

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

**IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
A REVIEW OF A PROBATIONARY AGENCY DESIGNATION
AND CERTAIN AGENCY APPLICATIONS**

August 20, 2025

CONTENTS

Background	3
Submissions Received by the Commission	8
Red Sun's Submissions	8
MPL's Submissions	9
Mucci's Submissions	9
Windset's and GGFI's Submissions	10
Red Sun's Reply Submissions	11
Analysis	11
Preliminary Matters.....	11
Have the Secured Production Conditions Been Satisfied?	13
Other Matters	14
Disposition	15
SAFETI.....	15

Background

1. On January 22, 2025, the Commission made the following decision in relation to the application for agency status made by Jem-D International dba Red Sun Farms (“Red Sun”):

99. Having regard to: (a) the considerations listed in paragraphs 9(4)(a) through (i) of the Commission's Agency Order; (b) the capacity of existing agencies or other prospective agencies to market regulated product (including MPL); and (c) other matters raised by the participants herein; **the Commission has decided that Red Sun should be designated as an agency, subject to:**

- (a) **Red Sun securing production from "Grower A" and "Grower B" (as identified in its application as the producers who have committed to supply Red Sun);**
- (b) **"Grower A" and "Grower B" being and remaining at arm's length from each other; and**
- (c) **the approval of the BCFIRB.**

100. **If Red Sun is unable or unwilling to satisfy these conditions, the Commission's decision that Red Sun should be granted agency status will be rescinded without further order.**
(emphasis added)

2. On May 1, 2025, the BCFIRB issued directions concerning the process and submissions to address Red Sun’s agency designation, as follows:

The Commission has made a conditional decision to address concerns related to the failure of Red Sun to disclose the identity of “Grower A” and “Grower B” in its agency designation process. As the Commission points out at paragraph 97 of the Agency Designation Decision, in the face of Red Sun’s lack of disclosure of the identities of “Grower A” and “Grower B”, it could have dismissed Red Sun’s agency application outright. Instead, the Commission made a conditional order requiring Red Sun to do more than demonstrate grower support as required by sections 8 and 9 of the Commission’s Agency Order of June 27, 2024, as amended, but rather required it to demonstrate it had secured the production of “Grower A” and “Grower B”.

Upon reviewing the Agency Designation Decision, it was not clear to the Panel what process would be followed to determine whether the Secured Production Conditions were met. The Decision provided no details about how, when and to whom Red Sun should provide that evidence, or who was responsible for deciding that the conditions were satisfied.

The Commission has now clarified that Red Sun should provide [evidence that it has secured the production of “Grower A” and “Grower B”] to the Commission, and the Commission will determine whether the Secured Production Conditions have been satisfied. The Commission suggested that it could be satisfied if Red Sun provides statutory declarations of "Grower A" and "Grower B". Red Sun says it is finalizing terms with “Grower A” and “Grower B” with respect to their commitment to supply production and is hopeful that it will be able to share further information related to those producers with BCFIRB and the participants of this process in unredacted form.

In these circumstances, the best approach is for the Commission to complete its task by making that determination. If there are issues regarding the bona fides of “Grower A” and “Grower B” or their arm’s length status, they should be properly addressed by the first instance decision maker in a transparent process before the decision is submitted to BCFIRB.

.....

In light of the foregoing, the Panel has decided to place its consideration of Red Sun’s agency designation into abeyance pending a further decision by the Commission. This order is made without prejudice to any arguments participants may wish to raise in this approval process, including arguments concerning the Commission’s authority to make conditional designations.

