

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

**IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
A DIRECTION MADE BY THE BCFIRB REQUIRING THE COMMISSION TO ENGAGE
IN A TRANSPARENT PROCESS WITH RESPECT TO
FUTURE CONSIDERATION OF PROKAM'S DELIVERY ALLOCATION**

July 18, 2024

CONTENTS

BCFIRB Orders and Directions	3
Chronology Relating to Prokam’s DA and Licence Class	3
Transparent Processes	7
Key Issues Arising from the Submissions	10
Analysis	11
A. Scope of Review	11
B. The Nature of DA and The Positions of Some Stakeholders	12
C. The Effect of a “Freeze” on a DA Calculation	15
D. DA for the 2024 / 2025 Season	16
Order	17

BCFIRB Orders and Directions

1. On March 15, 2024, the BCFIRB issued a 134-paragraph decision under the style of cause “*In the Matter of the Natural Products Marketing (BC) Act and Allegations of Bad Faith and Unlawful Activity Review*” using the header “*Phase II Decision*” (the “Phase II Decision”). In the Phase II Decision, the BCFIRB made certain orders and directions including the following:

Any **future** consideration of Prokam’s **delivery allocation** (DA) and **license class** must be considered by the Commission through a transparent process with an opportunity for submission by all stakeholders, and subject to prior approval by BCFIRB. (emphasis added)

Chronology Relating to Prokam’s DA and Licence Class

2. The relevant chronology relating to Prokam’s delivery allocation and licence class is as follows:
 - (a) In a decision dated December 22, 2017 (**Appendix A**), the Commission made the following orders (among others):
 - (i) Prokam’s 2017-18 Crop Year potato shipments on Kennebec potatoes and all potato exports are not to be included in the calculation of delivery allocation for the 2018-19 crop year. [par. 48.2]
 - (ii) The Class 1 Producer Licence issued to Prokam is to be revoked and replaced with a Class 4 Licence. The Commission may choose to replace this licence with a Class 3 or Class 5 licence on review of the producer’s compliance with these orders. [par. 48.3]
 - (b) In a decision dated February 28, 2019 (**Appendix B**), the BCFIRB ordered that the Commission reconsider its decision to revoke Prokam’s Class 1 Producer Licence and replace it with a Class 4 Licence. [par. 89]
 - (c) In September 2019, the BCFIRB established a supervisory panel to undertake a supervisory review arising out of a series of appeals from Commission decisions and related Commission management projects.
 - (d) On November 18, 2019, the Commission released its Reconsideration Decision (**Appendix C**) and made the following order (among others):

92. Prokam Enterprises Ltd. Licence Class

Effective immediately, The order to issue a Class IV Licence to Prokam be replaced with an order to issue a Class III License to this producer.

Prokam was not licensed to produce regulated vegetables for the 2018 and 2019 crop years. Prokam will be required to be licensed as a Class III producer when it so chooses to recommence growing regulated vegetables. If Prokam remains compliant to the General Order, after one year of growing regulated vegetables the licence class will revert to a Class II Licence, and at the end of a second year of producing regulated vegetables, Prokam would be entitled to a Class I Licence.

- (e) On November 20, 2019, Prokam filed Appeal #N1908 of the Reconsideration Decision. Among other things, Prokam sought reinstatement of its Class 1 licence retroactive to December 22, 2017, and an order freezing its delivery allocation as at October 10, 2017.
- (f) By letter dated November 29, 2019 (**Appendix D**), the BCFIRB ordered that Appeal #N1908 be deferred until the Vegetable Review was completed (the Deferral Decision).
- (g) On January 10, 2020, the BCFIRB supervisory panel issued an interim relief decision (**Appendix E**):
 - (i) At paragraph 25, the BCFIRB supervisory panel stated:

In this decision, the panel is not considering Prokam's appeal request to have its Class I licence reinstated. Prokam has a valid licence and as such can produce and market vegetables. The issue of what is the appropriate class of licence for Prokam cannot be resolved in this process.
 - (ii) At paragraph 52, the BCFIRB supervisory panel stated:

For the purposes of this decision, the panel finds that the two years of business uncertainty were in part created by the flawed Vegetable Commission process which

necessitated the initial appeal and then the reconsideration. In the panel's view, the delay to resolve the process concerns amounts to special circumstances and those years should be excluded from calculation of delivery allocation.

