

Submission to CGC “Subject to Inspector’s Grade and Dockage” consultation

The National Farmers Union (NFU) is pleased to provide input to the Canadian Grain Commission (CGC) consultation on proposed changes to “Subject to Inspector’s Grade and Dockage.”

As stated in the CGC’s consultation document the proposed changes would specify that a sample from each producer delivery must be retained for the lesser of seven days after the date the operator of the licensed primary elevator determines the grade and dockage of the sample and issues the primary elevator receipt, or until an agreement on grade and dockage has been made between the elevator operator and the producer and an appropriate primary elevator receipt or cash purchase ticket has been issued, or until a producer requests access to inspector’s binding determination of grade and dockage and the sample has been accessed for this purpose. The CGC also proposes to allow producers to trigger a binding review of grade and dockage even if they are not present at delivery.

The NFU supports these proposed changes. 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.

The current proposal recognizes that changes in how grain is delivered have made it more difficult for a farmer to request binding determination at the time of delivery. We also believe the seven-day window in the current proposal provides adequate time for farmers to request binding determination after delivery in the event of a dispute.

We welcome the proposed changes, and we would also ask the CGC to take further steps to protect the interests of farmers in the event of disputes when delivering grain. In addition, we recommend the following:

- that farmers’ access to binding determination of grade and dockage should extend to all licensees that receive grain from farmers.
- 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
- 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.
- Contracts must be prohibited from implying that any other agency or grader’s assessment supersedes the CGC’s determination.

Rationale for further recommendations

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.

Access to CGC's binding determination on all contract 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. Yet farmers do need protection if grain companies' use of DON and Falling Number results in unfair discounts. Enabling "subject to" for these specifications would be a deterrent to companies that may skew their testing procedures to their own advantage.

"Subject to" is an important element in the CGC's ability to both maintain Canada's grain quality standards and regulate in the interest of farmers. It is in the public interest to ensure there are no loopholes that allow companies to avoid it, and no barriers to farmers who request binding determination, whether cost or misleading contract language.

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, we recommend that the CGC carry out effective public education campaigns prior to harvest every year to encourage, normalize and expand the use of binding determination to promote fairness.

Respectfully submitted by

The National Farmers Union
February 25, 2022

