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# Canada Gazette, Part I, Volume 156, Number 24: Regulations Amending the Canada Grain Regulations

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June 11, 2022

## Statutory authority

*Canada Grain Act*

## Sponsoring agency

Canadian Grain Commission

## REGULATORY IMPACT ANALYSIS STATEMENT

*(This statement is not part of the Regulations.)*

## Executive summary

**Issues:** The Canadian Grain Commission (CGC) provides a binding grain grading dispute resolution service, also referred to as “Subject to Inspector’s Grade and Dockage,” under the *Canada Grain Regulations* (CGR). This service provides producers the right to request that a sample of their grain delivery be reassessed by the CGC if they disagree with a licensed primary elevator’s assessment of

grade and dockage.<sup>1</sup> Commercial handling practices have changed, and producers are not always present when their grain is delivered. The CGR does not clearly provide producers with an opportunity to dispute an elevator grain grade and dockage assessment if they are not present at delivery and is no longer meeting producer needs. Also, stakeholders have requested more clarity and flexibility on the associated grain sample retention procedures, including who can retain the grain delivery sample, and for how long it must be retained.

**Description:** The proposed regulatory amendments extend the time period over which a producer is able to trigger grain grading dispute resolution, clarify that producers can dispute an elevator grade even if they were not able to deliver the grain themselves, prescribe the time requirements for retaining a sample, and allow for more flexible sample retention arrangements.

**Rationale:** The proposed regulatory amendments would address stakeholder concerns by modernizing grain grading dispute resolution and associated grain sample retention procedures, which would provide increased operational clarity and flexibility for both grain producers and primary elevator operators. These changes would improve producer protections and ensure that producers continue to receive fair compensation for their grain deliveries.

## Issues

When producers deliver grain to a licensed primary elevator, their grain is assessed by the receiving elevator for grade and dockage. Grade and dockage are indicators of the grain's quality and cleanliness and are

factors that determine payment to a producer. If a producer disagrees with the primary elevator operator's assessment of their grain, they have the right to request that a sample of their grain delivery be reassessed by the CGC for an independent, binding decision. This grading dispute resolution service is called "Subject to Inspector's Grade and Dockage" under the CGR. Producers can only trigger this service if they are present at the time of their grain delivery into a primary elevator. Given that commercial handling practices have changed, producers are not always present when their grain is delivered and the process and time period for triggering grain grading dispute resolution are no longer meeting their needs. Also, stakeholders have requested more clarity and flexibility on the associated grain sample retention procedures, including who can retain the grain delivery sample, and for how long it must be retained.

Based on consultations with Canadian grain sector stakeholders, the CGC is proposing regulatory amendments to modernize the grain grading dispute resolution and clarify the related sample retention procedures.

## Background

The CGC is responsible for establishing and maintaining Canada's grain quality standards. Its programs result in shipments of grain that consistently meet contract specifications for quality, safety and quantity. The CGC regulates the grain industry to protect producers' rights and ensure the integrity of grain transactions.

Under the *Canada Grain Act* (CGA), the CGC provides grain grading dispute resolution as a cost-effective means of settling grading and dockage assessment disputes between primary elevators and producers. As per Schedule I of the CGR, the 2022–23 fee for this service is \$49.25 per sample and is adjusted for inflation annually. It is up to the producer

and the elevator operator as to who pays this fee. Since 2017, the CGC has received an average of 230 grain grading dispute resolution requests per year. Where each of these dispute resolution requests represents one producer delivery load, the total number of requests equals approximately 0.015% of all load samples taken at primary elevators.<sup>2</sup>

While the total number of grain grading dispute resolution requests is low in proportion to the number of delivery samples taken each year, this dispute resolution service is an important tool for producer protection. It ensures that producers have the right to receive a fair assessment of grade and dockage, and ultimately value, for their grain.

### ***Sampling grain on delivery***

Section 34 of the CGR requires that primary elevator operators take a 1-kilogram sample of grain from each producer delivery load for the purposes of determining grain dockage and resolving any disputes regarding grain grade and dockage. The sample must be representative of the delivery load and be retained at the elevator. However, the CGR does not currently prescribe a time period for how long the sample must be retained or provide for alternative sample retention arrangements between a producer and elevator operator. Grain producers, producer associations and licensed primary elevator operators have asked for more clarity and flexibility on delivery sample retention including who can retain the sample, and for how long a sample must be retained.

