



Australian Grain Industry – Code of Practice Technical Guideline Document

No. 8

DISPUTING CLASSIFICATION

**Compiled on behalf of the Australian Grain Industry by:
Grain Trade Australia**

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Technical Guideline Document

No. 8 Disputing Classification

Version Control

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1. Application

This Technical Guideline Document (TGD) refers to Industry best practice for managing disputes relating to the classification of grain tendered for delivery. It complements the Australian Grain Industry – Code of Practice (GTA Code of Practice). It does not address expert determination and arbitration procedures under GTA Dispute Resolution Rules.

2. Discussion on Dispute Resolution

2.1 What is a Dispute

Disputes will occur when the deliverer of the grain disputes the classification of the grain tendered for delivery.

As significant financial penalties may apply based on the process for classifying grain and many of the tests conducted to classify grain are “Subjective Tests” there is potential for disputes to arise.

Upon classification of a load, the deliverer of the grain may dispute the assessment provided and request a re-test. In all cases, the samplers must treat the deliverer of the load with respect and attempt to provide the reasoning for the assessment. If practicable samplers should provide evidence for their assessments such as showing the grains that may contain the defect. These measures seek to avoid the escalation of disputes and the invocation of formal dispute resolution procedures.

2.2 Why have a Dispute Procedure?

Section 2.5.1 of the Code of Practice requires that Storage Providers who receive and classify grain:

- Make available at each receival site a documented dispute and rejection procedure for each load tendered for delivery; and
- Preference is for the use of a common industry procedure.

A key component of those processes is a documented procedure to apply in a dispute to ensure that the load achieves the highest grade possible. A fully documented procedure enables all persons delivering the grain to know their rights and the method of application of the Standards by the company classifying the grain.

2.3 Causes of Dispute

Disputes may arise when the deliverer of the grain disagrees with the assessment for any parameter listed in the Standards that may:

- Cause a lower payment due to the load being classified at a lower quality;
- Lead to downgrading to a lower than expected grade of the load; or
- Rejection of the load.

In this Technical Guideline Document (TGD), two types of tests are referred to:

Objective Test

- An objective test is one where the analytical result is determined by an instrument e.g., Oil content, protein content.

Subjective Test

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- A subjective test is where the analysis result is determined using visual analysis and includes a range of quality parameters such as:
 - Defective grains (e.g., severely damaged, distorted, insect damaged, stained); and
 - Contaminants (e.g., weed seeds)

This subjective analysis generally requires industry to utilise reference material to aid assessment (such as the Visual Recognition Standards Guide (VRSG)) for various commodities. The VRSG contains a range of photographs and illustrations of defective grains to supplement the GTA Trading Standards. The definitions in the GTA Trading Standards are to be read in conjunction with the photos in the VRSG where shown which depict the minimum affected standard for a grain to be classified as the respective defect shown.

Disputes will arise for a number of reasons depending on the test conducted. Causes of a dispute may include:

- Equipment used in the classification process is not suitably maintained, calibrated or operated;
- Staff are not adequately trained;
- Staff do not follow the required sampling and testing procedures;
- While all sampling, testing processes are done correctly, results are obtained just outside of the tolerance for the applicable standard, resulting in a downgrade;
- The inherent variability of grain delivered in bulk in a truck tendered for delivery; and
- Variability in results obtained due to inherent variability in sampling and testing.

2.4 Regulatory Controls

2.4.1 Industry Control

As noted above, it is a requirement in the Code of Practice that each organisation involved in the receipt and classification of grain must have a documented dispute resolution process.

Associated with a dispute process, there are a range of other issues that are not dealt with in this TGD. These may include aspects such as:

- GTA Trade Rules, including arbitration issues.
- Individual organisations may also apply their own dispute rules as specified in marketing contracts or Storage and Handling Contracts.

In some instances, these clauses may over-ride any dispute process.

2.4.2 Government Control

There are no Government controls relating to the dispute process used by industry at the point of delivery of grain. Industry chooses to manage its own dispute process through self-regulation and provided industry manages this process in a transparent, consistent and equitable way, it is not expected that Government intervention would be required.

