

What We Heard: Canada Grain Act Review Consultations

August 13, 2021

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Minister's Message

Last January, our Government launched consultations as part of our review of the *Canada Grain Act* and the operations of the Canadian Grain Commission.

Supported by the Canadian Grain Commission, we wanted to hear from producers and everyone in the sector to make sure we shape a regulatory framework that reflects the realities of the modern grain industry.

Canada's grain industry is an economic powerhouse that generates about half of all farm income in Canada, and about half of our agriculture and food exports. Despite the challenges of the pandemic, grain growers and grain companies worked together and delivered again in 2020-21, with record production and exports. A modern *Canada Grain Act* will help build on that success and support the Canadian grain sector's continued innovation and dependability.

Our government is working hard with the sector to help its businesses remain competitive, and to realize our common vision for a grain industry that is economically, environmentally, and socially sustainable.

A few years ago, we made changes to the *Canada Transportation Modernization Act* that gave farmers a more reliable and efficient rail system. We introduced measures such as reciprocal financial penalties on rail service agreements, and enhanced the Maximum Revenue Entitlement formula, contributing to both CN and CP putting thousands of new grain hopper cars into service.

Last year, to help grain producers better manage the risks of weather, trade and production, we listened to the sector and removed the reference margin limit from the AgriStability program. This should boost payments by about \$95 million a year for producers who need it most.

In Budget 2021, we made a number of announcements that will benefit the grain sector.

To help grain farmers respond to the growing demand for low-carbon commodities, we are investing another \$200 million to help growers adopt beneficial management practices in the areas of nitrogen management, cover cropping, and rotational grazing. We are also directing \$50 million through the Agricultural Clean Technology program to help grain producers purchase more efficient grain dryers.

To help get our grains to market, we are investing \$1.9 billion in the National Trade Corridors Fund, to help drive much-needed enhancements to our roads, rail, and shipping routes.

Our Government's strong trade agenda will also continue to help the grain sector grow its markets abroad. We continue to engage with all our trading partners, from the United States, to Europe, to Asia, to maximize the benefits of our trade agreements and ensure our trade is open and predictable.

And effective August 1, 2021, the Canadian Grain Commission reduced

fees for official inspection and weighing services based on an adjusted grain volume forecast. These fee amendments will be effective for the next three years, helping avoid surpluses and keep money where it belongs – in the pockets of our grain producers.

I want to thank all stakeholders who provided written feedback and participated in our virtual Town Hall and roundtable discussions. Your views are important as we explore the next steps in modernizing the *Canada Grain Act*, to ensure it meets the needs of the sector now and in the future.

The Honourable Marie-Claude Bibeau,
Minister of Agriculture and Agri-Food

Note: the views summarized below reflect the perspectives of stakeholders and others who participated in engagement sessions. They do not represent Government of Canada policy.

Executive Summary

The *Canada Grain Act* (CGA) and its associated regulations provide the framework for Canada's grain quality assurance system and establish certain protections for grain farmers. The CGA sets out the objectives and functions of the Canadian Grain Commission (CGC), which is responsible for regulating grain quality and handling in Canada to ensure a dependable commodity for domestic and export markets. The CGC delivers programs and services to establish and maintain Canada's science-based grain grading system and provide various safeguards for grain farmers.

The CGA and CGC were established at a time when the Canadian grain sector looked much different than it does today. The way grain is bought, sold, delivered, and handled at facilities has changed significantly, as have buyers' demands for grain quality. The CGA has not been comprehensively updated since 1971, and review is needed to ensure the system is aligned with current and future market realities.

On January 12, 2021, the Honourable Marie-Claude Bibeau, Minister of Agriculture and Agri-Food, launched consultations on the review of the CGA and the CGC. The consultation process enabled stakeholders to provide their ideas for the regulatory framework that would ensure a world-class grain quality assurance system and producer protection framework that meets the needs of the sector, now and for the future. Consultations closed on April 30, 2021.

AAFC received written feedback from stakeholders through the consultation phase, in addition to a virtual Town Hall and three Minister-led virtual roundtable discussions. In written feedback, echoing what was heard in the Town Hall and roundtables, respondents discussed several topics generally aligning with three themes: CGC administration, grading and oversight, and producer safeguards. Topics raised regarding the administration of the CGC included its governance, mandate, and funding model, the role of the CGC in Eastern Canada, and introduction of a scheduled CGA review clause. Grading and oversight discussions focused on delivery of mandatory outward weighing and inspection services, oversight and enforcement of the CGA at inland delivery points, standards committees, wheat class modernization, and standardization of licensee equipment and grading processes. Producer safeguards feedback discussed licensing, producer payment protection, access to binding determination, CGC data collection and publication, issues

regarding contracts, itemization of deductions on cash purchase tickets, and the provision of producer cars. Overall, respondents indicated that the CGC should continue to have a strong role in setting and maintaining a world-class grain quality assurance system, through regulation and oversight of the grain sector. However, opinions on the roles that the CGC should adopt going forward were mixed.