- (h) By letter dated January 17, 2020 (**Appendix F**), the Commission detailed Prokam's 2020 / 2021 delivery allocation, which was calculated by excluding the 2018 / 2019 and 2019 / 2020 crop years as directed by the BCFIRB.
- (i) By letter dated March 18, 2020 (**Appendix G**), Prokam requested that the Commission freeze its delivery allocation for the 2020 / 2021 season.
- (j) On November 17, 2020, the Commission decided to approve Prokam's request for a delivery allocation freeze for the 2020 / 2021 growing season (**Appendix H**). This decision had the effect of freezing Prokam's delivery allocation such that Prokam's allotted future marketing volumes were not impacted by its non-production years.
- (k) On December 22, 2020, the BCFIRB issued its supervisory decision (**Appendix I**).
- (l) On December 29, 2020, Prokam sought to reinstate Appeal #N1908, stating that the issue raised by it concerning reinstatement of its Class 1 License retroactive to December 22, 2017 was not addressed in the Supervisory Review Decision, and that it remains a live issue in Appeal #N1908.
- (m) By letter dated March 30, 2021 (**Appendix J**), the BCFIRB agreed that the issues concerning Prokam's licence class remain extant on Appeal #N1908, and directed that the matter be set down for hearing. [par. 22]
- (n) In April, 2021, the BCFIRB discovered that two civil claims for the tort of misfeasance in public office had been filed - one by Prokam, and another by MPL. Peter Guichon, the former Vice-Chair of the Commission, and Andre Solymosi, the Commission's General Manager, were named as defendants in both claims. MPL's claim also named as defendants four additional members of the Commission, namely, John Newell, Mike Reed, Corry Gerrard, and Blair Lodder.
- (o) Consequently, on May 26, 2021, the BCFIRB ordered a supervisory review, pursuant to s. 7.1 of the NPMA, with respect to the allegations of bad faith and unlawful activity raised in the Civil Claims.

- (p) By letter dated July 7, 2021 (**Appendix K**), the BCFIRB again decided to defer the issues concerning Prokam's licence class in Appeal #N1908 pending the outcome of the BCFIRB's supervisory review into allegations of bad faith.
- (q) By letter dated May 17, 2022 (**Appendix L**), Prokam made a formal request that its delivery allocation be frozen for the 2022 / 2023 season on the basis that it was still recovering from the extensive damages incurred from the November 2021 floods and would not have infrastructure in place for the 2022 / 2023 season.
- (r) By email dated October 5, 2022 (**Appendix M**), the Commission invited all storage crop producers who were affected by the November 2021 Sumas floods to make an application to the Commission to freeze their delivery allocation.
- (s) In October, 2022, Prokam applied for an order freezing its delivery allocation for the 2021 – 2022 and 2022 / 2023 seasons (**Appendix N**).
- (t) By letter dated November 24, 2022 (**Appendix O**), the Commission approved Prokam's request for an order freezing its delivery allocation for the 2021 – 2022 and 2022 / 2023 seasons. In that same letter, the Commission provided details of Prokam's revised 2023 / 2024 delivery allocation.
- (u) The Commission understands that Prokam produced a small crop of potatoes for the 2023 / 2024 season to be marketed by its designated agency, Okanagan Grown Produce Ltd. ("Okanagan"). However, the Commission also understands that no potatoes from that crop were marketed by Okanagan. Also, the Commission's records indicate that Prokam did not apply for a producer licence for the 2023 / 2024 season, or for an order freezing its delivery allocation for that season. Prokam was not issued a licence for the 2023 / 2024 season, and no freeze was considered or granted with respect to its delivery allocation for the 2023 / 2024 season. The Commission's records indicate that staff emailed Prokam on August 15, 2023 to notify it that its licence renewal was past due, and that in order to maintain its delivery allocation, Prokam would need to be licensed as a producer.
- (v) By email dated October 17, 2023 (**Appendix P**), the Commission confirmed Prokam's delivery allocation for the 2023 / 2024 season.

