

On December 5, 2024, the Commission circulated a draft version of a new, proposed General Order. This draft General Order reflects the Commission's efforts to clarify the existing rules without implementing major, substantive changes.

By Bulletin dated December 5, 2024, stakeholders were invited to comment on the draft General Order.

The Commission received feedback from two stakeholders, Jos Moerman (on behalf of Sunnyside Produce Ltd.) and Murray Driediger (on behalf of BC Fresh). Mr. Moerman's email dated December 19, 2024 and Mr. Driediger's letter dated December 23, 2024 are both attached.

The Commission has carefully considered this feedback. With respect to Mr. Moerman's email, the Commission's analysis is as follows:

1. With respect to the exercise of discretion, it is important to note that the purpose of the General Order is to regulate the industry – not to fetter the discretion of the Commission. In fact, it is generally considered to be impermissible for regulatory decision-makers to fetter their discretion. Second, the General Order is always subject to amendments that may be made by the Commission from time to time. Subsection 4(2) of the *Scheme* and paragraph 11(1)(q) of the *Natural Products Marketing (BC) Act* expressly vest in the Commission the power “to make orders and rules considered by the marketing board or commission necessary or advisable to promote, control and regulate effectively the marketing of a regulated product, and to amend or revoke them.”
2. With respect to the designation of agencies, the new, draft General Order simply reflects the rules that are already in place. These are currently set out in the Commission's Agency Order. In other words, these rules have not changed in any fundamental way, and they reflect the long-standing principle that there is a balance to be achieved between having enough selling desks to provide choice to producers, without having too many selling desks as might fragment our marketing efforts and lead to price competition among agencies to the detriment of producers. In this respect, the primary purpose of the new, draft General Order is to present the Commission's existing rules in a way that is more easily comprehensible. Once this is achieved, the Commission will have a baseline from which to explore various policy options (concerning agencies or otherwise).

With respect to Mr. Driediger's letter dated December 23, 2024, the Commission's analysis is as follows:

1. “BC No. 1 Grade” and “BC No. 2 Grade” were repealed because those terms were not defined in any meaningful way and had no substantive meaning. In other words, the terms did not identify the qualities or standards applicable to these grades. BC Fresh argues that it is

important to preserve the ability of agencies to market product in BC that does not meet Canada No. 1 Grade or Canada No. 2 Grade. To accommodate this, changes have been made to paragraph 16(2)(b) and 17(3) of the new General Order. These provisions, together with subsection 26(1), now operate to prohibit Greenhouse Crops, Processing Crops or Storage Crops from being marketed unless they must meet or exceed Canada No. 1 Grade or Canada No. 2 Grade, or unless otherwise approved by the Commission in writing.

2. With respect to the removal of licence classes with different licence fees, the Commission remains of the view that this approach was problematic, First, the approach could be vulnerable to a challenge that the licence fees represent unauthorized administrative penalties. Second, there was insufficient guidance in the General Order regarding the circumstances in which a licence class should change. Nevertheless, the Commission is resolved to use all enforcement tools available to it under the legislation as appropriate.
3. The typographical errors noted by BC Fresh in paragraphs 11(3)(c), subsection 11(4), and paragraph 16(2)(d), have been corrected.

Having considered this feedback, the Commission has decided to pass the new General Order, effective January 2, 2025. A copy of the new General Order is attached. It is the Commission's expectation that this new General Order will provide a useful platform from which to consider a number of policy issues.

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From: Jos Moerman <jos@sunnysideproduce.ca>

Sent: December 19, 2024 3:52 PM

To: Derek Sturko <dereksturko@innerharbourconsulting.com>; BCVMC – Diana Milligan <dmilligan@bcveg.com>; BCVMC – Info <info@bcveg.com>

Cc: BCVMC – Andre Solymosi <asolymosi@bcveg.com>

Subject: RE: BCVMC BULLETIN: General Order Revision

Thank you for your quick response. Have a merry Christmas to you and your family!

Regards,



Jos Moerman

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From: Derek Sturko <dereksturko@innerharbourconsulting.com>

Sent: Thursday, December 19, 2024 3:34 PM

To: Jos Moerman <jos@sunnysideproduce.ca>; BCVMC – Diana Milligan <dmilligan@bcveg.com>; BCVMC – Info <info@bcveg.com>

Cc: BCVMC – Andre Solymosi <asolymosi@bcveg.com>

Subject: RE: BCVMC BULLETIN: General Order Revision

Mr. Moerman,

Thank you for your December 19, 2024, email. Your comments will be put before the Commission when it next meets to discuss the new, draft General Order. In the meantime, I thought it might be useful to address some of the points you raised, at least in a preliminary way.

With respect to the exercise of discretion, I think it is important to note that the purpose of the General Order is to regulate the industry – not to fetter the discretion of the Commission. In fact, it is generally considered to be impermissible for regulatory decision-makers to fetter their discretion. Second, the General Order is always subject to amendments that may be made by the Commission from time to time. Subsection 4(2) of the Scheme and paragraph 11(1)(q) of the Natural Products Marketing (BC) Act expressly vest in the Commission the power “to make orders and rules considered by the marketing board or commission necessary or advisable to promote, control and regulate effectively the marketing of a regulated product, and to amend or revoke them.”