AAFC will work with the CGC in the coming months to explore and analyze the various options presented through the consultation.

Introduction

The *Canada Grain Act* (CGA) and its associated regulations provide the framework for Canada's grain ¹ quality assurance system and establish certain protections for grain farmers. The CGA sets out the objectives and functions of the Canadian Grain Commission (CGC), which is responsible for regulating grain quality and handling in Canada, specifically for the 20 grains identified by regulation. The CGC is responsible for establishing and maintaining Canada's grain grading system, and for delivering programs that ensure the quality and quantity of Canadian grain exports and provide various safeguards for grain farmers. The CGC also maintains a grain research laboratory that supports the science-based grain grading system and generates scientific data to support market access.

In Budget 2019, the Government of Canada expressed a commitment to review and modernize the CGA. Some targeted changes have been made to the CGA over time, but the last comprehensive amendment took place in 1971. Since then, the ways in which grain is bought, sold, delivered, and handled have changed. Canadian grain production and exports have

increased significantly over the past decade. The sector has also made significant infrastructure investments, including in rail and port infrastructure, such as new high capacity loop track primary elevators and upgraded terminal elevators, which have improved the speed and volume of grain shipments throughout the supply chain. Structural changes have also affected the sector, such as reforms in wheat and barley marketing. Technological advancements and evolving grain buyer demands also continue to shape the sector and its capacity as one of the world's leading exporters of grain. During the COVID-19 pandemic, Canada's grain supply chain demonstrated its resiliency and adaptability, producing and moving record volumes of grain to solidify Canada's role as an internationally reliable grain supplier. Since the late 1990s, several reviews² and bills³ tabled in Parliament have proposed CGA reforms, but many of the changes were not enacted.

The CGA review consultation process was launched on January 12, 2021, by the Honourable Marie-Claude Bibeau, Minister of Agriculture and Agri-Food, and ran until April 30, 2021. Upon launching the consultation period, Agriculture and Agri-Food Canada (AAFC) published a discussion document to initiate stakeholder discussion of several previously identified issues. Respondents were encouraged to address questions surrounding these issues, and were invited to also comment on other concerns related to the CGA and the operations of the CGC. A total of 66 submissions were received during the consultation period from farmers, producer groups, commodity groups, grain handlers, processors, and other interested stakeholders.

Prior to the close of consultations, AAFC hosted a virtual Town Hall to discuss the contents of the discussion document and to provide the opportunity for stakeholders to ask questions and discuss their views for

the CGA and CGC. Minister Bibeau also led three virtual roundtables with representatives of stakeholder organizations throughout the grain sector to better understand their views on how the CGA could be changed to meet the needs of the sector.

This report summarizes the submissions received and feedback heard over the course of the consultation, including through the roundtables and Town Hall. Recommendations and rationale in this feedback are summarized directly as presented to AAFC, and have not been verified for accuracy. The following section discusses the issues raised by respondents through the CGA consultation.

What We Heard on the Role of the CGC in the Value Chain

As part of this review process, AAFC was interested in hearing from stakeholders about their vision for the future of Canada's legislative and regulatory framework for grain quality assurance and producer protection. The review presented an opportunity to reflect upon any modernization that may be required to maintain and strengthen Canada's reputation as a supplier of consistently safe and dependable quality grain, while providing an agile and innovative regulatory framework. Respondents discussed several topics related to the CGA and the role of the CGC in the future of the Canadian grain sector.

CGC Administration

Governance Model

Under the CGA, the Commissioners are appointed by the Governor-in-Council and serve to provide supervision and direction of the work and

staff of the Commission. The current model includes a Chief Commissioner, who is the Chief Executive Officer, along with an Assistant Chief Commissioner and a Commissioner.

Many respondents indicated that the current three commissioner model is effective at meeting the objectives of the CGA. However, several respondents made suggestions related to the governance structure. For example, several grain handling and processing-affiliated respondents indicated that one of the commissioners should represent the grain handling and processing industry, which, they argue, would provide the Commission with a balance of producer voice and grain handling and exporter knowledge of market demands.

