



Reconsideration of 2017-12-22 Decision
on Allegations of Non-Compliance by the Island Vegetable Co-Operative
Association, Prokam Enterprises Ltd., and Thomas Fresh Inc.

Effective Date: 2019-11-18

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INTRODUCTION

1. By decision dated February 28, 2019 in the matter of BCVMC ats. Prokam and Thomas Fresh (N1715, N1716, N1718, N1719), the BCFIRB directed the Commission to reconsider certain orders made by it on December 22, 2017.

2. The orders made by the Commission which are subject to the BCFIRB's reconsideration direction are as follows:

48.1 Effective February 1st, 2018, BCfresh is the designated Agency for Prokam. Prokam is to sign a GMA with BCfresh under the Agency's standard terms.

48.2 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.

48.3 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.

48.5 The Class 1 Wholesaler Licence issued to Thomas Fresh is to be revoked and replaced with a Class 4 Licence.

3. The following is a summary of the February 28, 2019 directions made by the BCFIRB:

Order 1. Commission orders 48.3 and 48.5 are referred back to the Commission to reconsider, with directions to consider all relevant facts and all relevant provisions of the General Orders, other than the asserted violation of the minimum pricing requirements in respect of the interprovincial sales.

Order 2. The Commission is directed to reconsider its decision to issue order 48.1.

Order 3. Prior to undertaking reconsideration pursuant to orders 1, 2 and 4, the Commission is directed to canvass the parties' views on the question of whether any members of the Commission must recuse themselves from the discussions and deliberations concerning the reconsideration.

Order 4. The Commission is directed to reconsider the question of whether any compliance or remedial action is necessary in relation to IVCA.

Order 5. The Commission is directed to review its minimum pricing policy documentation to ensure that it is properly documented and integrated as appropriate with its General Orders.

4. This reconsideration decision addresses Orders 1, 2, and 4.

BACKGROUND

5. On or about October 10, 2017, the Commission delivered “Compliance Notices” to each of Island Vegetable Cooperative Association, Prokam Enterprises Ltd. (Prokam) and Thomas Fresh. The Compliance Notices described alleged non-compliance with the General Order and directed the stakeholders to cease and desist certain specified activities.
6. The Compliance Notices were intended to operate as the first step in a SAFETI-based process initiated by the Commission. The purpose of each Compliance Notice was to advise of the particulars of alleged violations, and to require compliance with the existing provisions of the General Order pending a show-cause hearing to be conducted by way of written submissions.
7. After October 10, 2017, the Commission provided various additional materials to the stakeholders to better particularize the alleged non-compliance. Then, in accordance with a schedule established by the Commission, the stakeholders made written submissions with respect to the alleged non-compliance. These submissions were then circulated among the stakeholders so that they would each have an opportunity to file a brief reply submission.
8. The allegations of non-compliance were fully particularized in material provided to the stakeholders. The central allegation was that IVCA, a designated agency of the Commission, marketed potatoes grown by Prokam to Thomas Fresh at less than the minimum price established by the Commission.
9. On December 14, 2017, the Commission met to deliberate on the matter. At that meeting, the Commission reviewed the same material that had been provided to the stakeholders, as well as the written submission made by the stakeholders. The matter was considered by the Commission again on December 22nd, 2017.
10. On December 22, 2017 the Commission issued the following Orders:
 - 48.1. Effective February 1st, 2018, BCfresh is the designated Agency for Prokam. Prokam is to sign a GMA with BCfresh under the Agency’s standard terms.**
 - 48.2. 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.**
 - 48.3. 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.**
 - 48.4. The suspension of Mr. Bob Gill’s 2017-18 certificate of authority is to be addressed as an Agency matter. IVCA is to inform the Commission General Manager on if the certificate is to be re-instated or cancelled.**
 - 48.5. The Class 1 Wholesaler Licence issued to Thomas Fresh is to be revoked and replaced with a Class 4 Licence.**
49. These are the decisions and reasons of the Commission as “first instance regulator”. A person aggrieved by this decision may appeal the decision to the BCFIRB.