Section 8 of the NPMA Regulations provides that every designation of an agency by a marketing board requires BCFIRB’s approval in writing. **The Panel anticipates the Commission will continue its review process and submit a final Agency Designation Decision for Red Sun to BCFIRB if the conditions are addressed to the Commission’s satisfaction.** (emphasis added)

3. Notably, in its submissions to the BCFIRB dated April 3, 2025, Red Sun stated:

19. Without necessarily accepting the Commission's characterization, **Red Sun agrees that any review or consideration by BCFIRB is efficiently addressed following the satisfaction of the conditions outlined by the Commission. Red Sun accordingly adopts the Commission's submission that BCFIRB's review with respect to Red Sun can be held in abeyance until Red Sun fulfills the conditions specified at paras. 99(a) and (b) in of the Agency Designation Decision.**

20. To that end, **Red Sun is in the process of finalizing terms with "Grower A" and "Grower B" with respect to their commitment to supply production to Red Sun (subject only to BCFIRB approval). As part of providing that information to the Commission, and with the benefit of the Commission's conditional approval, Red Sun is hopeful that it will be in a position to share further information related to those producers with BCFIRB and the participants of this process in unredacted form.** Those steps, Red Sun submits, will reduce the potential issues, necessary determinations, and process for this Panel. (emphasis added)

4. Consistent with the BCFIRB's directions, on May 18, 2025, the Commission issued a "Phase II Notice" expressing its intention to complete the Commission's task by determining whether the "Secured Production Conditions" have been satisfied by Red Sun. The Phase II Notice provides, in part, as follows:

As noted by the BCFIRB, the Commission indicated in its submissions dated March 24, 2025 that the "Secured Production Conditions" might be satisfied by the provision of statutory declarations from "Grower A" and "Grower B" confirming their commitment to supply production to Red Sun (subject only to BCFIRB approval), and further confirming that they are and remain at arm's length from each other. For greater clarity, such statutory declarations could take the following form:

I, _____, of [Town/City], of the Province of British Columbia, DO SOLEMNLY DECLARE that:

1. I am [here describe relationship to "Grower A"], and have personal knowledge of the matters herein declared.
2. ["Grower A"] is committed to supplying all of its production to Jem-D International dba Red Sun Farms ("Red Sun") subject only to the BCFIRB approving Red Sun as a designated Agency.

3. ["Grower A"] has no past or present, direct or indirect, legal or beneficial interest in ["Grower B"], and ["Grower B"] has no past or present, direct or indirect, legal or beneficial interest in ["Grower A"]. Further, ["Grower A"] has no past or present commercial dealings with ["Grower B"], and ["Grower B"] has no past or present commercial dealings with ["Grower A"].

4. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Because Red Sun now has "the benefit of the Commission's conditional approval", it is the Commission's expectation that the identities of "Grower A" and "Grower B" would be revealed in the statutory declarations.

Though no deadline was set for Red Sun to demonstrate that it has satisfied the "Secured Production Conditions", the Commission reasonably anticipated that Red Sun would take steps to satisfy those conditions without undue delay. However, as at this date, the Commission has received nothing further from Red Sun in relation to its ability to satisfy those conditions.

The outstanding questions regarding Red Sun's ability to satisfy the "Secured Production Conditions" cannot linger without resolution indefinitely. Therefore, a panel has been struck to determine whether the "Secured Production Conditions" have been satisfied by Red Sun. The panel consists of the following Commission members: Wes Shoemaker (Independent Chair); Craig Evans (Independent Vice Chair); Daphne Stancil (Independent Member); Ken Sandu (Greenhouse Crops Member); and Michael Minerva (Greenhouse Crops Member).

The Commission directs as follows:

1. Any submissions regarding the composition of the Commission panel must be received by the Commission no later than May 23, 2025.
2. Red Sun is directed to demonstrate its ability to satisfy the "Secured Production Conditions" no later than June 13, 2025. All material provided by Red Sun to the Commission shall be

copied to Mucci, MPL, Windset and GGFI by way of their respective counsel.