Many Eastern Canadian and national producer organizations requested increased Eastern representation in the CGC governance model, noting that commissioners have historically been chosen from Western Canada. Some respondents suggested that one commissioner should be Eastern Canadian, while others said that one of the commissioners should be specialized in Eastern issues. Others suggested that an increase in representation of Eastern Canada should be an outcome of a review of the CGC governance model, to ensure that CGC issues and policies would be deliberated with a balanced perspective.

Several individual and producer organization submissions also suggested reinstating the Assistant Commissioner roles, in response to the perceived lack of CGC presence at in-country elevators.

Other respondents indicated the CGC governance model should move towards a CEO and Board of Directors model. These submissions indicated the Board of Directors should consist of numerous farmers and private grain handling and processing members, with the government

providing additional appointees. The proposed Board would be made up of representatives across Canada and would appoint a CEO, who would be directly accountable to the Board. The Board would meet quarterly to provide direction and oversight to the CEO. Some respondents indicated that analysis may need to be done to determine whether a different structure best serves the needs of Canada's grain sector

The importance of having an accountable and transparent Commission well versed in all aspects of the grain sector, from production to export, was highlighted on several occasions. There were suggestions to increase accountability and transparency through a better defined commissioner selection process, and a clearer definition of their roles and responsibilities. These suggestions argued each commissioner should have their own areas of oversight and responsibility, for which they become subject matter experts. Several respondents indicated that if there should be any change to the governance model, the model must increase accountability and transparency.

Mandate

Most submissions discussing the CGC mandate indicated the mandate should remain in the interest of Canadian grain producers, with many noting that the original intent of the CGA when it was passed into law in 1912 was to protect small, dispersed grain producers from the concentrated market power of grain companies. These submissions were made by individual respondents and producer and commodity organizations, the groups that are protected under the CGA.

Several grain handling and processing groups suggested the mandate of the CGC should be updated to state that the Commission would act not only in the interest of grain producers, but in the interest of the entire

value chain, including grain buyers, handlers, and processors, or of all Canadians. These submissions stated that a vibrant Canadian grain handling and processing sector is crucial to ensure the health and vitality of Canada's grain producers, and therefore, they propose, the CGC should work in the interests of the whole value chain.

The CGC in Eastern Canada

In addition to the suggestions for increased Eastern representation in the CGC governance model, several respondents discussed enhancing the representation of Eastern Canada at the CGC. Several submissions requested that an increased amount of grain research laboratory resources be dedicated to Eastern issues. One submission also requested that the CGC meet semi-annually with Eastern representatives to discuss Eastern issues

One submission suggested extending full CGC authority to Eastern Canada, which would incorporate the region into existing CGC programs and regulatory requirements to treat both regions equally. Another submission requested further CGC public consultation on extending CGC authority to Eastern Canada.

Funding Model

Almost all respondents discussing CGC funding indicated a need to revise the funding model, moving away from service fees funding 90 per cent of the CGC's operating budget, especially those suggesting that outward inspection services be conducted by accredited third parties. CGC service fees are primarily collected on mandatory outward inspection and weighing services.

Many respondents suggested that the CGC should receive a larger share

of its operating budget as government appropriations. Referring particularly to the grain research laboratory, they argue the services provided by the CGC that can be described as public goods should see increased funding through federal government appropriations. Many respondents cited that the CGC operating budget should be 33 per cent appropriations, mirroring the Federal Grain Inspection Service of the United States, the CGC's American counterpart. Respondents agreed that service fees should not fund CGC overhead costs, and many noted a perceived lack of transparency behind what they see as the cross-subsidization of CGC activities using service fee revenue.

Several respondents, including some producer groups, suggested that delivery deductions could be used to help recover some of the direct costs of regulation in the interest of producers, coupled with increased appropriations for funding of all public goods of the CGC. These respondents said that the deduction could be transparently indicated as a line item on the grain receipt or cash purchase ticket. They believe that a model where producers directly fund the regulatory activities of the CGC is more transparent than the current model, which, they argue, eventually passes costs on to producers. In the event of a surplus under the delivery deduction model, it was suggested that the CGC could then return the surplus back to producers in direct transfers or reduced service fees. Several respondents also commented more generally on the need to ensure surplus revenues are returned to producers.

CGA Review Clause

Several respondents indicated that they would like to see a review clause added to the CGA that would indicate the frequency that the CGA would be reviewed. They suggest this would be similar to the review clause in

the *Pest Control Products Act*, which requires it to be reviewed every seven years. The respondents indicated that formalizing a review clause into the CGA will ensure that rapid technological advancements in the global grain sector will be reflected in the CGA in a timely manner.