### ***Grain grading dispute resolution***

Section 36 of the CGR does not allow for a person delivering grain to leave the delivery site before grading and dockage assessment has been completed and later request grain grading dispute resolution if they do not agree with the elevator's assessment. Grain producers and producer

associations have said that this process for requesting grain grading dispute resolution has not kept pace with changing grain delivery practices and is no longer meeting their needs. Unlike in the past, producers are not always present when their grain is delivered to a licensed primary elevator as currently required. Instead, third parties, such as commercial truck drivers, are increasingly being hired to deliver a producer's grain into the licensed elevator system. As a result, a producer may forego redress and be unable to trigger grain grading dispute resolution in the event of a grading assessment dispute with an elevator if they are not present themselves at delivery.

## Objective

To modernize grain grading dispute resolution to reflect current grain sector operational practices by

- clarifying the minimum time requirements for retaining a sample.
- allowing for more flexible sample retention arrangements between the producer and primary elevator operator.
- clarifying that producers are able to access grain grading dispute resolution even if they are not able to deliver the grain themselves.
- clarifying the time period over which a producer is entitled to exercise their right to access grain grading dispute resolution, including a period after delivery.

## Description

The proposed regulatory amendments would

- Amend section 34 to clarify the minimum requirements for sample retention by specifying that a sample must be retained for the

shortest of the following periods:

(i) the period that ends seven days after the day the elevator operator issues a primary elevator receipt

(ii) the period that ends when an agreement on grade and dockage is made between the elevator operator and the producer and an appropriate primary elevator receipt or cash purchase ticket has been issued

(iii) the period that ends when the representative portion of the delivery sample is forwarded for the purpose of “Subject to Inspector’s Grade and Dockage.”

- Amend section 34 to allow for a sample to be retained at the elevator or in accordance with such other instructions as the elevator and producer agree.
- Amend section 36(1) to remove the obligation for a sample be to be taken “in the presence of the person delivering the grain,” unless the producer requires it.
- Amend section 36(1) to clarify that a producer can trigger a binding review of grade and dockage in accordance with the amendments to section 34.

## Regulatory development

### *Consultation*

Over the past number of years, grain sector stakeholders have provided considerable feedback on grain grading dispute resolution including through the 2019 CGC discussion on “Falling Number and DON as Potential Grading Factors” and the 2021 Agriculture and Agri-Food

Canada-led CGA Review. The CGC has also received direct correspondence from several stakeholders on the grain grading dispute resolution.

Overall, many stakeholders have affirmed that access to grain grading dispute resolution is an important producer protection tool and should be maintained. However, producers and producer associations asked for amendments to the CGR to reflect evolving grain delivery and handling processes. Producers were clear that grain grading dispute resolution must be accessible even if they are not present at the time of delivery and that more time to request grain grading dispute resolution is needed after delivery. Grain handlers and producers have also requested clarity on who can retain the delivery sample and for how long.

### **Canada Grain Act *review***

On January 12, 2021, the Minister of Agriculture and Agri-Food, launched consultations on the review of the CGA. In support of those consultations, Agriculture and Agri-Food Canada published a discussion document to initiate stakeholder discussion of several previously identified issues including grain grading dispute resolution. A total of 66 submissions were received during the consultation period from farmers, producer groups, commodity groups, grain handlers, processors, and other interested stakeholders. Consultations closed on April 30, 2021.

Many submissions indicated that grain grading dispute resolution requires producers to request binding determination of grade and dockage at the time of delivery and is out of step with modern commercial practices as third parties are often relied upon by producers to deliver their grain. Many respondents suggested somewhere between

5 and 14 days as an appropriate window of time to trigger grain grading dispute resolution. They felt this extended time period would provide producers with adequate time to receive the grade and dockage assessment from the primary elevator, compare it to on-farm samples, and decide whether to proceed with requesting grain grading dispute resolution.

