



BC Farm Industry Review Board

2019-20 VEGETABLE SUPERVISORY REVIEW

Consultation Document

July 10, 2020

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Overview

Supervisory Review Purpose and Scope

BCFIRB initiated this Supervisory Review (Review) to support the BC Vegetable Marketing Commission (Commission) with its projects related to Commission governance, agencies, and storage crop industry policies and rules. These projects and this Review arise, in part, from a recent series of appeals and industry issues.

This Review also relates to the Commission's 2019 decision to place a moratorium on agency and producer-shipper applications for an unstated time pending completion of its strategic planning and agency accountability projects.

The areas of focus for this Review, are:

- Commission structure;
- Agency accountability; and
- Storage crop delivery allocation

How to Participate

You are invited to make a written submission using the questions in this document.

Please send your written submissions to Wanda Gorsuch, Manager of Issues and Planning at Wanda.Gorsuch@gov.bc.ca by August 19, 2020.

Written submissions will be posted on BCFIRB's web page to ensure a transparent, fair and accountable process:

<https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/boards-commissions-tribunals/bc-farm-industry-review-board/regulated-marketing/supervisory-reviews/2019-2020-vegetable-supervisory-review>

You are responsible in the first instance for informing BCFIRB if, in your view, the information you are providing is confidential. The panel will assess the information and reasons for confidentiality before determining if or how the information should be disclosed.

BC Regulated Marketing

Production and marketing of BC vegetables is provincially regulated. Regulated marketing is intended to benefit producers, the sector's supply chain, and the public. It does this by ensuring industry members coordinate with each other to serve the market.

The BC Vegetable Marketing Commission (Commission), established by the [BC Vegetable Scheme](#) (Scheme), is responsible for regulating the sector. It is granted legal authorities by the BC government to promote, control and regulate the production, transportation, packing, storage and marketing of a regulated product. It does this using a wide variety of tools in its [General Orders](#) including licencing, production and marketing allocation (e.g. delivery allocation); price setting, program delivery (e.g. food safety) and enforcement processes. Policies and a principles-based approach to regulation guide its decision-making.

The BC Farm Industry Review Board (BCFIRB) supervises the Commission under the [Natural Products Marketing \(BC\) Act](#). BCFIRB is responsible for ensuring the Commission acts within its regulations. It is also responsible for ensuring the Commission uses its authorities for the benefit of industry members and the public (sound marketing policy) in an accountable way via good governance practices. Finally, BCFIRB hears appeals of Commission decisions.

Sector Overview

BC's vegetable producers compete in a global marketplace. Production from B.C.'s 59 greenhouse producers, 78 storage crop producers and 10 processing crop producers was valued at about \$368 million in 2019.

BC's greenhouse sector is competitive in North America. Location (moderate climate, proximity to markets) and innovation give differentiation and cost advantages. Production is enough to serve a diverse scale of wholesale, retail and food services purchasers.

Storage and processing crop producers face challenges such as seasonal production, unpredictable weather that impacts quality and volume, high production expenses (e.g. land) versus low return prices, and competition with high volume, lower-priced imports.

The Commission currently regulates production south of the 53rd parallel, including Vancouver Island and the Gulf Islands, but not Haida Gwaii. Producers who grow more than one tonne/year of the following vegetables must register with the Commission:

Storage Crops: Beets (tops off); Green Cabbage; Red Cabbage; Carrots (tops off); Parsnips; Rutabagas; White (purple top) Turnips; Yellow Onions; and Potatoes (all types and varieties) when the end use is not for seed.

Greenhouse Crops: Cucumbers (all types); Tomatoes (all types); Peppers; (all types); and Lettuce (as defined)

Processing Crops: Peas, Beans, Corn, Broccoli, Brussels sprouts, Cauliflower, Potatoes (all types & varieties) and Strawberries when the end use is manufacture/processing.

Commission Structure and Governance

Issue Statements

The questions BCFIRB will answer with the help of industry input are:

1. Does the Commission structure enable it to make effective and strategic decisions regarding the production and marketing of BC vegetables (sound marketing policy)?
2. Does the Commission structure allow it to effectively, fairly and accountably manage potential conflicts of interest and apprehension of bias in its decision-making?

