Licensing

Objectives

The Canadian Grain Commission (CGC) licensing framework achieves 3 objectives:

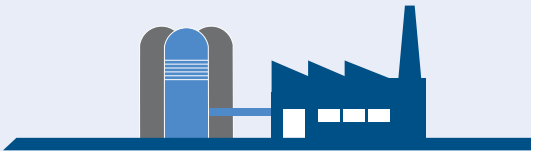
- **Safeguarding producers** – Providing producers with certain rights as set out in the *Canada Grain Act* such as financial protection against non-payment.
- **Quality and quantity assurance** – Providing a framework for establishing and maintaining Canadian grain quality assurance standards and processes.
- **Data collection to support market analysis** – Providing grain handling statistics to support market analysis and to provide a picture of the flow of grain for export or domestic use.

How it works

The CGC determines if grain handlers must be licensed or exempted according to the requirements of the *Canada Grain Act* and the *Canada Grain Regulations*. There are currently 4 classes of licence, as defined in the *Canada Grain Act*:

Primary elevator licence: A primary elevator is an elevator the principal use of which is the receiving of grain directly from producers for storage or forwarding or both.

Process elevator licence: A process elevator is an elevator the principal use of which is the receiving and storing of grain for direct manufacture or processing into other products.



Terminal elevator licence: A terminal elevator is an elevator the principal uses of which are the receiving of grain on or after official inspection and official weighing of the grain and the cleaning, storing and treating of the grain before it is moved forward.

Grain dealer licence: A grain dealer is a person who, for reward, on his own behalf or on the behalf of another person, deals in or handles western grain.

Potential licensees submit information to the CGC related to their planned operations through a Mode of Operations form. Based on the information provided, the CGC assesses planned operations against the authorities and definitions in the *Canada Grain Act* and decides whether the operation needs a CGC licence or not. Companies are then notified of the type of licence required and of the next steps to become licensed. There is a fee to become a CGC-licensed grain company.

Once licensed, the *Canada Grain Act* imposes obligations on licensees intended to:

- ensure grain moving into and through the elevator system is dependable and safe for consumption
- minimize the risk of commercial shipments being out of compliance with domestic and international grain quality and safety standards
- provide safeguards to grain farmers

Exceptions

Not all operations that handle or deal in grain must be licensed by the CGC. Exceptions include:

Operations that have been exempted by regulation or by CGC order.

- Current regulatory exemptions include:
  - feed mills
  - process elevators that do not purchase grain from producers
  - seed cleaning plants
  - grain dealers or elevators that act only on behalf of licensees and do not purchase western grain from producers (for example, an agent or mandatary), provided that:
    - the licensees provide security for all western grain transactions and all grain received into the elevator
    - the agent allows the CGC to access its records
  - grain dealers buying and selling only western grain for feed purposes or buying and selling eastern grain
- Current exemptions by CGC order include:
  - producer railway cars loading facilities
- In general, there are conditions attached to exemptions to minimize payment risk to producers.

Operations whose business is outside the jurisdiction of the *Canada Grain Act*:

- eastern Canadian elevators, except terminal elevators located along the Great Lakes and St. Lawrence Seaway
- eastern grain dealers that buy and sell grain grown in eastern Canada
- livestock feeding operations, such as cattle feed lots and hog barns

While container loading facilities and transloaders meet the broad definition of an elevator in the *Canada Grain Act*, they do not meet the specific criteria for one of the existing licence classes. As a result, many of these facilities have neither been licensed nor exempted by the CGC.

All other operations that should be licensed but are not are operating in violation of the *Canada Grain Act*.

Quick facts

- Licensing provides the framework for the CGC to regulate grain handling facilities to ensure Canada's grain is dependable and safe for domestic and export markets.
- Licensing enables producers to exercise their rights under the *Canada Grain Act*. This includes:
  - lodging informal complaints with the CGC regarding a licensee
  - formal dispute arbitration
  - access to a binding determination of grade and dockage on deliveries to licensed primary elevators
- All CGC licensees who buy western grain from producers must post security to cover eligible liabilities to producers. If a company is unable to pay producers, this security is divided among all eligible producers owed money for their grain.
- The *Canada Grain Regulations* establish reporting obligations on licensed grain dealers, process, primary and terminal elevators, as well as persons exporting grain by containers. For example, licensees are required to report information about Canadian grain movement through the licensed handling system. The CGC uses this information to produce reports on producer deliveries, domestic handling and exports of Canadian grain through licensed facilities. Reports are freely accessible to the public.
- 2020-21 CGC licence fees are $287.37 per month per licence. Licences are typically issued for a 1-year term.
- As of November 1, 2020, the CGC issued licences for:

358	46	36	88
primary elevators	process elevators	terminal elevators	grain dealers

Current *Canada Grain Act* (CGA) authority:

Sections 42 through 45 establish that grain dealers and primary, terminal and process elevator operators must be licensed or exempted from licensing by the CGC.

