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CANADA-U.S. GRAIN & SEED TRADE

CANADA GRAIN PRODUCER  
FAQs

Canada Grain Producer path

## **Thank you for your interest in information on Canada and U.S. Grain and Seed Trade.**

This document provides a selection of questions and answers (QandA) designed to help Canadian grain producers with marketing that may include sales and deliveries across the border. The QandA were developed with a focus on wheat, barley and durum producers.

On August 1, 2012, Canada will implement the *Marketing Freedom for Grain Farmers Act*. The Act changes the way Western Canadian wheat and barley farmers market their grain by removing the mandatory requirement to market wheat and barley through the Canadian Wheat Board (CWB). Since the changes brought about by the *Marketing Freedom for Grain Farmers Act* are important to stakeholders in the Canada - U.S. cross-border trade of grains and oilseeds, several not-for-profit associations from both the U.S. and Canada are working together to provide information to facilitate the marketing of grain and seed between the US and Canada.

*More information is available from the Ag Canada: What Farmers Need to Know Backgrounder.* <http://www4.agr.gc.ca/AAFC-AAC/display-afficher.do?id=1323988816376&lang=eng>.

*We welcome your comments and additional questions. Please submit them via email to:* [Questions@Canada-USSeedandGrainTrade.info](mailto:Questions@Canada-USSeedandGrainTrade.info) or [Comment@Canada-USSeedandGrainTrade.info](mailto:Comment@Canada-USSeedandGrainTrade.info)

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## **Canada Grain Producer Frequently Asked Questions and Our Answers Follow**

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## QUESTIONS AND ANSWERS

### 1) Introduction

**a) How does Canada's new grain marketing legislation (the *Marketing Freedom for Grain Farmers Act*) affect trade?**

Deliveries of Canadian wheat and barley can now be contracted and sold through the open market from any supplier and to any buyer for delivery after August 1, 2012.

Effective August 1, 2012, the cross-border system for wheat, durum and barley trade will work as it does for other commodities such as canola and pulses. Export licenses will no longer be needed to export wheat, durum or barley from Canada. Grain entering Canada would still be subject to Canada's phytosanitary requirements.

**b) How do the changes to the Canadian system affect Canadian producers' ability to deliver wheat to the U.S.?**

Canadian producers can contract and sell their wheat, durum and barley either directly or through a grain company to buyers in the U.S. without going through the Canadian Wheat Board. Export licenses will no longer be needed to export wheat, durum or barley to the U.S. More information is available at: <http://www.cbsa-asfc.gc.ca/publications/cn-ad/cn12-019-eng.html>

**c) Will the Canadian Wheat Board still exist after August 1, 2012?**

Yes. The Canadian Wheat Board will exist after August 1, 2012, but will be known as the CWB. The CWB will continue to operate as a state trading organization for up to five years, albeit without a monopoly on the marketing of wheat and barley. It will operate voluntary commodity pools for farmers and grain buyers who wish to avail themselves of the CWB's service.

## 2) Finding a Buyer

### a) Where can I find a listing of U.S. grain elevators and buyers?

There are several locations to find contact information for U.S. grain elevators including state websites, trade association websites, private company websites, telephone directories, etc.

U.S. grain buyers are either privately owned companies or farmer-owned cooperatives.

Most states require grain buyers to be licensed and each state licensing authority maintains lists of licensed businesses. Information found through state and trade associations typically includes many aspects of interest to farmers.

Examples of state websites listing of grain buyers include:

1. Idaho Department of Agriculture:  
<http://www.agri.idaho.gov/Categories/Warehouse/Documents/ActiveCommodity.pdf>
2. Michigan Department of Agriculture:  
[http://www.michigan.gov/documents/mda/5\\_16\\_11\\_MI\\_Licensed\\_Grain\\_Dealers\\_352969\\_7.pdf](http://www.michigan.gov/documents/mda/5_16_11_MI_Licensed_Grain_Dealers_352969_7.pdf)
3. Minnesota Department of Agriculture:  
<http://www2.mda.state.mn.us/webapp/lis/default.jsp>
4. Montana Department of Agriculture:  
[http://agr.mt.gov/agr/Programs/Commodities/DealersWarehouses/pdf/commodity\\_licensed\\_dealers\\_warehouses.pdf](http://agr.mt.gov/agr/Programs/Commodities/DealersWarehouses/pdf/commodity_licensed_dealers_warehouses.pdf)
5. Washington Department of Agriculture:  
<http://agr.wa.gov/inspection/GrainWarehouseAudit/docs/gwalicensebook.pdf>

In the U.S., grain buyers are often listed in telephone and local business directories of state or national trade associations. U.S. grain buyers belong to trade associations who provide for information of interest to both buyers and sellers of grain, including information on trade rules and official requirements. Examples of trade association websites you may want to visit include:

1. National Grain and Feed Association: [www.ngfa.org](http://www.ngfa.org)
2. Pacific Northwest Grain and Feed Association (Idaho, Montana, Oregon and Washington): <http://www.pnwgfa.org/>
3. Michigan: <http://www.miagbiz.org/>
4. Minnesota: <http://www.mgfa.org/>

### b) What elevators in the U.S. will accept Canadian origin grain?

Sellers of grain wishing to deliver to a U.S. grain facility are advised to contact the company prior to delivery to obtain the information necessary to conclude a commercial transaction.

In the U.S., grain buyer licensing and related requirements vary among the state authorities that place requirements on the grain elevator. In general, there is no official requirement for a buyer in the U.S. to purchase grain from anyone, but there are requirements for fair and equitable treatment of grain sellers. If you deposit grain for storage, additional licensing, including an optional federal license, may place requirements on the grain elevator such as providing for equal and fair access to depositors of grain. As in Canada, grain buying, trading and warehousing companies are free to set their hours of operation and terms including buying prices. Terms are often related to the respective facility, its customers needs and ownership, the quality of the grain and logistical programs the companies have in place.

For example, relevant license requirements for grain buyers and storage providers can be found at:

1. U.S. Department of Agriculture, Warehouse Act regarding grain storage: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=was-ua>
2. Idaho Department of Agriculture: [www.agri.idaho.gov](http://www.agri.idaho.gov)
3. Michigan Department of Agriculture: [www.michigan.gov/mdard/](http://www.michigan.gov/mdard/)
4. Minnesota Department of Agriculture: [www.mda.state.mn.us/](http://www.mda.state.mn.us/)
5. Montana Department of Agriculture: [www.agr.mt.gov/](http://www.agr.mt.gov/)
6. Washington Department of Agriculture: [www.agr.wa.gov/](http://www.agr.wa.gov/)



### 3) Grading System, and How Grain Quality is Determined

#### a) What are the objectives of the U.S.'s official grain grading system?

The U.S. official grading system facilitates the marketing of cereals, oilseeds, and related agricultural products for the overall benefit of consumers and American agriculture. Official inspection of grains, oilseeds and other agricultural and processed commodities are based on established official U.S. standards, and on sound, proven and standardized procedures, techniques and equipment. This ensures consistency of test results and services, from elevator-to-elevator and state-to-state.

The USDA Grain Inspection Packers and Stockyards Agency (GIPSA) Federal Grain Inspection Service (FGIS) establishes and maintains the official U.S. standards for grains, oilseeds, and related commodities via the U.S. federal regulatory process. The standards are used each and every day by domestic and international sellers and buyers as a common commercial language to quickly and effectively communicate the type and quality of product being bought and sold.

