



**Agricultural Producers Association of Saskatchewan  
Submission to Canada Grain Act Review**

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**Contents**

Introduction ..... 2

Key Areas ..... 2

Recommendations ..... 3

    Legislative Framework..... 3

        1.1 CGC Mandate ..... 3

        1.2 CGC Governance Structure ..... 3

        1.3 CGC Funding Model ..... 4

    Commercial Services and Protections ..... 4

        2.1 Binding Determination ..... 5

        2.2 Standardized Testing & CGC Oversight ..... 5

        2.3 Contract Protections..... 6

        2.4 Producer Payment Security..... 7

        2.5 Licensing Programs ..... 7

    Export Programs ..... 8

        3.1 Outward Inspection Requirements ..... 8

        3.2 Export Sales Reporting Program..... 9

    Other Issues ..... 9

        4.1 Grain Grading Modernization Initiative ..... 9

        4.2 Producer Car Access ..... 10

Conclusion ..... 10

Summary of Recommendations ..... 11

    Legislative framework..... 11

    Commercial Services and Protections ..... 11

    Export Programs ..... 11

    Other Issues ..... 12



## Introduction

The Agricultural Producers Association of Saskatchewan welcomes this opportunity to provide comments to Agriculture and Agri-Food Canada's review of the Canada Grain Act.

The Canada Grain Act authorizes the Canadian Grain Commission (CGC) to create regulations and administer services that help to support the competitive position of Saskatchewan producers. These regulations and services are particularly important for Saskatchewan's agricultural sector, which produced 54% of the total value of Canada's grain exports in 2020. The predominance of grain production in Saskatchewan also means that the regulation of grain handling has a disproportionate impact on our province. In 2020, 50% of Canada's licensed primary and process elevator storage capacity was also located in Saskatchewan.

Given the importance of grain production and exports to Saskatchewan's agricultural sector, APAS members have a distinct interest in ensuring that the Canada Grain Act and CGC services continue to meet the need of producers. As Saskatchewan's general farm organization, APAS seeks its policy direction from our members. The recommendations contained in this submission reflect the APAS member resolutions and the organization's standing policies.

## Key Areas

The APAS recommendations are organized into four thematic areas. Each area includes specific program recommendations, and where applicable, principles and objectives that should guide future program directions. These key areas are as follows:

1. **Legislative Framework:** the CGC mandate, its governing structure, and funding model.
2. **Commercial Services and Protections:** Binding Determination, Standardized Testing & CGC Oversight, Contract Protections, Payment Security, and the CGC Licensing Programs.
3. **Export Programs:** Outward Inspection Requirements and Export Sales Reporting
4. **Other Issues:** Producer Car Access and Grain Grading Modernization



## Recommendations

### Legislative Framework

The Canada Grain Act review is a key opportunity to update legislation to ensure that CGC programs and regulations keep pace with modern grain handling and marketing practices. The Canada Grain Act is enabling legislation that provides the CGC broad authority to implement program reforms that will benefit producers. It is important that the Act continues to provide the CGC with a clear mandate, appropriate governance structure, and a funding model that adequately supports its programs and services.

#### 1.1 CGC Mandate

The Canada Grain Act states that the object of the CGC is to “maintain standards and regulate grain handling in the interests of grain producers.”

This mandate reflects the original purpose of the Canada Grain Act and the CGC, which is to protect the interests of producers in Canada’s grain industry. There is a continuing need for regulatory oversight in areas like weights and grade, payment protection, dispute resolution and access to transportation. The CGA review is an important opportunity to update and strengthen programs in these areas. Legislative changes to remove or diminish the explicit reference to producer interests would undermine this opportunity for legislative renewal.

The CGC mandate focusing on the interest of producers should serve as a guiding principle for this review process and for future reforms. Producers have distinct interests in all areas of CGC programs and services, including inspections and quality assurance for export markets. They also ultimately bear the cost of user-fees and licensing in the prices that they receive for their grain. The CGC is above all a regulatory agency and needs to exercise its authority without undue influence from those it is meant to regulate.