Other stakeholder comments focused on sampling and sample retention. Several respondents voiced the need for primary elevators to collect and hold tamper-proof samples for at least the length of time that access to grain grading dispute resolution could be triggered, in the event of an extended request time frame. Some respondents also suggested that the elevator should provide a driveway sample for the producer to hold in the event that grain grading dispute resolution is triggered after delivery in order to ensure producer confidence in the sample.

### ***Regulatory proposal consultation***

After considering feedback from the CGA Review, the CGC consulted on a set of proposed regulatory amendments to grain grading dispute resolution, between December 13, 2021, and February 28, 2022. The consultation document sought stakeholder input on sample retention and timing, and on the appropriate time period for triggering grain grading dispute resolution. A total of thirteen submissions were received and all, including a respondent representing licensed primary elevators, were broadly supportive of the CGC's regulatory proposal. However, some stakeholders suggested revisions to the proposal in two main areas: the number of days a producer has available to trigger grain grading dispute resolution, and alternative sample retention arrangements.

### **Number of days**



While the majority of respondents did not recommend changing the number of days a producer has available to trigger grain grading dispute resolution after receiving a primary elevator receipt, some thought that the proposal should reference business days instead of calendar days, in particular five business days instead of seven calendar days. This distinction was raised as some stakeholders thought that business days would provide producers with a consistent number of days-per-year to access grain grading dispute resolution without having to factor in holiday disruptions to elevator service.

### **Sample retention**

The majority of respondents did not request changes to the proposed approach for sample retention, which would allow producers to retain a sample when the producer and elevator operator agree on alternate arrangements, or otherwise the elevator would retain the sample by default. However, some respondents asked for further amendments that would allow producers to request and receive samples, not only for the purposes of grain grading dispute resolution, but for their own use and for purposes not within the scope of the regulatory proposal.

### **Additional suggestions for change**

In addition to the issues around time period for triggering grain grading dispute resolution and sample retention, stakeholders provided other suggestions for amending grain grading dispute resolution. This input covered a number of themes, including increasing oversight and direction for grain sampling and compliance inspections at primary elevators; waiving the service fee; requiring quicker delivery document provision by primary elevators; including all commercial grading specifications, particularly deoxynivalenol (DON) and falling number;

extending the grain grading dispute resolution to all types of licensees; and protecting a producer's right to observe the assessment of grading and dockage at primary elevators. Although many of these areas are outside the scope of the current regulatory proposal, the CGC acknowledges these concerns and may address these through separate processes. A full summary of the consultation results and next steps is provided in the "What We Heard Report" on the CGC's website.

### ***Modern treaty obligations and Indigenous engagement and consultations***

The CGC conducted a modern treaty assessment and determined that there are no modern treaty obligations associated with this regulatory amendment. No direct impacts to Indigenous peoples are anticipated.

### ***Instrument choice***

Using a regulatory amendment is the only available option.

## **Regulatory analysis**

### ***Benefits***

Guided by the CGA, the CGC works in the interests of grain producers to establish and maintain standards of quality for Canadian grain, regulate grain handling in Canada, and ensure that grain is a dependable commodity – all factors that benefit the economy, trade, business and health and safety of Canadians.

The proposed regulatory amendments would modernize and improve the overall relevance of grain grading dispute resolution and ensure that Canadian producers continue to receive a fair value for their grain deliveries. The proposed changes would address producer and producer association concerns by allowing producers to trigger grain grading

dispute resolution even if they are not present at delivery and by clarifying sample retention processes and time requirements. Allowing for alternative arrangements regarding who and where the sample may be kept would improve operational flexibility for both producers and primary elevator operators.

### **Costs**

Overall, this regulatory proposal is expected to result in negligible incremental costs to licensed primary elevators and producers. Licensed primary elevators currently sample producer grain deliveries and retain these samples for their own risk and quality management purposes, often well beyond the proposed seven-day sample retention time period. As primary elevators can use these same samples for dispute resolution requests, any potential additional compliance costs associated with retaining samples are expected to be negligible for most primary elevators.

Although some elevator locations may require additional capacity for extended sample retention, the proposed amendments enable elevators to reduce or mitigate any potential costs of sample storage by providing elevators the option to make alternate sample storage locations if agreed to by a producer.