All of the federal, state, and private partners that comprise the official system are strictly guided by the *U.S. Grain Standards Act* and the *Agricultural Marketing Act of 1946*. Every official service provider uses uniform, codified processes, procedures and techniques.

The accuracy of officially approved equipment is verified - and reverified - by GIPSA using finely calibrated master instruments and official reference methods.

FGIS helps the marketplace by providing farmers, handlers, processors, exporters, and international buyers with sampling, inspection, weighing and stowage examination services that accurately and consistently describe the quality and quantity of the commodities being bought and sold.

FGIS establishes standards for quality assessments, regulating handling practices, and managing a network of federal, state, and private laboratories that provide impartial, user-fee-funded official inspection and weighing services all with respect to grain and related agricultural products.

Official personnel pass rigorous licensing tests and undergo extensive and continuous training. The work of official personnel is reviewed and monitored by an extensive quality assurance program. Every official state and private agency is backed by the resources and expertise of the FGIS National Grain Center in Kansas City, Missouri.

You can find more information on GIPSA and FGIS at: <http://www.gipsa.usda.gov/>

**b) Can grain of Canadian origin receive an official U.S. grade?**

Yes, but official inspection of Canadian grain entering the U.S. is not required. Grain, as defined by the U.S. Grain Standards Act, means corn, wheat, rye, oats, barley, flaxseed, grain sorghum, soybeans, mixed grain and any other food grains, feed grains and oilseeds for which standards are established under 7 U.S.C. Section 76. You can find the Official U.S. Standards for Grain at:  
<http://www.gipsa.usda.gov/fjis/standproc/usstands.html>

Typically, when Canadian grain arrives by truck at a local U.S. elevator, an “unofficial” grain sample (that is, taken by an individual not licensed by USDA’s Federal Grain Inspection Service “FGIS”) will be taken from the truck either by probe or an end-gate sample. The sample will typically be tested for dockage, test weight, moisture and protein. More tests may or may not be done depending on the physical appearance of the sample and the relevant conditions of the crop year. For example, if conditions have been conducive to sprout damage, a falling numbers test may be done. Likewise, a test for DON (vomitoxin) might be conducted if conditions warrant. Other factors that could be graded include dark, hard vitreous, (DHV) damage, shrunken and broken kernels. Elevators that load rail shuttles tend to have more sophisticated testing equipment, and in some cases “official” grain inspection agencies, designated by FGIS, may have a satellite office at some train loading stations. Such offices are authorized by FGIS to make an official determination of all official U.S. grade factors. Smaller elevators would typically send samples to a lab for falling number and DON tests. All U.S. locations should be expected to grade according to U.S. factors and grading scales. Unless an “official” grain inspection agency is available, grade and factor determination will generally be conducted by personnel hired by the elevator. If there is a question about a particular grade or factor within a grade, there may be an opportunity for a representative sample to be drawn and submitted to an “official” agency or some other qualified third party at a different location. The delivering farmer should expect to pay a reasonable fee for the “official” grade determination. (Specific rights regarding grade determination may vary by state and Canadian farmers should become familiar with their rights and obligations under various state laws. Links to some of these laws are included in the answer to question 2)b above)

USDA/FGIS official inspection agencies can be located at this website:  
[http://www.gipsa.usda.gov/fjis/svc\\_provid/providers.html](http://www.gipsa.usda.gov/fjis/svc_provid/providers.html)

**c) Can grain of U.S. and Canadian origin be commingled in a U.S. elevator?**

Yes. The commingled grain can receive an official USDA grade certificate. As a result, Canadian wheat is eligible for domestic U.S. sale and export, based on the U.S. official specifications of the grain.

**d) Does the U.S. system restrict the varieties of wheat that U.S. producers can grow?**

No. The U.S. does not have official variety control and farmers are free to grow any variety of wheat, including Canadian varieties, and deliver them into the grain handling system. Some commercial marketing programs in the U.S. do require variety control.

**e) Does a seller of Canadian grain in the U.S. need to provide varietal information?**

No, not unless his commercial sale contract calls for varietal information. Varietal information is not a requirement for U.S. grade designation. A declaration may be required based on specific contracts with grain handlers.

**f) Is there a difference in the way Canada and the U.S. measure and report protein content?**

Yes there are some differences, as well as many similarities.

An important difference is in the reporting of test results for wheat. In Canada, protein for wheat is reported on a 13.5% moisture basis and in the U.S. protein for wheat is on a 12% moisture basis. This difference in moisture will result in U.S. protein being reported as approximately 0.2% higher than the equivalent Canadian value. In other words, in Canada a 13.5% protein on 13.5% moisture basis is equivalent to a 13.7% protein on a 12% moisture basis in the U.S.

In terms of barley, the moisture basis for protein in the U.S. and Canada is reported on a dry matter basis, as such there is no adjustment required.

Both the Canadian Grain Commission (CGC) and U.S. Federal Grain Inspection Service (FGIS) will report protein on an alternate moisture basis upon request using simple mathematical calculations to convert results.

The CGC in Canada and FGIS in the U.S. use the same reference method for analyzing the protein content of grains and oilseeds which is combustion nitrogen analysis (CNA). The CNA laboratory supports the NIRT instruments that are used for official testing in Canada and the U.S. The CNA reference method incinerates samples and captures and measures the nitrogen content. This is then converted to protein content. FGIS and CGC use CNA method AOAC 992.23, or the equivalent method AACC 46-30

**g) What are the statutory grain classes of U.S. wheat?**

The U.S. defines wheat grain that, before the removal of dockage, consists of 50 percent or more common wheat (*Triticum aestivum L.*), club wheat (*T. compactum Host.*), and durum wheat (*T. durum Desf.*) and not more than 10 percent of other grains for which standards have been established under the United States *Grain Standards Act* and that, after the removal of the dockage, contains 50 percent or more of whole kernels of one or more of these wheats.

There are eight classes for wheat: Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Soft Red Winter wheat, Hard White wheat, Soft White wheat, Unclassed wheat, and Mixed wheat.

(1) Durum wheat. All varieties of white (amber) durum wheat. This class is divided into

the following three subclasses:

(i) Hard Amber Durum wheat. Durum wheat with 75 percent or more of hard and vitreous kernels of amber color.

(ii) Amber Durum wheat. Durum wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(iii) Durum wheat. Durum wheat with less than 60 percent of hard and vitreous kernels of amber color.

(2) Hard Red Spring wheat. All varieties of Hard Red Spring wheat. This class shall be divided into the following three subclasses:

(i) Dark Northern Spring wheat. Hard Red Spring wheat with 75 percent or more of dark, hard, and vitreous kernels.

(ii) Northern Spring wheat. Hard Red Spring wheat with 25 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(iii) Red Spring wheat. Hard Red Spring wheat with less than 25 percent of dark, hard, and vitreous kernels.

More information can be found at:

<http://www.gipsa.usda.gov/fjis/standproc/usstands.html>

**h) Does the U.S. grain grading system facilitate sales on specification as well as statutory grades?**

Yes, grain buyers often buy and contract on specifications entirely separate from or in conjunction with official grain standards. Many of the specifications used to buy wheat and barley are not part of the factors included in U.S. official grain standards.

To facilitate purchase and sales referencing specification as well as official grade factors, the U.S. grain trade utilizes in-house, qualified third party private laboratory and Federal Grain Inspection Service inspection services.

