

# BC Cranberry Marketing Commission

## General Orders

July 2010

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### **Part 1** *Purposes and Authorities*

#### *Precedence of these Orders*

1. These Orders replace all former General Orders of the British Columbia Cranberry Marketing Commission ("Commission"). To the extent of any inconsistency between these Orders and any other Order, Rule or policy of the Commission, these Orders shall prevail.

#### *Authority of Commission*

2. The Commission exercises its powers under the following

- (a) Natural Products Marketing (BC) Act, R.S.B.C. 1996, c.330;
- (b) British Columbia Cranberry Marketing Scheme, B.C. reg. 259/68;
- (c) Order in Council No.1086, approved and ordered Nov 18, 2004, amending BC Reg # 259/68; and the
- (d) Natural Products Marketing (BC) Act Regulations, B.C. Reg 328/75.

*Purpose of Orders*

3. The Commission is vested with the power to promote, regulate and control in any and all respects, to the extent of the powers of the Province, the transportation, processing, packing, storing and marketing, or any of them, of the regulated product, including the prohibition of such transportation, processing, packing, storing and marketing, or any of them, in whole or in part. These Orders implement the powers vested in the Commission.

*Power to Exempt*

4. The Commission is vested with the power to exempt from a determination or order a person or class of persons engaged in the transportation, processing, packing, storing and marketing, production, of a regulated product or a class, variety or grade thereof.

*Power to Delegate*

5. The Commission is vested with the power to delegate its powers to such extent and in such manner as the Commission may from time to time deem necessary or advisable for the proper operation of the Scheme.

***Part 2 Definitions***

1. In these Orders
- (a) “Act” means the Natural Products Marketing (BC) Act;
  - (b) “Designated Agency” means any person designated by the Commission as being a person through which any regulated product shall be processed or marketed;
  - (c) “Commission” means the British Columbia Cranberry Marketing Commission;
  - (d) “Control” means
    - (i) the majority of the votes to elect the Board of Directors in respect of a corporation;
    - (ii) the majority of partners entitled to vote in respect of a General Partnership;

- (iii) the majority of votes to elect the Board of Directors of the General Partner or General Partners of a Limited Partnership;
- (e) “Cranberry bog” means land on which cranberries are grown;
- (f) “Marketing” includes buying, selling, disposing of, and offering for sale;
- (g) “Order” means an order of the Commission ( as may from time to time be declared by the Commission) and includes these General Orders;
- (h) “Person” includes any individual, partnership, firm or corporation;
- (i) “Producer vendor” means a grower authorized and licensed by the Commission to pack, transport, process, store and market, the regulated product grown by him;
- (j) “Registered Grower” includes any individual or authorized representative of a partnership, firm or corporation, holding a valid grower or producer vendor license issued by the Commission.
- (k) “Regulated product” means any variety of cranberries (*Vaccinium macrocarpon*) grown in British Columbia.
- (l) “Scheme” means BC Regulation No. 259/68 amended from time to time.
- (m) “Rule” means a determination by the Commission giving effect to, or defining a General Order, or a determination by the Commission providing a temporary variance to a person or class of persons, from a General Order
- (n) “Transport order” means an authorization issued by the Commission providing for the transport of the regulated product.

#### *Interpretation*

2. For purposes of interpreting these Orders the masculine includes the feminine and the singular includes the plural.

### **Part 3 Requirement to Keep Records**

#### *Books and Records*

1. Every person shall keep in the English language complete and accurate books and records of all matters relating to the production, transportation, processing, packing, storing and marketing of the regulated product by him.

#### *Make Books and Records Available for Inspection*

2. For the purpose of ascertaining whether the orders of the Commission are being complied with, every person shall upon request, produce for inspection by the Commission or any member of the Commission or any of its employees or any other person authorized by the Commission for that purpose, all such books and records kept by him.

#### *Provide*

3. Every person shall upon request furnish to the Commission any information relating to the transportation, processing, packing, storing and marketing by him of the regulated product and shall make specific answers to any questions submitted to him by any member or employee of the Commission or any other person duly authorized by the Commission.

## **Part 4 License Requirements and**

### *License Classes*

1. All persons engaged in the production, processing, packing or marketing of the regulated product are required to register annually with the Commission and obtain a license annually issued by the Commission.
  - (a) Persons engaged in production of the regulated product must obtain a Grower's License;
  - (b) Persons engaged in production and marketing of the regulated product other than to a designated agency, must obtain a Producer Vendor License;
  - (c) Persons engaged in processing, packing or marketing the regulated product produced by a grower must obtain an Agency License.