The CGC would not incur any additional costs to implement this proposal. While the proposed amendments would increase the amount of time period available for producers to trigger grain grading dispute resolution, the CGC is not expecting a significant increase in requests for this service. Any increase in requests would be dealt with using existing CGC resources.

### ***Small business lens***

Analysis under the small business lens concluded that the proposed regulations would impact small businesses, including producer farming operations and some elevator operators.

This proposal would benefit producers as it allows them additional time to consider whether to trigger grain grading dispute resolution. With more time, producers have the ability to review their grain grading information and ensure that they are being paid accordingly for the quality of their grain delivery. Producers would also benefit from the increased flexibility afforded under the amended sample retention requirements.

As of April 1, 2022, the CGC licensed 363 grain handling facilities as primary elevators. Of these, 3% fall under the small business category as defined in the *Policy on Limiting Regulatory Burden on Business*: “A small business, for the purpose of the small business lens is: any business, including its affiliates, that has fewer than 100 employees or less than \$5 million in annual gross revenues”. Amended grain sample retention procedures and timelines for the purpose of grain grading dispute resolution could result in minor increases or decreases in compliance costs for elevator operators that are considered small businesses; however, the changes would provide operational consistency for primary elevator operators across the grain sector, including those considered to be small businesses.

The Rationale section below provides more detail on how this proposal benefits producers and primary elevators.

### ***One-for-one rule***

The one-for-one rule does not apply as there is no incremental change in administrative burden on business and no regulatory titles are repealed

or introduced.

### ***Regulatory cooperation and alignment***

The proposal does not have any linkages to international agreements or obligations and is not related to a work plan or commitment under a formal regulatory cooperation forum (e.g. the Canada-US Regulatory Cooperation Council, the Canadian Free Trade Agreement Regulatory Reconciliation and Cooperation Table, the Canada-European Union Comprehensive Economic and Trade Agreement Regulatory Cooperation Forum).

An assessment of other jurisdictions and international organizations identified that this regulatory proposal is specific to Canadian requirements.

### ***Strategic environmental assessment***

In accordance with the *Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, a preliminary scan concluded that a strategic environmental assessment is not required.

### ***Gender-based analysis plus (GBA+)***

No GBA+ impacts have been identified for this regulatory amendment.

### ***Rationale***

#### **Sample Retention Process**

Stakeholders, particularly producers and producer associations, have asked for clarity regarding how long a delivery load sample must be retained. Prescribing clear timelines for sample retention and for the purpose of dispute resolution would address these requests and provide

operational consistency for both producers and elevator operators across the grain sector. In addition, allowing producers and primary elevator operators to make mutually agreed to arrangements for who may retain a delivery sample would address stakeholder requests for more flexibility and result in smoother grain transactions.

### **Time Period for a Producer to Trigger Grain Grading Dispute Resolution**

Producers have consistently raised the issue of needing more time to trigger grain grading dispute resolution, particularly if they are not present at the time of delivery and use third party, commercial truckers to deliver their grain which can create delays in the exchange of grading assessment information between the elevator and producer. Allowing seven calendar days for a producer to trigger grain grading dispute resolution provides more time for a producer to receive and review the elevator's grading assessment. This improves the relevance of grain grading dispute resolution and ensures continued producer protection.

Setting the time period at seven days also aligns with the existing requirements for sample retention by terminal elevators and third parties as set out in section 6.2 of the CGR and ensures ample time for offsite grading to be performed if necessary.

Although a number of stakeholders suggested using five business days instead of seven calendar days, the actual benefit to producers is highly dependant on whether, and for how many weeks, an elevator provides extended hours of operation on Saturdays and Sundays.<sup>3</sup> In the weeks where an elevator offers extended hours on weekends, but there are no holidays, seven days provides more time for a producer to make a decision than five business days. Five business days only provides an advantage to a producer where there are more holidays in a given week

than days of extended operations, for example, over the December holiday period or where the elevator is not offering extended operations on the weekend. Under most circumstances, seven days would provide the largest benefit to producers.

