

AMENDING ORDER 54

PART XIV DESIGNATED AGENCIES

Effective Date: **March 15, 2021**

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INTRODUCTION

As the regulator of the BC Vegetable Scheme, the BC Vegetable Marketing Commission (the Commission) is responsible for establishing the regulatory environment and policy framework for the marketing of regulated vegetables and monitoring compliance.

Agencies are granted authority by the Commission to market regulated product. While they operate as businesses, designated agencies are not industry stakeholders akin to hatcheries or processors in other regulated commodities. In this respect, the vegetable industry is unique. Agencies licensed by the Commission are very much true “agents” of the Commission, and they exist to further the Commission’s objectives of orderly marketing, and the maximization of producer returns through coordinated marketing.

An agency must operate in accordance with the authority granted to it by the Commission. It is the Commission’s responsibility to ensure that designated agencies and agency applicants are provided with clear and understandable rules that reflect the Commission’s policy objectives. Furthermore, the Commission must ensure that its designated agencies are accountable to the Commission in order to ensure that the Commission’s policy objectives are served by their actions.

As a result of the agency review process that commenced in 2018, it became apparent to the Commission that its current orders regarding the designation of new agencies, and the review of existing agencies, are deficient. In the Commission’s view, the current orders do not clearly articulate the Commission’s policy objective of promoting the interests of the industry as a whole through coordinated marketing that will maximize the returns of all producers. Furthermore, it is the Commission’s view that the existing orders contain too many ambiguities

that could give rise to disputes that could otherwise be avoided if the orders were drafted with greater precision. Consequently, the Commission has been engaged in a re-write of these orders. One of the primary objectives is to develop new orders that clearly convey the Commission's objectives. This amending order to PART XIV DESINGATED AGENCIES will permit new agency applicants to submit applications that precisely address the relevant considerations.

BACKGROUND

The overarching mandate of an agency is to represent a group of licensed producers and carry out the marketing duties of regulated vegetables;

- i. in compliance of the Consolidated General Order;
- ii. in respect of the operating principles of the orderly marketing system;
- iii. for the benefit of all producers;
- iv. in a manner that promotes the interests of the industry as a whole.

In 2018 the Commission initiated an engaged process with agencies to conduct agency reviews. The project focus was to provide the Commission with a comprehensive understanding of agency corporate policy and procedures, and insight on how each agency performs in relation to regulatory compliance and expectations. Over the next few months the Commission staff was in contact with each agency's management team to introduce the auditor, the review process, determine who we will be working with, and establish a review schedule. In addition to identifying inadequacies in regulatory clarity, the information gathered through this process was used to establish a plan in cooperation with agency management to address immediate deficiencies in regulatory compliance as per the current General Orders.

On completion of the 2018 agency reviews, a report was presented to the Commission by the auditor in July 2020 and circulated with industry advisory groups for comment. Over the next few months meetings were held with each advisory group to discuss the report outcomes and solicit feedback. The meeting sessions culminated with a workshop that was held in October 2020 with all advisory groups in attendance, and facilitated by an independent consultant. The facilitator also submitted a report based on his own experience and observations.

Moving forward, further discussion, and evaluation will continue to be held with agency management to benchmark industry best practices and identify specific issues and opportunities that will enhance orderly marketing for the industry as a whole. An outcome of this process will eventually lead to the establishment of industry specific metrics and reports that provide sufficient transparency on an agency's performance in fulfilling its marketing obligations, and being held accountable to the authority delegated to it by the Commission.

This amending order takes into consideration all feedback from engagements with agencies and the advisory groups throughout this review process that commenced back in 2018.

AMENDING ORDER

Part XIV Designated Agencies of the Commission's General Order be replaced with the amended Part XIV that can be found in Appendix A of this document.

