



**National Farmers Union**  
**Union Nationale des Fermiers**



2717 Wentz Avenue  
Saskatoon, SK S7K 4B6

p: (306) 652-9465  
f: (306) 664-6226  
nfu@nfu.ca  
nfu.ca

## **NFU Submission to the Canadian Grain Commission regarding Proposals to license producer railway car loading facilities, agents, and feed mills August 31, 2016**

**The Canadian Grain Commission is seeking input on what licensing requirements should be applicable to agents, **producer railway car loading facilities** or feed mills, how its regulatory proposal would affect the interests of our members, and whether we would like to propose an alternative approach that the CGC has not considered.**

**The National Farmers Union (NFU) does not support licensing of producer car loading facilities. The CGC's concerns about risks to the quality standards of Canada's grain associated with producer car sites can be dealt with by improving allocation and spotting of producer cars, reinstating inward inspection and adjusting the conditions for license exemption. Licensing is not necessary. It would introduce confusion regarding producer payment protection as well as costs that could lead to the loss of some producer car loading sites, which would be against the interests of producers and thus contrary to the CGC's mandate. We further recommend the establishment of a new Producer Car Receiver under the *Canada Grain Act*.**

Section 87 of the *Canada Grain Act* confers the right of producers to order and load railcars to ship grain to terminal or process elevators or other consignees. This right was established as a necessary check on the oligopoly power of grain companies and railways by providing farmers with access to rail transportation and a statutory alternative to delivering to grain elevators. Canada's grain trade is dominated by three companies -- Cargill, Richardson and Viterra -- which together control approximately 60% percent of western Canada's primary elevator capacity. Producer car loading facilities are a small but critical part of the grain transportation infrastructure because they make it possible for farmers to exercise their right to use producer cars and thereby provide discipline regarding the rates grain companies' charge for loading and shipping grain. The continuing viability of producer car loading facilities is in the interests of producers, so any change to regulations governing them must be done in accordance with the objects of the CGC as stated in Section 13 of the Act:

*13. Subject to this Act and any directions to the Commission issued from time to time under this Act by the Governor in Council or the Minister, the Commission shall, **in the interests of 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 proposed regulatory change would eliminate the annual licensing exemption for producer car loading sites and require them to meet a modified version of the primary elevator license. The rationale for the proposed change is to reduce risk to grain quality, to increase the accuracy of the CGC's system-wide statistics, to ensure accurate weighing and documentation of grain delivered, and to give producers access to the CGC arbitration process in the event of a dispute over weight.

The NFU does not agree that licensing of producer car loading sites is necessary. We believe that the problems can be solved other ways. Licensing would introduce costs and confusion that would be detrimental to farmers.

The CGC has concerns about risks to the quality of Canada's grain that may result from the producer car facilities' increasing use of leased cars along with the grain companies' use of producer car loading sites to access leased cars for their own shipments. The root cause of these new risks appears to be problems with producer car allocation by the railways.

Because producer cars are not provided in a timely way, producers have had to turn to leased cars in order to get their grain to its destination. Risks related to potential intermingling of leased cars could be reduced by reinstating the provision that producer cars have top priority in car allocation, along with improving the regulation, procedures and enforcement of car allocation to ensure that producer cars are available when needed. Better enforcement is required to prevent grain companies from fraudulently ordering producer cars. Legitimate producer car orders should be given priority and spotted first. Today the opposite is often the case. Railways seeking to minimize costs are giving priority to unit-trains and high-throughput elevators, providing cars to producer loading sites only when grain volumes are low. If adequate producer cars are spotted when needed the use of leased cars will decline, reducing or eliminating the risk of intermingling producer car loads with grain company loads. Without timely access to cars, the right to load producer cars becomes hollow.