More information for private third party laboratories is available on their respective websites. For example: [Intertek Group](#), [SGS](#) and [Thionville Laboratories](#).

Detailed information on the testing services for grading and quality factors provided by FGIS can be found at:

[http://www.gipsa.usda.gov/fjis/insp\\_weigh/testinggrade.html](http://www.gipsa.usda.gov/fjis/insp_weigh/testinggrade.html)

**i) What are the key similarities and differences between the U.S. and Canadian grading systems?**

The two systems are similar in that both systems establish official grades for all major grains, form a basis for transactions as well as facilitate price discovery and value communication. Both grading systems allow for sales by specification.

The two systems differ in that the official grading system in Canada encompasses a broader spectrum of specifications. As a result, there are more statutory grades in Canada versus the U.S. The U.S. system is more reliant on contract specification reducing the number of grades while allowing the contract specifications to capture customer wants rather than the statutory grade.

Canada's system is closely linked to variety evaluation and registration. There is no equivalent official variety registration system in the U.S. In the U.S., variety can be mandated by contract specification between the buyer and seller.

Both systems modify grade specifications in response to industry demand. Canada relies more on statutory grades to reflect industry demand. The U.S. has fewer official grades and relies more on contract specifications to reflect industry demand.

Canada's grading system can apply to all wheat origins for trade on specifications but only Canadian-grown grain can receive official statutory grade certification other than the lowest statutory Canadian Grain Commission grade in the particular class (e.g., Feed Wheat or #5 Amber Durum). The U.S. system is not tied to any origin or variety requirements so, if examined under the official U.S. system, any wheat sample can be certificated with a U.S. official grade.

**j) Why does the U.S. not have a variety registration system?**

Every country needs a robust seed system to guarantee the sustainability of its agriculture and to ensure that the products of modern plant breeding and local farmer ingenuity are widely available. An important prerequisite for seed sector development is the existence of robust agricultural markets. In response to the market and agronomic environment in the U.S., policies that encourage the evolution of a diverse collection of seed enterprises, both public and private, rather than limit access to seed market participation to focus agricultural production on targeted markets has evolved. The U.S. has focused its regulatory agencies on developing seed producer competence and providing consumer/producer education.

## 4) Contracts and Pricing

### a) What is the process for entering into forward contracts or making spot deliveries of Canadian grain into U.S. grain facilities?

Unless deposited for storage, grain generally enters the U.S. grain system under contracts that specify the delivery period, either spot or deferred. In the U.S., like Canada a verbal agreement is considered an enforceable contract, however, in most cases a written confirmation will be forwarded to the producer to be signed.

Sellers of grain produced in Canada wishing to deliver to a grain facility in the U.S. are advised to contact the company prior to delivery to obtain the information necessary to conclude a commercial transaction.

Terms for purchase contracts in there sometimes subject to the rules of the relevant licensing authority (for more information see answer 2)b above.)

Many grain facilities in the U.S. use the National Grain & Feed Association (NGFA) Grain Trade Rules and arbitration. Adopted in 1902, these rules govern most transactions of a financial, mercantile or commercial nature involving grain in the U.S. Members of the NGFA are obligated to abide by the rules and arbitration in transactions with other NGFA members. Increasingly, NGFA members reference the NGFA's Trade Rules and Arbitration Rules in contracts with firms located in Mexico and Canada. In addition, Canadian and Mexican firms that become NGFA Associate/Trading members are expressly permitted to reference the NGFA's Trade Rules and/or Arbitration Rules in their contracts, or otherwise consent to have the NGFA's rules apply. However, before referencing the rules in cross-border trade NGFA cautions users that it is advisable to consult competent legal counsel and review international treaties that govern such transactions.

You can review these provisions and the other four sets of trade rules (barge rules, barge affreightment rules, feed rules and rail arbitration rules) promulgated by NGFA at [www.ngfa.org/rules-arbitration.cfm](http://www.ngfa.org/rules-arbitration.cfm).

Please note that while many of the contracts used to buy and sell grain include clauses under which buyer and seller agree to comply with the U.S. and Canadian regulatory prerequisites applicable to the contract, the grain buying and selling is an environment under which grain is essentially traded with an “implied warranty of merchantability” meaning the grain being sold is subject to a warranty implied by law that goods are reasonably fit for the general purpose for which they are sold. In international sales law, merchantability forms part of the ordinary purpose of the goods. According to Article 35(2)(a) of the United Nations Convention on Contracts for the International Sale of Goods, a seller must provide goods fit for their ordinary purpose.

In the United States, this obligation is in Article 2 of the Uniform Commercial Code (UCC). This warranty will apply to a merchant (that is, a person who makes an

occupation of selling things) who regularly deals in the type of merchandise sold. Under U.S. law, goods are 'merchantable' if they meet the following conditions: The goods must conform to the standards of the trade as applicable to the contract for sale. They must be fit for the purposes such goods are ordinarily used, even if the buyer ordered them for use otherwise. They must be uniform as to quality and quantity, within tolerances of the contract for sale. They must be packed and labeled per the contract for sale. They must meet the specifications on the package labels, even if not so specified by the contract for sale.

If the merchandise is sold with an express "guarantee", the terms of the implied warranty of merchantability will fill the gaps left by that guarantee. If the terms of the express guarantee are not specified, they will be considered to be the terms of the implied warranty of merchantability. The UCC allows sellers to disclaim the implied warranty of merchantability, provided the disclaimer is made conspicuously and the disclaimer explicitly uses the term "merchantability" in the disclaimer.[1] Some states, however, have implemented the UCC such that this cannot be disclaimed.

**b) How do sellers of grain of Canadian origin into the U.S. compare nominal U.S. and Canadian prices?**

U.S. prices are generally listed in U.S. dollars per bushel. A bushel is an "avoirdupois or imperial" (U.S. / British) and U.S. customary unit of dry volume. Bushels of grain most often will be determined by dividing the shipment net weight in pounds by the U.S. Commercial Bushel Size for the grain in the shipment. For example one bushel of wheat is equal to 60 pounds. One bushel of barley is equal to 48 pounds.

For wheat, the standard conversion is 36.74 bushels per metric ton (tonnes) and there are 2,204.6 pounds in a metric ton.

Conversion tables and calculators for pounds to tonnes are available at [www.google.com](http://www.google.com). More information is available at the USDA website at: [http://www.gipsa.usda.gov/publications/fgis/handbooks/grain-insp/grbook2/general\\_info.pdf](http://www.gipsa.usda.gov/publications/fgis/handbooks/grain-insp/grbook2/general_info.pdf)

Grain prices in Canada are quoted in Canadian dollars per tonne. Canadian / U.S. foreign exchange quotes are available at your financial institution or various financial websites.

For any U.S. delivery a phone call in advance to the intended delivery point is advisable prior to making physical delivery. Sellers of grain wishing to deliver to a U.S. grain facility are advised to contact the company prior to delivery to obtain the information necessary to conclude a commercial transaction.

More information on U.S. Commercial Bushel Sizes and Tables for Weights and Measurement of Crops can be found on the web. For example the *University*

*Missouri's Agricultural Publication G4020*, found on the web at:  
<http://extension.missouri.edu/publications/DisplayPub.aspx?P=G4020>.