11. Four appeals were filed with the BCFIRB by vegetable producer Prokam Enterprises Ltd. (Prokam), and vegetable wholesaler Thomas Fresh Inc. (Thomas Fresh). The appellants appealed the decision of the BCVMC on October 10, 2017 to issue the “Compliance Notices” and the subsequent decision that was issued December 22, 2017.
12. The appeal was heard by a three member BCFIRB panel consisting of members Diane Pastoor, Al Sakalauskas, and John Les as the presiding chair. Dianne Pastoor’s appointment to the BCFIRB ended on July 31, 2018. However, her appointment was extended to allow her to continue to exercise her powers as a member of the BCFIRB on this appeal. On November 15, 2018 the appointment of Chair John Les was rescinded. A decision on the appeal that was made by the two remaining panel members was issued February 28, 2019.
13. The February 28, 2019 decision directed the BCVMC to reconsider the following Commission decisions: the replacement of Prokam’s Class 1 Producer Licence with a Class 4 Licence; the replacement of Thomas Fresh’s Class 1 Wholesaler Licence with a Class 4 Wholesaler Licence, and, directing Prokam to market through BCfresh Inc. Furthermore, the decision also directed the Commission to reconsider the question of whether any compliance or remedial action is necessary in relation to Island Vegetable Co-Operative Association (IVCA). And, as part of the reconsideration process, that the parties’ views be canvassed on the question of whether any Commissioners must recuse themselves from the discussions and deliberations concerning the reconsideration.

RECONSIDERATION PROCESS

14. By letter dated March 15, 2019, the Commission wrote to Thomas Fresh, Prokam and IVCA to solicit their views concerning the composition of a Commission panel to be struck for the purpose of reconsidering the matters described in the BCFIRB’s orders 1, 2 and 4. In particular, the Commission proposed a panel comprised of the following members: John Newell, Eric Schlacht, Mike Reed, Brent Royal (newly elected Commissioner representing peppers). None of those persons ship to, or are shareholders, directors or officers of, BCfresh. The Commission asked that any comments concerning the proposed panel be submitted to the Commission no later than March 29, 2019.
15. By letter dated April 23, 2019, the Commission advised that it had reflected on comments made by IVCA, Thomas Fresh and Prokam regarding the composition of the panel, and that it had decided that the panel would consist of the originally proposed members, namely: John Newell, Eric Schlacht, Mike Reed and Brent Royal. As the decisions resulting from the reconsideration would be decisions of the Commission, the Commission did not think that it would be useful to include persons on the panel who are independent from the Commission itself, as suggested by IVCA.
16. In the same letter, the Commission invited each of IVCA, Thomas Fresh and Prokam to make written submissions to the Commission regarding the matters to be reconsidered, before May 10, 2019. Each of IVCA, Thomas Fresh and Prokam would then have an opportunity to file a brief reply submission in order to address any matter raised in any other party’s original written submission. Any such reply submission was to be delivered to the Commission and to the other parties entitled to make submissions on or before May 24, 2019.

17. Written submissions were received from each of IVCA, Thomas Fresh and Prokam. On May 10, 2019 these submissions were distributed to each of IVCA, Thomas Fresh and Prokam so that they would have an opportunity to file a brief reply submission in order to address any matter raised in any other party's original written submission.
18. Reply submissions were received from each of IVCA, Thomas Fresh and Prokam by May 24, 2019.
19. On June 11, 2019 the Panel sought to engage in further consultation with industry stakeholders (potato producers and agencies, in particular) with respect to the reconsideration of the Commission's decision to issue order **48.1**: *"Effective February 1, 2018, BCfresh is the designated Agency for Prokam. Prokam is to sign a GMA with BCfresh under the Agency's standard terms."* Potato producers and designated agencies were invited to make submissions **with respect to order 48.1** on or before Wednesday **July 10, 2019**.
20. By letter dated July 5, 2019 all potato producers and designated storage crop agencies were informed that the due date for submissions would be extended to **July 19, 2019**. This letter also advised that any submissions received by the Commission would be provided to Thomas Fresh, Prokam and IVCA so that each may have the opportunity to make a brief reply before the matter is tabled before the Panel for consideration. Thomas Fresh, Prokam and IVCA were advised that reply submissions would be due Friday **August 2, 2019**.
21. Submissions were received by July 19, 2019 from BCfresh, Okanagan Grown Produce Ltd., and Vancouver Island Farm Products Inc. All three submissions were forwarded to IVCA, Thomas Fresh and Prokam on July 22, 2019. No further reply submissions were received from IVCA, Thomas Fresh or Prokam.

PARTICIPATION ON THIS APPOINTED PANEL

22. This Appointed Panel has been established by the Commission to reconsider the decisions made by the Commission on December 22, 2017. Participation on this Panel has been requested because the selected panel members:
 1. Have less conscious or perceived levels of bias with this issue, and,
 2. Are deemed to have less conflict-of-interest, based on their arms-length involvement with the storage crop sector.
23. The Appointed Panel has arrived at a consensus-based recommendation for the consideration of the BCVMC as a whole and has used a designed accountability process, with the intent to manage or limit the amount of bias or perceived bias present in the final recommendations presented to the BCVMC as a whole. Debbie Etsell, Chairperson of the BCVMC, and Andre Solymosi, General Manager of the BCVMC co-facilitated the process used by the Appointed Panel. Both the Chair and the General Manager worked together to prepare any advance reading required by this Appointed Panel, and, any responses to questions requiring further information or documentation.