Transparent Processes

3. By email dated April 24, 2024, the Commission circulated a Bulletin (**Appendix Q**) setting out the chronology relating to Prokam's DA and licence class as reproduced above and including all of the Appendices referenced above.
4. The Commission advised that any future consideration regarding the extant issues with respect to Prokam's licence class should be addressed in the context of Appeal #N1908, which is no longer held in abeyance given the resolution of the BCFIRB's supervisory processes. The Commission invited any industry stakeholders who wished to take a position in relation to those extant issues to apply to the BCFIRB for Intervener status. To this date, the Commission is not aware of any such applications for Intervener status.
5. With respect to Prokam's Delivery Allocation, the Commission advised that any industry stakeholders (including Prokam) who wished to take a position in relation to Prokam's DA for the 2024 / 2025 season must provide the Commission with a written submission on or before May 8, 2024. The Commission further advised that these written submissions would be circulated among all stakeholders who have provided written submissions, so that each could have an opportunity to address any points raised in the submissions filed by others.
6. The Commission received written submissions relating to Prokam's DA as follows:
 - (a) Letters from growers (**Appendix R**) as follows:
 - (i) Letter dated May 7, 2024 from Burr Farms Ltd.;
 - (ii) Letter dated May 7, 2024 from Amrik Sihota;
 - (iii) Letter dated May 7, 2024 from Heppell's;
 - (iv) Letter dated May 7, 2024 from Blake Lundstrum;
 - (v) Letter dated May 7, 2024 from Rod Swenson Farms Inc.;
 - (vi) Letter dated May 7, 2024 from Brent Kelly Farms Inc.;
 - (vii) Letter dated May 8, 2024 from Triple J Potato Corp.;
 - (viii) Letter dated May 8, 2024 from TSN Farms Ltd.; and

- (ix) Letter dated May 8, 2024 from Sprangers Farms Ltd.
 - (b) Letter dated May 8, 2024 from IVCA (**Appendix S**);
 - (c) Letter dated May 8, 2024 from counsel for Prokam, with attachments (**Appendix T**);
 - (d) Letter dated May 8, 2024 from counsel for BCfresh, with attachment (**Appendix U**);
7. By email dated May 14, 2024 (**Appendix V**), counsel for BCfresh requested an extension of the deadline to file a reply submission to Friday, May 24, 2024. In that same email, counsel for BCfresh also requested that the Commission provide answers to the following questions:
- (a) By letter dated November 24, 2022 (Exhibit O to the VMC’s Binder of Appendices), the VMC gave Prokam notice of a DA freeze for crop year 2021/2022. The VMC included, with the letter, its calculation of Prokam’s DA for 2023/2024. This DA calculation makes positive adjustments for all types of potatoes for the 2021/2022 crop year. By its own admission, Prokam had not planted any red, white or yellow potatoes in 2021. Could you please explain the positive adjustments for coloured potatoes for 2021/2022?
 - (b) Does the VMC have any record of a DA freeze for 2021/2022 for Prokam other than the November 22, 2022 letter?
 - (c) Has the VMC provided any additional DA calculations to Prokam since the letter of November 24, 2022 to date? If so, please provide those calculations.
8. Later that afternoon, counsel for Prokam emailed the Commission (**Appendix W**) to express its opposition to the requested extension. Prokam argued that time is of the essence in the determination of Prokam’s DA, and that there are not a “number of crop years to be reviewed” as asserted by BCfresh, given that “decisions have already been made by either the BCFIRB or the Commission in respect of all years except 2023/24” (sic). Finally, Prokam asserted that the Commission should not accede to BCfresh’s request for an explanation for the treatment of coloured potatoes in the Commission’s DA Freeze granted in November 2022. Among other things, Prokam asserted that a response to this query other than in the Commission’s reasons would complicate the process.