3. Responding submissions from Mucci, MPL, Windset and GGFI must be received by the Commission no later than June 20, 2025. All responding submissions must be copied to Red Sun by way of its counsel.
4. Any reply submission from Red Sun must be received by the Commission no later than June 27, 2025. The Reply submission must be copied to Mucci, MPL, Windset and GGFI by way of their respective counsel.
5. By letter dated May 23, 2025, counsel for Red Sun expressed opposition to the composition of the proposed panel and submitted that the panel should be comprised of: Wes Shoemaker (Independent Chair); Craig Evans (Independent Vice Chair); Daphne Stancil (Independent Member); Paul Guichon (Member-Storage Crops), Hugh Reynolds (Member-Storage Crops).
6. On June 13, 2025, the Commission received Red Sun's submissions and book of documents.
7. On June 16, 2025, the Commission issued its decision regarding the composition of the panel, as follows:

the panel will consist of the following Commission members: Wes Shoemaker (Independent Chair); Craig Evans (Independent Vice Chair); Daphne Stancil (Independent Member); Paul Guichon (Storage Crop Member); and Hugh Reynolds (Storage Crop Member).
8. On June 20, 2025, the Commission received responding submissions from Mucci International Marketing Inc. ("Mucci"), MPL British Columbia Distributors Inc. ("MPL") and Windset Farms (Canada) Ltd. and Greenhouse Grown Foods Inc. ("Windset and GGFI").
9. Finally, on June 27, 2025, the Commission received Red Sun's reply submissions.
10. The Commission met on August 7, 2025 to deliberate on the issues before it in Phase II.

Submissions Received by the Commission

Red Sun's Submissions

11. In its submissions dated June 13, 2025, Red Sun states:

2. Pursuant to s. 9(4)(f) of the General Order, the Commission may designate the applicant as an Agency, subject to the approval of the BC Farm Industry Review Board ("BCFIRB"), where it is satisfied that there is evidence-based support from at least two (2) licensed Producers, who are at arms-length from each other and who intend to market Greenhouse Crops, Processing Crops or Storage Crops through the proposed Agency.

12. Red Sun argues that Paul's Greenhouse and Houweling Nurseries were and remain at arm's length from each other, and it relies upon the solemn declaration of Amritpal Gill, in his capacity as the representative of Paul's Greenhouse. The full text of that declaration is as follows:

1. I represent Pauls Greenhouse Ltd. Previously disclosed as "Grower B", and have personal knowledge of the matters herein declared.

2. Pauls Greenhouse Ltd. is committed to supplying production to Jem-D International dba Red Sun Farms ("Red Sun") subject to the BCFIRB approving Red Sun as a designated Agency.

3. Pauls Greenhouse Ltd. has no past or present, direct or indirect, legal or beneficial interest in Houweling Nurseries Ltd. Listed as "Grower A" by Red Sun, and Houweling Nurseries Ltd. has no past or present, direct or indirect, legal or beneficial interest in Pauls Greenhouse Ltd. Further, Pauls Greenhouse Ltd. has no past or present commercial dealings with Houweling Nurseries Ltd., and Houweling Nurseries Ltd. has no past or present commercial dealings with Pauls Greenhouse Ltd.

4. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

13. In addition, Red Sun indicates that it has negotiated, finalized and signed an agreement with Paul's Greenhouse for right of supply ("GMA") effective to December 31, 2026, under which Paul's Greenhouse has agreed to supply products to Red Sun

from the date of Red Sun's approval as a designated Agency. A copy of that Agreement for Right of Supply was also included in Red Sun's book of documents.

14. With respect to Houweling Nurseries, Red Sun says this:

10. Red Sun is continuing and has not yet finalized discussions regarding crop/program details and commercial terms with Houweling Nurseries for the supply of its production. Those discussions are complicated or impacted by developments around Houweling Nurseries existing agency and wholesaler, Country Fresh Produce Inc. ("CFP") and Mucci International Marketing Inc. ("Mucci"), respectively, and the former's Agency review, which has continued despite the elapse of time since Red Sun's agency application. The parties' efforts to balance each others' interests have extended these discussions, at least while no decision has been made with respect to Country Fresh Produce Inc.'s status as an agency.

15. Red Sun submits that it has demonstrated "evidence-based support from at least two (2) licensed producers, who are at arms-length from each other and who intend to market product with the Red Sun", warranting the Commission's final approval. Alternatively, Red Sun proposes that "Phase II" be adjourned pending one of the following: (a) Red Sun finalizing commercial terms with Houweling Nurseries; or (b) Red Sun securing production from "Grower C."