Section 117 allows the CGC to issue licence exemptions by regulation or by order if the CGC is of the opinion that the control of any particular elevator or type of elevator or grain handling operation is not essential for the maintenance of quality, safekeeping and orderly and efficient handling of grain in Canada.

Subsection 83(2) states that there are certain types of contracts that can be made by unlicensed persons. These include contracts for:

- the purchase of grain without reference to grade names as long as payment is made in full at the time of making the contract or when the grain is delivered
- the purchase of grain for seed use in the producer's farming operation
- the purchase of grain by a person who raises livestock or poultry where the purchase is for feeding the livestock or poultry
- the purchase of grain by a broker trading on a recognized stock exchange

Frequently asked questions

What happens if a producer sells grain to someone who does not have a CGC licence?

Unlicensed grain companies are either exempted from licensing, outside the jurisdiction of the *Canada Grain Act*, or in violation of the *Canada Grain Act*. Unlicensed grain companies do not provide security and none of the protections of the *Canada Grain Act* apply, including payment protection.

Are there penalties for operating without a CGC licence?

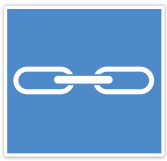
Grain companies may face prosecution if they deal in or handle grain and are required to be licensed by the CGC but are operating without a licence in violation of the *Canada Grain Act*.

Alternatives previously considered

- In 2010, an option considered was to focus licensing and regulatory requirements on activities, functions or methods of grain handling and transportation instead of dividing portions of the *Canada Grain Act* according to the type or category of elevator. This option was not pursued because of timing considerations, as it required an extensive re-write of the *Canada Grain Act*.
- In 2014, proposed updates to the *Canada Grain Act* in Bill C-48 included the addition of a class of licence for container loading operations and a definition of eastern elevator.

  An additional licence class for container loading operations would have helped address the licensing gap that currently exists. Adding a definition of eastern elevator would have allowed the CGC access to samples of grain from eastern elevators for monitoring purposes. Bill C-48 died on the Order Paper with the dissolution of Parliament in 2015.
- In 2014, proposed updates to the *Canada Grain Act* in Bill C-48 also included making some offences under the *Canada Grain Act* subject to administrative monetary penalties under the *Agriculture and Agri-Food Administrative Monetary Penalties Act*. Using administrative monetary penalties would have allowed the CGC to respond more appropriately to common violations of the *Canada Grain Act*.
- In 2016, the CGC developed and consulted on regulatory amendment proposals to license agents with elevator facilities, producer railway car loading facilities and feed mills. These proposals were regulatory in nature and did not require *Canada Grain Act* amendments. The CGC decided not to proceed with the proposals based on feedback.

Strengths of the current approach



- The current licensing structure provides a well-established framework that enables the CGC to achieve grain quality assurance and payment protection objectives.
- Industry stakeholders and producers are familiar with the requirements of this long-standing structure.
- There is a high degree of compliance with CGC licensing requirements. Most primary, process and terminal elevators as well as grain dealers abide by requirements of the *Canada Grain Act* and meet licensing objectives.

Potential opportunities for improvement

- The current licensing framework may not provide effective regulatory flexibility for today's grain sector. As new types of technology and mechanisms of trading have become available over time, some new grain handling businesses now fall outside the definitions of existing licence classes and are not licensed.
- The current framework based on elevator type and principal use of elevator presents challenges when an elevator has more than one use and some facilities do not fully meet the definition of an existing class. This can result in inconsistent application of legislative and regulatory authorities.
- Under the current *Canada Grain Act*, the CGC has little authority with respect to unlicensed grain companies. The CGC's current enforcement powers consist of suspending, cancelling, and/or revoking a licence, or prosecuting an offence. These powers are too severe for minor infractions. A wider range of penalties and better tools in the *Canada Grain Act* could improve compliance.
- Many of the CGC's licensing activities related to quality assurance are designed to ensure a dependable commodity for export markets. This raises questions about whether there are sufficient activities to fulfill the CGC's mandate to ensure a dependable commodity for domestic markets.