9. Counsel for BCfresh replied to Prokam’s submission by email dated May 14, 2024 (**Appendix X**). Among other things, BCfresh challenged Prokam’s assertion that past DA freeze decisions are not to be reviewed.
10. On May 16, 2024, the Commission issued an Interim Decision granting the extension sought by BCfresh (**Appendix Y**). In addition, the Commission provided the information and records sought by BCfresh in the interest of promoting a transparent process, as follows:
 - (a) The Commission’s letter dated November 24, 2022 granted a freeze of Prokam’s DA for all classes of potatoes, notwithstanding that Prokam had not planted any red, white or yellow potatoes in 2021.
 - (b) Copies of Commission minutes relating to the November 24, 2022 freeze decision are attached [see: **Appendix Y**].
 - (c) DA calculations provided to Prokam since the letter of November 24, 2022 to date are set out at Appendix P (already circulated).
11. All stakeholders (including Prokam) were invited to make submissions in response to the submissions filed by other parties, and with respect to the additional information and documentation provided by the Commission, by the May 24 deadline. The Commission further advised that any party seeking a right of sur-reply could apply to the Commission following circulation of those submissions. Finally, the Commission encouraged all parties to focus on Prokam’s DA for the current crop year (2024/2025), stating as follows:

In its March 15, 2024 decision, the BCFIRB directed that: “Any future consideration of Prokam’s delivery allocation (DA) and license class must be considered by the Commission through a transparent process with an opportunity for submission by all stakeholders, and subject to prior approval by BCFIRB.” This is not an invitation to revisit past decisions made by the BCFIRB or the Commission regarding Prokam’s DA. The chronology of events circulated to stakeholders is intended to provide essential background information only. Consistent with the BCFIRB’s direction, the Commission will not engage in a retroactive reconsideration of past DA freeze decisions made by either the BCFIRB or the Commission.
12. On May 24, 2024, the Commission received a reply submission from Prokam (**Appendix Z**) and BCfresh (**Appendix AA**).

13. Though no person sought a right of sur-reply, on June 4, 2024 the Commission circulated the reply submissions of Prokam and BCfresh advised that any interested person would have a right to submit a sur-reply by June 12, 2024.
14. No sur-reply submissions were received.
15. All submissions were reviewed and considered by a Commission panel comprised of Derek Sturko (Chair), Craig Evans (Vice Chair), Natalie Veles (Member), John Newell (Member) and Ken Sandhu (Member).

Key Issues Arising from the Submissions

16. The key issues arising from the submissions made by stakeholders may be summarized as follows:
 - (a) Should the Commission reconsider past decisions made with respect to “freezing” Prokam’s DA? If so:
 - (i) Should Prokam’s DA calculation be adjusted to account for the fact that it grew only russets in 2021 and grew no coloured potatoes in either 2021, 2022 or 2023?
 - (ii) Were there legitimate special circumstances in regard to 2020, 2021, 2022 and 2023 to justify a freeze?
 - (iii) Is there a basis to disbelieve Prokam’s explanation for non-production in 2023 / 24?
 - (b) What is the nature of delivery allocation? When a grower does not produce, is that grower’s delivery allocation “filled by other producers”? Should Prokam’s DA be adjusted to reflect the notion that other growers had increased their delivery allocations by meeting market demand during the years since 2017 when Prokam has, for its own reasons, not shipped potatoes? Has the market that was previously satisfied by Prokam potatoes “been absorbed by potatoes produced by other BC growers”?
 - (c) What is the effect of a “freeze” on a DA calculation? When DA is “frozen” for a year, is the producer “deemed” to have shipped a particular volume of potatoes during the year in which the freeze occurs, or should DA be calculated on the basis that the “frozen” year is exempted or excluded from the calculation?

- (d) Should Prokam's DA for the 2024 / 2025 season be calculated as if it had obtained a freeze for the 2023 / 2024 season? What is the impact of Prokam not having a licence for the 2023 / 2024 season? What is the impact of Prokam neither seeking nor obtaining a freeze with respect to its delivery allocation for the 2023 / 2024 season?

