

**BRITISH COLUMBIA
VEGETABLE MARKETING COMMISSION**

AGENCY ORDER OF JUNE 27, 2024

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PART I – INTRODUCTORY

Application

1. This Order is to be read together with the Commission’s General Order made on May 29, 2024, as amended. To the extent of any conflict or inconsistency between this Order and the General Order made on May 29, 2024, as amended, the terms of this Order shall prevail.

Interpretation

2. In this Order, unless the context requires otherwise, the definitions contained in the *Natural Products Marketing (BC) Act* and the *British Columbia Vegetable Scheme* shall have effect together with the following additional definitions:

“**Agency**” means a person designated by the Commission and approved by the British Columbia Farm Industry Review Board for the purpose of marketing Regulated Product as authorized or directed by the Commission.

“**Valid Licence**” means a current and subsisting licence of the applicable class issued by the Commission to a Person in good standing with respect to each and every requirement therefor;

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PART II – AGENCY LICENSING

Requirement to Hold Licence

3. (1) No Person shall act as an Agency unless in possession of a Valid Licence issued by the Commission.
- (2) No Person shall be eligible to receive an Agency licence until that Person has been designated by the Commission, and approved by the British Columbia Farm Industry Review Board, for the purpose of marketing Regulated Product as authorized or directed by the Commission.

Licence Application Process

4. (1) A Person who is eligible to receive an Agency licence must apply for an Agency licence in the form prescribed by the Commission from time to time and remit the applicable licence fee prescribed in Schedule VIII of the General Order made on May 29, 2024, as amended.
- (2) Agency licences are issued on an annual basis commencing May 1 and expiring on midnight, April 31, of the following year.

Renewal

5. The Commission may renew every existing Agency licence without application, provided that the holder has paid the applicable licence fee prescribed in Schedule VIII of the General Order made on May 29, 2024, as amended, and maintained compliance with all orders of the Commission.

No Transferability of Licences

6. (1) Agency licences are not transferable.
- (2) Any sale of all or a portion of an Agency by way of sale of assets or shares, or a change in the Agency's business plan, must receive prior approval from the Commission. In the absence of such prior approval, the Agency designation, licence, and any Producer Marketing Agreements, will each terminate without further order of the Commission.

General Licence Conditions

7. It is a condition of issuance and maintenance of every licence that the applicant or holder complies with all applicable orders of the Commission from time to time in force.

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PART III – AGENCY DESIGNATION

Application for Designation as an Agency

8. (1) An application for designation as an Agency must include a detailed business plan addressing:
 - (a) the structure of the applicant, including:
 - (i) the identities of the principals of the applicant;
 - (ii) the identities of all shareholders and other Persons with a direct or indirect financial interest in the applicant; and
 - (iii) particulars of the management and staff of the applicant, 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 applicant will operate;
 - (iii) particulars of any other facilities that may be owned or operated by the applicant 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 applicant, and the dates on which such arrangements are expected to be secured;
 - (ii) a copy of the applicant's proposed Producer Marketing Agreement in a form that complies with the minimum standards established from time to time by the Commission;
 - (iii) copies of letters of commitment obtained from at least two (2) prospective Producers, who are at arms-length from each

other, who wish to market Regulated Product through the applicant; 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 applicant.
- (d) marketing strategy and framework, including;
- (i) particulars of the applicant's target market, including the type and amounts of Regulated Product to be received from each Producer and the target market therefor;
 - (ii) the applicant's assessment of market supply and demand, including an assessment of market supply and demand in areas where the applicant intends to market Regulated Product;
 - (iii) particulars of the applicant's intended utilization of delivery and production allocation by target market category as defined by the Commission;
 - (iv) particulars of the applicant's intended utilization of delivery and production allocation fore marketing within British Columbia and for marketing outside of British Columbia;
 - (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 applicant;
 - (vii) copies of all letters of commitment obtained from proposed customers of the applicant; and
 - (viii) particulars of any commercial agreements with third parties that may assist with transportation, grading, packaging, storage, or marketing on behalf of the applicant.
- (e) operational procedures, including:
- (i) particulars of quality assurance procedures relating to:
 - (A) biosecurity programs and trace-back and recall systems;