2.5 Considerations to be Included in a Dispute Resolution Procedure

There are a number of mechanisms available to resolve a dispute, which may be included in an industry dispute resolution procedure.

2.5.1 General

The following may be incorporated into dispute resolution procedures generally:

- The procedure should apply to all loads in all instances.
- The procedure should be consistent. It should not vary depending on circumstances such as:
 - Prior quality delivered by that person; and
 - Quality of grain already received in the stack/storage.
- It is preferable for all of industry to follow a similar dispute resolution procedure however this is not mandatory.
- The procedure should be documented and made available to all industry as required.
- The dispute procedure should clearly define which tests are allowed to be disputed e.g., all tests, or only those that do not have a NIL tolerance.
- The dispute procedure should define when a result is “outside of the boundaries for a dispute to be permitted” e.g., if a result is over double the tolerance permitted in the standards then it would be unrealistic to permit a dispute in most circumstances.
- The dispute procedure should clearly define whether only the test that is subject to dispute will be retested, or the entire sample re-assessed for all parameters listed in the standards.
- There should be a maximum number of re-tests permitted to be conducted.
- When using third parties or a laboratory for re-assessment in a dispute situation, consider whether reference tests must be used as opposed to a rapid method (e.g., Dumas protein versus NIR).
- Where the disputed sample is sent for independent or laboratory analysis, consider whether a cost recovery charge for the analysis is to be applied to the deliverer of the grain who raised the dispute.
- Determine the receipt and storage strategy to be applied to the disputed load while waiting for the third-party results to be obtained. Generally, industry receives the load as per the original sampler assessment results.
- Determine what charges and payments are to occur following receipt of the final disputed results:
 - For a load upgraded, the receiver generally bears the cost of analysis and re-grading.
 - For a load downgraded the deliverer of the grain generally bears the cost of analysis and re-grading.
- When developing the dispute procedure, considering the impact of the dispute procedure when a large number of trucks are in the queue, thus potentially slowing the receipt process. For example, a dispute may be allowed provided the truck goes to the end of the queue.
- Ensure it is clearly documented who will assume the price risk while awaiting results. Generally, it is the deliverer of the grain.

Note that industry is expected to apply a range of programs to monitor the quality of grain received. While not directly related to their dispute resolution procedure, these programs may enable an individual storage provider to vary their dispute procedure from those generally applied by industry. These programs may include:

- Running sample collection and monitoring of quality received at a site by grade and commodity.
- Collection on weighbridge ticket quality data for particular quality parameters and determining the weighted average for each storage at a site.
- Dynamic Bin Strategy (or Active Stack Management) whereby “live” monitoring of the quality of the stack enables loads to be received outside of the standards for particular quality parameters only.

2.5.2 Dispute Not Allowed

Industry should consider whether a dispute is permitted in all instances.

Generally disputes over classification are not permitted in the following circumstances, in which case the initial classification result will apply with no re-test permitted:

- Grain moisture:
 - Where storage conditions cannot be monitored and controlled.
 - Where the storage period is not known.
- When the load cannot be accepted. In these instances the load will be rejected without appeal. This includes material in the load that has a nil tolerance in the standards, including:
 - Objectionable Material such as glass, metal, rocks;
 - Live Stored Grain Insects;
 - Pickled grain;
 - Nil tolerance contaminants such as weed seeds; and
 - Nil tolerance defective grains as applicable by commodity.

For this procedure to be “transparent”, the sampler must ensure:

- The sample assessed is representative of the load; and
- Sample integrity is maintained, and it is not contaminated with material from a prior sample.

Note that a nil tolerance applies to detection of that quality parameter anywhere in the load during the receival process. Hence most standards state for these nil tolerance parameters (entire load). This means that grain may be rejected:

- Prior to sampling (the parameter is detected on the surface of the load);
- During sub-sampling of the sample obtained from probing;
- At any time during the analysis process; or
- At any other stage during the receival process such as during discharge into the receival pit.