Analysis

A. Scope of Review

17. In its Reply submission dated May 24, 2024, BCfresh respectfully disagrees with the Commission's earlier ruling that it would not engage in a retroactive reconsideration of past DA freeze decisions. Notwithstanding that earlier ruling, BCfresh asks that certain crop years be reconsidered for various reasons set out in the Reply submission.
18. Among other things, BCfresh argues that "it is clear from the BC FIRB's direction to conduct this review that Prokam's lack of production since 2017 is to be considered, as well as the reasons for that lack of production." However, this does not align with the BCFIRB's direction, which emphasized "future consideration" of Prokam's DA:
- Any **future consideration** of Prokam's delivery allocation (DA) and license class must be considered by the Commission through a transparent process with an opportunity for submission by all stakeholders, and subject to prior approval by BCFIRB. (emphasis added)
19. In the Commission's view, "future consideration" does not imply reconsideration of past decisions. Indeed, it is the Commission's view that the BCFIRB's direction implies that the Commission is not to engage in a retroactive or retrospective reconsideration of past decisions.
20. Further, a retrospective or retroactive reconsideration of past freeze decisions would necessarily seem to call into question the BCFIRB's January 10, 2020 supervisory decision (**Appendix E**), which directed the Commission to grant a "freeze" for two years for the purpose of calculating Prokam's DA. Significantly, BCfresh states that it "does not seek any review of the orders of the BC FIRB that crop years 2018/2019 and 2019/2020 be excluded when calculating Prokam's DA." However, if a retroactive or retrospective review is to be undertaken at all, it is difficult to understand how that could be achieved without also reconsidering the BCFIRB's past decisions, which provided at least part of the foundation for the decisions of the Commission that followed.

21. In support of its position, BCfresh and the participating growers point to certain alleged errors in past “freeze” decisions. As one example, BCfresh and the growers note that the Commission granted a freeze of Prokam’s DA for all classes of potatoes, notwithstanding that Prokam had not planted any red, white or yellow potatoes in 2021. However, it is the Commission’s view that a reconsideration of past decisions will not contribute to orderly marketing, even if there is cause to debate the merit of such past decisions. At some point, a decision must be final and not open to reconsideration. If the Commission is willing and able to revisit decisions made by it years in the past, there might be no end to a matter, no beginning of enforcement, and no certainty or stability in the industry. Presumably, the essential need for finality of decisions is one of the reasons why the legislative scheme provides that appeals from Commission decisions must be made within 30 days of the decision being appealed.
22. Consequently, the Commission reiterates its earlier ruling that it will not engage in a retroactive or retrospective reconsideration of past freeze decisions. The issue for determination is limited to Prokam’s DA for the 2024 / 2025 crop year, without revisiting past DA decisions.

B. The Nature of DA and The Positions of Some Stakeholders

23. Growers who filed submissions with the Commission assert that they were able to make shipments, resulting in an increase to their DA, in years when Prokam did not plant or ship potatoes. BCfresh argues that the import of this is as follows:

4. **Delivery allocation is a producer's earned share of the market. When a producer vacates that market, that producer's share is then filled by other producers.** Vacating a market for 6 years and then demanding that other producers, who filled that market, reduce sales is contrary to the principles of orderly marketing and fairness.

.....

10. **The market that IVCA sold to by shipping Prokam potatoes has, since 2017, been absorbed by potatoes produced by other BC growers.** Those growers should not now face the prejudice, increased costs and risks of having their market access compromised by Prokam shipping in excess of its delivery allocation, which properly calculated, should be zero.

.....

Having not shipped potatoes since 2017, **Prokam has vacated the market it was shipping to in 2017. Since that market was vacated by Prokam, other participating producers have increased their production and in-filled that market and by doing so have increased their respective DA.** It would be contrary to paragraph 39 of the General Orders to allow Prokam, in 2024/2025, to simply now decide to step back into the market requiring other producers to stand aside and incur the prejudice flowing from not being permitted to fully utilize their hard-earned DA in 2024/2025. This prejudice can be averted by managing Prokam's DA with adjustments or postponements during certain periods of the year when DA is triggered.