- (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 applicant's Producers, including the method by which proceeds from sales will be distributed; and
 - (iii) particulars of the manner in which shipments of regulated storage crops will be monitored in relation to delivery allocation, and the applicant'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 applicant;
 - (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 applicant encounters financial difficulties; and
 - (vii) proof of product, third party, and director liability insurance.
 - (g) advancement of Producer and industry interests, including:
 - (i) particulars of how the applicant would prioritize the marketing of Regulated Product;
 - (ii) particulars of how the applicant would encourage collaboration in decision-making with their Producers

regarding the production, transportation, packaging, storage, and marketing of Regulated Crops; and

- (iii) an express commitment to comply with all applicable minimum pricing orders made by the Commission from time to time in relation to sales occurring both within and outside of British Columbia.
- (2) Subject to subsection (3), applications for designation as an Agency 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 Order;
 - (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 Order 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;
 - (f) demonstrate to the satisfaction of the Commission that any arrangements that the applicant may have with third parties:
 - (i) will not impair or undermine the applicant's responsibility to serve as the primary marketer of Regulated Product, or to directly respond to changing market demands;
 - (ii) will not expose the industry to increased food safety risks;
 - (iii) will not be disruptive to orderly marketing;

- (g) identify the extent to which the applicant has previously participated in the British Columbia industry in other capacities, if any;
 - (h) provide examples of the applicant's prior cooperative engagements with existing agencies, if any; and
 - (i) 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 applicant;
 - (ii) how the applicant would benefit producers shipping through it;
 - (iii) how the applicant would benefit the industry as a whole; and
 - (iv) the impact that the applicant would have on existing Agencies.
- (3) The Commission may, in its sole discretion, assign different weights to each of the considerations set out in subsection (2), and may waive any of the requirements set out in subsection (2).

Review of Application for Designation as an Agency

9. (1) The Commission may, in its sole discretion:
- (a) request that an applicant provide any supplementary information or documentation that might facilitate the Commission's review of the application; and/or
 - (b) invite an applicant to present its application to the Commission, and to answer questions from the Commission concerning the application, at such time, and in such a manner, as the Commission may direct.
- (2) The Commission may summarily dismiss the application:
- (a) where the application does not conform with the requirements of this Part to the satisfaction of the Commission; or
 - (b) where the Commission, in its sole discretion, is satisfied that the designation of the applicant as an agency would not benefit the Commission and the British Columbia industry as a whole, having regard to the content of the application, the circumstances in which the application is brought (including the capacity of existing Agencies

or other prospective Agencies to market Regulated Product), or any other factor.

- (3) Where the Commission has not summarily dismissed an application, the Commission may engage in further consultation with industry stakeholders concerning the application, at such time, and in such a manner, as the Commission may direct.
- (4) Subject to subsections (5) and (6), the Commission may designate the applicant as an Agency, subject to the approval of the BCFIRB, 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 producers marketing through other Agencies;
 - (b) it would not be in the interests of the industry for existing or anticipated 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 at least two (2) 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; and
 - (i) the proposed Agency has the knowledge, capacity, and ability to operate effectively as an Agency.
- (5) The Commission may, in its sole discretion, assign different weights to each of the considerations set out in subsection (4), and may waive any of the requirements set out in subsection (4).
- (6) The Commission may have regard to the circumstances in which the application is brought (including the capacity of existing Agencies or other prospective Agencies to market Regulated Product), or any other factor.

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PART IV – AGENCY REQUIREMENTS AND LIMITATIONS

Provincial Office

10. Every Agency licensed by the Commission must maintain a staffed office with the Province.

Active Engagement in Marketing

11. Every Agency licensed by the Commission must be actively engaged in marketing Regulated Product received from its assigned Producers.