**Recommendation 1.1** APAS requests that any updates to the legislation must maintain the CGC’s core mandate to work in the interest of producers. This mandate must furthermore direct this review process and its outcomes.

#### 1.2 CGC Governance Structure

Although not specifically referenced in the CGA Discussion Paper, there are indications that this review is considering feedback about potential changes to CGC’s governance structure.

The Commissioner model of governance has worked well in ensuring that there is producer representation at the Commissioner level. This is key for an organization that protects our industry. The model also allows Commissioners to be drawn from different provinces and grain growing regions across the country, bringing different backgrounds and perspective to



their role. It is important that Commissioners continue to remain accessible to producers and farm organizations to share information about CGC operations and strategic direction.

**Recommendation 1.2:** APAS supports the continuation of the three-Commissioner governance structure in the Canada Grain Act to ensure producer representation at the Commissioner level.

### **1.3 CGC Funding Model**

The Canada Grain Act review is an opportunity to establish a funding model that will provide the CGC predictable and sustainable funding to carry out its mandate.

There are outstanding concerns related to the CGC cost-recovery funding model that need to be resolved as part of this modernization initiative. A lack of clarity about appropriate funding sources for different CGC operations and services has resulted in an overreliance on user-fees to cover operational costs. User-fees are set using a methodology that can result in large and recurring budgetary surpluses that jeopardize important CGC requirements, like outward inspection, as stakeholders look to service reductions to minimize costs.

Many of the challenges with the user-fee funding model stem from a lack of federal funding support for those CGC services and programs that serve a clear public good. These include grains research, market development, and maintaining quality assurance programs that support Canada's competitiveness in international markets. The federal apportionment of between \$5 and \$6 million annually only represents about 9% of the CGC operational budget. By comparison, 33% of the US Federal Grain Inspection Services budget is funded by government sources. The public apportionment to the CGC budget has not kept up with inflation over the course of two five-year fee cycles. At the same time, grain exports have grown considerably, and continue to provide increasing contributions to the Canadian economy. The lack of sustainable funding for these CGC services is inconsistent with the federal targets to increase agricultural exports to \$75 billion by 2025.

**Recommendation 1.3:** APAS requests increased federal funding for CGC programs to fully support public good services that benefit all Canadian and to reduce the reliance on user-fees to cover operational costs.

### **Commercial Services and Protections**

The Canada Grain Act provides a legislative framework for programs and services that protect the commercial interests of producers. APAS has reviewed these programs with a view towards reforms that will make transactions in the trade more predictable and standardized (e.g. grade assessment, contracting, payment assurance), while ensuring that CGC programs are applied more consistently across the industry through updated licensing programs.



## 2.1 Binding Determination

The CGA Discussion Paper addresses many of the challenges associated with the Subject to Inspectors Grade and Dockage (SIGD) service. The current legislation prescribes specific terms and circumstances when a producer can request a binding grade determination from the CGC. These provisions are increasingly out of step with modern grade delivery, handling and sales practices. COVID-19 guidelines at grain handling facilities limiting access to the grading room and scale weights at the time of delivery has added further complications that should be addressed through updated regulations. The definitions used in the CGC Licensing Classes also serves to restrict access to binding grade determinations at certain facilities. For example, producers have long requested better access to binding grade determinations and regulated shrink allowances at process elevators (e.g. crush plants, flour mills)

Legislative provisions in the Act have also limited binding grade determination to quality specs that are official grade factors. This restriction can undermine the effectiveness of the service in years when non-grade specs, such as DON and Falling Number testing, are important quality factors in local grain markets. The legislative amendments were passed in 2020 to expand binding determination to “any other prescribed quality characteristic” are a good first step and should give the CGC flexibility to exercise more authority over non-grade quality factors into the future.

Although the binding determination is a major focus of the CGA Discussion Paper, it is important to recognize that this service is often relied upon as a recourse of last resort. Producers are also depending on the CGC to oversee standardized procedures for measuring grain quality. Policy reforms need to clarify the CGC’s standard-setting authority to ensure that grade assessment and quality testing in the industry is more transparent and accountable to producers.

