

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 linked [here](#). 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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