### *License Qualifications*

2. To qualify for a license:
  - (a) a grower must have registered his acreage of the regulated product with the Commission, he must have a valid contract with a designated agency and he may be required to demonstrate compliance with a recognized food safety plan.
  - (b) a producer vendor must have registered his acreage of regulated product with the Commission, he must submit a marketing plan satisfactory to the Commission and may be required to demonstrate that all aspects of producing, transporting, processing, storage and marketing the regulated product are consistent with recognized food safety standards.
  - (c) an agency must be in compliance with all applicable provisions of Part 8 of these Orders.

### *Corporate Licenses*

2. Each application for a license made in the name of a partnership or corporation must list the name of each owner, partner or shareholder and identify the signing or voting authority for the partnership or corporation.

### *Name on License*

3. Each license issued by the Commission shall be issued to a named individual or an individual and a corporation jointly or in the case of a general partnership to the

named partners jointly or in the case of a limited partnership to the partnership and the general partner jointly.

#### *Ownership or Lease Requirements*

4. A grower's license or a producer vendor's license will only be issued to a person who is an owner of a cranberry bog or the holder of a lease of a cranberry bog for a term of not less than three (3) years.

#### *License Form*

5. Each application for a license shall be on a form prescribed by the Commission.

#### *License Expiry Date*

6. All licenses expire on March 31 of each

#### *License Fees*

7. The Commission shall set annually the license fees for each class of license. The Commission may, from time to time by Rule, suspend the license fee for any or all classes of license. The schedule of license fees is appended to these Orders as Schedule II.

#### *Exemptions from License Requirement*

8. Other than Growers, Producer Vendors and Designated Agencies, persons engaged in the transportation and persons engaged in the storage of the regulated product are exempted from registering with and obtaining a license from the Commission.

## **Part 5 Authorities and Limitation of**

#### *Grower License*

1. A grower's license authorizes a person to market the regulated product grown on his registered acreage or an amount of regulated product as may be determined from time to time by the Commission, to a designated agency. A grower's license does not permit the holder to process or store the regulated product. The Commission may make Rules exempting a grower from the requirement of delivering an amount of regulated product to an agency, if that product is exclusively used for the fresh market.

#### *Producer Vendor License*

2. A producer vendor license authorizes a person to market the regulated product grown in his registered acreage or an amount of regulated product as may be determined from time to time by the Commission. A producer vendor license does not permit the holder to receive, transport, process, market or store, the regulated product, unless that regulated product was grown by the licensee.

### *Agency License*

3. An agency license authorizes a person to receive the regulated product from a grower and to process, transport, market or store that product.

## **Part 6 Levies and Service**

### *Levies*

1. Unless otherwise exempted by the Commission all persons producing the regulated product shall pay levies or service fees to the Commission based on the volume of regulated product produced or marketed or on the area producing the regulated product. Levy or services fee amounts are established and amended from time to time by the Commission and are described in Schedule II to these General Orders.

### *Use of Levies*

2. The funds derived from levies or service fees may be used for carrying out the purposes of the Scheme and in paying any expenses of the Commission in carrying out the performance of its duties.

## **Part 7 Agency Designation**

### *Designated Agencies*

1. The Commission may from time to time, designate one or more agencies to process, pack, market, or store, the regulated product produced by licensed growers. Agencies designated by the Commission are listed in Schedule I.

### *Application Criteria*

2. To be designated as an agency a person must make application to the Commission for the designation. The application for designation shall address the following:
  - (a) the market opportunities the applicant intends to pursue;
  - (b) how the designation of the agency will benefit the industry as a whole;
  - (c) processing, handling, packing, storage and marketing facilities and expertise;
  - (d) the applicant's financial capability and stability;
  - (e) demonstrated support from current licensed growers;
  - (f) the applicant's understanding of the Act, the Scheme and the General Orders and the applicant's intention to comply with the applicable laws, orders, rules and procedures;
  - (g) such other information as the Commission deems appropriate.

### *Public Hearing*

3. When a completed agency designation application has been received, the Commission will, within 60 days of the receipt of the application, hold a public hearing where the applicant will present his application and all known interested persons will be extended the opportunity to comment on it. Interested parties may comment in person or in written form at the public hearing.