Design Elements

24. The design is based upon the need for clarity of Order 3, (FIRB decision, Feb. 28, 2019) and all points following this order that relate to the management of reasonable bias or perceived bias when effectively managing commodity boards, and the decisions they must make on behalf of the industry as a whole.
25. All design elements and tools are there to ensure that the BCVMC is delivering on Order 3 of the Feb. 28, 2019 FIRB Appeal decision.
26. **Order 3: Prior to undertaking reconsideration pursuant to orders 1, 2 and 4, the Commission is directed to canvas the parties' views on the question of whether any members of the Commission must recuse themselves from the discussions and deliberations concerning the reconsideration.**
27. Producer governance undoubtedly raises special challenges for commodity board members seeking to identify those situations where there might still be a special or unique conflict that exists over and above the fact that a person is a producer. These are challenges that must be met if the commodity boards are to function effectively.
28. The design has tools developed for the use of the Panelists that will assist them to check their bias(es) at certain points, ensuring that the process has considered the many angles that will be required to make decisions based on the S.A.F.E.T.I. principles that the BCFIRB has designed as a guide for use by Commodity Boards.

Roles and Responsibilities

Commission Members as Panelists

29. Board members must respect their presence as elected officials and do their jobs to ensure and to the best of their ability and in good faith, the proper governance of the industry as a whole.

Appointed Chair of the BCVMC

30. The appointed chair will facilitate the process, ensuring that each Panel member has the ability to independently have the ability and opportunity to make their own decision, and present why they have arrived at such a decision, and how they have managed any potential bias(es).
31. The Chair will further ensure that the Panel will then listen to the individual panel presentations, discuss each thoroughly, and then, using a consensus-based model, synthesize until a representative decision is arrived at and is then collectively voted upon.
32. The Chair will be accountable for ensuring that all voices are heard, and if there are bias(es) that cannot be overcome, that the Panelist be able to clearly state what may be blocking them from voting on a consensus-based decision. The Chair will also present any further options for Panelists to stand aside with the final decision, (without blocking it from passing). In summary, the Chair will use and guide the process and use of tools for each question, until consensus is reached.

General Manager of the BCVMC

33. The general manager will assist the Panel as required to the facilitate their decision-making process.

REGULATORY FRAMEWORK

34. The overall purpose of regulated marketing is to provide a framework for producer economic stability and to satisfy other related public interests. It is intended to benefit producers, the sector's value chain, and the public.
35. The BC regulated vegetable industry is organized under the Natural Products Marketing (BC) Act and the British Columbia Vegetable Scheme (the Scheme). The Scheme prescribes the rules, procedures and application.
36. The Commission is the first instance regulator and acts by the authority delegated through the Natural Products Marketing (BC) Act and its Regulations. It is responsible for applying the Scheme, including coordinating producer activities, to ensure Orderly Marketing. Orderly Marketing is achieved through managing the promotion, control, and regulation of production, transportation, packing, storage, and marketing of vegetables.
37. The Commission's General Order sets out how the Commission manages the promotion, control, and regulation of production, transportation, packing, storage, and marketing of the vegetables it regulates.
38. In delivering its responsibilities, the Commission takes into account the economic stability of the industry, including producer price, and encourages growth of vegetable production in naturally strategic areas. To help support these actions the Commission pulls together current production and marketing data. The Commission also represents the interests of the industry inter-provincially, as well as nationally and internationally.
39. The Commission administers the Scheme, in part by way of a sub-delegation of powers to licensed Agencies.
40. Under the Natural Products Marketing (BC) Act (NPMA), BCFIRB is responsible for the general supervision of the Commission, including ensuring sound marketing policy. BCFIRB is also responsible for prior-approval in the designation of Agencies by the Commission under the NPMA Regulations, as well as hearing appeals of any Commission decision, determination, or Order.

SUMMARY OF ORDERS FOR RECONSIDERATION

ORDER 1. Commission orders 48.3 and 48.5 are referred back to the Commission to reconsider, with directions to consider all relevant facts and all relevant provisions of the General Orders, other than the asserted violation of the minimum pricing requirements in respect of the interprovincial sales.