Grading and Oversight

Outward Inspection and Weighing Service Delivery

The CGA requires that all grain discharged from terminal elevators be officially inspected and weighed to determine the quality and quantity of the grain. The CGC does not provide official inspection and weighing of shipments of grain destined by rail or truck to the United States or Mexico, or domestic vessel shipments along the St. Lawrence Seaway. It also does not conduct official inspection and weighing of grain exports shipped by container.

There was general support for continued mandatory outward inspection and weighing, which verifies that grain exports meet quality and quantity specifications. Respondents argued this requirement supports the CGC's mandate to ensure a dependable commodity for domestic and export markets. However, respondents were divided in their views on the role of the CGC in the provision of this service. While it was unanimous that the CGC should continue to have a role in the setting of quality standards, approximately half of respondents that discussed outward inspection were in favour of the CGC accrediting and overseeing third party inspection companies, rather than performing inspections directly.

All grain handling and processing organizations were in favour of an oversight model. The majority of commodity organizations shared this position while producer organizations were split on this issue. Individual

submissions (not affiliated to a group) were typically in favour of maintaining the CGC service provider role for mandatory outward inspection, with seven of the thirteen individuals discussing outward inspection being in favour of maintaining the current system.

Those supporting maintaining the CGC's current role believe that the CGC's presence as a service provider guarantees the health and vitality of the "Canada Brand", and that the CGC is a neutral third party providing the grading service, not an organization hired by the buyer or exporter. Some individuals indicated that CGC inspection is Canada's standard, and if buyers would like additional inspection, this is a cost to be borne by the buyer.

Some respondents suggested that they were in favour of the CGC retaining its service delivery role, but expressed concerns over CGC flexibility in service delivery, in areas such as timeliness of inspections, availability of inspectors, and speed of documentation issuance. Many of the individuals and organizations in favour of maintaining mandatory outward inspection by the CGC also requested that the CGC resume several discontinued practices, including mandatory incremental vessel loading inspection and inward inspection at terminal elevators.

All respondents in favour of the CGC moving to an oversight role, primarily grain handlers and several producer and commodity organizations, indicated that there is currently a duplication of services, where the CGC issues a Certificate Final and then a private third party is hired to inspect a shipment based on the terms of sale negotiated between the buyer and seller. They claim that this duplication exists for approximately 70 per cent of Canadian grain exports and argue this results in additional costs to the system, ultimately borne by the producers. To maintain Canada's quality assurance system, these

respondents believe the CGC should have an oversight role based on the accreditation of third party companies. In their view, this would include requirements for how inspectors are trained, and mechanisms for the collection of samples from accredited companies. They suggest these samples could be used to audit grading results, and to continue to provide market access and quality control data from the grain research laboratory. Some of these respondents said the CGC should continue to provide outward inspection, on a voluntary basis, to ensure continuous availability of inspectors as needed.

Respondents favouring oversight through an accreditation model also noted an opportunity to include grain shipped by truck or rail to the United States and Mexico. Several respondents indicated that they view the regulatory decision to not require outward inspection on these shipments as problematic to ensuring the “Canada Brand,” but allowing accredited companies to inspect at inland terminals would close these gaps. The respondents in favour of accreditation also indicated that the opportunity to have third party inspection offered by competing services should result in lower costs, which can be passed on to producers.

Of those in favour of accreditation, responses were mixed about the issuance of Certificate Finals, the inspection certificate attesting to the quality of the shipment. Currently, the CGC issues the Certificate Final following mandatory outward inspection and weighing. Some indicated that the accredited third party should be authorized to issue Certificate Finals on behalf of the CGC; others believe that the CGC should still issue the Certificate Final after reviewing the inspection results, as another layer of CGC oversight. Some respondents said that the Certificate Final should only be issued upon request from the foreign buyer; others suggested that the Certificate Final accompany all exports.

Two organizations suggested that in lieu of accrediting third parties, the CGC could tender contracts to provide mandatory outward inspection. They suggest this delivery model would also include CGC auditing and training of the company or companies winning the contract, to ensure that grading is done based on CGC standards.

When discussing outward inspection and weighing, many stakeholders identified the linkages between this activity and the ability of the CGC to carry out other important regulatory and research activity. Additionally, many respondents noted the dependency of the CGC on outward inspection and weighing for operational revenue.