### *Application is Public*

4. Prior to holding the hearing, the Commission will make copies, with any confidential or business sensitive information removed, of the application available to all known interested parties.

### *Conducting Hearings*

5. The Commission may make Rules from time to time concerning the conduct of public hearings.

### *Recommendation to FIRB*

6. A final decision on designating an agency is made by the Farm Industry Review Board. Within 30 days of the public hearing, the Commission will make a recommendation on the agency designation application to the FIRB.

## **Part 8 Agency Responsibilities and Review**

### *Requirement to Furnish Information*

1. Upon request, an agency shall furnish such information, consistent with the Scheme and these General Orders, as the Commission may from time to time require.

### *Review of Agencies*

2. An agency designation by the Commission is not issued in perpetuity. To maintain its designation, an agency must annually obtain a license issued by the Commission. Licenses may be cancelled or suspended at any time, if the Commission determines that continuing the license is not in the best interests of the industry.

### *Financial Security*

3. Agencies are required to demonstrate annually to the satisfaction of the Commission that each has sufficient continuing financial stability and security. An agency designated by the Commission for 10 or more years may be exempted from this requirement.

### *Grower*

4. Agencies must submit copies of all signed grower contracts, and any changes to grower contracts, to the Commission and such contracts do not take effect until approved by the Commission.

#### *License and Contract Requirement*

5. No agency shall accept regulated product from a grower unless that grower has a valid license issued by the Commission and the Agency has a valid contract with that person. All contracts between an Agency and a Grower must be for a stated acreage of regulated product. An Agency may receive regulated product from a licensed producer vendor without a contract with that person.

#### *Limitation of Marketing Order*

6. An agency may only receive from a grower the volume of regulated product specified in a marketing order, if such an order has been issued by the Commission.

#### *Volume Reports*

7. Agencies shall report to the Commission in a timely manner volumes of regulated product delivered to the agency by each grower and producer vendor.

#### *Remitting Levies*

8. Each Agency shall deduct the appropriate Commission levy or service fee from the producer's proceeds as directed by the Commission and each Agency shall remit the funds to the Commission in a timely manner.

## **Part 9      Planned Production on New or Additional**

#### *Notification of New Planting*

1. Other than consolidating existing cranberry bogs, any person intending to plant new or additional acreage of the regulated product must notify the Commission by December 31st in the year prior to the year of planting. The notification shall include:
  - (a) The number of acres intended to be planted;
  - (b) The legal description and street address of the land on which the cranberry planting is intended;
  - (c) Confirmation the applicant owns the land or has a lease on the land for a term of at least three years;
  - (d) Confirmation from a designated agency that it will accept the production from the additional acreage;
  - (e) In the case of Producer Vendors a marketing plan, acceptable to the Commission, for the production from the new or additional acreage.

*Confirmation of Planting*

2. A person filing a notice under Section 1 of this Part is also required to notify the Commission when the planting has been completed.

*Failure to Notify*

3. In the event that new or additional acreages of the regulated product were planted without properly notifying the Commission, the Commission may at its discretion, exclude all or part of the production from those acreages when determining marketing orders as described in Part 10.

## **Part 10 Marketing Orders**

*Issuing Marketing Orders*

1. If the Commission determines that the production of the regulated product may exceed projected market requirements, the Commission may issue marketing orders to each grower and each producer vendor specifying the amount of regulated product that each grower and each producer vendor may transport from his cranberry bog in that period.

*Equitable Sharing*

2. When the Commission has determined the total projected market requirements for the regulated product for the period, the Commission may make Rules to determine individual marketing order volumes so that each grower and each producer vendor shares equitably in the projected market requirements.

*Prohibition against Transfer*

3. Marketing Orders are not transferable between growers or between producer vendors or between each other and may not be shared, leased, or used in any way other than by the grower or producer vendor named on the order.

*Limitation of Marketing Order*

4. No grower and no producer vendor may market an amount in excess of the amount stated on the marketing order.

*Absence of Marketing Orders*

5. If no marketing orders have been issued for the period, then all of a grower's and all of a producer vendor's production of cranberries from his registered acreage may be marketed as authorized by the license.

*Transfer between*

6. If marketing orders have been issued, the Commission may direct an agency to deliver or make available a volume of regulated product, as determined by the Commission, to another agency and the Commission may establish the price for the product so transferred.