BCVMC Decision Reference:

48.3 *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.*

Question: Should the Class Three Licence previously issued to Prokam be revoked and replaced with a licence of a different class?

48.5 *The Class 1 Wholesaler Licence issued to Thomas Fresh is to be revoked and replaced with a Class 4 Licence.*

Question: Should the Class Three Licence previously issued to Thomas Fresh be revoked and replaced with a licence of a different class?

ORDER 2. The Commission is directed to reconsider its decision to issue order 48.1.

BCVMC Decision Reference:

48.1 *Effective February 1st, 2018, BCfresh is the designated Agency for Prokam. Prokam is to sign a GMA with BCfresh under the Agency's standard terms.*

Question: Should BCfresh be the designated Agency for Prokam and should Prokam sign a GMA under the Agency standard terms?

ORDER 3. Prior to undertaking reconsideration pursuant to orders 1, 2 and 4, the Commission is directed to canvass the parties' views on the question of whether any members of the Commission must recuse themselves from the discussions and deliberations concerning the reconsideration.

Issue to address: Consideration on absence of bias.

ORDER 4. The Commission is directed to reconsider the question of whether any compliance or remedial action is necessary in relation to IVCA.

Question: Should any compliance or remedial actions be taken with or to IVCA?

KEY PROVISIONS OF THE GENERAL ORDER

41. The following provisions of the BCVMC General Order have been referenced. A complete copy of each section can be found in Appendix A:

Part IV Licensing

Part V Agencies

Part VII Agency Responsibilities

Part IX General Prohibitions

Part XIV Designation of Agencies

Part XV Marketing of “New” or Additional Regulated Product ...

Part XVI Production and Delivery Allocations – General

Part XVII Procedure for Determining Delivery Allocation for Storage Crops

Schedule III Annual Licence Fees

PRIMARY REFERENCE MATERIALS

- The BCVMC Decision issued December 22, 2017
- The BCFIRB Appeal Decision issued February 2, 2019
- Submissions received as part of the Reconsideration Process
- Agricultural Products Marketing Act, RSC 1985
- British Columbia Vegetable Order, SOR/81-49
- Natural Products Marketing (BC) Act
- British Columbia Vegetable Scheme
- The BCVMC General Order

42. The Panel has carefully considered all of the materials and submissions referred to above, even though it does not intend to refer to all of it in the course of this decision.

PANEL FINDINGS, REASONS, AND RECOMMENDATIONS

43. For each of the questions on the associated order to be reconsidered, findings, evidence and decisions are listed that are applicable to the reconsideration and taken from the

43.1. Decision document issued by the Commission on December 22, 2017

43.2. The BCFIRB decision on the appeal that was issued February 28, 2019

Thomas Fresh License Class

44. *Question: Should the Class Three Licence previously issued to Thomas Fresh be revoked and replaced with a licence of a different class?*

Prima Facie Evidence to be Reconsidered:

7.3. The purchase order issued by Thomas Fresh was at pricing below the IVCA product quote sheet provided by IVCA to Thomas Fresh. Therefore, Thomas Fresh had knowingly procured regulated BC grown product at pricing below the price quoted by the agency and below the minimum price.

7.7. For each of the 125 invoices listed, the invoiced price was at pricing below the IVCA product quote sheet issued by IVCA to Thomas Fresh. Therefore, Thomas Fresh had knowingly procured regulated BC grown product at pricing below the price quoted by the agency and below the minimum price.

7.17. Bob Gill, Prokam, and Thomas Fresh acted in blatant disregard of the Agency's authority, the Commission General Order, and established policy approved by the Commission as the first instance regulator to maintain orderly marketing of regulated BC grown vegetables.

7.15. Thomas Fresh, a wholesaler licensed by the Commission, entered into a contract directly with Prokam (a registered producer of regulated vegetables) and Sam Enterprises (an entity that is not a registered producer of regulated vegetables).

BCVMC Preliminary Findings to be Reconsidered:

13.4. Thomas Fresh is not privileged to the confidential minimum pricing sheets and the general orders that direct Agency behaviour. Though its behaviour is suspect, it is not reasonable beyond a doubt that Thomas Fresh acted in willful non-compliance of the general order and commission policy.