MPL's Submissions

16. By letter dated June 20, 2025, MPL submitted that it had "no further submissions to make with respect to Red Sun's submissions."

Mucci's Submissions

17. At paragraph 3 of its June 20, 2025 submissions, Mucci states:

3. Mucci only learned the identity of the Growers when Red Sun disclosed them for the first time in the Red Sun June 2025 Submissions. **Other than to make this clear, Mucci makes no further submission on the second phase of the review of Red Sun's agency application.** Mucci repeats and relies on its submissions to the Commission and the BCFIRB, namely the Notice of Appeal of the Initial Commission Decision to the BCFIRB, dated February 21, 2025, the Letter to the BCFIRB regarding the Commission's Application for Summary Dismissal of Mucci's Appeal, dated March 6, 2025, and Mucci's

submissions regarding the preliminary matters raised by the BCFIRB in the Supervisory Review of the Initial Commission Decision, dated April 10, 2025. (emphasis added)

Windset's and GGFI's Submissions

18. In their submissions dated June 20, 2025, Windset and GGFI make the following arguments:
- (a) Red Sun's application "has been deficient from the outset", because subsection 8(2) of the General Order requires applicants to provide copies of letters of commitment from producers, which Red Sun failed to provide.
 - (b) What is required by subsection 8(2) is not merely a "letter of support", as referred to in s. 9(4)(f) of the General Order, but actual commitment from two arm's length producers.
 - (c) Red Sun refused to comply with the Commission's directions regarding the identities of "Grower A" and "Grower B".
 - (d) Red Sun has failed to secure the production of "Grower A" and "Grower B" for the 2025 crop season, and it failed to provide evidence of producer commitment, as required by s. 8(2)(c)(iii). Instead, what Red Sun has put forth are conditional letters of support. The agreement for right of supply between Red Sun and Paul's Greenhouse is not effective until December 31, 2026. No GMA has been finalized between Red Sun and Houweling Nurseries Ltd.
 - (e) Red Sun's failure to comply with the Commission's directions and requirements reveal that "it does not have a sufficient understanding of the regulatory system, nor the will to comply with the Commission's orders such that it should be designated as an Agency."
 - (f) No additional agency is required:
 - (i) There is no reasonable basis for suggesting that Paul's Greenhouse crops could not be marketed by an existing agency or that there is a market requirement for Red Sun to market these crops.
 - (ii) Houweling Nurseries already markets its crops through its own agency. This further demonstrates there is no reasonable basis for suggesting that Houweling Nurseries crops could not be marketed by its own

agency or that there is a market requirement for Red Sun to market these crops.

Red Sun's Reply Submissions

19. In its reply submissions dated June 27, 2025, Red Sun argues, among other things, as follows:
- (a) There is no basis to reopen Phase I of these proceedings.
 - (b) Each of the letters of Paul's Greenhouse and Houweling Nurseries expressly say that "[p]ending the approval of an agency by the BCVMC and BCFIRB to RSFW and negotiations regarding crop/program details and GMA terms, we would commit to market our regulated production through [Red Sun]."
 - (c) The Effective Date of the GMA with Paul's Greenhouse is May 30, 2025. The end of the term of the GMA is December 31, 2026.

Analysis

Preliminary Matters

20. At the outset, the Commission agrees with Red Sun that the scope of this "Phase II" proceeding does not contemplate a "re-opening" of the Commission's decision in Phase I. The narrow questions now before the Commission are these:
- (a) Has Red Sun secured production from "Grower A" and "Grower B" (as identified in its application as the producers who have committed to supply Red Sun)?
 - (b) Are "Grower A" and "Grower B" at arm's length from each other and do they remain so?
21. Should the Commission determine that Red Sun has been unable or unwilling to satisfy those conditions, then in accordance with its Phase I decision, the Commission's decision that Red Sun should be granted agency status will be rescinded without further order.
22. Given this narrow scope, the Commission is similarly unwilling to adjourn "Phase II" pending Red Sun "finalizing commercial terms with Houweling Nurseries", or pending Red Sun securing production from "Grower C." The questions that arise in this phase

are premised on the application that was advanced by Red Sun in Phase I, and on the Commission's findings and analysis in Phase I. Further, as noted by the Commission in its "Phase II Notice" dated May 18, 2025:

Though no deadline was set for Red Sun to demonstrate that it has satisfied the "Secured Production Conditions", the Commission reasonably anticipated that Red Sun would take steps to satisfy those conditions without undue delay. However, as at this date, the Commission has received nothing further from Red Sun in relation to its ability to satisfy those conditions.