S.A.F.E.T.I. PRINCIPLE

This decision satisfies the S.A.F.E.T.I. principles that are a foundation of the BCFIRB accountability framework and guide decision making by the Commission. Commissioners are committed to be pro-active risk managers and applying principles-based decision making to achieve responsive governance. These decisions are determined to be in the best interest of sound, orderly marketing within British Columbia and reflects a principle-based approach to regulation. They are validated for the following reasons:

STRATEGIC	<ul style="list-style-type: none">• Takes action to address ambiguities in the existing order that will likely give rise to unnecessary disputes, and furthermore, do not reflect a policy approach that promotes the interests of the industry as a whole. PART XIV of the General Order is replaced with new orders that clearly convey the Commission's objectives, and permits new applicants to submit applications that squarely address the relevant considerations.
ACCOUNTABLE	<ul style="list-style-type: none">• Builds accountability in the system by providing clear and concise rules that reflect the true intentions and policy objectives of the Commission that best promote the interests of the industry as a whole.
FAIR	<ul style="list-style-type: none">• The pending applicants are able to have their applications revised or resubmitted so that they may be processed under orders that accurately reflect the Commission's true intentions and policy objectives. The revised rules apply to all potential applicants – not specifically to them.
EFFECTIVE	<ul style="list-style-type: none">• Clear and understandable rules that reflect the legitimate policy objective of promoting the interests of the industry as a whole.• Leads to enforceable regulation that ensures fair and equitable market access by producers and agencies.
TRANSPARENT	<ul style="list-style-type: none">• The reports generated through the agency review process clearly articulate the reasons on why the Commission needs to take this approach.
INCLUSIVE	<ul style="list-style-type: none">• Agency management, producer / agency advisory groups have been engaged in the process that commenced in 2018.• Information gathered through the Supervisory review processes (2015 / 2020) has also been taken into consideration.

Respectfully submitted on behalf of the BC Vegetable Marketing Commission,



Debbie Etsell, Chair

APPENDIX A

AMENDING ORDER 54

PART XIV DESIGNATED AGENCIES

Application for Designated Agency Status

1. (1) A Person may apply in writing to the Commission for an order designating that Person as an Agency through which a regulated product may be marketed in accordance with the Commission's General Orders as amended from time to time.
- (2) Unless otherwise specified by the Commission in writing, applications for designated Agency status must be submitted to the Commission on or prior to June 1, for consideration by the Commission between June 1 and September 15 of that calendar year.
- (3) Applications for designated Agency status must include a detailed business plan addressing:
 - (a) the structure of the proposed Agency, including:
 - (i) the identities of the principals of the proposed Agency;
 - (ii) the identities of all shareholders and other Persons with a direct or indirect financial interest in the proposed Agency; and
 - (iii) particulars of the management and staff of the proposed Agency, including their marketing experience and skill level.
 - (b) commencement and operational capacity, including:
 - (i) the date that the applicant proposes to commence operations;
 - (ii) particulars of the facilities from which the proposed Agency will operate;
 - (iii) particulars of any other facilities that may be owned or operated by the proposed Agency including grading, packing, warehouse and storage facilities; and

- (iv) particulars of the applicant's capacity to market regulated product, the methods by which this is to be achieved, and the applicant's short and long-term objectives in relation thereto;
- (c) access to regulated product, including:
- (i) particulars of how the applicant intends to secure arrangements with Producers who will ship regulated product to the proposed Agency, and the dates on which such arrangements are expected to be secured;
 - (ii) a copy of the applicant's proposed GMA in a form that complies with the minimum standards established by the Commission;
 - (iii) copies of all letters of commitment obtained from arms-length Producers who wish to market regulated product through the proposed Agency; and
 - (iv) the amount of existing storage crop delivery allocation (tons) and/or greenhouse production allocation (m²) that is proposed to be transferred to the proposed Agency;
- (d) marketing strategy and framework, including:
- (i) particulars of the applicant's target market, including the type of regulated product intended to be marketed, the total amount of regulated product to be marketed by the applicant, and the total amount of regulated product to be received from each Producer who will market through the proposed Agency;
 - (ii) the applicant's assessment of market supply and demand, including an assessment of market supply and demand in areas where the proposed Agency intends to market regulated product;
 - (iii) particulars of the applicant's intended market placement of delivery and production allocation by target market category as defined by the Commission;
 - (iv) particulars of the applicant's intended application of delivery and production allocation towards the domestic (BC) market and towards the export (external to BC) markets; and
 - (v) particulars of the applicant's intended volumes of sales packed for end use and in bulk for further processing and/or repacking;