In-Country Oversight and Enforcement

CGC enforcement of CGA provisions and ensuring trust in the grain handling system was a common theme among respondents. While the CGC has general authorities to ensure compliance with the CGA, there was discussion of increasing auditing and oversight at the primary elevator level. Many respondents requested increased CGC presence at the local elevator through randomized audit processes. They indicated that auditing needs to be done on sampling and grading procedures, to instill trust in grading, particularly in terms of moisture, protein, and dockage assessment processes. Respondents indicated they value the CGC grading system and would like to ensure the integrity of the system is maintained, whether the CGC or the primary elevator is conducting the grading. Additional training by the CGC for in-country third party grading personnel was suggested in several submissions, along with a Grain Grader Code of Ethics.

Many respondents also suggested that a formal process be developed to respond to farmer complaints about in-country elevator activities.

Additionally, several respondents suggested that administrative monetary penalties (that is, fines) could be an effective tool to address minor CGA transgressions, or for grading discrepancies after accessing binding determination of grade and dockage. However, they suggest monetary penalties should not replace the CGC's authority to suspend licenses in the event of severe transgressions against the CGA.

Standardization of Equipment and Sampling/Grading Processes

Several submissions discussed the need for standardizing equipment and testing procedures at the primary elevator level. These respondents highlighted the importance of accuracy in testing objective measures for grain grading, and the difference in revenue to the producer for even slight discrepancies in measures such as protein and moisture content. Several respondents would like to see inspection of moisture and protein testers as part of the CGC's annual licensing review. One respondent indicated that the CGC should explicitly define and explain the scope of the CGC's authority on equipment and protocols, and exercise this authority on equipment testing protocols for grade factors, as well as non-grade factors such as deoxynivalenol (DON) and falling number (FN).

Some producers indicated that they would like to be able to see readouts of all measures and weighing while at the elevator, including scale weight measured and moisture and protein test results. Several producers indicated that they would also like to be guaranteed the right to observe the grading and sampling process for deliveries made to any type of CGC licensee.

Respondents also indicated that they would like to see guidelines developed or enhanced for testing and grading. Several submissions also

discussed the need to develop better sampling guidelines that ensure that samples are representative of the entire load, including settling at the bottom of the load.

Standards Committees

Through the CGA, Western and Eastern Standards Committees are established to recommend specifications for grain grades, and to select and recommend primary and export standard samples of grain. Some producer and commodity organizations expressed the need for increased flexibility around producer representation on the Standards Committees. Currently, the Western Standards Committee is made up of 25 members, of which at least 12 must be producers. The Eastern Standards Committee has 15 members, with four places reserved for producers. These members are appointed as individuals.

Several respondents indicated that producers should be able to select their representatives. They suggest this could be done by assigning Western and Eastern Standards Committee memberships to producer organizations and allowing producers to select their representative through the producer organization. One respondent indicated that the committee should be comprised of at least 60 per cent grain producers. Another respondent asked for a change in language to make the Western Standards Committee mirror the Eastern Standards Committee, by allowing “representatives of producers of grain” instead of “actual producers of grain”, so that the producers choosing committee members can select those that best represent their interests, even if not producers. Additionally, many producer and commodity organizations requested that, by assigning the committee membership to a producer organization rather than an individual, representation at meetings can be altered

without losing voting rights. Depending on the content of the meeting agenda, they suggest producer organizations should be able to send the representative that best represents the organization on that issue.

Another frequent comment was a request for increased transparency. Producer groups requested broader and timelier access to relevant information from the standards committees, including meeting minutes, records of decision, and grading issues discussed.

From the grain handlers and processors' perspective, the Western Standards Committee should be reduced in size and the number of grain handler and processor representatives should increase, to account for technical knowledge of the system, experience with, and knowledge of, international markets, and demands for quality as they relate to the setting of standards.

For the Eastern Standards Committee, one organization requested that the CGC allow the Eastern Standards Committee to recommend regulatory solutions that are geographically relevant. This was proposed in recognition that there are unique and distinct differences in Eastern Canada with respect to grain, regulatory authorities, and logistics, which they argue means that some national regulations do not apply well to Eastern Canada.

Wheat Class Modernization

Several submissions discussed Wheat Class Modernization, and while wheat classes are not specified in the CGA, this issue does relate to CGC authorities. These respondents all requested that the CGC revisit the Western Canadian wheat classification system, because, they state, while there are currently ten classes of wheat in Western Canada, 90.5 per cent of wheat acres in Western Canada are Canada Western Red Spring

(CWRS) and Canada Western Amber Durum (CWAD). Some respondents requested to streamline the wheat classes into three or four primary classes that represent the majority of Canadian wheat production: CWRS, CWAD, Canada Prairie Spring Red (CPSR), and Canada Western Red Winter (CWRW). They claim that the current number of classes segments the market too much with no benefits to the customer, as there is limited year-to-year supply of smaller classes.

