



Grain Contracts Background Information

Complete the APAS grain contracts survey

APAS is currently conducting a survey to gather feedback from producers about their experiences with grain contracts during the 2021 drought. The information received will be used by APAS in its advocacy to help improve grain contracts for producers.

Visit www.surveymonkey.com/r/6W6ZJ7G to complete the APAS grain contracts survey.

2021 drought and grain contract defaults

Extreme heat and lack of moisture at critical times during the 2021 growing season led to rapid and severe reductions in grain yield and quality. Many producers are harvesting crops that are yielding far below their long-term production averages. The extent of these production shortfalls was not anticipated in many producers' grain marketing plans, and they are now facing a situation in which thousands of farms are unable to fill their production contracts with grain companies.

Like most contracts, grain production contracts often include provisions that can apply when parties do not meet the agreed upon contract terms. These can include certain terms and conditions when the seller is unable to produce the contracted volumes due to weather related production problems. "Act of God" clauses that exempt the seller from their contractual obligations due to weather events are not common in the grain industry. In most instances, contracts will require the producer to "buy out" the unfilled volumes of grain to reimburse grain companies for the production shortfall. Contracts may also stipulate a range of additional administrative fees and other penalties that apply in cases of default.

Financial implications for producers

The widespread nature of this year's drought and current market volatility have limited the options available for producers to manage this situation. In a normal year, grain is more easily sourced from other regions to compensate for shortfalls in localized areas. Commodity prices are rapidly increasing as grain buyers and end users begin to recognize the full extent of this year's production shortfalls. These market conditions are imposing extraordinary costs for producers who are having to purchase grain at historically high prices to fill outstanding contract obligations.

The financial implications of this situation are significant and will cause long-lasting hardship for many Saskatchewan farm operations. Farms more likely to enter into these contracts tend to be younger operations with limited equity, less bin space, more bills to pay in the fall, and those seeking to manage price risk. Operations that were already in a tight cash-flow position may not financially recover from this unanticipated expense.



Solutions needed for financial stability in the industry

For many years producers have expressed concerns about the lack of balance and consistency in contract terms within the grain industry. Buyout provisions, administrative fees, and penalty provisions vary considerably between companies and are often set without meaningful negotiations between the contracting parties. Producers have also faced difficulties negotiating fair terms in a market with many sellers and few buyers.

Both long-term and short-term solutions are needed to address this situation in the interest of financial stability in the grain industry. APAS strongly urges grain companies to recognize the severity of the situation, to work with producers to find solutions, and renegotiate contract terms where possible. APAS has joined the Saskatchewan grain commodity commissions in requesting that grain companies waive administrative fees and penalties on contract defaults related to the drought and is encouraging the grain industry to adopt a coordinated approach in response to this issue to ensure consistent and predictable treatment for producers.

APAS is also advocating that governments, producer groups, and grain buyers begin working together to prioritize the development of a standardized grain contract in Canada that protects the interests of all parties.

APAS policy positions and resources

- ▶ APAS has been responding to member concerns about contracts by encouraging them to seek legal advice regarding their options. As this problem grows, legal experts have questioned the validity of certain contract provisions given their one-sided nature.
- ▶ The Canadian Canola Growers Association has published an information booklet about common issues and concerns relating to grain contracts. You can read the CCGA's booklet at <https://www.ccg.ca/policy/Pages/Marketing.aspx>.
- ▶ Grain contracts are a longstanding policy issue for APAS. In 2020, APAS was denied an application for federal funding to conduct a research project to examine potential policy reforms that would have led to greater standardization and predictability in contracts between producers and purchasers of agricultural commodities.
- ▶ APAS included a section on the need for improved contract protections in its 2021 submission to the Canada Grain Act review. The APAS submission is available at <http://apas.ca/pub/APAS%20UPDATES/apas-submission-to-cga-review.pdf>.
- ▶ On July 26, 2021, APAS sent a media release asking for grain companies to provide flexibility for producers who can't fulfill their contract obligations due to the drought, plus recommended producers seek legal advice about their options. Read that release at <http://apas.ca/pub/APAS%20UPDATES/apas-july-26-2021-media-release.pdf>.