## **Part 11 Promotion and Research**

### *Funding of Projects*

1. The Commission may provide funding for research and promotion that it determines may be beneficial to the industry. Any person or organization requesting funds from the Commission for research or promotional purposes shall make application on a form prescribed by the Commission and if funding is approved shall carry out the activity as described in the application, and shall report the results of the project or activity to the Commission in a manner approved by the

### *Collaboration with other Organizations*

2. The Commission may consult or collaborate with other organizations in Canada or abroad to maximize research and promotion benefits to BC growers and it may delegate any appropriate powers and responsibilities to those organizations, as it deems desirable and expedient.

## **Part 12 Quality Standards**

### *Commission to establish standards*

1. The Commission may from time to time establish quality standards for the regulated product and require agencies and producer vendors to provide evidence of compliance with those standards.

## **Part 13 Compliance**

### *Failure to Comply*

1. If the Commission determines that a person or an agency has failed to comply with the Act, the Scheme, or any Orders or Rules of the Commission, the Commission may:
  - (a) cancel or suspend that person's license,
  - (b) issue a special marketing order specifying the volume of regulated product that may be marketed, or
  - (c) take such other steps, consistent with the Act and the Scheme, as the

Commission deems appropriate.

*Due Process*

2. Prior to taking any actions contemplated in Section 1 of this Part, the Commission will inform the person or agency of the alleged violation and if the person or agency wishes to contest the allegation the Commission will hold a hearing providing the opportunity for the person or agency to present evidence or opinion on the matter.

*Costs Recoverable*

3. Any costs incurred by the Commission in imposing a penalty on a person under this Part shall be fully recoverable by the Commission from that person.

## **Part 14      Miscellaneous**

*Commissioner and Officer Indemnification*

1. If an action or prosecution is brought against a Commission member or officer in connection with the performance of the person's duties, the Commission will, subject to Sections 2 and 3, pay amounts required for the protection, defence or indemnification of the member or officer.

*Exception for Criminal Offence*

2. The Commission will not pay a fine that is imposed on a member or officer as a result of the person's conviction for a criminal offence.

*Exception for Neglect*

3. The Commission will not pay amounts required for the protection, defence or indemnification of the member or officer in respect of any action of the person that results in a claim for damages if:
  - (a) the claim arises out of the gross negligence of that person, or
  - (b) in relation to the action that gave rise to the claim against a member or officer, he or she willfully acted contrary to the Commission's recognized policies or procedures or contrary to the order of a superior.

*Annual General Meeting*

4. The Commission shall hold an Annual General Meeting not later than March 31<sup>st</sup> of each year.

*Effective Date*

5. These General Orders shall come into operation on July 20

Dated at Abbotsford, British Columbia this 20th day of July

BC CRANBERRY MARKETING COMMISSION

(original signed by)  
John Savage, Chair

## Schedule I Designated Agencies

Ocean Spray of Canada, Ltd  
5400 Number 6 Road  
Richmond BC V6V 1T1

Pacific Canadian Fruit Packers Inc 1854  
Dewdney Trunk Road  
Pitt Meadows BC V3Y 2R9

## Schedule II Fees & Levies

### A. License Fees

Grower	\$ 10.00
Producer Vendor	\$100.00
Agency	\$500.00

### B. Grower Levy

\$0.28 (twenty eight cents) USD or the CDN\$ equivalent – per barrel (100 lbs)

## Rules

### Rule # 1

Pursuant to Part 4 Section 7

#### *Exemption from License*

Growers who have paid the levy in Part B of Schedule 3 are exempted from the annual License Fee.

### Rule # 2

Pursuant to Part 5 Section 1

#### *Exemption for Fresh*

Growers are granted an automatic exemption to a maximum of 1,000 lbs annually for the fresh market. Growers wishing to market more than 1,000 lbs for the fresh market must apply to the Commission for a higher exemption and Commission decisions will be made on a case by case basis.

### Rule # 3

Pursuant to Part 7 Section 5

#### *Procedures for the Conduct of Public Hearings on an Agency Application*

1. Chair Calls Order and introduces himself Commissioners and each attendee. Process to be informal. Witnesses need not be sworn in.
2. Chair cites legal authority (Natural Products Marketing (BC) Act and reason for the Hearing.
3. Chair describes process
  - a. Applicant to present application
  - b. Questions from Chair and Commissioners
  - c. Questions from other attendees
  - d. Applicant given opportunity for “in camera” and for final comments.