Producer Safeguards CGC Licensing

CGC Licensing

The CGA requires that all elevators and grain dealers that purchase or handle grain from western Canadian producers be licensed. The objectives of the licensing system are to provide the framework for establishing and maintaining Canada's grain quality assurance system, safeguards for producers, and data collection. The CGC licensing system establishes the standards and procedures for the handling, transportation and storage of grain and the facilities used for those purposes.

Since the CGA was last comprehensively updated in 1971, new types of grain businesses have joined the sector, and some operations are not licensed due to not falling into one of the four prescribed classes, or are exempted from licensing. In Eastern Canada, only terminal elevators are licensed by the CGC.

The respondents to the review had a range of perspectives on which facilities should be considered for licensing and which should be excluded or exempted. The main categories discussed in the consultations were feed mills, container-loading facilities, and producer

car-loading facilities. Overall, many respondents indicated that any business that buys grain directly from producers should be licensed by the CGC because this would ensure producer protections and increase data available to the CGC for publishing.

Feed mills were the most commonly discussed exemption to the current licensing requirements. Many respondents felt that feed mills should be subject to the same licensing requirements as any other grain buying business because deliveries to these facilities expose producers to risk of non-payment; however, several expressed interest in maintaining exemptions for co-operative, farmer-owned feed mills. Several respondents suggested that feed mill licences could be scaled based on volume of grain movement or exist as a separate class, to help scale licensing costs to the size of the operation and to ensure that licensing requirements are not a barrier to entry for start-ups or small mills. There were also several respondents that expressed opposition to the licensing of feed mills, especially co-operative farmer-owned feed mills.

Container-loading facilities were also frequently discussed. In addition to these facilities becoming subject to inspection and the producer payment protection program requirements, respondents saw an opportunity to increase CGC data reporting by having these facilities licensed, as data on container exports would no longer be collected solely on a voluntary basis. One respondent was opposed to expanding CGC's oversight role to include outward weighing and inspection at container-loading facilities.

Producer-car loading facilities were discussed less frequently. Some respondents were in favour of licensing these facilities on the principle that they function as primary elevators, while one respondent opposed producer-car loading facility licensing.

There were also several suggestions to extend CGC licensing authority to Eastern Canada so that CGC protections are available to producers in the East, while other respondents from Eastern Canada expressed that primary elevators in the region should not be licensed by the CGC and remain under provincial authority.

Producer Payment Protection

Overall, there was strong support for maintaining the producer payment protection program. Under the current program, licensed grain companies must provide payment security to the CGC to cover money owed to producers for grain deliveries. In the event that a licensed company fails to pay for grain deliveries, the CGC uses the held security to pay producers for eligible claims.

Some respondents requested that producer payment protection be made available for any delivery, including to currently unlicensed buyers, so that producers are protected for all deliveries. Many individuals and one producer organization indicated that they are satisfied with the current security-based model, while a large percentage of respondents, including producer and commodity organizations, individual respondents, and some grain processing and handling organizations, indicated that the current model is sufficient until a separate focused and comprehensive review of the program can be conducted.

In discussing options for further review, respondents ranged from wanting to make small changes to the program to enhance efficiency, reduce administrative costs, and guarantee 100 per cent coverage, to potentially overhauling the program by re-examining some previously proposed models, such as an insurance-based or compensation fund model.

Several producer and commodity organizations indicated an immediate need to move to a new protection model. Rationale for a new model included the inability to guarantee 100 per cent payment of outstanding liabilities to farmers and perceived lack of correlation between risk of default and security required for licensees. One individual suggested a clearinghouse model, similar to a futures commodity contract, where the clearinghouse is a middle party in the transaction, providing a transaction-based and comprehensive program where producers and grain buyers pay when they use it. Another individual suggested short-term payables insurance that provides a guarantee of a certain percentage of the transaction. Several respondents were opposed to a pooled approach because, they argue, this would increase risky behaviour and would not decrease costs to producers.

One grain processing and handling respondent expressed opposition for the current producer payment protection program, and offered that it could be replaced by an optional insurance-based system. This submission recognized that mandatory producer payment protection may nonetheless remain desirable to most respondents, so if the program remains in place, any cross-subsidization of licensees at greater risk of non-payment should be addressed. Another grain processing and handling respondent indicated that the producer payment protection program was unnecessary and both of these respondents suggested that producers concerned about the risk of default by the licensee could buy receivables insurance from the private insurance market.