Some U.S. grain companies may contract for grain and provide prices in tonnes and / or Canadian dollars. Again it is very important to contact your intended or potential grain buyer or storage facility to provide for a complete understanding of all terms related to your delivery of grain to a facility in the U.S.

**c) Where can pricing information be found for grain delivered to U.S. elevators?**

Price indications are provided on many websites and advisory services. Sellers of grain wishing to deliver grain to a U.S. grain facility should always obtain actual or contractible price information directly from the grain company. U.S. grain buyers most often will provide for pricing in person or by phone. In some cases email and other electronic data transfer may be used by the buyer to confirm price.

In many cases grain company websites provide for current price indications but they are not necessarily contracted or actual prices paid. The State Department of Agriculture websites (See answer 2)a above) often provide historical and indicative cash grain price information as do numerous commodity advisory services in Canada and the U.S.

**d) What trade rules govern cash grain sales at U.S. elevators?**

Many grain facilities in the U.S. use the NGFA Grain Trade Rules and arbitration. Adopted in 1902, these rules govern most transactions of a financial, mercantile or commercial nature involving grain in the U.S. Members of the NGFA are obligated to abide by the rules and arbitration in transactions with other NGFA members. Increasingly, NGFA members reference the NGFA's Trade Rules and Arbitration Rules in contracts with firms located in Mexico and Canada. In addition, Canadian and Mexican firms that become NGFA Associate/Trading members are expressly permitted to reference the NGFA's Trade Rules and/or Arbitration Rules in their contracts, or otherwise consent to have the NGFA's rules apply. However, before referencing the rules in cross-border trade NGFA cautions users that it is advisable to consult competent legal counsel and review international treaties that govern such transactions.

You can review these provisions and the other four sets of trade rules (barge rules, barge affreightment rules, feed rules and rail arbitration rules) promulgated by NGFA at [www.ngfa.org/rules-arbitration.cfm](http://www.ngfa.org/rules-arbitration.cfm).

**e) Can Canadian origin grain be priced against U.S. futures contracts?**

Yes, it is likely that U.S. companies can use U.S. future contracts to hedge purchases of wheat, durum and barley within the constraints of their risk management policies. Sellers of Canadian grain wishing to deliver to a U.S. buyer



are advised to discuss pricing options and policies with their buyer prior to entering into a contract.

In August 2011 the Minneapolis Grain Exchange (MGEX) removed its U.S. origin requirement for its hard red spring wheat (HRS) contract, making it possible for Canadian wheat to be used as deliverable supply. The CME Group (Chicago Board of Trade) has created several options-based tools to serve this population, including MGEX-CBOT wheat spread option. The Kansas City Board of Trade (KCBOT) offers a contract based on hard red winter (HRW) wheat. It is a close second to the MGEX contract in terms of the quality of the deliverable wheat. This wheat, which is also used in bread baking, has a high protein level, but not as high as the HRS wheat grown in the U.S. northern plains or Canada. HRW wheat is grown predominantly in Kansas, Nebraska, Oklahoma and the Texas panhandle.

KCBOT has not made changes to its contract in anticipation of the new Canadian Wheat Board policy, but the exchange is likely to continue to be a very important venue for liquidity and price discovery of wheat grown in both Canada and the U.S. as well as the rest of the world. More information can be found at:

1. [https://www.theice.com/publicdocs/futures\\_canada/Wheat\\_Futures\\_Article.pdf](https://www.theice.com/publicdocs/futures_canada/Wheat_Futures_Article.pdf)
2. <http://openmarkets.cmegroup.com/2896/a-new-era-for-canadas-wheat-farmers>

## 5) Crossing the Border

### a) Where are the U.S./Canadian border crossings located?

Information regarding U.S. Customs and Border Protection (CBP) offices is available at: <http://apps.cbp.gov/bwt/index.asp>

Information regarding Canada Border Services Agency (CBSA) offices is available at <http://www.cbsa-asfc.gc.ca/menu-eng.html>

### b) What identification is required to enter the U.S. from Canada?

Canadian producer and commercial truck drivers require a valid driver's license for the transport unit they are operating. All drivers and passengers need a passport or Free and Secure Trade (FAST) identity card.

Canadian producer and commercial trucks arriving at the border must have Customs paperwork including a prior notification (PN) number for each shipment crossing at the border, to reference entry information that has been filed with customs in advance of arrival at the border.

All vehicles operated within the United States by motor carriers domiciled in a contiguous foreign country, shall have on board the vehicle a legible copy, in English, of an insurance document provided by an insurance company and required by the Federal Motor Carrier Safety Regulations.

Canada-domiciled motor carriers and freight forwarders must maintain, as acceptable evidence of financial responsibility, insurance policies issued by Canadian insurance companies legally authorized to issue such policies in the Canadian Province or Territory where the motor carrier or freight forwarder has its principal place of business. Proper filing and retention of [MCS-90](#), Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of The Motor Carrier Act of 1980 MCS-90 is required.

Further information on the requirements for Canadians travelling to the U.S. is available at <http://www.cbsa-asfc.gc.ca/whiti-ivho/tourist-touriste-eng.html>.

The U.S. Department of Transportation website: <http://www.fmcsa.dot.gov/intl-programs/canada/index.htm>. The site is organized both by geographic area and by topic. You can click on a State or Province on a map to find information that pertains specifically to Commercial Motor Vehicle (CMV) operations for such items as general motor carrier information, licensing, oversize/overweight permitting, International Fuel Tax Agreement (IFTA) requirements, etc. You also can search by topic using the dropdown box below the map to find available information within that topic for all States and Provinces.

**c) What customs and other documentation are required for grain to enter the U.S. from Canada?**

Canadian trucks are allowed to deliver loads from Canada and pick up loads with a Canadian destination but generally cannot pick up U.S. loads with a U.S. destination.

The U.S. Department of Transportation website: <http://www.fmcsa.dot.gov/intl-programs/canada/index.htm>. The site is organized both by geographic area and by topic. You can click on a state or province on a map to find information that pertains specifically to Commercial Motor Vehicle (CMV) operations for such items as general motor carrier information, licensing, oversize/overweight permitting, International Fuel Tax Agreement (IFTA) requirements, etc. You also can search by topic using the dropdown box below the map to find available information within that topic for all States and Provinces.

Canadian Grain Producer and Commercial Trucks would need a Standard Carrier Alpha Code (SCAC) code to transmit information electronically through the Automated Commercial Environment (ACE).

Canadian Grain Producer and Commercial Trucks arriving at the border must have customs paperwork including a prior notification (PN) number for each shipment crossing at the border, to reference entry information that has been filed with Customs in advance of arrival at the border.

**d) What are the licensing and registration requirements for Canadian trucks transporting grain within the U.S.?**

Canadian producer trucks hauling grains into the U.S. do not need specialized licensing (i.e., farm plates are permitted), if hauling their own grain.

The U.S. Department of Transportation website: <http://www.fmcsa.dot.gov/intl-programs/canada/index.htm>. The site is organized both by geographic area and by topic. You can click on a State or Province on a map to find information that pertains specifically to Commercial Motor Vehicle (CMV) operations for such items as general motor carrier information, licensing, oversize/overweight permitting, International Fuel Tax Agreement (IFTA) requirements, etc. You also can search by topic using the dropdown box below the map to find available information within that topic for all States and Provinces.

Key items include: Canadian producer trucks must be registered under the International Fuel Tax Agreement (IFTA) and have the appropriate IFTA sticker(s) affixed to their vehicle.