The outstanding questions regarding Red Sun's ability to satisfy the "Secured Production Conditions" cannot linger without resolution indefinitely. (emphasis added)

23. Even if an adjournment of the Phase II proceedings could be regarded as being consistent with the narrow scope of the issues now before the Commission, the Commission would otherwise decline to adjourn on the basis that further delay would cause prejudice in the form of industry uncertainty and unfairness to other industry stakeholders.
24. It should also be noted that the Commission's "Phase I" decision to provide Red Sun with an opportunity to demonstrate that it has satisfied the "Secured Production Conditions" arose because of unusual circumstances. In particular, the "conditional" decision to designate Red Sun as an agency was conceived as a way to address the fact that participating stakeholders were impeded from making submissions regarding the *bona fides* of the conditional commitment from Growers "A" and "B", given that their identity had been withheld by Red Sun. Thus, the Commission's response to these unusual circumstances should not suggest that "conditional designation", pending the demonstration of commitments from producers, is or should be the default approach. On the contrary, having firm commitments from producers is an essential pre-requisite to a successful application for agency designation. Agency designations are made by the Commission to further the interests of producers. If an applicant cannot demonstrate the minimum requirements for producer commitments, the absence of sufficient producer support is a compelling indication that agency designation would not further the interests of producers.
25. Coincidentally, the importance of producer commitments was addressed by the Commission in its November 6, 2023 decision summarily dismissing an earlier application for agency status submitted by Red Sun:

21. RSF has not provided any letters of commitment that satisfy Part XIV paragraph 1.(3)(c)(iii) of the General Order. RSF states that its “goal in BC is to partner and represent growers ...” and that it has had several conversations with BC producers since communicating its intent to industry stakeholders to apply for a designated agency licence. RSF’s position on this requirement is that it places the producer in a difficult situation to commit to a prospective agency so far in advance while the producer is supplying product under a grower marketing agreement that is in place with an existing designated agency. RSF contends that the obligation creates mistrust and concerns amongst producers and that the Commission should consider granting an agency applicant with a conditional agency licence, subject to the expectation that producers will commit to producing for the agency applicant over the ensuing crop year. A failure on the part of the agency applicant to attract prospective producers prior to the October 31 agency transfer deadline would provide grounds for retracting the conditional agency status that has been granted to the applicant.

22. The panel appreciates RSF’s perspective on this requirement. However, **producer support is an essential prerequisite**. The General Order sets out the rules on how the Commission manages the industry to ensure orderly marketing. Part XIV paragraph 1.(3)(c)(iii) is a requirement stated in the Commission’s General Order. **Letters of commitment from producers provide evidence of producer support for the prospective agency. Producer support is a key pillar of an application in demonstrating through evidence that there is a strong need for another agency to represent BC regulated vegetable producers.** (emphasis added)

26. While Red Sun appealed the Commission’s decision to the BCFIRB, it subsequently withdrew its appeal, and the BCFIRB thereupon dismissed the appeal by order dated February 27, 2024.

Have the Secured Production Conditions Been Satisfied?

27. The Commission is satisfied that Paul’s Greenhouse and Houweling Nurseries Ltd. are at arm’s length from each other, and that they remain so. This is sufficiently addressed by the statutory declaration of Amritpal Gill, and this point does not appear to have been seriously contested by the other Phase II participants.
28. In addition, the Commission is of the view that Mr. Gill’s statutory declaration demonstrates that Paul’s Greenhouse is sufficiently committed to Red Sun’s application. Though Paul’s Greenhouse is undoubtedly a very small producer, this

fact alone should not disqualify Paul's Greenhouse from constituting at least one of the two producers who are required to demonstrate a commitment to ship to the prospective agency. In addition, while Windset and GGFI also argued the Paul's Greenhouse GMA is "not effective until December 31, 2026", the Commission accepts Red Sun's position that the effective date of that GMA is actually May 30, 2025.