Background

The Commission structure is set by the BC government in the BC Vegetable Scheme. It allows for:

- A Chair appointed by government; and,
- Up to eight members who are commercial producers, elected by commercial producers.

The Commission currently functions with the support of a General Manager, 2 additional staff, one contractor and retention of specialized services when required.

The current Commission Election Policy establishes the following member positions:

<u>Representation Category</u>	<u>District¹</u>	<u>Election Year</u>
Greenhouse Tomatoes	Districts I, II & III	Even
Greenhouse Peppers	Districts I, II & III	Even
Greenhouse Cucumbers	Districts I, II & III	Odd
Greenhouse Vegetable (any regulated greenhouse crop)	Districts I, II, & III	Odd
Storage Crops	District I	Even
Storage Crops	Districts II & III	Even
Storage Crops	Districts I, II, & III	Odd
Processing Crop	District I, II & III	Odd

The structure of the Commission is an important factor in its ability to make informed sound marketing policy decisions for the benefit of producers, industry and the public. It is also an important factor in its ability to manage perception of bias and conflict of interest in decision-making.

BCFIRB's questions stem primarily from the following issues.

Complex operating environment

The Commission makes regulatory decisions for the benefit of producers and the supply chain in a complicated operating environment. For example, retailer consolidation,

¹ District I = Lower Mainland, District II = Vancouver Island and Gulf Islands; and District III = Interior. For specific District definitions see the Commission General Orders

rapidly changing consumer demands, increasingly stringent food safety requirements and uncontrolled imports and unregulated vegetables are important factors in managing BC vegetable marketing.

Perception of bias and conflict of interest

Producer bias on regulated marketing boards is built-in and has been noted by BCFIRB as being a generally accepted part of the regulated marketing system. However, the limited number of producers and agencies also means it can be difficult for the Commission to have enough members for decision making (quorum) where members must recuse themselves for perception of bias or potential conflict of interest reasons.

Commission response

The Commission has endeavored to address these challenges by:

- Establishing three advisory committees advisory committee with representatives from storage crops, greenhouses and agencies to provide industry expertise (see the [Advisory Committee Terms of References](#));
- Using panels of Commission members to manage perception of bias and conflict of interest in decision-making; and,
- Moving forward with adding another independent member(s) to the Commission. The Commission has considered the addition of independent member(s) in 2013, 2017 and in 2019. To date it has not made a formal request to the Minister of Agriculture.

Independent member(s)

Given the complexity of the vegetable industry, the Commission is of the view that the addition of independent, non-producer member(s) can bring new expertise to the board, add to the boards decision-making capabilities, and assist the Commission with managing perception of bias and potential conflict of interest concerns with decision-making.

Several other BC regulated marketing boards have non-producer members in addition to the appointed Chair. These are:

1. Independent member appointed by industry or the regulated marketing board.

BC Cranberry Marketing Commission

- One independent member selected by the Cranberry Commission.

BC Milk Marketing Board

- One independent member selected by the industry advisory committee².

2. Independent member appointed by Cabinet.

BC Chicken Marketing Board:

- Two independent members appointed by Cabinet.

² Milk Industry Advisory Committee: 4 licensed producers, 2 of whom represent Lower Mainland licensed producers, one of whom represents Interior licensed producers and one of whom represents Vancouver Island licensed producers; 4 processor members, and further persons appointed by the board to broaden the scope of experience available to the committee in its deliberations.

BCFIRB questions for industry

1. An effective regulated marketing system requires trust and agreement to abide by the Commission rules.

What does the Commission need to do to build that essential level of trust and to build a stronger common interest in supporting its policies and rules for the benefit of the industry as a whole?

2. Does the use of panels and advisory committees result in sound decision making by the Commission? Please explain.

- a) If no, what more does the Commission need to do to make sound decisions and manage perception of bias and conflict of interest challenges?

3. How could the industry benefit from the Commission adding independent member(s)?

- a) What are the risks?

4. If BCFIRB recommends to the Minister of Agriculture that the Scheme be changed to include the addition of an independent member(s), should the member be appointed by government or industry? Please explain.