13.5. Thomas Fresh entered into a contract to directly purchase regulated product with an un-licensed producer. This is in direct violation of the general order and the conditions attached to a wholesaler licence. All sales of regulated vegetables must be managed by an Agency. All approved contracts are between a wholesaler (Thomas Fresh) and an Agency (IVCA)

BCVMC decision on Licence Class to be reconsidered:

47. Thomas Fresh's wholesale licence class is to be adjusted to reflect its disregard to orderly marketing of BC regulated vegetables. Thomas Fresh had entered into a contract to directly purchase regulated product with an un-licensed producer. This is in direct violation of the general order and the conditions attached to a wholesaler licence. The Commission is also satisfied that Thomas Fresh played a significant role in the marketing of regulated product at below the minimum price established by the Commission.

BCFIRB Findings of Key Facts to be considered:

16. Thomas Fresh is registered as a wholesaler of vegetables in BC with operations in BC, Alberta and Saskatchewan.

21. As early as 2015 IVCA, through its previous general manager and its president, was actively soliciting out-of-province sales with Thomas Fresh in Calgary and Saskatoon. IVCA supplied Prokam potatoes to Thomas Fresh in 2016. In March 2017, Thomas Fresh sent signed 60-day forward contracts to IVCA and in April 2017, Mr. Gill executed these contracts to supply Thomas Fresh with Prokam's potatoes at a set price.

BCFRIB Findings and Reasons to be considered:

35. Given the length and complexity of the submissions, we find it useful to set out our findings and orders first, with our supporting reasons set out below.

Finding The Commission did not have the authority to apply its minimum pricing rules to these interprovincial sales, or to issue any related cease and desist orders respecting such sales. We reach this conclusion because the Commission has not complied with the federal Statutory Instruments Act, a step that is required for the Commission to be able to avail itself of the interprovincial price setting authority that is provided by the federal Agricultural Products Marketing Act and the British Columbia Vegetable Order.

43. It is not necessary for us to engage in a complex exercise of finding the “locus” of the contract. There does not appear to be any real dispute that the transactions at issue involved potatoes grown in British Columbia, by a British Columbia producer, being sold by a British Columbia agency to customers in another province, with physical delivery of the potatoes outside the province. Put simply, they involve the sale of regulated product outside of BC.

88. The appellants made arguments that the Commission made decisions in the absence of any evidence giving two examples, that there was no evidence before the Commission at the time the cease and desist orders were issued that Thomas Fresh had done anything wrong, nor was there evidence before the Commission to support the findings about the adequacy of BCfresh as an agency. Given that these arguments are relevant to Orders 48.1, 48.3, 48.5, which orders we have remitted back to the Commission for reconsideration, there is no need to address them further.

Panel Findings and Reasons:

45. Given that the BCFIRB has ruled that the Commission did not have the authority to apply its minimum pricing rules to these interprovincial sales, the panel is to reconsider if the licence issued to Thomas Fresh be reverted back to a Class 1 Licence. Though the BCFIRB made no findings with respect to whether Thomas Fresh had “entered into a contract to directly purchase regulated product with an un-licensed producer”. It is acknowledged that the Commission’s main concern was the role that Thomas Fresh played “in the marketing of regulated product at below the minimum price”.
46. The panel concludes that there is not sufficient factual evidence to find that Thomas Fresh directly acted contrary to the general order and commission policy. However, the panel does believe that Thomas Fresh indirectly facilitated the circumvention of the delivery allocation rules by Prokam. As stated in par.34 of the BCFIRB decision, “All three parties had something to gain. IVCA wanted the tonnage fees, Prokam wanted the early market (periods A and B) for its potatoes to grow DA, Thomas Fresh wanted a cheap supply of premium potatoes to take to the market.” Thomas Fresh is a direct competitor to BCfresh. Having access to a significant volume of bulk, cheap, early potatoes would enable Thomas Fresh, a wholesaler, to directly compete with an agency on regulated BC storage crop vegetables in the table potato market outside the province of BC. This market is currently serviced by at least one of four Agencies licensed to market regulated BC storage crop vegetables.

Panel Recommendation:

47. The Class IV Licence issued to Thomas Fresh be replaced with a Class I License

48. In the absence of the Commission’s authority to apply its minimum pricing rules to these interprovincial sales, the Commission cannot hold Thomas Fresh accountable for this significant compromise of the regulatory framework and the major impact it has on orderly marketing. Therefore, a Class IV licence cannot be imposed on Thomas Fresh. The panel does believe that Thomas Fresh played a role, however, the agency should have been in a position to simply take action to correct the situation.

49. It is accepted that if an agency is functioning as is expected, the incident should have an insignificant impact or little disruption to an agency's normal operations and its ability to enforce compliance to the regulatory framework. Therefore, the conduct of Thomas Fresh is insignificant.