24. To some extent, BCfresh's conception of Delivery Allocation as "quota" is also reflected in the BCFIRB's Phase II decision at paragraph 88:

88. Hearing Counsel specifically proposes a transparent process for the determination of Prokam's DA going forward. That process must involve submissions from Prokam on why it has not produced regulated product; **an opportunity for producers who have grown their DA as a result of Prokam's nonproduction to provide input on how DA should be apportioned;** and be subject to prior approval by BCFIRB. I note that Prokam did not provide any substantive concerns with Hearing Counsel's proposal.

25. Prokam, on the other hand, essentially argues that BCfresh has inappropriately characterized the Delivery Allocation as form of quota akin to that which exists in supply managed commodities:

BC Fresh says that its growers will be prejudiced if Prokam is permitted to re-enter the market with its pre-2017 DA because many of them have been able to increase their DA over the six years that Prokam has not shipped potatoes. From Prokam's perspective, the basis for the claim of prejudice to growers who have increased their DA during Prokam's absence is unclear.

BC Fresh's submissions on prejudice seem premised on a theory that the potato market is finite and saturated, such that any DA for Prokam will prevent another grower from having their full DA marketed. However, DA only takes effect when supply exceeds demand. Unless there is reason to believe that Prokam re-entering the market will result in an excess of supply, all growers will be able to have their full DA marketed. If BC Fresh wished to assert the existence of prejudice, it was incumbent on BC Fresh to provide supporting data – particularly

because a large agency like BC Fresh has access to market data that Prokam does not.

.....

In any event, it is unclear how Prokam marketing its DA through Okanagan Grown would affect the ability of growers to market their DA through BC Fresh. As BC Fresh put it in its 2019-20 Vegetable Supervisory Review submission, “[t]he purpose of the DA system is to provide a mechanism for an Agency to manage supply within their grower group when supply exceeds demand to ensure the best opportunity to maximize producer returns.” As the Commission explained in its 2019-20 Vegetable Supervisory Review submissions, “[n]o agency is permitted to ship in excess of the aggregate delivery allocation held by its producers unless authorized by the Commission.” It is speculative to suggest that allowing Prokam to resume growing in accordance with its pre- 2017 DA would affect the ability of BC Fresh or IVCA growers to have their full DA marketed.

26. The Commission is presently engaged in an ongoing effort to clarify its orders, and it is evident that further amendments could be made to improve the precision of language expressing the Commission’s Delivery Allocation system. Admittedly, some of the provisions in the General Order relating to Delivery Allocation, at least when read in isolation, might suggest that Delivery Allocation is in the nature of a true “quota.” For example, section 47 of the General Order provides as follows:

47. No producer shall ship in excess of their delivery allocation, unless otherwise authorized by the Commission.

27. However, when the Commission’s General Order is read as a whole, it is clear that Delivery Allocation is not intended to operate as “quota”, but rather as a means to ensure that Agencies treat their growers fairly when there is more product available than can be sold by that Agency in a given period. In that event, the orders are to be filled proportionately from growers that have delivery allocation, which means that growers who do not have delivery allocation are first at risk of having their product unsold by the Agency. For example, section 48 of the General Order provides as follows:

48. Delivery Allocation within a period does not commence until supply exceeds demand. Any shipments made within a Delivery Allocation period prior to commencement of Delivery Allocation will count towards the building of Delivery Allocation.

28. Consequently, a grower's Delivery Allocation will define that grower's "place in the queue" relative to other growers shipping to the same agency, but it is unlikely that one grower's Delivery Allocation could detrimentally affect another Agency, or another Agency's growers, in the way suggested by BCfresh. To be sure, the activities of one Agency may be disruptive to the activities of another Agency. By extension, if an Agency improperly floods a market with product when that market is adequately serviced by another Agency, there may be a detrimental impact on producer returns. However, this is a matter of Agency regulation – not a function of Delivery Allocation. This is acknowledged, at least partly, by BCfresh in its Reply submission as follows:

Any planting by Prokam and **the marketing plan of its agency** need to be thoroughly reviewed and subject to adjustment to accord with the objects and purposes of the DA scheme. (emphasis added)