The International Fuel Tax Agreement (IFTA) is an agreement between 10 provinces in Canada and 48 states in the United States of America. It makes it easier for inter-jurisdictional carriers to register, license, report and pay taxes for motor fuels (such as diesel and gasoline). Carriers pay fuel taxes to their base jurisdiction, to which

they register under IRP. Those taxes are then distributed to the jurisdictions in which the vehicles traveled

Canadian producer trucks hauling grains into the U.S. must be registered with the U.S. DOT (if they are not carrying/delivering their own grain). U.S. DOT does not accept Canadian DOT registration. The International Registration Plan (Plan) is a registration reciprocity agreement among states of the United States, the District of Columbia and provinces of Canada providing for payment of apportionable fees on the basis of total distance operated in all jurisdictions. Vehicles not registered under IRP require trip permits to travel into jurisdictions other than where they are registered. IRP's fundamental principle is to promote and encourage the fullest possible use of the highway system.

Canadian producer trucks are not permitted to burn purple gas in the U.S. – they must fill with clear diesel prior to entering into the U.S. A helpful page on Canadian rules for dyed diesel can be found at:

<http://www.dieselplace.com/forum/showthread.php?t=415525>

Producers are exempt from drug and alcohol testing as long as they are operating their own vehicle within 150 miles of their farm. (Electronic Code of Federal Regulations, Title 49: Transportation, Part 382 - Controlled Substances and Alcohol Use and Testing, S382-103 - Applicability) – presumably they are subject to testing if they exceed the maximum distance allowable (150 miles) - If a producer employs farm personnel that operate their farm-plated vehicles (delivery truck) the same rules apply to the employed person as the producer.

Canadian commercial trucks must be registered and licensed in each jurisdiction they will travel through and for the weight they will be hauling. They must register through the International Registration Plan (IRP) in the base (home) jurisdiction of the vehicle.

Canadian commercial trucks are subject to Drug and Alcohol Testing through the U.S. Department of Transportation. Commercial motor carrier companies engage a certified company to conduct pre-employment drug and alcohol testing for all employed drivers. Drivers must pass the test before being permitted cross-border access. After this initial test, the drivers are subject to random testing and must pass the test to maintain their approved status.

**e) What are the load restrictions for grain trucks on U.S. highways?**

The U.S. has federal, state and local (county and city) restrictions and requirements for vehicles that move over roads and bridges. For example, U.S. weight limits for heavy vehicles such as grain trucks on the federal interstate highways are most often 80,000 lbs. of total weight. Emergency and seasonal weight limits are also often put in place and enforced by Federal, State and Local authorities. Some states may have higher limits that apply to state roads and highways only. Best information is most often found by contacting the appropriate authority. Contact

information and details on the restrictions that apply can be found online. For instance:

1. The U.S. Department of Transportation (USDOT) provides information on freight management and operations including a link to truck size and weight and bridge limits at: <http://ops.fhwa.dot.gov/freight/index.cfm>.
2. The U.S. DOT also provides a website to locate the Department of Transportation states: <http://www.fhwa.dot.gov/webstate.htm>.
3. The U.S. Department of Transportation website: <http://www.fmcsa.dot.gov/intl-programs/canada/index.htm>. The site is organized both by geographic area and by topic. You can click on a State or Province on a map to find information that pertains specifically to Commercial Motor Vehicle (CMV) operations for such items as general motor carrier information, licensing, oversize/overweight permitting, International Fuel Tax Agreement (IFTA) requirements, etc. You also can search by topic using the dropdown box below the map to find available information within that topic for all States and Provinces.
4. The spreadsheet at: [www.bttinc.com/news/US\\_wgt\\_limitations.xl](http://www.bttinc.com/news/US_wgt_limitations.xl), provides for an interactive database of U.S. weight limitations.
5. Here are examples of U.S. State websites that may be helpful:
  - Idaho: <http://511.idaho.gov/>
  - Minnesota: <http://www.dot.state.mn.us/>.
  - Montana: <http://www.mdt.mt.gov/travinfo/>
  - North Dakota: <http://www.dot.nd.gov>
  - Washington: <http://www.wsdot.wa.gov/commercialVehicle/Restrictions/>

**f) What documentation is required to import grain of Canadian origin into the U.S?**

Primary responsibility for administering the U.S. laws relating to import, export and the collection of duties is given to the United States Customs and Border Protection (CBP), an agency within the Department of Homeland Security.

Information specific to importing agricultural products into the U.S. can be found at USDA's Foreign Agricultural Service (FAS) website:

<http://www.fas.usda.gov/importprograms.asp>.

FAS is the official U.S. Enquiry Point as required under the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary (SPS) measures for all WTO member inquiries related to SPS regulations. It is also responsible for the Food and Agricultural Import Regulations and Standards (FAIRS) report that aims to consolidate foreign import procedures for food and agricultural products. FAS provides technical information on allowable pesticide residues, food labeling and standards, sanitary and phytosanitary requirements, acceptable food additives, and certification and testing requirements of countries importing U.S. agricultural and food products.

Phytosanitary regulations are established by the importing country. Exporters must determine if the importing country requires certification that the commodity meets that country's phytosanitary regulations; for example, freedom from a particular prohibited insect. Phytosanitary import requirements for the U.S. are determined by USDA's Animal and Plant Health Inspection Service (APHIS). APHIS information on importing grain can be found here: [Plant Import Information](#). Additional information regarding importing requirements can be found in the Foreign Agriculture Service's (FAS) Global Agriculture Information Network (GAIN) reports or by calling APHIS Customer Service Support office at 301.851.2046 or 877.770.5990. Subject to changes that reflect the ongoing risk assessments of APHIS, our current understanding is that wheat and barley from Canada can be imported into the U.S. without a Phytosanitary Certificate.

The U.S. Food and Drug Administration (FDA) is responsible for determining whether or not an import to the U.S. is in compliance with or in violation of the acts enforced by FDA. FDA acts under provisions of the U.S. law contained in the U.S. *Federal Food, Drug and Cosmetic Act*. Importers of grain are responsible for ensuring that the products are safe, sanitary, and labeled according to U.S. requirements. FDA does not approve, certify, license or otherwise sanction individual importers, products, labels or shipments. We are not aware of any current actions taken by FDA with regard to wheat or barley imported from Canada. More information on FDA actions can be found at:

<http://www.fda.gov/ForIndustry/ImportProgram/default.htm>

Please review questions in section 6): g through k for information on crop protection chemical requirements and related matters addressed by the U.S. Environmental Protection Agency (EPA). EPA also coordinates with CBP, USDA, Food and Drug Administration (FDA), State and local authorities on actions related to biosecurity. Biosecurity is the protection of agricultural animals from any type of infectious agent -- viral, bacterial, fungal, or parasitic. We are not aware of any current actions related to biosecurity with regard to wheat or barley imported from Canada. More information on U.S. biosecurity actions can be found at:

<http://www.epa.gov/oecaagct/tbis.html>

**g) Are end-use certificates required for shipments of Canadian origin in the U.S.?**

Yes, importers are currently required to submit end-use certificates for wheat only and that is expected to be eliminated by August 31, 2012. Currently the North American Free Trade Agreement Implementation Act (NAFTA Act) requires the U.S. Secretary of Agriculture to establish end-use requirements for wheat and barley imported from any foreign country or instrumentality that requires end-use certificates for imports of U.S. produced commodities. Canada is the only nation that requires such certificates, and U.S. wheat is the only commodity subjected to the Canadian restrictions. As a result, the Farm Service Agency has implemented an End-Use Certificate Program that requires the "identity preserved" storage of Canadian-produced wheat that enters the United States.