## **Implementation, compliance and enforcement, and service standards**

### ***Implementation***

These regulatory amendments are targeted to come into force on October 1, 2022.

As part of implementation, a communication strategy will involve notification to all Canadian grain sector stakeholders and updates to the CGC website prior to the Regulations coming into force.

### ***Compliance and enforcement***

The CGC will ensure compliance using its existing enforcement and compliance tools.

### ***Service standards***

The service standard associated with grain grading dispute resolution will remain unchanged as is as follows:

- A submitted sample certificate will be issued within five business days of receiving the sample and completion of all required analytical testing results.
- Grades are accurate (based on the submitted sample reinspection process).

## **Contact**

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## PROPOSED REGULATORY TEXT

Notice is given that the Canadian Grain Commission, pursuant to subsection 116(1)<sup>a</sup> of the *Canada Grain Act*<sup>b</sup>, proposes, with the approval of the Governor in Council, to make the annexed *Regulations Amending the Canada Grain Regulations*.

Interested persons may make representations concerning the proposed Regulations within 30 days after the date of publication of this notice. All such representations must cite the *Canada Gazette*, Part I, and the date of publication of this notice, and be addressed to Policy Unit, Innovation and Strategy, Canadian Grain Commission (tel.: 1-800-853-6705; TTY: 1-866-317-4289; email: [discussions@grainscanada.gc.ca](mailto:discussions@grainscanada.gc.ca)).

Ottawa, June 2, 2022

Wendy Nixon  
Assistant Clerk of the Privy Council

# Regulations Amending the Canada Grain Regulations

## Amendments

**1 Section 34 of the *Canada Grain Regulations*<sup>4</sup> is replaced by the**



**following:**

**34 (1)** For the purposes of sections 35 and 36, on the delivery of grain to a licensed primary elevator, a portion of at least 1 kg from a sample of the grain that is considered by the elevator operator and the person delivering the grain to be representative of the grain shall be taken from each load and retained either at the elevator or in accordance with any other instructions agreed to by the operator and the producer.

**(2)** The sample shall be retained for the shortest of the following periods:

**(a)** the period that ends seven days after the day on which the elevator operator issues the primary elevator receipt;

**(b)** the period that ends when an agreement on grade and dockage is made between the elevator operator and the producer and an appropriate primary elevator receipt or cash purchase ticket has been issued; and

**(c)** the period that ends when the representative portion of the sample is forwarded in accordance with paragraph 36(1)(d).

**2 (1) The portion of subsection 36(1) of the Regulations before paragraph (a) is replaced by the following:**

**(1)** If the operator of a licensed primary elevator and the producer do not agree on the grade of the grain or the dockage in the grain delivered and an interim primary elevator receipt is issued, the operator shall take a representative portion of at least 1 kg from the sample referred to in section 34 and shall

**(2) Section 36 of the Regulations is amended by adding the following after subsection (1):**

**(1.1)** After the applicable period referred to in 34(2) has expired in respect

of a sample, the operator or the owner of the grain may not make a written request under paragraph (1)(d) in relation to the sample.

**(1.2)** The operator of the elevator shall take the representative portion in the presence of the person delivering the grain, if the producer so requires.

## Coming into Force

**3 These Regulations come into force on the day on which they are registered.**

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## Footnotes

a S.C. 2020, c. 1, s. 68

b R.S., c. G-10

1 Grades are assigned based on a grain sample's ability to meet tolerances for various grading factors. A grading factor is a physical condition or feature that is evaluated to determine the quality of the grain. Some examples of grading factors are protein, frost, mildew, damaged kernels, and sprouted kernels. Dockage is material that must be removed from grain using approved cleaning equipment so that the grain can be assigned a grade.

- 2 Based on CGC statistics (Grain Deliveries at Prairie Points: Primary Elevators), the average annual grain volume delivered into the primary elevator system over the last 5 years is 49,643,894 tonnes. To estimate the average number of delivery load samples taken over the same period, it has been assumed that one load represents 32 tonnes and that one sample is taken per load.
  
  - 3 It is assumed that during the busy harvest season, most elevators offer at least one additional day of operation per week.
  
  - 4 C.R.C., c. 889
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