29. To put the matter another way, Prokam's Delivery Allocation cannot detrimentally affect BCfresh and its growers in the way suggested by them. The present circumstances are not analogous to those that existed when Prokam was shipping to IVCA. At that time, the concern was that Prokam and its principals were essentially controlling the Agency, and that the Commission had no effective means of controlling the marketing activities of the Agency. In the current context, the harm articulated by BCfresh and its growers could only arise if the Commission approved an Agency marketing plan that was detrimental to the interests of other growers.
30. To the extent that BCfresh and its growers express concern that markets serviced by BCfresh might be disrupted by the activities of other Agencies, these concerns can be managed by adequate oversight of Agencies and their marketing plans. It is the Commission's view that Prokam's Delivery Allocation, in isolation, cannot give rise to the disruptive affect alleged by BCfresh and its growers.
31. In brief, it is the Commission's view that the activities of BCfresh growers have no material bearing on the calculation of Delivery Allocation for a grower, like Prokam, that is shipping to another agency.

C. *The Effect of a "Freeze" on a DA Calculation*

32. In its Reply submission, BCfresh states:

General Order 48 provides that it is only recorded shipments through an Agency that shall be used for the calculation of DA levels or adjustments. The DA system is fundamentally based on potatoes shipped during a given period or year. Accordingly, although the word "freeze" is commonly used in regard to a year in which a producer does

not ship potatoes, the term is a bit of misnomer. When DA is "frozen" for a year, the producer is not deemed to have shipped a particular volume of potatoes during the year in which the freeze occurs. If shipments were deemed to have occurred at the same level as a previous year, then a producer's rolling 5 year average may be artificially increased. With respect, the correct description is either as an exemption or the exclusion of a year from the calculation, as described in the BC FIRB decisions excluding crop years 2018/2019 and 2019/2020 when calculating Prokam's DA. Paragraph 4 of the General Orders vests the Commission with an authority to grant exemptions. Prokam's DA for 2024/2025 should not be considered in this review using a hypothetical assumption that Prokam continued to produce potatoes from 2017 to 2023.

33. Section 48 of the General Order (now section 45) provides as follows:

Only Regulated Product shipped through an Agency or Producer-Shipper shall be used for the calculation of Delivery Allocation levels or adjustments.

34. The Commission agrees that section 48 (now section 45) obliges the Commission to exclude frozen years from a DA calculation. This has always been the practice of the Commission when calculating DA. Still, the calculation is conducted on a rolling 5-year average in accordance with section 46 (now section 49) which provides as follows:

Delivery Allocations shall be established on a rolling 5-year average for Storage Crops, unless otherwise directed by the Commission.

35. In other words, where Delivery Allocation is "frozen", the frozen years are excluded from the calculation and the Commission reaches back to past years, to the extent necessary, in order to calculate a rolling 5-year average.

D. DA for the 2024 / 2025 Season

36. Prokam argues that its DA for the 2024 / 2025 season should be calculated as if it had been granted a freeze for the 2023 / 2024 season. In essence, Prokam says that it made planting decisions for 2024 / 2025 on the assumption that there would be no reduction to its DA notwithstanding that it had not shipped any product in the previous season.

37. The Commission is not persuaded by Prokam’s submission on this point. The General Order is clear that Delivery Allocations is established on a rolling 5-year average, and Prokam does not require explicit “guidance” from the Commission to the effect that, absent an order freezing his DA, it would be reduced as a consequence of his failure to ship in the preceding year. To the extent that Prokam planted on the assumption that it had received a “freeze” when it was had not applied for one, and when it was not even licensed to ship product, it clearly did so to its own detriment.
38. The Commission has concluded that Prokam’s DA is properly subject to a reduction (when calculated on a rolling 5-year average) as a consequence of his failure to ship in the 2023 / 2024 season.