U.S. Importers are required to submit end-use certificates to the Farm Service Agency (FSA) within fifteen work days of the grain entering the United States. All sales and resales of Canadian-produced wheat are required to be reported within fifteen days of the sale. U.S. exporters and end users are also required to submit quarterly reports on consumption amounts and methods.

Existing U.S. regulations [7 C.F.R. Part 782 Section 782.11] obligate the U.S. to suspend its end-use certificate requirement within 30 calendar days following the date Canada eliminates its end-use certificate requirement on imports of U.S. commodities.

More information on the U.S. End use Certificate program can be found at:  
<http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=pai-eu>

#### **h) Where can I find current and additional information related to border crossing?**

One website dedicated to making it easier for everyone who has to cross the United States / Canadian border is <http://www.ezbordercrossing.com/>. At the site you will find a separate page for every port along the 4,000 mile border, congestion reports and a wealth of information on what is happening on the roads and border crossing points. Current border wait times, weather conditions, road conditions, traffic reports, port hours of operation, maps and contact information are some of the useful tools, and much, much more.

Canada's Border Service Agency ([www.cbsa.gc.ca](http://www.cbsa.gc.ca)) provides some current information including a webpage listing wait times: <http://www.cbsa-asfc.gc.ca/bwt-taf/menu-eng.html>.

Many of the U.S. States and Canada Provinces have current information available on their websites. Examples include:

Idaho: <http://511.idaho.gov/>

Michigan: <http://michigan.gov/drive>

Washington State: <http://www.wsdot.com/traffic/>

Minnesota: <http://www.511mn.org/>

Montana: <http://www.mdt.mt.gov/travinfo/>

## 6) Regarding Delivery Of Grain

### a) What sampling methods are used by U.S. grain elevators when receiving grain by truck?

U.S. elevators typically use a probe sample prior to unloading or a hand sample while unloading to sample grain received from trucks at the elevator.

Typically, when Canadian grain arrives by truck at a local U.S. elevator, an “unofficial” grain sample (that is, taken by an individual not licensed by USDA’s Federal Grain Inspection Service (FGIS)) will be taken from the truck either by probe or an end-gate sample. The sample will typically be tested for dockage, test weight, moisture and protein. More tests may or may not be done depending on the physical appearance of the sample and the relevant conditions of the crop year. For example, if conditions have been conducive to sprout damage, a falling numbers test may be done. Likewise, a test for DON (vomitoxin) might be conducted if conditions warrant. Other factors that could be graded include dark, hard vitreous, (DHV) damage, shrunken and broken kernels. Elevators that load rail shuttles tend to have more sophisticated testing equipment, and in some cases “official” grain inspection agencies, designated by FGIS, may have a satellite office at some train loading stations. Such offices are authorized by FGIS to make an official determination of all official U.S. grade factors. Smaller elevators would typically send samples to a lab for falling number and DON tests. All U.S. locations should be expected to grade according to U.S. factors and grading scales. Unless an “official” grain inspection agency is available, grade and factor determination will generally be conducted by personnel hired by the elevator. If there is a question about a particular grade or factor within a grade, there may be an opportunity for a representative sample to be drawn and submitted to an “official” agency or some other qualified third party at a different location. The delivering farmer should expect to pay a reasonable fee for the “official” grade determination. (Specific rights regarding grade determination may vary by state and Canadian farmers should become familiar with their rights and obligations under various state laws. Links to some of these laws are included in the answer to question 2-d above)

USDA/FGIS official inspection agencies can be located at this website:

[http://www.gipsa.usda.gov/fgis/svc\\_provid/providers.html](http://www.gipsa.usda.gov/fgis/svc_provid/providers.html)

### b) When grain of Canadian origin receives a U.S. grade in the U.S., How is the grade determined?

The sample will typically be tested for dockage, test weight, moisture and protein. More tests may be or may not be done depending on the physical appearance of the sample and the relevant conditions of the crop year. For example, if conditions have been conducive to sprout damage, a falling numbers test may be done. Likewise, a test for DON (vomitoxin) might be conducted if conditions warrant. Other factors that could be graded include DHV (dark, hard vitreous), damage, shrunken and broken



kernels. Unofficial U.S. labs (not designated by USDA's Federal Grain Inspection Service) are not allowed to certify official designations (e.g., "U.S. No. 2" grain).

Elevators that load rail shuttles tend to have more sophisticated testing equipment and in some cases "official" grain inspection agencies (designated by USDA's Federal Inspection Service) may have a satellite office at some train loading stations. Such offices are authorized to make a determination of all grade factors and apply a U.S. grade. Smaller elevators would typically send samples to a lab for falling number and DON tests. Unless an "official" grain inspection agency is available, grade and factor determination will generally be conducted by personnel hired by the elevator.

USDA/FGIS official inspection agencies can be located at this website:  
[http://www.gipsa.usda.gov/fgis/svc\\_provid/providers.html](http://www.gipsa.usda.gov/fgis/svc_provid/providers.html)

**c) Are varietal declarations for Canadian origin grain required by U.S. buyers and elevators?**

Not unless they are required under commercial contract. Sometimes buyers may require knowledge of the variety, most likely only if the specific variety is required under contract. Variety is not a factor in determining U.S. grades.

**d) What documentation is required regarding the producer's chemical use when grain of Canadian origin is delivered to a U.S. grain facility?**

Unless specified in contracts no specific documents related to chemical use are required to sell grain to U.S. grain elevators or to anyone in the U.S.

All crop protection chemicals (or pesticides) used in the U.S. are regulated by federal and state law. Before farmers and other applicators can use them, crop protection chemicals undergo extensive research, development, testing, governmental review and approval to protect human health and the environment. Pesticide use and development are regulated by the U.S. Environmental Protection Agency (EPA) under several different U.S. laws, including the *Federal Insecticide, Fungicide, and Rodenticide Act* and the *Pesticide Registration Improvement Act*. EPA enforcement provides for use of chemicals in accordance with labels it approves. EPA regulation and enforcement is integral to safe use of crop protection chemicals and providing for grain that does not exceed Maximum Pesticide Residue Levels. Any use of chemicals that is not consistent with EPA regulation is a violation of law and may render grain not merchantable.

The U.S. Food and Drug Administration (FDA) conducts a surveillance monitoring program that analyzes samples of produce and commodities of both domestic and foreign origin for pesticide residues. If residues are found that exceed established tolerances or for which no tolerance is established, enforcement action can be taken (e.g., rejection of foreign shipment).

While many of the contracts used to buy and sell grain include clauses under which buyer and seller agree to comply with the U.S. and Canadian regulatory prerequisites applicable to the contract, in the U.S. system grain buying and selling is an environment under which grain is essentially traded in the U.S. with an “implied warranty of merchantability” meaning the grain being sold is subject to a warranty implied by law that goods are reasonably fit for the general purpose for which they are sold. In international sales law, merchantability forms part of the ordinary purpose of the goods. According to Article 35(2)(a) of the United Nations Convention on Contracts for the International Sale of Goods, a seller must provide goods fit for their ordinary purpose.