Many individuals requested a stronger auditing regime by the CGC and asked that the CGC develop approaches to monitor the liabilities of licensees in virtually real-time, so that the CGC can be proactive in identifying financially distressed licensees.

One producer organization requested that Atlantic Canada be included in the CGC producer payment protection program, while several Eastern organizations requested the payment protection program cover sales made across provincial boundaries that are not currently covered by existing provincial programs, while not interfering with the existing provincially-administered payment programs in Ontario and Quebec.

Access to Binding Determination of Grade and Dockage

The respondents commenting on access to binding determination of grade and dockage were in favour of maintaining this producer right. Several respondents indicated that the program was sufficient in its current form, while many others proposed changes to align the program with modern grain delivery practices. There were no respondents that expressed opposition to this right.

Many respondents indicated that the current process requiring producers to request binding determination at the time of delivery is not appropriate. Producers may be present at the time of delivery or have staff or custom trucking operations make the deliveries. Many suggested that somewhere between 5 to 14 business days was an appropriate window of eligibility as this would provide producers with adequate time to receive the grade and dockage result, compare to on-farm samples, and decide whether to access binding determination.

Currently, when a producer requests access to binding determination, the CGC determination examines only official grading factors, as defined in the Canada Grain Regulations. Many respondents indicated the need to expand the quality characteristics eligible for this assessment to include all factors upon which a grain contract is based, because contracts are increasingly specifying non-grade factors. This might

include factors such as DON level and FN for wheat. By expanding determination to factors beyond the grading factors, respondents argued producers would be provided with better protection against disputes related to the contract specifications.

Currently, primary elevators are the only class of licensed facilities where this right is available to producers. Several respondents indicated that the right to access binding determination should be expanded to include other classes of CGC licensees, such as process elevators and grain dealers. Several respondents noted the increase in processing facilities on the prairies in recent years, with several more facilities recently announced. They argue a further proportion of deliveries will likely shift away from primary elevators to process elevators. One respondent from the processing sector questioned the merit of extending access to binding determination to process elevators.

Other comments on access to binding determination of grade and dockage included a focus on sampling procedures. Currently, the CGA outlines sampling procedures in the event that the deliverer of grain requests binding determination. Several respondents discussed the need for CGC licensees to collect and hold tamper-proof samples for at least the length of time that access to binding determination could be requested, in the event of an extended timeframe to request binding determination. Some respondents also suggested that the elevator should provide a driveway sample for the producer to hold in the event they request binding determination after delivery to ensure producer confidence in the sample.

While discussing access to binding determination, some respondents requested updates to the documentation prescribed for the delivery or sale of grain. It was suggested by several commodity organizations that a

physical copy should be provided to the truck driver at the time of delivery, with a digital copy of all relevant delivery information provided to the producer within 24 hours.

CGC Data Collection and Publishing

There was generally strong support for CGC activity in the collection and dissemination of grain sector statistics. Currently, the CGC publishes grain sector data based on data collected from licensees about producer deliveries, domestic handling, and exports of grain. Several respondents called for increased CGC reporting and improved coordination with AAFC and Statistics Canada with respect to grain sector statistics.

Many respondents, ranging from individuals, to producer and commodity organizations, to some grain handling and processing organizations, expressed a desire for increased market transparency in the form of export sales reporting, similar to the United States Department of Agriculture's Export Sales Reporting Program. Many respondents felt that given the CGC already collects data from licensed grain companies on grain movement and exports, the CGC would be a good fit to collect sales data for upcoming export to various destinations. They argue this would provide producers with a clearer picture of export commitments made, and in turn, the demand for their commodities.

Some respondents also suggested that the CGC should provide pricing information in one of several forms. Some suggested export-level pricing between the foreign buyer and domestic seller, to increase the availability of sales information available to the producers for decision-making. Others indicated that they would like to have local prices posted at the elevator and online, as a tool for price discovery.

Grain handling and processing organizations expressed concerns related

to increased data provision, as, they argue, this may put Canadian exporters at a competitive disadvantage on the international market, and could make commercially sensitive data public. These concerns were general to the types of data requested, including export sales, but this opposition was particularly strong for price reporting, as these organizations believe that several means are already available for price discovery.

Contractual Issues

Individuals and producer organizations requested that the CGC exercise more authority over contracts by developing standardized grain contracts. They requested that these contracts be designed to ensure fairness and reciprocity between producers and grain companies, to protect producer interests in a market where market power is perceived to be imbalanced. The contracts were suggested to include clear reciprocal responsibilities and liabilities, outlining penalties if either party cannot meet their obligations.

