



Canadian Grain  
Commission

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des grains



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March 14, 2022

Jenneth Johanson, President  
Prairie Oat Growers Association

E-mail: [jjohanson@mts.net](mailto:jjohanson@mts.net)

Dear Ms. Johanson,

We are writing in reply to your letter of February 22, 2022, regarding the statutory declarations introduced as part of legislation to implement the Canada-US-Mexico Agreement (CUSMA). The Commission appreciates the opportunity to respond to your concerns.

As part of CUSMA, Canada agreed to allow U.S. grown wheat deliveries to receive an official Canadian grain grade and be certified as Canadian grain at export, if the wheat was of a registered variety in Canada. However, given many U.S. varieties are not registered or regulated in Canada, it was important to preserve the integrity of the Canadian grain quality assurance system. In assessing potential options to ensure variety registration, declarations were identified as a relatively low impact mechanism to allow for this while facilitating consistent treatment of producers on both sides of the border. Further, given the regulatory framework under the *Canada Grain Act* (CGA) is not specific to wheat, and the strategic benefits of consistency from both a trade and administrative perspective, the implementation of declarations was broadened to all regulated grains.

As noted in your letter, despite the emerging COVID-19 pandemic, the legislation and regulations required to implement CUSMA were expedited in order to bring the agreement into force within the agreed-to ratification timelines. Regrettably, these circumstances did not allow for the level of consultation that would typically be the case in developing new regulatory requirements. The requirements were designed to allow Canada to protect its quality assurance system while limiting the burden on Canadian producers. However, while the requirement for declarations was already set in legislation and regulation, the CGC was able to consult on the content of the declaration and the administrative approach for its implementation (i.e., allowing the integration of prescribed declaration requirements into existing commercial declarations or grain contracts) in the spring of 2020. The CGC invited a very broad group of stakeholders to sessions throughout April and May 2020. The Prairie Oat Growers Association (POGA) was invited to the session on May 7, 2020, but our records indicate your organization did not attend. Given commercial declarations were already widely used across western Canada, there was an opportunity to integrate the statutory requirements in the existing process, which would serve to minimize administrative burden to the sector. At that time, there were no concerns raised by grower groups about the potential use of combined statutory and commercial declarations. In fact, the stakeholder reactions were positive, given commercial declarations were already widely used across western Canada. Stakeholders supported providing grain companies the opportunity to minimize paperwork and costs to the sector.

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The CGC understands your organization's concerns with the integrated documentation approach, but after careful consideration of your comments and those of other organizations, we continue to support the use of integrated documentation where grain companies choose this option. Since statutory declarations were implemented, the CGC has taken steps to ensure that statutory and commercial requirements are clearly distinguished on documentation when presented to producers. To mitigate any confusion between the statutory requirement (which is currently limited to variety eligibility) and commercial requirements (such as restrictions on the use of certain pesticides), licensed grain companies must provide an example of the document they are using to the CGC for review as part of its annual licence renewal process. This provides for regulatory oversight and allows the CGC to ensure that the statutory and commercial requirements are clearly distinguished when presented to producers. However, if a producer does not want to sign an integrated document, they can still request a separate CGC declaration form from the company or provide the CGC form themselves. A copy of the CGC declaration form can be downloaded from the CGC website.

With respect to your concern about producer accountability associated with making declarations, Canadian producers have always been responsible for ensuring that their deliveries are of an eligible variety in order to be able to receive an official grain grade above the lowest available. The statutory declaration requirement does not add new accountability in this regard, but rather formalizes existing responsibilities by requiring a signed declaration of eligibility. As outlined in section 106 of the CGA, penalties for the misrepresentation of grain deliveries existed prior to the implementation of statutory declarations. In terms of a potential false declaration situation, these will be investigated on a case-by-case basis. If a producer unintentionally makes a false declaration this would not be subject to penalty, but the consequences of knowingly making a false declaration could include the penalties set out in section 107(2) of the CGA. There is no link to the Criminal Code, and penalties for a false declaration would not involve criminal charges. Since declarations were implemented in August 2020, the CGC has not been made aware of or encountered any incidents of misdeclaration.

In terms of the CGC's consultations with eastern Canada stakeholders, while the statutory declaration was introduced in western Canada based on the existing commercial process, it became apparent early in the implementation process that the same would not be possible for eastern Canada. Unlike western Canada, where commercial declarations had been a common feature for some time, the eastern grain sector did not have an existing process to facilitate timely implementation of statutory declarations. The CGC has provided exemptions from the requirement in eastern Canada for the past two crop years to provide more time for elevators and producers to familiarize themselves with the declaration requirements and develop an implementation plan.

In our consultations with the eastern grain sector, it also became clear that there was an opportunity to reconsider the requirement for declarations for all grain kinds regulated under the CGA given that the respective quality assurance concerns are not the same for all grains. As you know, throughout the week of November 15-19, 2021, the CGC held a number of targeted virtual stakeholder discussions outlining a regulatory proposal in this regard. The proposal put forward would amend the declaration requirement to apply to only those grain types that are subject to variety registration under the *Seeds Act* and *Regulations*, and for which merit criteria

applies as part of the variety registration process. The proposed amendments are not intended to exempt the largest crops in eastern Canada, corn and soybeans, but are based on a clear policy rationale linked to the quality parameters of different grains. For example, as there are no requirements for varieties of corn to be registered, there is no need for it to be declared as registered. However, varieties of other grains such as wheat, oats and canola must be registered, and quality parameters are considered in the registration process.

At this point, the CGC is targeting the 2022-23 crop year for national implementation of the amended declaration requirement. The CGC plans to issue updated communications materials to sector stakeholders well in advance of the start of the new crop year. Part of our communications messaging will focus on reminding producers to read and understand all documentation prior to signing, and that if they do not want to sign an integrated document, they can request a separate CGC declaration form.

We also want to acknowledge your request that producers be able to obtain a sample of each of their deliveries. The issue of sample retention has been raised by producer associations in several contexts in addition to declarations. The section of the *Canada Grain Regulations* governing sample retention is included in the CGC's current consultation on grade grading dispute resolution and we are looking at the potential for changes in this area. Sample retention will be a key point of consideration as we evaluate the consultation feedback and as part of the ongoing CGA Review process.

Thank you again for your letter and for sharing your collective concerns.

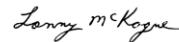
Sincerely,



Doug Chorney  
Chief Commissioner



Patty Rosher  
Assistant Chief Commissioner



Lonny McKague  
Commissioner

CC:

Hon. Marie-Claude Bibeau, Minister of Agriculture  
Hon. Nate Horner, Alberta Minister of Agriculture and Forestry  
Hon. David Marit, Saskatchewan Minister of Agriculture  
Hon. Derek Johnson, Manitoba Minister of Agriculture