Issues of quality and statistical gaps now being raised by the CGC are due to the absence of inward inspection. The NFU opposed the *Canada Grain Act* amendment that eliminated inward inspection in 2012. The problems we anticipated then seem to be occurring now. In our 2012 brief, *Response to Proposed Amendments to the Canada Grain Act in regard to the Canadian Grain Commission*, the NFU stated:

*Inward inspection is the weighing and grading of grain that arrives at export terminals from the countryside. It serves as a continuous audit so that grades and volumes issued at primary elevators match those at terminal position. It is also essential to the functioning of producer cars so that they are graded when they arrive at the terminals. ...*

***The NFU recommends that inward inspection remain and that CGC employees carry out this duty. The idea of accredited service providers being selected by the receiving elevator as proposed would again put the power of the elevator company ahead of farmers and their institution. One could see pressure by the accredited agency to lean towards favouring the one it viewed as its customer (the grain company). An accredited agency does not have the legislated mandate to act in the grain producers' interest. This is the inherent problem with the concept of accreditation and the questions remain: To whom does the accredited employee owe his allegiance and who pays the wage? The same would apply to accredited private service providers.***

We are also concerned that licensing producer car facilities would lead to confusion regarding producer payment protection. It is widely understood by farmers that licensed elevators must provide bond security to cover outstanding payments in the event of the licensed company's insolvency. Producer car loading facilities do not buy grain, thus producer payment protection is not necessary. However, among farmers, licensing is synonymous with producer payment protection. If producer loading facilities became licensed but were not required to maintain a security bond, it would be confusing.

The fact that producer car loading facilities do not buy grain is relevant to the need for oversight of weighing equipment and documentation of weights. The scales used at producer car loading facilities are used primarily for ensuring railcar loads are not overweight, not for commerce. Community scales are adequate for this purpose. The actual sale does not occur at the loading facility. However, with the loss of inward inspection by

the CGC, there may be situations where weighing at the destination may be questioned. Therefore, we recommend the reinstatement of inward inspection.

In addition, we recommend an amendment to the Canada Grain Act to establish an independent Producer Car Receiver. This body would have the authority to negotiate producer car sales with the receiving terminal and ensure unloading and grading is done promptly. The body would be responsible for allocating the grain to the respective terminals, however ownership of the grain would not be transferred to the terminal until the producer car receiver was satisfied with all aspects of the transaction, including weights, grade, and payment.

Producer car loading facilities are meant to be the farmers' check on the monopoly power of elevator companies. The cost of establishing and maintaining a facility needs to be manageable by relatively small groups of producers, otherwise the right to producer car loading is nullified. Requiring new, inspected scales may lead to some of the smaller facilities being shut down, to the detriment of farmers. In the original 1912 *Canada Grain Act* ten producers could petition to have a producer car loading site constructed. The NFU recommends that this right reinstated. The current proposal for licensing would make it more difficult to maintain existing producer car infrastructure, much less establish new facilities. We also recommend that railways' authority to close producer car loading sites be rescinded.

Currently, producer car loading facilities must operate within the parameters of their licence exemption, which is set by the CGC. The exemption requires the following:

- The facility will only handle grain on behalf of producers which is intended to be loaded into producer railway cars (with provision for the use of leased cars as well).
- The facility will have posted at all times a notice advising producers that the facility is not licensed under the *Canada Grain Act* and that the Canadian Grain Commission will not be involved in disputes between the facility and the producer other than disputes which arise at the port location.
- The facility shall not purchase or sell grain.
- The facility shall allow the Canadian Grain Commission access to its records.

It would be possible to adjust licence exemption conditions to mitigate the identified risks. In fact, the only differences between the current license exemption and the proposed license subclass is the subclass would require the facility to issue a document to record the receipt of grain by type and weight in a form acceptable by the CGC, take representative samples from each load, and ensure its scales comply with Measurement Canada's standards. With the establishment of a Producer Car Receiver under the Canada Grains Act, the remaining concerns would be alleviated.

Respectfully submitted by

The National Farmers Union  
August, 2016

---

<sup>i</sup> *National Farmers Union Response to Proposed Amendments to the Canada Grain Act in regard to the Canadian Grain Commission*, March 22, 2012. <http://www.nfu.ca/story/response-proposed-amendments-canada-grain-act-regard-canadian-grain-commission>