Prokam License Class

50. *Question: Should the Class One Licence previously issued to Prokam be revoked and replaced with a licence of a different class?*

BCVMC Prima Facie Evidence to be reconsidered:

7.9. The evidence suggests that in week numbers 37 and 38, Kennebec Potatoes had been shipped by Prokam and sold by IVCA. Prokam does not have any delivery allocation rights for Kennebec Potatoes and therefore is not permitted to ship Kennebec Potatoes into the market, without special permission granted by the Commission. As the designated agency for Prokam, IVCA is also to be held accountable for allowing this product to enter the market without regard to delivery allocation rights of other IVCA producers and the industry.

7.10. IVCA's attempts to work with Prokam and Bob Gill have been futile and have resulted in extensive verbal abuse and constant refusal to communicate effectively and take direction from Brian Meyers, IVCA General Manager.

7.11. The actions of Bob Dhillon and Bob Gill demonstrate a complete lack of acknowledgement of the IVCA General Manager's authority over the operations of IVCA and the Agency's authority to manage the marketing of regulated products.

7.12. The actions of Bob Dhillon and Bob Gill have put undue stress on IVCA staff and created a toxic environment that impedes on their ability to operate effectively as an Agency to fairly represent all its producers in the market place and function in accordance of the authority granted to it by the Commission.

7.13. Through the actions of Bob Dhillon (Prokam Enterprises) and Bob Gill, their refusal to communicate effectively with the IVCA General Manager and his staff has inadvertently allowed for regulated product to be sold without a price being set and approved by the Commission and prohibits the General Manager from performing his responsibility to market and sell regulated product managed by IVCA.

7.16. Prokam, a producer licensed by the Commission, entered into a contract directly with Thomas Fresh.

7.17. Bob Gill, Prokam, and Thomas Fresh acted in blatant disregard of the Agency's authority, the Commission General Order, and established policy approved by the Commission as the first instance regulator to maintain orderly marketing of regulated BC grown vegetables.

BCVMC Preliminary Findings to be reconsidered:

13.2. Prokam Enterprises, Bob Dhillon, shipped potatoes through IVCA at pricing below the minimum price that was not approved by the Commission.

13.3. Prokam Enterprises, Bob Dhillon, shipped Kennebec potatoes without having any delivery allocation rights to the market and did so without the approval of the Commission.

13.7. The IVCA general manager and IVCA office staff had repeatedly informed Bob Gill and Bob Dhillon (Prokam) of the issues. Both Bob Gill and Bob Dhillon failed to take adequate action to respect IVCA management authority in the marketing of regulated vegetables and comply with the direction given to correct the issues.

13.8. Prokam Enterprises (Bob Dhillon) is licensed as a producer and has no authority to market regulated product. However, as a member of the IVCA board he is privileged to commission regulations and policy that guide how a designate agency is expected to perform to promote orderly marketing of regulated vegetables.

BCVMC decision on Licence Class and Delivery Allocation to be reconsidered:

42. The Commission is of the view that Prokam's Delivery Allocation must be adjusted to negate the effect of shipments achieved through sales made at less than the minimum price. No permission was granted to IVCA to market at pricing below the established minimum price.

43. In addition, the shipments of Kennebec Potatoes will not count towards the calculation of delivery allocation for this product. Prokam does not have any delivery allocation for Kennebec potatoes and was not granted permission by the Commission to ship any Kennebec Potatoes into the market.

44. Prokam's licence class is to be adjusted to reflect its disregard of delivery allocation rights on Kennebec potatoes and in acknowledgement that it played a significant role in the marketing of regulated product at pricing below the minimum price established by the Commission.

BCFIRB Findings of Key Facts to be considered:

15. Mr. Dhillon and his wife own and operate Prokam, a registered vegetable producer in Abbotsford, BC. Prokam holds DA for potatoes in the amount of 26 tons purchased in late 2015 which represents production from approximately 60-70 acres. Prokam has early land and with skilled cropping practices has the potential to bring an early crop to market where it can command a premium price.

17. Island Vegetable Co-operative Association (IVCA) is a designated agency of the Commission with its office on Vancouver Island. It is a cooperative with a board comprised of representatives of four of its approximately 8 growers. Since 2014, Prokam has shipped regulated and unregulated vegetables to IVCA and in 2017, was its largest shipper of potatoes with approximately 80 -90% of IVCA's volume. Mr. Michell is IVCA's president and Mr. Dhillon is its vice-president.

20. In 2017, Prokam increased its production of potatoes well in excess of its DA to 380 acres in response to IVCA's growth plan to fill the premium early wholesale retail market. In April 2017, Mr. Dhillon's brother-in-law Mr. Gill was hired as IVCA's mainland sales representative primarily to sell Prokam's potatoes.

