

**British Columbia
Farm Industry Review Board**

February 11, 2020

File: 44200-60 VEG

DELIVERED BY EMAIL

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Dear All:

**PROKAM ENTERPRISES LTD. (PROKAM) 2020/21 DELIVERY ALLOCATION
PRIOR APPROVAL DECISION**

In its January 10, 2020 decision “Interim Relief Sought by Prokam Enterprises Inc. [Ltd]”, the BC Farm Industry Review Board (BCFIRB) supervisory panel made the following direction:

59. In calculating Prokam’s delivery allocation for 2020/21, the Vegetable Commission is directed to:
 - a) Exclude 2018/19 and 2019/20 crop years from calculating Prokam’s 2020/21 delivery allocation;
 - b) Abide by the Prokam appeal decision finding that 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; and,
 - c) Submit Prokam’s 2020/21 delivery allocation to the panel for prior approval.

The BC Vegetable Marketing Commission (Commission) submitted its delivery allocation calculation to BCFIRB on January 17, 2020. On January 22, 2020 the panel provided Prokam the opportunity to respond by January 27, 2020 to the following two questions:

Does Prokam accept the Commission January 17, 2020 delivery allocation calculation for 2020/21?

If not, why not and what specifically should be changed?

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The Island Vegetable Cooperative Association (IVCA) provided an unsolicited submission on January 22, 2020 to BCFIRB and the Commission, copied to all storage crop agencies. The panel did not take IVCA's submission in to consideration.

Prokam's response was received on January 27, 2020. Prokam did not accept the Commission's calculations. Instead Prokam proposed two alternative calculation methods and pointed to a potential recording error for white potatoes. The email accompanying Prokam's submission raised concerns about the posting of confidential business information on BCFIRB's web site.

We will address the confidential business information concern before turning to Prokam's 2020/21 delivery allocation.

Publication of Prokam's delivery allocation numbers

Based on the principle of transparency, the panel has adopted BCFIRB's website to disclose all formal communications, submissions and other supervisory review documents. Normally, it is the submitter's responsibility to identify to BCFIRB at the time submissions are made if, in the opinion of the submitter, the submission contains confidential business information.

Despite the late notice, the panel respects Prokam's confidentiality concerns. BCFIRB removed Prokam's and the Vegetable Commission's submissions (December 10, 2020, December 16, 2020, January 17, 2020) from BCFIRB's web site on January 27, 2020, immediately after receiving Prokam's email.

The panel requires Prokam's shipment and delivery allocation data for making a decision on Prokam's delivery allocation for the 2020-21 production year. For the present purpose, the panel need not make a further ruling about the nature of the delivery allocation submissions and notes that the decision (as follows) will be posted to the website as is BCFIRB's practice with all decisions.

As the panel proceeds with the supervisory review it will make clear to all involved its expectations and processes regarding document disclosure.

Prokam's delivery allocation for the 2020/21 crop year

The Commission delivery allocation calculation reflects Part XVII Procedure for Determining Delivery Allocation for Storage Crops s. 3 of its Consolidated General Orders:

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

The Commission states its calculations take in to account the panel's January 10, 2020¹ directions regarding the 2018/18, 2018/19 and 2019/20 crop year data. The panel observes that the Commission includes Prokam's export shipment volumes in 2016/17 which contribute to Prokam's delivery allocation. This approach results in an overall benefit to Prokam in terms of its 2020/21 final delivery allocation, as does the panel's January 10, 2020 direction for the Commission to exclude Prokam's zero years of production (2018/19 and 2019/20).

Prokam's proposed "Method 1" calculation uses a three-year rolling average based on Mr. Hothi's total shipment volumes² as "year 1", plus Prokam's 2016/17 and 2018/19³ shipment volumes as years 2 and 3 respectively. The proposed "Method 2" calculation uses a two-year rolling average of Prokam's 2016/17 and 2017/18⁴ shipments.

Prokam did not provide substantive sound marketing policy reasons for the panel to deviate from the Commission's established delivery allocation calculation rules beyond a general, unsubstantiated, statement about economic viability. Also Prokam did not establish a basis to suggest the Commission calculation itself was in error except for identifying one potential recording error addressed below.