**Recommendation 2.1:** The CGC should proceed with reforming the Subject to Inspectors Grade and Dockage services to ensure they are consistent with modern delivery and sales practices, emerging quality specifications, and updated CGC licensing programs.

## 2.2 Standardized Testing & CGC Oversight

Variations in grain quality assessment is a persistent challenge that producers face in today’s operating environment that was not addressed in the CGA Discussion Paper.

It is very common for grade and test results to vary considerably from one facility to the next on the same sample. These inconsistencies can occur on CGC Grade, which relies in part on visual factors, but also for machine tested quality attributes, such as moisture and protein. Analytical testing and machine calibration for the testing of DON and Falling Number are also conducted outside the CGC’s oversight and regulatory programs because they are non-grade factors. In a 2018 submission to the CGC, APAS recommended



additional regulatory authority over testing procedures for non grade quality specs, independent of any decision to add them to the official grading system.

Although the CGC maintains calibration and testing procedures for official grading factors, the CGC does not appear to actively monitor or audit these procedures and equipment as part of its licensing program. The CGC instead follows up on grade and testing discrepancies on a case-by-case, complaint driven basis. This gap in regulatory oversight appears to be at odds with other major grain exporting jurisdictions. For example, Australia regulates grain quality testing and assessment, such as protein, under national weights and measurement legislation with specific procedures outlined in a “code of practice” for elevator and lab technicians.

Proper sample size, accurate equipment calibration, and precise procedures are very important factors for maintaining the accuracy of analytical testing results. Greater standardization and regulatory oversight of these procedures and equipment, including formal training of elevator technicians, would provide additional assurances to producers that the CGC is actively working to mitigate the risk of grade variability and quality disputes in the trade.

**Recommendation 2.3:** APAS requests the CGC take steps to standardize quality testing in the industry by establishing clear and consistent industry standards for testing procedures and equipment. These standards should apply to non-grade specs and be monitored through a regulator inspection and auditing process that is accountable to producers and licensees.

## 2.3 Contract Protections

Contract fairness and predictability in the grain industry is another persistent concern of producers that was not addressed in the CGA Discussion Paper.

APAS has longstanding standing policy supporting the standardization of contracts between producers and purchasers of agricultural commodities, including grain. In 2014, APAS welcomed amendments to the Canada Grain Act which granted the CGC authority over provisions used in grain contracts and the power to intervene when contract terms are breached. During the legislative consultations, APAS proposed a minimum or standard penalty fee schedule for overdue deliveries, and requested the federal government look at other jurisdictions, such as Australia, where contracts are written in a standardized format with formal dispute resolution mechanisms. The federal government decided to adopt a non-prescriptive approach to the Regulations and producers have continued to report significant challenges with overdue delivery contracts, inconsistent and non-reciprocal contract terms since that time.

**Recommendation 2.3** APAS recommends the CGC revisit its authority over grain contracts and dispute resolution to ensure legislative provisions are available to



support future initiatives aimed at improving contract transparency and reciprocity in the industry.

## **2.4 Producer Payment Security**

APAS Representatives have considered potential reforms to the payment protection program and are requesting more information and analysis to formalize a position.

Many of the concerns with the CGC Bonding program are longstanding and centred around program cost, administrative burden, and risk of nonpayment when licensees' posted security is lower than their outstanding liabilities due to delayed or inaccurate reporting. While it is suspected that the use of payable insurance options has, to some extent, alleviated these longstanding issues, producers still have concerns about the lack of a transparent payment protection at licensed facilities and are often unaware of the level of security and coverage available when selling their grain. Additional concerns have also been raised about the suitability of security requirements for new entrants with low margin, capital intensive business structures, such as feed mills, in the event the CGC expands its licensing program to new classes of grain buyers.

**Recommendation 2.4:** APAS recommends that the CGC conduct a separate and focussed review of potential changes to payment protection programming with focus on improving program transparency and examining the development of more flexible security options to accommodate the needs of new entrants and classes of licensees.