23. The Commission made it clear that this earlier application for agency license was not a marketing plan for IVCA's regulated product and issued a warning notice, but IVCA remained non-compliant with Part XV of the General Orders requiring Commission approval where an agency intended to market new product (product not covered by DA). Mr. Dhillon in his role as vice-president of IVCA and Mr. Gill as an IVCA employee participated in these decisions to thwart Commission authority.

26. On the evidence, there is no dispute that Prokam grew Kennebec potatoes without DA. Mr. Dhillon confirmed that IVCA president Mr. Michell wanted to make sure that if there was a gap in production due to inconsistent quality, IVCA could fill the gap.

27. Mr. Dhillon, either in his role as the principal of Prokam or as a director of IVCA, did not seek approval from the Commission before producing or shipping regulated product not covered by or in excess of Prokam's DA as required by the General Orders.

33. Having heard all the evidence, we find Mr. Dhillon's role to be a bit more nuanced than found by the Commission. Mr. Dhillon, in his role as IVCA vice-president and director, was a force to be reckoned with. Prokam was a big player in IVCA, in contrast to the other smaller growers; its production in 2017 amounted to 9% of the potato production in BC. This production significantly increased IVCA's capacity. Mr. Dhillon acknowledged that IVCA needed Prokam as a grower, both financially and for growth. Mr. Dhillon was not beneath threatening to fire staff or pulling his money from the agency in order to get his way. With respect to Mr. Gill, Mr. Dhillon was instrumental in bringing him into IVCA and supported his employment handling IVCA's "mainland sales" which in fact were the sales of Prokam potatoes to Thomas Fresh. While Mr. Dhillon denied paying part of Mr. Gill's salary, we accept Mr. Gill's evidence that Mr. Dhillon negotiated half his salary to be paid through Mr. Dhillon's father's company, Sam Enterprises.

34. However, it is also clear that IVCA through its previous general manager and its current president actively solicited the Thomas Fresh account over several years. While Mr. Gill may have signed the contracts, he did so in full knowledge that IVCA wanted a long term agreement with Thomas Fresh to access the tonnage fees to address agency cash flow problems. While the current general manager may have been late to a realization that the contracts were signed and the implications of those contracts, the inescapable conclusion is that the management of IVCA (not just Mr. Dhillon) actively participated in obtaining these contracts. All three parties had something to gain. IVCA wanted the tonnage fees, Prokam wanted the early market (periods A and B) for its potatoes to grow DA, Thomas Fresh wanted a cheap supply of premium potatoes to take to the market.

BCFRIB Findings, and Reasons to be considered:

43. It is not necessary for us to engage in a complex exercise of finding the "locus" of the contract. There does not appear to be any real dispute that the transactions at issue involved potatoes grown in British Columbia, by a British Columbia producer, being sold by a British Columbia agency to customers in another province, with physical delivery of the potatoes outside the province. Put simply, they involve the sale of regulated product outside of BC.

51. In our view, orders 48.3 and 48.5 of the Commission's December decision relied, to some degree, on the Commission's belief that it had the authority to apply its minimum pricing rules to the transactions at issue. In the circumstances, one option for the panel would be to simply reverse those orders on the basis that the Commission's position on the validity and applicability of its minimum pricing rules to the facts at issue has been rejected by the panel.

52. However, we also note that this case involves a very complex set of facts, interconnected parties, challenging relationships, deficient administrative processes and some remaining findings against Prokam in respect of DA issues (discussed below). We further note that a full review of the materials presented to us makes clear the conduct of Prokam and/or its officers was not beyond reproach.

53. In all the circumstances, we believe the question of whether the appellants' conduct warrants any further action by the Commission (irrespective of the minimum pricing rules in relation to interprovincial sales) is one that must still be answered, and it is one more appropriately considered in the first instance by the Commission – not the panel.

Panel Findings and Reasons:

51. The BCFIRB decision on the appeal made the finding that all shipments on Kennebec potatoes and all exports are not to be included in the calculation of delivery allocation. The finding and reasons for this BCFIRB decision are provided below:

Finding **The panel does not accept the appellants' submission that there is any basis to vary or rescind Commission order 48.2 and no reconsideration of that order is required.**

67. Order 48.2 states: 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.

68. In our view, this is a sound decision that is appropriate in all of the circumstances of this case. We reach that conclusion for the following reasons

69. The General Orders set out the following General Prohibition on producers.

12. No Producer shall produce or ship Regulated product without a Delivery or Production Allocation for the product in question, unless otherwise authorized by the Commission.