The Commission's approach to delivery allocation calculations has served growers for a number of years. Since Prokam has but 2 years of shipments, it follows that 3 years must come from Hothi's shipment volumes to calculate its 2020/21 delivery allocation under the existing rules based on a five-year rolling average calculation.

The panel recognizes Prokam's point that there may be a need for the Commission to revisit how it calculates delivery allocation for new producers that enter through transferred quota. Currently producers entering through transferred delivery allocation have their future delivery allocation calculations impacted by the previous producers' shipment volumes. However, this is a broader question and the panel is not satisfied that Prokam has sufficiently demonstrated exceptional circumstances for 2020/21 sufficient to justify an adjustment to the five-year rolling average calculation.

As per the panel's January 10, 2020 decision, Prokam's avenue to work with its agency, BC Fresh Vegetables Inc. (BCfresh), to expand production to fill new or additional markets remains available under the Commission's Consolidated General Orders. Prokam is not limited to shipments based on its delivery allocation if there are additional market opportunities as agreed to with BCfresh and the Commission.

¹ 2020 January 10. BCFIRB. In the Matter of the *Natural Products Marketing (BC) Act* and Interim Relief Sought by Prokam Enterprises Inc. [Ltd]

² Prokam refers to "delivery allocation" in its submission, but the numbers provided are a sum total of Mr. Hothi's shipment volumes.

³ Excluding export and Kennebec volumes as per BCFIRB direction.

⁴ Excluding export and Kennebec volumes as per BCFIRB direction.

Prokam states that it has not yet made arrangements for planting in the 2020/21 crop year “...because it has not been able to obtain confirmation of approval to plant potatoes in a volume that it can produce economically”. As per the panel’s January 10, 2020 decision and other correspondence, this remains a business decision for Prokam. If Prokam chooses not to plant regulated product for 2020/21 the panel observes this could result in a zero-production year for the purpose of future delivery allocation calculations.

2016 delivery allocation

Prokam asks the panel to confirm the volume of delivery allocation transferred to Prokam from Mr. Hothi in 2015/2016. The panel observes that Prokam’s entitlement to delivery allocation has been an issue in two prior appeals.

In *IVCA v. BCVMC*, (December 18, 2015), Mr. Dhillon testified in support of rescinding AO43 to allow a partial transfer of Mr. Hothi’s delivery allocation. Following the successful appeal and the rescission of AO43, the Commission approved the transfer of part of Mr. Hothi’s delivery allocation to Prokam. Prokam did not take issue at that time as to the amount of delivery allocation it acquired. Similarly, in the Prokam appeal⁵ Mr. Dhillon took no issue with what Prokam acquired from Mr. Hothi by way of the delivery allocation transfer. Rather, the issue for Prokam was how much could be grown in excess of the acquired delivery allocation.

Given this appeal history, this supervisory panel is not prepared to revisit the Commission’s 2016 determination of how much delivery allocation was transferred from Mr. Hothi to Prokam. Such a request appears to be an attempt to use these interim decisions made by the supervisory review panel to revisit a historical matter. Although the delivery allocation calculation arising from the transfer indirectly affected the calculation for Prokam production for 2016-17, it is not a direct factor in the calculation of production for Prokam in the upcoming 2020-21 production year.

There may be arguments to be made about how delivery allocation is calculated for new producers; these should be raised once the broader supervisory review is underway, as issues to be considered by the Commission and the supervisory review panel within the scope of work for the supervisory review.

Recording error

Prokam identifies a potential recording error for white potatoes (66.38 tonnes recorded by the Commission for 2015/16 period D versus 2016/17 period A). The panel received insufficient information from the Commission and Prokam to verify if this error has indeed occurred. As such we decline to make any adjustments and as noted below leave this to the Commission to resolve directly with Prokam.

⁵ 2019 February 28. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and Appeals from Compliance Orders of the British Columbia Vegetable Marketing Commission.](#)

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Decision

The panel approves the Commission's delivery allocation calculation for the 2020/21 crop year as disclosed in the Commission's January 17, 2020 submission to this panel on the condition that it review the recording error noted by Prokam and make any necessary adjustments.

The prior approved 2020/21 delivery allocation is for Prokam's production purposes in the 2020/21 crop year only.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:

A handwritten signature in cursive script that reads "D. Stancil".

Daphne Stancil,
Presiding Member

cc: BCFIRB web site