2.5.3 Quality Parameters Permitted to be Disputed

Generally, the following parameters may be suitable for allowing a dispute and permitting a re-test to be conducted:

- Grain moisture:
 - Where storage conditions can be monitored and controlled.
 - Where the storage period is known.
 - Where the storage period is relatively short.
- When the load can be accepted.
- For any Objective and Subjective quality parameter where a tolerance exists above nil.

For a dispute to be accepted, it is generally accepted that the grain must be within a “reasonable proximity” to the limit defined in the standards. This ensures that repeated disputes are not permitted that are beyond the bounds of sampling and testing variability.

The following Table 1. outlines variability for some quality parameters and may be a useful guide to industry when developing a dispute resolution procedure:

Table 1. Quality Parameter Variables

Quality Parameter	Potential Procedure	
	Initial Result	Sample to be Assessed
Protein, moisture, oil	0.3% within the standards limit	Original GLC
Test Weight	0.3kg/hl within the standards limit	Original GLC
Screenings	0.3% within the standards limit	Original GLC
Retention	2.0% within the standards limit	Original GLC
Sprouted via Falling Number	Within 15 seconds below the standards limit	Original ground sample
Defective grains with tolerance above nil	Within half of the standards limit	Original 0.5 litre sample
Contaminants with tolerance above nil	Within half of the standards limit	Original GLC
GLC = Grower Load Composite sample, being the sample obtained following probing of the load		

2.5.4 Samples to be Assessed

Where a dispute is permitted, industry should clearly define in the dispute procedure what sample is to be re-tested under the dispute procedure. Various options for the collection of a sample for consideration under a dispute situation are outlined below. The suitability of these options will vary depending on the quality parameter under dispute, as outlined above under 2.5.3:

- If the retest is to be conducted on another sample drawn from the GLC sample, or a sub-sample obtained from the GLC or half litre sample.
- If the re-test is to occur via re-sampling the load. In this case the option exists that:
 - The load may be re-sampled and fully classified only once.
 - All tests under the standards are to be re-rested, not just the disputed test.
 - If all subsequent results obtained override all previously obtained results.
 - Re-sampling may not be possible if the truck has moved from the sampling platform, in which case the load may need to re-join the end of queue and be re-presented as a new load.
 - There may not be adequate time for further re-sampling of the load.
 - Re-sampling may lead to delays in receipt of other loads tendered for delivery.
- If the sample is required to be despatched to a laboratory for analysis the sample may need to be split into three representative sub-samples and appropriately sealed and details recorded (noting further probing of the load may be required to obtain sufficient sample):
 - One sample should be retained on-site.
 - One sample provided to the deliverer of the grain.
 - One sample despatched to the laboratory for analysis. In this instance it may be preferable to place the quality parameter in dispute (where relevant e.g., the distorted grains) inside a separate bag which is placed inside a second bag with the remainder of the sample, ensuring the entire sample is representative. Alternatively, it may be preferable for a new representative sample to be drawn from the truck in the presence of the deliverer of the grain.

2.5.5 Final Result to Apply

Following the re-sampling and re-testing, industry must determine which result will apply in a dispute situation. There are a number of possibilities that include:

- The second test result takes precedence over the first test result.
- The two test results will be averaged (or three where 3 tests are conducted).
- Taking the highest result will apply.
- Where an objective test occurs, the result of all tests obtained from the re-test will be applied (not just the disputed test).

2.6 Documenting the Outcome

Following resolution of the dispute, the usual practices at the receipt point in terms of sampling and quality data recording should generally be applied.

It may be appropriate to document the reasoning for the dispute and the outcome. This may be useful for quality control purposes to enable assessment during and/or after the main receipt process and to determine whether changes to processes are required, for example, including:

- To determine if further staff training is required;
- To determine a pattern that particular tests are consistently being disputed;
- To refine testing and dispute resolution procedures; and
- To assess if communication to industry on the processes to be followed is adequate.