- (vi) the names and contact information of proposed customers of the proposed Agency; and
 - (vii) copies of all letters of commitment obtained from proposed customers of the proposed Agency;
 - (viii) particulars of any commercial agreements with third parties that may assist with transportation, grading, packaging, storage or marketing on behalf of the proposed Agency;
- (e) operational procedures, including:
- (i) particulars of quality assurance procedures relating to:
 - A. food safety, including an acceptable trace-back and recall system;
 - B. grade compliance;
 - C. handling and distribution;
 - D. record keeping; and
 - E. any label or product identification system;
 - (ii) particulars of the manner in which shared market access will be managed among the proposed Agency's Producers, including the method by which proceeds from sales would be distributed.
 - (iii) particulars of the manner in which shipments of regulated storage crops will be monitored in relation to delivery allocation, and the proposed Agency's production plan;
- (f) financial viability and risk management, including:
- (i) an asset statement;
 - (ii) a breakdown of all disbursements, expenses and charges to be deducted from sales proceeds on payment to Producers;
 - (iii) forecasts of anticipated earnings, cash flow and sales;

- (iv) copies of all letters of reference obtained from financial institutions supporting the proposed Agency;
 - (v) a copy of a valid business licence;
 - (vi) a copy of a performance bond, letter or credit, or particulars of a contingency plan addressing how Producers will be paid for regulated product in the event that the Agency encounters financial difficulties;
 - (vii) proof of product, third party, and director liability insurance;
- (g) advancement of Producer and industry interests, including:
- (i) particulars of how the proposed Agency would prioritize the marketing of regulated product;
 - (ii) particulars of how the proposed Agency would encourage collaboration in Agency decision-making with their Producers regarding the production, transportation, packaging, storage, and marketing of regulated vegetables; and
 - (iii) details on how the proposed Agency would comply with all applicable minimum pricing orders in relation to sales occurring both within and outside the Province.
- (4) Applications for designated Agency status must also:
- (a) demonstrate to the satisfaction of the Commission that the applicant's primary business objective is the marketing of regulated product in a manner that benefits the Commission and the British Columbia industry as a whole;
 - (b) demonstrate to the satisfaction of the Commission that the applicant has knowledge and understanding of the regulatory requirements and limitations imposed on Agencies under the Commission's General Orders;
 - (c) demonstrate to the satisfaction of the Commission that the applicant has knowledge and understanding of the market access system established under the Commission's General Orders for all applicable regulated products;

- (d) demonstrate to the satisfaction of the Commission that the applicant has sufficient knowledge and ability to service markets in British Columbia and Canada;
- (e) demonstrate to the satisfaction of the Commission that the applicant has the capacity to directly market regulated product without excessive reliance on wholesalers, or third-party grading, packing, warehouse and storage facilities, or that the applicant will otherwise make arrangements with such third parties in a manner that:
 - (i) would retain the proposed Agency's control throughout the marketing channel and permit the proposed Agency to be responsive to the changing needs and desires of the end-user;
 - (ii) would not expose the industry to unnecessary food safety risk;
 - (iii) would not be disruptive to orderly marketing;
- (f) demonstrate to the satisfaction of the Commission that the applicant has taken all reasonable steps to meet with, and seek the cooperation of, existing Agencies, and provide particulars of the result of such initiatives.
- (g) provide a rationale in support of the application with specific reference to the following:
 - (i) existing and anticipated requirements of the market that could be serviced by the proposed Agency;
 - (ii) how the proposed Agency would benefit producers shipping through that Agency;
 - (iii) how the proposed Agency would benefit the industry as a whole; and
 - (iv) the impact that the proposed Agency would have on existing designated Agencies.