Order

39. In accordance with the above, and subject to the approval of the BCFIRB, Prokam’s DA for the 2024 / 2025 season is calculated as follows:

FRESH RUSSET POTATOES								
Delivery Allocation (Tons)								
Crop Year	A		B		C		D	
	Ship	Adj.	Ship	Adj.	Ship	Adj.	Ship	Adj.
2014/15	0.0		25.0		329.6		196.9	
2015/16	0.0		0.0		22.0		0.0	
2016/17	0.0		0.3		0.0		0.0	
2017/18	0.0		3.9		0.0		0.0	
2018/19	0.0		0.0		0.0		0.0	
2019/20	0.0		0.0		0.0		0.0	
2020/21	0.0		0.0		0.0		0.0	
2021/22	0.0		0.0		0.0		0.0	
2022/23	0.0		0.0		0.0		0.0	
2023/24	0.0		0.0		0.0		0.0	
2024/25	NA		NA		NA		NA	
Total	0.0	0.0	29.2	0.0	351.6	0.0	196.9	0.0
D.A. Calc. for 2024/25	0.0		5.8		70.3		39.4	115.5

40.

FRESH WHITE POTATOES

Delivery Allocation (Tons)

Crop Year	A		B		C		D		Total
	Ship	Adj.	Ship	Adj.	Ship	Adj.	Ship	Adj.	
2014/15	2.8		10.6		26.8		5.8		
2015/16	0.8		84.6		40.9		0.0		
2016/17	315.5		348.9		107.3		0.0		
2017/18	253.3		323.3		7.6		0.0		
2018/19	0.0		0.0		0.0		0.0		
2019/20	0.0		0.0		0.0		0.0		
2020/21	0.0		0.0		0.0		0.0		
2021/22	0.0		0.0		0.0		0.0		
2022/23	0.0		0.0		0.0		0.0		
2023/24	0.0		0.0		0.0		0.0		
2024/25	NA		NA		NA		NA		
Total	572.3	0.0	767.4	0.0	182.6	0.0	5.8	0.0	Total
D.A. Calc. for 2024/25	114.5		153.5		36.5		1.2		305.6

41.

FRESH RED POTATOES

Delivery Allocation (Tons)

Crop Year	A		B		C		D		Total
	Ship	Adj.	Ship	Adj.	Ship	Adj.	Ship	Adj.	
2014/15	0.7		12.3		113.3		55.3		
2015/16	0.0		21.4		43.5		23.6		
2016/17	119.3		373.0		190.3		0.0		
2017/18	84.6		136.3		26.4		0.0		
2018/19	0.0		0.0		0.0		0.0		
2019/20	0.0		0.0		0.0		0.0		
2020/21	0.0		0.0		0.0		0.0		
2021/22	0.0		0.0		0.0		0.0		
2022/23	0.0		0.0		0.0		0.0		
2023/24	0.0		0.0		0.0		0.0		
2024/25	NA		NA		NA		NA		
Total	204.5	0.0	543.0	0.0	373.5	0.0	78.9	0.0	Total
D.A. Calc. for 2024/25	40.9		108.6		74.7		15.8		240.0

42.

FRESH YELLOW POTATOES								
Delivery Allocation (Tons)								
Crop Year	A		B		C		D	
	Ship	Adj.	Ship	Adj.	Ship	Adj.	Ship	Adj.
2014/15	1.1		15.7		144.2		64.9	
2015/16	0.0		27.2		55.3		27.7	
2016/17	141.6		312.6		286.9		0.0	
2017/18	23.1		253.0		43.0		0.0	
2018/19	0.0		0.0		0.0		0.0	
2019/20	0.0		0.0		0.0		0.0	
2020/21	0.0		0.0		0.0		0.0	
2018/19	0.0		0.0		0.0		0.0	
2022/23	0.0		0.0		0.0		0.0	
2023/24	0.0		0.0		0.0		0.0	
2024/25	NA		NA		NA		NA	
Total	165.8	0.0	608.4	0.0	529.4	0.0	92.6	0.0
D.A. Calc. for 2024/25	33.2		121.7		105.9		18.5	279.2

43.

44. Calculation Note: All units are in tonnes. Shipments are the sum of the last 5 years of shipments excluding frozen years. The calculated result for the delivery allocation for all product categories is the sum of the 5-year shipping average and the weighted sum of the past 5 years of adjustments excluding frozen years. Frozen years are indicated with struck out values.

On behalf of the panel,

(Derek Sturko, Craig Evans, Natalie Veles, John Newell, Ken Sandhu)



Derek Sturko



Craig Evans