In the United States, this obligation is in Article 2 of the Uniform Commercial Code (UCC). This warranty will apply to a merchant (that is, a person who makes an occupation of selling things) who regularly deals in the type of merchandise sold. Under U.S. law, goods are 'merchantable' if they meet the following conditions:

1. The goods must conform to the standards of the trade as applicable to the contract for sale.
2. They must be fit for the purposes such goods are ordinarily used, even if the buyer ordered them for use otherwise.
3. They must be uniform as to quality and quantity, within tolerances of the contract for sale.
4. They must be packed and labeled as per the contract for sale.
5. They must meet the specifications on the package labels, even if not so specified by the contract for sale.

If the merchandise is sold with an express "guarantee", the terms of the implied warranty of merchantability will fill the gaps left by that guarantee. If the terms of the express guarantee are not specified, they will be considered to be the terms of the implied warranty of merchantability. The UCC allows sellers to disclaim the implied warranty of merchantability, provided the disclaimer is made conspicuously and the disclaimer explicitly uses the term "merchantability" in the disclaimer. Some states, however, have implemented the UCC such that this cannot be disclaimed.

**e) Where can I find information regarding chemicals approved in the U.S. but not in Canada or approved in Canada but not in the U.S.?**

One good place is the International Pesticide & Application Database (IPAD) online at: <http://www.mrldatabase.com/>

IPAD helps users determine rates and limitations on the usage of agricultural pesticides. IPAD is a crop specific database that cross references pesticides by chemical brand name, method of application, rates and frequency of application, as well as pre- and post-harvest interval. The database contains information for the U.S., Mexico, and Canada, 42 crops, 1400 active ingredients, 29 pesticide types, and 14 different timings resulting in nearly 24 million combinations. The IPAD system provides chemical use practices in order to ensure compliance with a target country's MRL standards and provides practical guidance to maximize the benefit to the U.S. producer.

**f) Where can I find information regarding MRLs in the U.S.?**

USDA FAS maintains a global database on pesticide MRLs at:

<http://www.mrldatabase.com/> and at that site related market information from some countries is linked.

Canada's Pesticide MRLs Market Information Page on this USDA website is at:

[http://www.mrldatabase.com/marketinfo/marketinfo\\_332\\_6080291112014235.pdf](http://www.mrldatabase.com/marketinfo/marketinfo_332_6080291112014235.pdf).

**g) What recourse do sellers of Canadian grain have with quality problems or rejection in the U.S.?**

Sellers should be sure to understand all terms that apply to the sale of grain to any U.S. grain buyer. Contract provisions or trade rules like those maintained by the National Grain and Feed Association often provide specific methods of recourse for disputes including those related to quality determination. Sellers of grain wishing to deliver to a U.S. grain facility are advised to contact the company prior to delivery to obtain the information necessary to conclude a commercial transaction.

If there is a question about a particular grade or factor within a grade there may be an opportunity for a representative sample to be drawn and submitted to an U.S. "official" agency or some other qualified third party. If the shipment was already officially inspected in the U.S. after entry, the FGIS appeal inspection process can be invoked under specific circumstances. The delivering farmer should expect to pay a reasonable fee for the "official" grade determination. More information on the official services provided by the U.S. Department of Agriculture's Federal Grain Inspection Service (FGIS) can be found at: <http://www.gipsa.usda.gov/fgismain.html>

Specific rights regarding grade determination may vary by state and Canadian farmers should become familiar with their rights and obligations under various state laws. For example further details of such laws are available at:

1. Idaho Department of Agriculture: [www.agri.idaho.gov](http://www.agri.idaho.gov)
2. Michigan Department of Agriculture: [www.michigan.gov/mdard/](http://www.michigan.gov/mdard/)
3. Minnesota Department of Agriculture: [www.mda.state.mn.us/](http://www.mda.state.mn.us/)
4. Montana Department of Agriculture: [www.agr.mt.gov/](http://www.agr.mt.gov/)
5. Washington Department of Agriculture: [www.agr.wa.gov/](http://www.agr.wa.gov/)

## 7) Settlement - Payment

### a) When is payment received for Canadian grain delivered to U.S. elevators?

Technically the seller can receive payment promptly at the time of a truck delivery, but the normal practice is to complete delivery of the farm bin or bins being emptied, or the fields being harvested, before making payment.

### b) What is required to prove clear title to Canadian grain delivered to U.S. elevators?

In the U.S. if grain that has a perfected lien against it is sold into commerce, the buyer may face the risk of paying twice for the same amount of grain. State laws vary on this aspect of risk to the elevator (for example, in some states certain liens may have priority), but generally the various states have implemented methods to track lien grain through either direct notification systems (requiring the lender to notify potential buyers) or through a central filing system that permits the buyer to check a central information system regarding lien status and whether grain can be purchased with a clear title. As of this writing, it is not well understood how Canadian law might be applied to Canadian grain marketed in the U.S. so that clear title can be assured and confirmed. And it is not clear how easy it will be for U.S. buyers to track the existence of liens on Canadian grain. Canadian producers who intend to market wheat in the U.S., particularly where the producer does not have a previously established trading relationship with a U.S. elevator, may wish to contact the elevator prior to delivery to establish a reasonable method to determine clear title. In the event no advance contact is made with the elevator, if a truck shows up with a load of grain, the Canadian seller should expect the elevator manager to request some demonstration of clear title and/or contact information for Canadian parties that can be contacted to establish reasonable assurances that the grain being sold is free and clear of any liens.

### c) How are grain facilities licensed in the U.S.?

U.S. grain elevators providing storage for grain owned by farmers or others are generally required to have a warehouse license to conduct business. This warehouse license may be issued by either the federal U.S. government or the state government. Some states have a grain merchandising license (sometimes called a grain dealer license). The federal government has no merchandising licensing requirements for facilities. For example, relevant license requirements for grain buyers and storage providers can be found at:

1. U.S. Department of Agriculture, Warehouse Act regarding grain storage: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=was-ua>
2. Idaho: [www.agri.idaho.gov](http://www.agri.idaho.gov)
3. Michigan Department of Agriculture: [www.michigan.gov/mdard/](http://www.michigan.gov/mdard/)

4. Minnesota Department of Agriculture: [www.mda.state.mn.us/](http://www.mda.state.mn.us/)
5. Montana Department of Agriculture: [www.agr.mt.gov/](http://www.agr.mt.gov/)
6. Washington Department of Agriculture: [www.agr.wa.gov/](http://www.agr.wa.gov/)

**d) What are the bonding requirements and payment protection programs in place for grain facilities in the U.S.?**

U.S. buyers are either privately owned companies or farmer-owned cooperatives. There is generally no problem with sufficient funds being held by the elevator business to cover the checks issued to grain sellers, but bankruptcies can occur.

**e) Beyond the bank deposits and net assets of the elevator company, what other resources are available to assure financial performance of the U.S. buyer?**

U.S. grain elevators, because they provide storage services, are generally required to have a warehouse license to conduct business. This warehouse license may be issued by either the federal U.S. government or the state government. There are specific requirements under either state or federal law for: 1) net worth for the business; 2) bonding requirements to cover storage obligations (warehouse receipts or scale tickets or other evidence of producer-owned grain stored in the facility); and in some cases, 3) an indemnity fund has been established in a state to cover any other additional losses on storage obligations. The federal warehouse licensing program does not have any indemnity fund, and relies only on net worth and bonding to cover losses.