## **2.5 Licensing Programs**

APAS generally supports an expansion of licencing programs to extend many of the CGC services and protections outlined in this submission and the CGA Discussion Paper. These include access to binding determination, CGC oversight of testing and weights, payment protection as well as information requirements necessary for the CGC statistical reporting programs. This applies to grain buyers in the "process elevator" class, which have long been exempt from binding determination and regulated shrinkage allowances, as well as "container loading elevators", which are exempt from CGC regulatory oversight and information reporting requirements.

The exemption of Feed Mills has also posed a longstanding payment security risk. In a 2016 submission to a CGC Licensing Review, APAS supported feed mill licensing but requested the CGC work with producers and the feed industry to address challenges related to licensing costs, administrative burden, and inability to fulfill bonding requirements due to the specific nature of their businesses. It was recommended that the CGC consider establishing an additional class of license for feed mills that would include licensing requirements specific to the delivery of payment protection and oversight of weights and quality testing. It was felt that a more streamlined approach was appropriate given the





minimal impact such facilities had on the safekeeping of Canada's grain handling and quality assurance systems.

**Recommendation 2.5:** APAS requests that the CGC resume its licensing review to address gaps in oversight and producer protection, which could include further discussions with affected stakeholders about modifying administrative and security requirements specific to the purposes of licensing.

## **Export Programs**

The Canada Grain Act also contains provisions to maintain quality assurance of export shipments and authorize the collection of information for statistical reporting programs. While these program areas may not directly affect relations between producers and grain buyers, they have a direct and significant impact on producers' profitability and competitive position in international markets. For programs related to CGC Export Programs, APAS Representatives have developed recommendations to ensure that quality standards are maintain and accountable from farm-gate to end-use customer, while improving transparency and access to information for all supply-chain participants.

### **3.1 Outward Inspection Requirements**

There has been considerable discussion about outward inspection requirements for Canadian grain exports leading up to this Review, with some stakeholders calling for the elimination of mandatory requirements or allowances for third-party inspection to reduce costs. This discussion has also occurred in the context of growing protectionism in world markets, including the use of unfounded quality complaints to restrict market access for Canadian agricultural exports. It is important for policy decision-makers to recognize that primary producers face the greatest financial risks when there are perceived quality concerns in international markets. They also bear the cost of inspection requirements in the prices they receive for their grain. Increasingly, these inspection fees are set at a rate that exceeds the cost of inspection in order to raise revenue to support and maintain unrelated CGC services, including programs that serve a public good like grains research and market development.

Canada's system for outward inspection carried out by CGC staff ensures a high standard of quality assurance and verification in international markets. APAS wishes to acknowledge the recent report, commissioned by the Saskatchewan Wheat Development Commission, which details the value of outward inspection to Canada's brand in international markets. The report also includes a jurisdictional scan of inspection requirements used in other grain exporting countries and highlights additional costs associated with moving towards a system of accredited third-party inspection. This information is informative to current discussions about the future of Canada's outward inspection requirements and can be downloaded from the SaskWheat website.



**Recommendation 3.1:** APAS supports the continuation of CGC outward inspection in the Canada Grain Act, while ensuring that cost considerations are addressed through a CGC funding model that receives the appropriate level of federal investment in programs that benefit all Canadians.

### **3.2 Export Sales Reporting Program**

Greater transparency and timely information about export shipments and sales commitments has been a longstanding request of APAS and other producer associations. Since 1973, the USDA has administered an Export Sales Reporting Program that requires US exporters to report information about export sales of agricultural commodities each week. The information is compiled in weekly summary report which provides information about export demand and the impact of foreign sales on supplies and prices. The lack of comparable information in Canada has prevented Canadian producers and market analysts from accessing the same level of information needed to make informed marketing decisions.

Additional information about export sales and shipments was also a key recommendation in the Saskatchewan Producer Coalition's 2014 submission to the Canada Transportation Act Review. Recent market disruptions, changes in trade patterns, supply and demand dispositions have reinforced the need for more transparency in the agricultural supply-chain. As the regulatory agency responsible for grain handling in Canada, the CGA Review presents an opportunity to address this information gap in Canada's grain industry.