Review of Applications by the Commission

2. (1) Applications for designated Agency status will be reviewed by a five-member panel of the Commission selected by the Chair.
- (2) The panel may, in its sole discretion, request that an applicant clarify any part of the application submitted, or rectify any perceived omission or deficiency in the application.
- (3) The applicant will be provided with an opportunity to present its application to the panel.
- (4) Following the applicant's presentation, the panel may summarily dismiss the application if it is satisfied that it would not be in the interests of the industry to grant designated Agency status.
- (5) Where the panel has decided that the application should not be summarily dismissed, the panel will engage in further consultation with industry stakeholders concerning the application. The applicant will be given an opportunity to prepare a redacted version of the application for review by industry stakeholders, provided that only information that is confidential, proprietary or constitutes a trade secret may be so redacted from the application reviewed by the panel.
- (6) Following consultation with industry stakeholders, the panel will decide whether to grant designated Agency status to the applicant. The panel will grant designated agency status only where it is satisfied that:
 - (a) there is a market requirement for the proposed Agency, and the designation of that Agency would benefit the industry as a whole having regard to the interests of all producers, including those marketing through other Agencies;
 - (b) it would not be in the interests of the industry for the proposed regulated product to be marketed by an existing Agency;
 - (c) the presence of the proposed Agency will not be disruptive to orderly marketing and will not result in increased competition among Agencies on price, which may have a detrimental effect on producer returns;
 - (d) the proposed Agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission Orders and the enabling legislation and regulations;

- (e) there is evidence-based demand for the specific product(s), grouped by end use customer, that are to be marketed by the proposed Agency, which demand is not already satisfied by existing Agencies;
- (f) there is evidence-based support from multiple licensed Commercial Producers, who are at arms-length from each other, and who intend to market regulated product through the proposed Agency;
- (g) the primary responsibility for marketing regulated product will rest with the proposed Agency, rather than wholesalers who may market regulated product on behalf of the proposed Agency;
- (h) the proposed Agency will comply with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province;
- (i) the proposed Agency will not have a detrimental effect on the delivery allocation and production allocation of existing producers not represented by the proposed Agency; and
- (j) the proposed Agency has the knowledge, capacity and ability to operate effectively as an Agency.

Review of Existing Agencies

- 3. (1) The Commission may from time to time review existing Agencies and assess whether designated Agency status should be maintained, suspended, made subject to terms and conditions, or revoked.
- (2) After providing an existing designated Agency with an opportunity to be heard, the Commission may suspend, impose terms or conditions with respect to, or revoke, the existing Agency's designated Agency status where it is not satisfied with respect to any of the following:
 - (a) there is a market requirement for the Agency, and the Agency benefits the industry as a whole having regard to the interests of all producers, including those marketing through other Agencies;
 - (b) it is in the interests of the industry for regulated product to be marketed by the Agency;
 - (c) the presence of the Agency is not disruptive to orderly marketing and does not result in increased competition among Agencies on price, which may have a detrimental effect on producer returns;

- (d) the Agency has demonstrated an understanding of the regulatory system and has adequately expressed its intention to follow Commission Orders and the enabling legislation and regulations;
- (e) there is evidence-based demand for the specific product(s), grouped by end use customer, that are marketed by the Agency, which demand is not satisfied by other existing Agencies;
- (f) there is evidence-based support from multiple licensed Commercial Producers, who are at arms-length from each other, and who intend to market regulated product through the proposed Agency;
- (g) the primary responsibility for marketing regulated product rests with the Agency, rather than wholesalers who may market regulated product on behalf of the Agency;
- (h) the Agency complies with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province;
- (i) the Agency does not have a detrimental effect on the delivery allocation and production allocation of existing producers not represented by the Agency; and
- (j) the Agency has the knowledge, capacity and ability to operate effectively as an Agency;



Debbie Etsell, Chair



Hugh Reynolds, Secretary