



BC Farm Industry Review Board

FINAL TERMS OF REFERENCE

Prior Approval Application:

MPL British Columbia Distributors Inc. Agency Designation

The BC Farm Industry Review Board (BCFIRB) is considering the following January 12, 2022 recommendation from the BC Vegetable Marketing Commission (Commission):

That MPL British Columbia Distributors Inc. (MPL BC) be granted an agency designation to market BC regulated greenhouse vegetables.

Section 8 of the Natural Products Marketing (BC) Act Regulations (NPMA Regulations) requires BCFIRB to prior approve agency designations.

Agencies are businesses licensed by the Commission and prior approved by BCFIRB to market regulated B.C. products on the behalf of producers and to the exclusion of other businesses. Agencies are delegated certain legislative authorities by the Commission, to whom they are directly accountable.

Agencies secure and build access for B.C. regulated products in a wide variety of markets for regulated producers. Agencies also process, store, pack, label, and ship product on behalf of producers.

For consumers, agencies help ensure a steady, safe, high-quality supply of B.C. product by contributing to orderly marketing.

Overall, designated agencies play a front line and larger strategic role, assisting the Commission to regulate, manage and grow the regulated vegetable sector in an orderly fashion and in the public interest.

Agency designation is a privilege. It is non-transferable and is not approved in perpetuity. The Commission is responsible for conducting periodic reviews and assessments of agency designations to ensure that agencies are operating with good governance and within their statutory authority. Such assessments and reviews may also be required by BCFIRB.

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Scope and Focus

BCFIRB will consider the following questions:

1. Did the BC Vegetable Marketing Commission conduct a SAFETI-based¹ process?
2. Is the BC Vegetable Commission's decision to designate MPL BC as an agency in the public interest and consistent with sound marketing policy?

BCFIRB's prior approval role is to consider the above questions, address any procedural defects in the Commission's process if necessary, and to assess whether the Commission's rationale and recommendation accord with sound marketing policy. It is the Commission's responsibility as the first instance regulator to demonstrate that it conducted a SAFETI-based process and reached a sound marketing policy-based recommendation. It is not BCFIRB's intent to replicate or repeat the full agency designation application process. However, BCFIRB needs to reach its own conclusion as to whether the approval of MPL BC's agency license is beneficial to the regulated vegetable industry in BC.

Eligible Participants

The following are eligible to participate in BCFIRB's prior approval process:

BC Vegetable Marketing Commission

MPL BC

Agencies licensed to market BC regulated greenhouse vegetables

Producer-shippers licensed to produce and market BC regulated greenhouse vegetables

Wholesalers licensed to market BC regulated greenhouse vegetables, only if providing new or additional information not provided by a licensed agency or MPL BC.

Processors licensed to process regulated greenhouse vegetables.

Producers licensed to produce BC regulated greenhouse vegetables, only if providing new or additional information not provided by a licensed agency or MPL BC.

BCFIRB retains discretion to make directions regarding the form of participation, and may allow additional participants if it determines that the interests of other individuals or entities are likely to be affected by the prior approval decision.

¹ Strategic Accountable Fair Effective Transparent Inclusive

Process

The prior approval process set out below may be adjusted as necessary to ensure a fair process, appropriate stakeholder engagement and collection of the information necessary for decision-making.

As BCFIRB deems necessary and appropriate, participants will be given an ongoing opportunity to address relevant matters, including amending the Terms of Reference, throughout this process.

Phase 1: Terms of Reference – June 2022 - March 2023

Receipt of submissions and finalize the Terms of Reference no later than March 10, 2023.

Phase 2: Written Submissions, Document Disclosure and Expert Witnesses – March 2023 – May 2023

Written submissions

Eligible participants in the prior approval process will be given an opportunity to provide written submissions, supported by any documents, in response to BCFIRB's specific questions on the Commission process, rationale and recommendation. A separate letter will be sent to all eligible participants setting out the questions, any page limits, and submission deadlines for all participants.

MPL BC and the Commission will have written final right of reply.

BCFIRB will take into consideration the January 25, 2023 ruling of Chair Peter Donkers made in the Allegations of Bad Faith and Unlawful Activity supervisory review, and will seek written submissions on that ruling, including implications of the voluntary reporting requirement agreed to by MPL BC (Appendix A).

Document disclosure

The Commission must file with BCFIRB all documents, in its possession, in unredacted form that it relied on in coming to its January 12, 2022 decision **no later than March 17, 2023**. All eligible participants in the in-person hearing, including the Commission, are to file with BCFIRB all documents they intend to rely upon at the supervisory hearing **by April 21, 2023**.

Eligible participants must serve all other eligible participants with their documents at the same time they file them with BCFIRB unless they require a non-disclosure order pursuant to BCFIRB's May 2020 "Protection of Privacy and Confidentiality in BCFIRB Supervisory Processes and Reviews" Practice Directive (Appendix B).

Please be advised that all written submissions and documents will be posted to the BCFIRB web site unless the BCFIRB has granted a non-disclosure order.

Expert witnesses

Eligible participants who wish to rely on expert evidence must, at least 30 calendar days prior to the supervisory hearing, provide BCFIRB and all participants with a report setting out:

- I. the expert's qualifications; and,
- II. a summary of the expert's opinion, including the facts and assumptions on which it is based.

Phase 3: Supervisory Hearing – May 23, 24 and 26, 2023

At the conclusion of the written submission process, BCFIRB will confirm supervisory hearing eligible participants, establish time limits for presentations at the hearing, and address any other hearing-related matters. If necessary, a pre-hearing conference call will be scheduled.

An In-person Supervisory Hearing is scheduled for **May 23rd, 24th and 26th, at the Coast Tsawwassen Inn (1665 56 St, Delta, BC)**. Start and end times will be provided prior to the supervisory hearing.

Order of presentation

The order of presentation, including opening statements, witness and documentary evidence, and related questioning, will be as follows. BCFIRB may also set time limits or issue other directions as it deems necessary.

- (a) BC Vegetable Marketing Commission
- (b) MPL BC
- (c) Other Eligible Participants

BCFIRB will allow a right of reply to MPL BC and the Commission.

Evidence

Participants will be able to call witnesses and those witnesses will be subject to questions from other participants and BCFIRB. The order of questioning will be as above unless BCFIRB otherwise directs.

Closing Statements

- (a) BC Vegetable Marketing Commission
- (b) MPL BC
- (c) Other Eligible Participants
- (d) MPL BC reply
- (e) BC Vegetable Marketing Commission reply

Following the supervisory hearing, BCFIRB will determine if any further process and/or information is required before making its decision and notify the participants accordingly.

Phase 4: BCFIRB Decision

BCFIRB decision on MPL BC agency designation.

Phase 5: Outstanding appeals

Following the release of BCFIRB's decision, parties with outstanding appeals will be contacted by BCFIRB Case Management staff and be asked to advise whether any outstanding matters remain on their appeals. After receiving submissions from all affected parties, the BCFIRB appeal panel will determine if any live issues remain to be addressed on appeal and make any necessary rulings.

Contact

If you have questions regarding BCFIRB's prior approval process, please contact Wanda Gorsuch, Manager of Issues & Planning at 778-974-5790 or Wanda.Gorsuch@gov.bc.ca.