on a license, must be retained. Fines should not be considered a substitute for license suspension, as the wealth and financial capacity of the large corporations involved would allow them to easily absorb large fines as a "cost of doing business" and likely they would simply pass that cost onto farmers.

CGC as Producer Railway Car Receiver

The CGA currently enables the CGC to authorize and allocate producer cars to farmers, allowing them to have their grain transported without involving a grain company or incurring elevation charges. Since the demise of the Canadian Wheat Board, the ability of farmers to benefit from this right has weakened, as grain companies are not obligated to accept producer car shipments. As a result, less grain is moved via producer cars. Access to producer cars is an important power-balancing mechanism in our grain handling system as it serves as a check on monopolistic elevation and/or basis pricing by grain companies and by allowing farmers direct access to rail transportation services.

It is in the interests of grain producers for the CGC to ensure producer cars remain an effective element in the grain handling system. To this end, we recommend the CGC establish and operate Producer Car Receivers at the West Coast and at Thunder Bay to receive producer cars at port and direct them to whichever terminal elevator had space. Grain companies with port terminal capacity would be mandated by the CGC to accept a certain portion of their supply from the Producer Car Receiver. The CGC would grade the grain at port then offer it to whichever grain company was purchasing that grain. Any discrepancies in space allocations and sales could be cleared up on a monthly basis by the Producer Car Receiver.

CGC Research

The CGC's research capacity is a vital and necessary component of its role in safeguarding quality standards of Canadian grain. The CGC statistics are also a key element of transparency of Canada's grain system, which is in the interests of grain producers.

The CGC's Grain Research Lab does all the analytical testing for new public varieties and grades all the check samples. It organizes and runs the quality analysis process for variety registration co-op trials. The quality, consistency, and integrity of this step in the variety registration process is critical to the validity of variety registration decisions, and is key to upholding quality standards for Canadian grain. Scientists from the Grain Research Lab also sit on the Recommending Committees for oilseed and pulse crops. Their expertise ensures new varieties are properly assessed at the recommendation stage.

The Grain Research Lab also studies and publishes on scientific matters regarding Canada's grain production, storage, and end uses that would not otherwise be investigated. This CGC research underpins all of the CGC's inspection standards, processes, and measurements so that farmers, customers and policy makers can have full confidence that our system is based on evidence, and that it is has the capacity to monitor and respond to changing conditions as they arise.

This review of the CGA and the CGC must ensure that the CGC's research capacity and scope is fully supported as a core regulatory function.

Extending CGC authority to Eastern Canada

The CGC provides many benefits to western grain farmers that are not available to farmers in Eastern Canada. We would encourage the CGC to explore the possibility of extending the CGC's authority to cover all grain producers in Canada. We recommend that the CGC carry out first an educational campaign, and then a public consultation process with farmers in Ontario, Quebec and the Atlantic provinces. If Eastern farmers support extending CGC authority to their region, the CGA should be amended to include them.

In closing, we cannot overstate the importance of the Canada Grain Act as the legislative framework underpinning Canada's grain economy, and the Canadian Grain Commission with its mandate to "in the interests of the 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." The CGC has operated as Canada's grain system regulator for over a century. The Act is the solid foundation of our grain economy, our farmers' livelihoods and our domestic and international customers' confidence. We are pleased to offer our recommendations for making the CGA and the CGC even stronger.

All of this respectfully submitted by

The National Farmers Union
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