29. However, it is the Commission's view that Red Sun has failed to demonstrate that it has secured production from Houweling Nurseries Ltd. Though Red Sun argues that Houweling's generic support for its application is sufficient to warrant agency designation, the failure to demonstrate that Houweling Nurseries Ltd. has committed to ship to Red Sun is otherwise acknowledged by Red Sun in its submissions. As already noted, in its June 13, 2025 submissions, Red Sun says this:

10. **Red Sun is continuing and has not yet finalized discussions regarding crop/program details and commercial terms with Houweling Nurseries for the supply of its production.** Those discussions are complicated or impacted by developments around Houweling Nurseries existing agency and wholesaler, Country Fresh Produce Inc. ("CFP") and Mucci International Marketing Inc. ("Mucci"), respectively, and the former's Agency review, which has continued despite the elapse of time since Red Sun's agency application. The parties' efforts to balance each others' interests have extended these discussions, at least while no decision has been made with respect to Country Fresh Produce Inc.'s status as an agency.

30. For this reason, the Commission concludes that Red Sun has failed to satisfy the "Secured Production Conditions."

Other Matters

31. The Commission notes that while Mucci "makes no further submission on the second phase of the review of Red Sun's agency application", it otherwise states in June 20, 2025 submissions that it "repeats and relies on its submissions [in its] Notice of Appeal... dated February 21, 2025" and in its "submissions... in the Supervisory Review." As these submissions are made by Mucci to the BCFIRB in extant appellate and supervisory proceedings, the Commission makes no comment in those submissions here.
32. With respect to Paul's Greenhouse, the Commission notes that it has been marketing other than through a designated agency pursuant to paragraph 16(1)(a) of the General Order. Provided that it continues to hold less than 2,000 m2 of Production Allocation

and is otherwise compliant with the General Order, it could continue to do so. Consequently, if Red Sun's conditional agency designation is rescinded that status quo should be unaffected. In addition, if Paul's Greenhouse were to expand beyond the 2,000 m2 threshold, then it would not be impeded from marketing through any other designated agency.

Disposition

33. Given the Commission's finding that Red Sun has failed to satisfy the "Secured Production Conditions", in accordance with its Phase I decision, the Commission's decision that Red Sun should be granted agency status is rescinded.

SAFETI

34. It is the Commission's considered view that its decision reflects a principles-based approach to supervision and regulation. This principled approach has been defined by the BCFIRB as six principles collectively referred to as the "SAFETI" principles:
- (a) Strategic: The decision reflects the Commission's identification of key opportunities as well as systemic challenges. The Commission confined itself to the narrow issues remaining extant in this "Phase II" proceeding, and did not reopen or revisit findings already made by the Commission in Part I.
 - (b) Accountable: The Commission has maintained legitimacy and integrity by discharging its responsibilities according to the detailed criteria for new agency applications as set out in the General Order.
 - (c) Fair: The Commission has ensured procedural fairness by providing industry stakeholders with a fulsome opportunity to express their positions.
 - (d) Effective: The high threshold for the grant of an agency designation, as well as criteria that need to be satisfied to maintain an existing agency designation, are both clearly defined in the General Order.
 - (e) Transparent: The Commission has taken all appropriate measures to ensure that processes, practices, procedures, and reporting on how the mandate is exercised are open, accessible and fully informed.
 - (f) Inclusive: The Commission has taken all appropriate steps to ensure that appropriate interests are considered.

35. Any person aggrieved or dissatisfied with this decision may appeal the decisions to the BCFIRB within 30 days from the date hereof.

A handwritten signature in blue ink, appearing to read "W. Shoemaker", with a long horizontal flourish extending to the right.

Wes Shoemaker, Chair