Determination as to Whether an Agency is Actively Engaged in Marketing

12. (1) The Commission will determine, in its sole discretion, whether an Agency is actively engaged in marketing Regulated Product received from its assigned Producers. Without limiting the generality of the foregoing, the Commission will have regard to the following factors:
 - (a) whether the Agency is directly identifying target markets, creating marketing plans, and implementing marketing plans;
 - (b) whether the Agency is dealing directly with purchasers other than Wholesalers;
 - (c) whether the Agency is directly managing all aspects of sales and marketing including the preparation of related documentation, the collection of sales revenues, the distribution of sales revenues and management of payables; and
 - (d) whether the Agency is relying excessively on wholesalers or other third parties to market Regulated Product received from its assigned Producers.
- (2) For the purpose of determining whether an Agency is actively engaged in marketing Regulated Product received from its assigned Producers, the Commission shall have regard to the substance and effect of any arrangement made between the Agency and any other Person, irrespective of the form of that arrangement.
- (3) Where it appears to the Commission that the Agency is primarily relying on others to market Regulated Product received from its assigned Producers, the entrant shall be deemed not to be actively engaged in marketing Regulated Product received from its assigned Producers.

Minimum Price

13. Agencies must not market any Regulated Product at a price (net of all deductions, holdbacks or chargebacks) that is less than the applicable minimum price published from time to time by the Commission.

Dealings with Producers and Other Agencies

14. (1) Agencies must enter into a written Producer Marketing Agreement with each Producer shipping to it. The Producer Marketing Agreement must address all applicable terms and conditions upon which the Regulated Product shall be provided by the Producer and sold by the Agency. Producer Marketing Agreements must not be inconsistent with any order made by the Commission. To the extent of any conflict or inconsistency between the terms of a Producer Marketing Agreement and any order made by the Commission from time to time, the terms of the order made by the Commission shall prevail. Producer Marketing Agreements will become voidable at the option of the Producer where there has been a sale of all or a portion of an Agency by way of sale of assets or shares that was not approved by the Commission, or a change in the Agency's business plan that was not approved by the Commission.
- (2) Subject to subsection (3), Agencies must accept for marketing and shall market the Regulated Product from any Producer directed to it by the Commission, and every such Producer shall receive returns, in the same manner as other Producers delivering Regulated Product to that Agency.
- (3) Agencies may refuse to accept or market any Regulated Product that is not of marketable quality. Any dispute arising from a refusal to accept or market such Regulated Product should be resolved in accordance with the terms of the Producer Marketing Agreement.
- (4) Agencies must have a trace-back and recall system that adequately identifies and traces the Regulated Product from the time it is shipped by a Producer until it is received and purchased by a Wholesaler or Retailer.
- (5) Before Regulated Product may be transported from a Producer's farm, an Agency must create and maintain a record specifying:
 - (a) the day or days on which such Regulated Product will be transported;
 - (b) the volume and particulars of the Regulated Product so transported; and
 - (c) the identity and location of the recipient of the Regulated Product.

- (6) Where authorized by the Commission, Agencies may conduct a pool or pools for the distribution of all proceeds received from the sale of the Regulated Product. In that event, the Agency shall distribute the proceeds of sale of each pool, after deducting necessary and proper disbursements, expenses and charges, as permitted or directed by the Commission.
- (7) Agencies must distribute the proceeds of sales not later than the 20th day of the month following the month in which the sales were made, unless otherwise approved in writing by the Commission.
- (8) Agencies must not charge any Producer any amount in excess of the service fees from time to time approved by the Commission for packing, cooling, grading, storing, washing, handling, transporting and marketing of the Regulated Product.
- (9) Agencies must deduct levies and charges payable by Producers from the amounts payable to such Producers as directed by the Commission, and remit such funds to the Commission, not later than the 20th day of the following month.
- (10) Agencies must cooperate with other Agencies in the marketing of Regulated Product.

Prohibitions

15. (1) No Agency shall receive or market any Regulated Product from a Producer who does not have a valid and current Producer Licence.
- (2) No Agency shall receive any Regulated Product from a Producer that was not grown by that Producer unless expressly authorized by the Commission.
- (3) No Agency may market Regulated Product except in accordance with a detailed business plan approved by the Commission.
- (4) No Agency may market Regulated Product in a manner that is contrary to any direction made by the Commission from time to time.

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PART V – REASSIGNMENT OF PRODUCERS BETWEEN AGENCIES

Where There is Agreement

16. Where there is agreement between a Producer, its designated Agency, and another Agency, a Producer may reassign to that other Agency upon providing notice to the Commission of the effective date of the reassignment, and provided that the Commission does not otherwise direct.