- a) What skills and expertise you think independent member(s) should have?

5. Commission positions go uncontested during the annual elections and there is little turnover in membership.

What are the risks and benefits to the sector when there is a lack of board turnover?

- a) If you see this as a problem, what are the possible solutions?

Agency Accountability Framework

Issue Statement

The questions BCFIRB will answer with the help of industry input are:

1. What should an agency accountability framework include?
2. How should an agency accountability framework be used?

Background

There are currently ten designated agencies³ in BC. (see Schedule I of the [General Orders](#)). They are businesses granted regulatory powers and responsibilities (see Part V Agencies; Part VII Agency Responsibilities of the General Orders).

Agencies are intended to play a key role in marketing BC regulated vegetables by harnessing the collective power of producers to develop and maintain market access for BC products. One of their front-line roles is to ensure that marketing is conducted in an orderly fashion according to the Commission General Orders. Orderly marketing provides fair market access for all licenced commercial producers.

Agencies are designated by the Commission and prior approved by BCFIRB. As part of its agency oversight responsibility, the Commission requires agencies to file documents and/or report on:

- use of delivery (ground crops) and production (greenhouse) allocation;
- pricing ranges and final prices;
- product quantities and sales within specified time periods,
- grower agreements;
- business or marketing plans;
- contracts with parties, such as retailers, for end use; and,
- financial statements.

Notably, the General Orders enable agencies to handle and label product to achieve marketing objectives and to charge producers fees for these services. As the point in the chain where “money changes hands”, agencies also deduct Commission levies from sales income and remit it on behalf of producers to the Commission.

Agencies are the delivery mechanism for food safety, tracking, tracing and quality programs. Their cooperation with the Commission and each other is essential to compliance and enforcement, as necessary, to preserve the BC regulated marketing system.

It is the system operating as an integrated whole that enables the maintenance of minimum prices to producers in a highly competitive open market. Agencies must

³ Of the ten agencies, nine are incorporated and one is a producer cooperative. The corporate structure and affiliations of the nine incorporated agencies vary, some being subsidiaries of larger business organizations. Some retain and maintain market expertise inhouse and others retain marketing services as necessary to their business needs.

cooperate amongst themselves to supply markets with BC product in a manner that minimizes gaps being filled by lower price imports.

Producers aggrieved by the performance of the agency they ship to can make a complaint to the Commission. Once the Commission has considered the complaint and made a decision, a producer who continues to be aggrieved may appeal the Commission's decision to BCFIRB. The Commission may exercise a range of remedial powers if an agency is determined to be in noncompliance, including the suspension and cancellation of the agency's licence. In the past, producers dissatisfied with the performance of one agency have switched to another.

Given the comprehensive nature of the regulatory regime that applies to agencies, what should an agency accountability framework cover?

As agencies are businesses with delegated regulatory authorities, they have a corresponding responsibility to be accountable to producers, the Commission, BCFIRB and the public for their compliance and operations.

During the most recent Vancouver Island supervisory review⁴, the Commission⁵ developed an agency accountability framework (a specialized set of evaluation criteria) to assess the existing Vancouver Island agencies and make recommendations to BCFIRB as to continued agency designation. Since that time the Commission has been working towards a general agency accountability framework for all BC agencies.

The Commission is responsible for ensuring agency compliance with its General Orders and for ensuring that agencies are effectively and strategically maintaining and building market access for BC regulated vegetables. The Commission must annually evaluate agency compliance as a basis for determining whether to renew each agency licence and to establish the licence Class (which determines the licence fee). While the Commission requires each agency to file a business or marketing plan upon request, it does not evaluate the performance of each agency in achieving their plan's objectives. While agencies routinely communicate with producers, a standard approach to the provision of key information could assist in better informed producers and prompt further dialogue amongst producers and with the agency for the benefit of the industry. Similarly, while agencies report to the Commission on specific matters at different times, there is no integrated report which would give the Commission key information about agency compliance and performance. Nor is there agency accountability reporting to BCFIRB or the public.