Although export sales are a major focal point for the CGA Review, APAS also notes the growing consensus among producer associations that Canada's agricultural data and reporting systems are not keeping up with rapid changes occurring in markets and information technology. The CGA Review should address issues specific to export sales, but also help to facilitate a broader discussion about improving federal trade and data reporting programs for the agricultural sector.

**Recommendation 3.2:** APAS recommends that the CGC enhance its reporting requirements for export sales and shipments to develop a statistical reporting program modelled on the USDA Export Sales Reporting Program.

## **Other Issues**

### **4.1 Grain Grading Modernization Initiative**

Although not a legislative provision, APAS members continue to support the CGC's Grain Grading Modernization Initiative with a focus on reforms to reduce reliance on subjective and visual methods of assessing grain quality. As noted in the APAS submission to the CGC Accumulated Surplus consultations, Canada has an opportunity to become a leader in the development of new grading techniques that provide rapid, repeatable and accurate grading results. The CGC should look to accelerate this initiative where possible and



encourage greater producer engagement through a regular reporting of status updates and next steps.

**Recommendation 4.1:** APAS continues to support the CGC's Grain Grading Modernization Initiative with a focus on reforms to reduce reliance on subjective and visual methods of assessing grain quality. The CGC should look to accelerate this initiative where possible and encourage greater producer engagement through a regular reporting of status updates and next steps.

## **4.2 Producer Car Access**

Producer cars are an important source of competition and market diversification in Canada's grain sector. While producer car access provisions are provided in the Canada Grain Act, limited access to port handling and vessel loading services has impeded the use of producer cars at Canadian ports. It has been noted that Canada is rather unique among major grain exporting nations in terms of access to third party loading services for exports and this constraint impacts the competitive options available to producers and other grain shippers. APAS Representatives carried a resolution at their 2021 AGM, calling on the CGC to excise "public warehouse" provisions in the Canada Grain Act to provide producer car shippers with access to port facilities at competitive handling rates.

**Recommendation 4.2:** APAS strongly supports the continuation of legislative provisions concerning access to producer cars in the updated Canada Grain Act. Producer car protections should be strengthened through the use of legislative provisions to provide competitive access to port handling and loading services.

## **Conclusion**

APAS appreciates the opportunity to respond to the CGA review. It is important that the Canada Grain Act continue to provide a legislative framework that protects the commercial interests of producers through regulatory safeguards and a quality assurance system for grain exports. A CGC mandate that works in the interests of producers needs to be maintained in the Act and should serve as guiding principle for this review process and subsequent program reforms. APAS encourages Agriculture and Agri-Food Canada and the CGC to ensure that any changes resulting from this review are determined through cost/benefit analysis and further consultation with affected stakeholders.



## **Summary of Recommendations**

### **Legislative Framework**

**Recommendation 1.1** APAS requests that any updates to the legislation must maintain the CGC's core mandate to work in the interest of producers. This mandate must furthermore direct this review process and its outcomes.

**Recommendation 1.2:** APAS supports the continuation of the three-Commissioner governance structure in the Canada Grain Act to ensure producer representation at the Commissioner level.

**Recommendation 1.3:** APAS requests increased federal funding for CGC programs to fully support public good services that benefit all Canadian and to reduce the reliance on user-fees to cover operational costs.

### **Commercial Services and Protections**

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**Recommendation 2.3:** APAS requests the CGC take steps to standardize quality testing in the industry by establishing clear and consistent industry standards for testing procedures and equipment. These standards should apply to non-grade specs and be monitored through a regulator inspection and auditing process that is accountable to producers and licensees.

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**Recommendation 2.5:** APAS requests that the CGC resume its licensing review to address gaps in oversight and producer protection, which could include further discussions with affected stakeholders about modifying administrative and security requirements specific to the purposes of licensing.

### **Export Programs**

**Recommendation 3.1:** APAS supports the continuation of CGC outward inspection in the Canada Grain Act, while ensuring that cost considerations are addressed through a CGC



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### **Other Issues**

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**Recommendation 4.2:** APAS strongly supports the continuation of legislative provisions concerning access to producer cars in the updated Canada Grain Act. Producer car protections should be strengthened through the use of legislative provisions to provide competitive access to port handling and loading services.