Several grain handler and processing organizations also discussed contractual protections. These submissions discussed provisions in contracts to protect grain handlers and processors in the event of producer insolvency. They argue that grain contracts and pricing are fundamentally important to manage grain company sales and financial risk, and that there is a gap in the protection system that leaves handlers and processors exposed to risk. In the event of producer insolvency, these organizations argue they are subject to significant financial losses stemming from Court and receiver actions. Some organizations would like to see the CGC involved in contract arbitration to ensure that both parties engaged in the contract comply with its provisions so that risk is

mitigated for both parties.

Two organizations expressed that the CGC should not get involved with compliance with contractual obligations.

Itemization of Deductions

Several producer organizations and individuals requested a detailed breakdown of deductions on cash purchase tickets. These submissions argue that producers should be made fully aware of all freight and elevation costs applied.

Provision of Producer Cars

All respondents discussing producer cars expressed a desire to continue CGC producer car allocation. Several respondents discussed the importance of ensuring that the producer car program remains a strong component of the grain handling system. These respondents noted that since the transition away from single desk marketing of wheat and barley in 2012, they believe that terminal elevators do not routinely accept producer car shipments. These respondents indicated that producer car allocation is an important alternative to grain companies that allows direct access to rail service. One manner suggested for ensuring the integrity of the producer car allocation program was the development of a producer car receiver in Thunder Bay and on the west coast. Under this proposal, the receiver would receive producer cars at port, provide a CGC grade, and then the CGC would allocate the grain to a terminal with available storage.

Other Topics

Bill C-4 CGA Amendments Related to the Canada-United States-

Mexico Agreement (CUSMA) and Declaration of Eligibility for Delivery

Several submissions asked for a repeal of CGA amendments made in 2020 under Bill C-4 to implement CUSMA. These respondents argued that the amendments, introduced in Bill C-4 as sections 59 to 64, were passed without adequate debate due to COVID-19. Changes highlighted by these respondents include: changes to the definition of foreign grain; national treatment of US-grown grain in Canada; foreign grain being eligible for CGC-issued grades; incorporation by reference; and discussion of issues related to grain grading or the grain classification system with respect to foreign interests. Respondents questioned the value of the changes made and whether some of the amendments were necessary for compliance with CUSMA.

Several submissions from Eastern Canada indicated opposition to the delivery eligibility declarations that have arisen from implementation of CUSMA. While these submissions have expressed appreciation for the deadline extension regarding the implementation of declarations in the Eastern division, they also express that there is no clear need for these declarations because the CGC is not present in the same role as in Western Canada.

Changes to the *Income Tax Act* (ITA)

While not directly related to the CGA or CGC, two submissions noted that the definition of “grains” in the ITA does not align with the list of grains regulated by the CGA. These submissions argue that this impacts producers’ ability to defer revenue for tax purposes on grains outside of the ITA definition.

Conclusion

Overall, the submission process resulted in good engagement from throughout the value chain. There was consensus that the CGC should continue to have a strong role in setting and maintaining a world-class grain quality assurance system, through regulation and oversight of the grain sector. However, there were mixed views in some areas on the roles that the CGC should adopt going forward.

AAFC would like to thank all of those that shared their time, views, and expertise to support the CGA Review. In the next phase of the review, AAFC will work with the CGC through the coming months to analyze what was heard during the consultation period. AAFC will use this feedback determine how best to move forward with the modernization of the CGA, to ensure that it meets the needs of Canada's grain sector, now and in the future.

Footnotes

- 1 For the purposes of this document, “grain” is used in the same manner as that defined in the CGA. This includes barley, beans, buckwheat, canaryseed, canola, chick peas, corn, fababeans, flaxseed, lentils, mixed grain, mustard seed, oats, peas, rapeseed, rye, safflower seed, soybeans, sunflower seed, triticale and wheat.
- 2 1998 Canadian Grain Commission Governance Review, 2002 Independent Review of the *Canada Grain Act* and the Canadian Grain Commission, 2006 Review of the *Canada Grain Act* and the Canadian Grain Commission in response to the Legislated Requirement in the *Canada Grain Act*.

- 3 Bill C-39, 39th Parliament, 2nd Session; Bill C-13, 40th Parliament, 2nd Session; Bill C-45, 41st Parliament, 1st session (*Jobs and Growth Act*, 2012); Bill C-48, 41st Parliament, 2nd Session; Bill C-4, 43rd Parliament, 1st Session. Bill C-4 is the implementing legislation for CUSMA and contains amendments to the CGA. Among other things, the amendments will allow varieties of grain that are registered in Canada but grown in the United States and delivered to a primary elevator in Canada to receive an official grade.
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