With respect to the designation of agencies, the new, draft General Order simply reflects the rules that are already in place. These are currently set out in the Commission’s Agency Order. These rules have not changed in any fundamental way, and they reflect the long-standing principle that there is a balance to be achieved between having enough selling desks to provide choice to producers, without having too many selling desks as might fragment our marketing efforts and lead to price competition among agencies to the detriment of producers. In this respect, the primary purpose of the new, draft General Order is to present the Commission’s existing rules in a way that is more easily comprehensible. Once this is achieved, we will have a baseline from which to explore various policy options (concerning agencies or otherwise).

If you have any questions regarding any of the above, please let me know.

Thank you,

Derek Sturko

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From: Jos Moerman <jos@sunnysideproduce.ca>

Sent: December 19, 2024 2:15 PM

To: BCVMC – Diana Milligan <dmilligan@bcveg.com>; BCVMC – Info <info@bcveg.com>

Cc: BCVMC – Andre Solymosi <asolymosi@bcveg.com>; Derek Sturko <dereksturko@innerharbourconsulting.com>

Subject: RE: BCVMC BULLETIN: General Order Revision

Hi Diana,

At least 12 times, I have seen the wording : *discretionary power* in the new general order. Does that mean the commission can do whatever they think is best for the BCVMC (despite the general order)?

In other words, the general order is in place but if the commission think differently, they can change/adjust the general order?

In general, the new general order is designed to keep new agencies out of BC, and I don't think this is in the best interest of the greenhouse industry.

Regards,



Jos Moerman

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December 23, 2024

Andre Solymosi
General Manager
BC Vegetable Marketing Commission
15252-32nd Ave.
Surrey, BC

Dear Mr. Solymosi,

Re: Response to General Order Revisions

Thank-you for the opportunity to make comments on the proposed changes to the General Orders. There are a few comments we would like to point out prior to these Orders becoming approved.

- I. **Commission Process** – We do intend to be critical of the Commission. However, there was a recent Storage Crop Advisory Committee meeting held earlier in December, and at that meeting, some of the proposed changes were disclosed, but not all. This would have been the perfect opportunity to provide the full draft in its entirety in advance of the meeting, to ensure meaningful dialogue. We respectfully request that changes of this magnitude should be put to industry with sufficient time to review and respond in the future. Transparency and meaningful dialogue go a long way to preventing regulatory confusion and compliance going forward.
- II. **BC #1 and BC #2 Grade** - The elimination of the BC #1 and BC #2 Grade would be a major mistake. The Canada #1 and Canada #2 Grades are the standard when marketing product within BC and inter-provincially. However, like regulators in many Provinces in Canada, and States in the US, the Commission has the authority to create a separate grade standard or “Marketing Order” within their own jurisdiction, providing the product is marketed within that jurisdiction. This is a commonly used regulatory tool throughout North America.

The Commission has the authority in the Province of BC to make different grade standards for product grown in BC and only marketed in BC. An ongoing example of this is the Warba potato program that kick starts the season in BC each year. Agencies in BC typically market these “new potatoes” as a BC #1 Small with a 1” minimum to a 2.25”

maximum. The Canada #1 Small grade standard is 1.5"-2.25". This would effectively alter this program significantly and render it unprofitable as there would be no home for the 1"-1.5" product and there would be insufficient volume to build a program around.

Furthermore, with food security and food waste being an important focus of the supply chain and public discord, the ability to create specific grade standards within BC to deal with off-grade product may prove to be the novel approach required to help further these goals. We believe the Commission must reconsider this change.

III. **License Classes** – The ability to create different license classes has given the Commission the ability to escalate their response along a spectrum based on a licensee's behaviour and failure to comply with the General Orders. The issue was raised at the Storage Crop Advisory meeting and it was suggested, that the removal of license classes without a replacement tool, could be concerning. We also understand the Commission may need to adjust how they deal with these matters to remain within their legal authority. While we are not opposed to the Commission seeking alternative solutions, removing a regulatory tool and replacing it with the "issuing of a financial charge against those found in violation or suspensions/cancellations of the Licence", without additional clarity as to what the means. We would have more comfort if this new proposed response had more clarity or guardrails before license classes were eliminated entirely.

IV. There are a few typos which the Commission should correct if not already corrected.

- On page 16, Part III, Clause 3 (c) does not read correctly and probably should read 50% of the new Delivery Allocation or conversely .5% of the total Delivery Allocation for a period depending on the Commission intent.
- On page 16, Part III, Clause 4 the word "or" is missing.
- On page 19, Part IV, 16. (2)(d) the word marketed is missing.

Again, thank you for the opportunity to respond to these proposed changes and trust that further dialogue will be forthcoming prior to the final Orders are approved.

Yours Truly,



Murray Driediger
President & CEO, BC Fresh

c.c. BC Fresh Board