With respect to grain that is sold to the elevator, if the business becomes illiquid financially, and thus unable to make the payment good, some states have a grain merchandising license (sometimes called a grain dealer license). The federal government has no merchandising licensing requirements for facilities. Under state law, merchandising (grain dealer) regulations generally require a separate merchandising bond; sometimes require additional net worth for the business, and some states have indemnity funds that can cover a portion of potential losses on grain sold.

Sellers of Canadian grain into U.S. grain facilities should refer to the specific state statutes provided as references for this explanation. Sellers of Canadian grain into the U.S. should be aware that grain that is sold in the U.S., but not paid for (deferred or delayed payment), is generally considered as having had title passed at the time of the initiation of the DP contract, and the seller is considered an unsecured creditor if the matter comes before a bankruptcy court. Specific laws that apply in individual states may have slight variations from what is the typical situation described here.

For example, relevant license requirements for grain buyers and storage providers can be found at:

1. U.S. Department of Agriculture, Warehouse Act regarding grain storage: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=was-ua>
2. Idaho Department of Agriculture: [www.agri.idaho.gov](http://www.agri.idaho.gov)

3. Michigan Department of Agriculture: [www.michigan.gov/mdard/](http://www.michigan.gov/mdard/)
4. Minnesota Department of Agriculture: [www.mda.state.mn.us/](http://www.mda.state.mn.us/)
5. Montana Department of Agriculture: [www.agr.mt.gov/](http://www.agr.mt.gov/)
6. Washington Department of Agriculture: [www.agr.wa.gov/](http://www.agr.wa.gov/)

## 8) Check-offs, Taxes and Other Deductions:

### a) What check-offs will Canadian grain delivered to the U.S. be subject to?

The U.S. has established marketing promotion programs for wheat and other commodities that are paid for by producers growing wheat in the U.S. and/or selling wheat at U.S. locations. The check-off assessment is generally collected at the first point of sale in the U.S. and the elevator has the responsibility for assessing and collecting the money. The application of this assessment will vary by state, and is described in more detail in the detailed information for each state. If applied, checkoffs are often refundable.

For example we understand current U.S. checkoff rates and rules include:

- 1) Montana - wheat - 2 cents per bushel, applies to Canadian wheat, refundable  
Re: Montana state law - Title 80, Chapter 11, Part 2
- 2) Minnesota - wheat - 2 cents per bushel, applies to Canadian wheat, not refundable unless proven that a check-off fee has already been paid that is determined to have a comparable purpose, Re: Minnesota Agricultural Commodities Promotion Act - State Statue 17.51
- 3) North Dakota - wheat 1.5 cents per bushel, applies to Canadian wheat , refundable, Re: ND Century Code Title 4.1 Agriculture, Chapter 13
- 4) Washington - only applies to wheat produced and sold in Washington, not applicable to Canada. Re: Revised Code of Washington - Title 15, Chapter 115
- 5) South Dakota - applies to commercial wheat sales in SD, can only be applied once, refundable. Re: South Dakota Codified Laws - Chapter 38.10

U.S. wheat producer check-off dollars are managed by state wheat commissions, they are:

[Arizona Grain Research and Promotion Council](#)

[Arkansas Wheat Promotion Board](#)

[California Wheat Commission](#)

[Colorado Wheat Administrative Committee](#)

[Idaho Wheat Commission](#)

[Kansas Wheat Commission](#)

[Maryland Grain Producers Utilization Board](#)

[Minnesota Wheat Research and Promotion Council](#)

[Montana Wheat and Barley Committee](#)

[Nebraska Wheat Board](#)

[North Dakota Wheat Commission](#)

[Ohio Small Grains Marketing Program](#)

[Oklahoma Wheat Commission](#)

[Oregon Wheat Commission](#)

[South Dakota Wheat Commission](#)

[Texas Wheat Producers Board](#)

[Virginia Small Grains Board](#)

[Washington Grain Alliance](#)  
[Wyoming Wheat Marketing Commission](#)

Barley checkoffs are managed by: [Idaho barley council](#), The Minnesota Barley Research and Promotion Council, [Montana Wheat and Barley Committee](#), [Washington Grain Alliance](#) and the [North Dakota Barley Council](#).

**b) What other deductions will be made from the settlement for Canadian grain delivered to U.S. grain facilities?**

Other than the checkoffs described in a) above, we are not aware of any common or additional deductions from the quoted delivered price as long as all specifications of the contract are met. If contract specifications are not met, discounts may apply. Conditioning charges (drying, cleaning or fumigation) may apply for grain deposited for storage. Sellers should always check with buyers regarding terms for delivery. Settlement may include adjustments related to contract requirements



## 9) More on Relevant Regulation and Standards

### a) What other information is important for grain deliveries in the U.S.?

Anyone importing into the United States may want to refer to the U.S. Customs and Border Patrol (CBP) website for general information related to importing into the United States: [http://www.cbp.gov/xp/cgov/trade/basic\\_trade/](http://www.cbp.gov/xp/cgov/trade/basic_trade/) and a pdf guide from CBP can be found at

<http://www.cbp.gov/linkhandler/cgov/newsroom/publications/trade/ius.ctt/ius.pdf>

The U.S. Small Business Administration (SBA) importing website, <http://www.sba.gov/content/importing-goods>, and blog page on Importing Goods into the U.S. – An Introductory Guide for Small Business Owners:

<http://www.sba.gov/community/blogs/importing-goods-us—introductory-guide-small-business-owner>

More specific information on importing agricultural products can be found at USDA's Foreign Agricultural Service (FAS) Website:

<http://www.fas.usda.gov/importprograms.asp>. FAS is the U.S. Enquiry Point as required under the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary (SPS) measures for all WTO member inquiries related to SPS regulations. It is also responsible for the Food and Agricultural Import Regulations and Standards (FAIRS) report that aims to consolidate foreign import procedures for food and agricultural products. FAS provides technical information on allowable pesticide residues, food labeling and standards, sanitary and phytosanitary requirements, acceptable food additives, and certification and testing requirements of countries importing U.S. agricultural and food products.

On the FAS website you will find the following links to the USDA Animal Plant Health Inspection Agency (APHIS) regarding phyto-sanitary measures

[Animal and Plant Health Inspection Service:](#)

[Import/Export Information](#)

[Permit Services](#)

[International Phytosanitary Standards](#)

[Traveler's Tips](#)

### b) What if the grain is to be re-exported from U.S.?

Once traded beyond the first point of delivery, we address the grain transaction under the Grain Commercial module on this website. For any grain that is going to be re-exported from U.S., it is the exporter and his supplier's responsibility to ensure the commodity meets the trading, import and export requirements of the U.S. and the destination country. Commodity specific export requirements may be available by contacting the information sources listed in answer to 9a above. In most cases, once a grain shipment has been cleared by U.S. CBP, it can move within the U.S. In cases where an import permit was required, the importer is still obligated to follow all

conditions set out in an import permit. More information can be found on the Grain Commercial FAQ.

**c) Once a truck with grain is in the U.S. are there any additional conditions that must followed?**

Compliance with U.S. laws, including posted speed limits and other laws impacting transport in the U.S. is mandatory. Canadian trucks are allowed to deliver loads from Canada and pick up loads with a Canadian destination but generally cannot pick up U.S. loads with a U.S. destination.