Input made earlier in this Review supports the adoption of an accountability framework requiring regular reporting to producers and the Commission about market and supply as a means of enhancing ongoing communication and building trust. One respondent

⁴2017 January 31, 2017. BCFIRB. [In the matter of the Natural Products Marketing \(BC\) Act and the Future of Regulated Vegetable Production on Vancouver Island – Agency Designation](#). This decision summarizes (pp. 5-11 inclusive) a series of Commission and BCFIRB decisions, supervisory and appeal, which led to the BCFIRB directions regarding agencies on Vancouver Island (pp. 30-32 inclusive).

⁵ June 8, 2016 Commission meeting.

noted accurate information on market and supply provides greater certainty to existing producers and potential new entrants. For the tool to be most effective, reports from an accountability framework should be developed to avoid concerns over disclosure of confidential business and personal information, support existing reporting requirements and be made public.

BCFIRB questions for industry

1. What do you think the primary purpose of an accountability framework should be? For example:
 - Report on agency performance against marketing plan?
 - Provide up to date price and sales data?
 - Provide up to date market data?
 - Indicate “health” of industry?

2. Should an agency accountability framework include reporting on compliance with the Commission’s General Orders?

3. Does an agency’s business structure influence outcomes for producers and the industry?

Storage Crop Delivery Allocation

Issue Statement

The questions BCFIRB will answer with the help of industry input are:

1. Is market access being managed effectively and strategically for storage crop producers through Delivery Allocation?
2. What, if any, changes are required to align Delivery Allocation rules and how it is managed with its intended purposes and meet the current needs of the industry?

Background

Delivery Allocation (DA) authorizes a producer to deliver a specified amount of a regulated product within a specified time period to an agency, or to market as otherwise directed or approved by the Commission. It is one of the main tools available to the Vegetable Commission to support and enhance a regulated marketing system for storage crops. Unlike production quota in supply managed industries, which is a right to produce a certain quantity of product, DA ensures producers have shared access to the market to sell what they have grown.

The Commission's [General Orders](#) (Part XVI) specifies the purposes of DA. These are:

- A. The preservation of market access for Producers who have served the market over time.*
- B. The provision of access for new entrants.*
- C. The desire to create and maintain long-term, sustainable, food safe, farming and greenhouse operations.*
- D. The provision of opportunity for industry growth.*
- E. The provision of an orderly marketing system*

The Commission's General Orders (Part XVI) state that agencies are to use each individual producer's assigned Delivery Allocation for the purpose of determining the producer's delivery opportunity in accordance with the established DA period. Each Agency has developed their own system for managing and applying delivery allocation for their producers. There is no standard system that Agencies are required to adhere to.

Established growers can increase their DA through earned allocation based on their average performance over a 5-year period. New entrants and growers seeking to grow additional product or new product apply to the Commission for DA. These applications require the support of an Agency in the form of a business/marketing plan and a Growers Agreement for the new product.

DA is transferable between producers. While formally there is no cash value assigned to DA, in practice it is bought and sold at a price negotiated between the parties. Transfers must be approved by the Commission.

DA only comes into effect when there is over-supply of product. When this happens DA is used to manage the rotation of market access among the grower group.

Why is Delivery Allocation part of this Review?

As the structure of the BC vegetable industry has evolved, DA rules and management have not been changed or updated. Recent applications to the Commission for new and additional DA has resulted in significant internal discussion about whether the current model, which was originally designed for a single-desk marketing system established according to geographic districts, is still adequate in a multi-agency environment where agencies and wholesalers are in competition throughout the province. Concerns have been raised about the capacity of DA rules and management to adapt to market opportunities and to accommodate new growers in the system.

BCFIRB questions for industry

1. Do the Delivery Allocation rules and how it is managed deliver on the purposes?
 - a) Does it deliver on some purposes better than others?

2. Is Delivery Allocation an effective tool for your business? How does it work well?
 - a) What elements could work better?

3. Do you think Delivery Allocation benefits one group over another in the vegetable industry? Please explain.

4. Do you think the Delivery Allocation rules and how it is managed offers room to grow for established growers? Please explain.

5. Does Delivery Allocation provide adequate opportunities for new entrants and renewal in the industry? Please explain.