Where There is No Agreement

17. Where a Producer wishes to reassign from its designated Agency to another Agency, or where an Agency wishes to discontinue receiving Regulated Product from a Producer, the Commission may redesignate the Agency through which that Producer's Regulated Product shall be marketed, upon the application of the Producer or the Agency, as the case may be.

Commercial Arrangements Unaffected

18. Unless otherwise directed by the Commission, no reassignment from one Agency to another shall negate or diminish any commitments made by a Producer or by an Agency under a Producer Marketing Agreement.

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PART VI – AGENCY REPORTING AND INSPECTION

Agency Reporting to Commission

19. (1) Every Agency shall, within 60 days of the close of a pool period, or in the case of storage crops, within 60 days of the close of a Delivery Allocation period, provide the Commission with a true and detailed report of each Producer's Delivery and/or Production Allocation and shipments.
- (2) Every Agency shall provide to the Commission, on request, pool settlement statistics showing quantities, price ranges and final pool prices.
- (3) Every Agency shall file with the Commission, for approval each year, a proposed list of fees or charges for Agency services provided to Producers for Marketing. Any fee or charge that has not been approved by the Commission is a nullity.

Agency Records to be Available for Inspection

20. (1) Agencies shall keep such books, records, and accounts, as will afford an intelligent understanding of the conduct of their business, in a form and containing particulars as the Commission may from time to time prescribe.
- (2) All books, records, and accounts required to be kept under subsection (1) must at all times be available for inspection by the Commission, or any officer or auditor of the Commission, or any other Person as may be authorized by the Commission from time to time to make an inquiry or report.
- (3) Every Agency shall retain and have available for inspection by the Commission all original records, whether contained in books or accounts or otherwise, for a period of three years.

Inspection of Agency's Premises

21. Every Agency shall permit any member or employee of the Commission, or any Person designated by the Commission, to inspect the premises of the Agency for the purposes of determining whether or not there has been compliance with orders of the Commission.

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PART VII – REVIEW OF EXISTING AGENCIES

General

22. The Commission may from time to time review an existing Agency in order to assess whether the Agency's licence and designated status should be maintained, made subject to terms and conditions, suspended, or revoked.

Considerations

23. (1) When conducting a review of an existing agency, the Commission may consider, among other things:
- (a) whether the Agency has been actively engaged in marketing Regulated Product received from its assigned Producers;
 - (b) whether there is a market requirement for the Agency, and whether the Agency benefits the industry as a whole having regard to the interests of all producers, including those producers marketing through other Agencies;
 - (c) whether it would be in the interests of the industry for marketing of Regulated Product to be undertaken by another Agency;
 - (d) whether the presence of the Agency has been disruptive to orderly marketing or has contributed to increased competition among Agencies on price, which may have had a detrimental effect on producer returns;
 - (e) whether 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;
 - (f) whether the market serviced by the Agency for specific product(s), grouped by end use customer, is satisfied by other Agencies;
 - (g) whether there is continued evidence-based support from at least two (2) licensed Commercial Producers, who are at arms-length from each other, and who wish to continue to market Regulated Product through the Agency;
 - (h) whether the primary responsibility for marketing Regulated Product has been discharged by the Agency, rather than by wholesalers who have marketed Regulated Product on behalf of the Agency;

- (i) whether the Agency has complied with the Commission's orders, including all applicable minimum pricing orders in relation to sales occurring both within and outside the Province; and
 - (j) whether the Agency has demonstrated the knowledge, capacity, and ability to operate effectively as an Agency.
- (2) The Commission may, in its sole discretion, assign different weights to each of the considerations set out in subsection (1).
- (3) The Commission may have regard to the circumstances in existence at the time of the review (including the capacity of existing Agencies or other prospective Agencies to market Regulated Product), or any other fact

PART VIII – COMMENCEMENT

24. This Order comes into effect on June 27, 2024.

DATED at Surrey, British Columbia on June 27, 2024.

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION



D. Sturko, Chair



H. Reynolds, Secretary