70. Part XV, XVI and XVII, the General Orders establish rules for DA and the marketing of new or additional regulated product. Part XV of the General Orders contemplates that new or additional regulated product can only be marketed by existing agencies with Commission approval. Section 2 requires an agency wanting to sell additional regulated product to submit a business plan covering the period of time specified by the Commission. Section 3 gives the Commission discretion to hold a hearing concerning the application by the agency to market new or additional regulated product.

71. In this case, IVCA and Prokam made a calculated decision not to provide a business plan satisfactory to the Commission for the new production and did not meet with the Commission to explain their intentions. Instead, they argue that IVCA's agency licence application submitted in November 2016 should have been adequate for the Commission's purposes. However, the Commission clearly and repeatedly articulated that the agency application was not sufficient for its purposes and asked for further information which was never provided.

72. With respect to Prokam's argument that the potatoes it shipped over DA are legitimate "gap fillers", the Commission explained its policy that gap fillers are to be registered and approved by the Commission on an annual basis. It recognized that gap fillers are needed to address shorting of orders by the agency for its established customer base and the agency must prove the market demand is new and not serviced by the industries' existing DA or supplied by another agency.

73. Commission witnesses explained that the purpose of gap filling was to allow growers to produce modest amounts over DA to take advantage of small, transitory, and temporary opportunities to fill market shortages throughout the marketing year. There is no dispute that Mr. Dhillon has early land and may well have had potatoes available for market a week or two before other growers and this would appear to be what the Commission would view as a legitimate "gap". However, in the absence of Commission authorization for producing, shipping and marketing in excess of DA and a determination that the regulated product was indeed a legitimate gap filler, Prokam and IVCA have not met their obligations under the General Orders to obtain Commission authorization.

74. Prokam appears to be arguing that had it applied, the authorization would have been given as these were legitimate gap fillers. But that is not Prokam's decision to make. Furthermore, we are not prepared

to accept that Prokam's marketing of huge volumes (348 tons) of potatoes falls within the concept of legitimate gap fillers as described by the Commission's witnesses. As a result, we agree with the Commission's decision not to include this production in Prokam's five year rolling average to calculate earned DA.

75. Similarly, there does not appear to be any dispute that Prokam grew Kennebec potatoes without DA. Mr. Dhillon said he had a discussion with IVCA president Mr. Michell, who wanted to make sure that if there was a gap in production caused by another grower's inconsistent quality, IVCA could fill the gap. Both Mr. Dhillon and Mr. Gill acknowledged that Prokam shipped Kennebec potatoes without DA (about 4000 lbs) but suggest this was a permissible gap filler as no other grower could supply the product at the time.

76. On this same issue, the appellants took issue with the Commission's reliance on the Hothi letter referred to earlier in which Mr. Hothi advised he had Kennebec potatoes ready for shipment in September 2017. This letter was not disclosed in advance of the show cause process and the Commission relied on it to make an adverse finding which the appellants argue was procedurally unfair.

77. To the extent that the failure to disclose the Hothi letter was procedurally unfair, we conclude that the hearing de novo before BCFIRB is sufficient to cure that defect in the Commission's process. However, in our view, the Hothi letter is not the only basis upon which to base an adverse finding against Prokam and IVCA. The evidence of Commission general manager Mr. Solymosi was that if a grower plants regulated product without DA, he must acknowledge the priority of those growers with DA that had served the market over time; growers planting product without DA are not permitted to enter the marketplace without Commission approval.

78. In this case, IVCA had a grower with Kennebec DA. There is no record that IVCA met its obligations under Parts XV, XVI and XVII of the General Orders; it did not contact the Commission to demonstrate that there was in fact a quality or supply issue with their grower's potatoes nor did it obtain the Commission's authorization for gap filling. In the absence of Commission authorization, there is no basis for this panel to make a finding that Prokam's Kennebec production should have formed part of its five year rolling average to calculate earned DA.

79. In reaching the foregoing two conclusions with respect to DA generally, and Kennebecs specifically, we note that the Commission's order 48.2 was not premised upon the application of the minimum pricing rules to interprovincial sales discussed in Finding 1.

52. For the same reasons presented in support of the above finding on Commission order 48.2, and the BCFIRB findings (par.15,17,20,23,26,27,33,34) that are outlined above, the Panel agrees that a Class I licence is not an appropriate outcome for Prokam. It is clear for the reasons stated in par. 68 to 75 in BCFIRB's decision that both Prokam and IVCA made calculated decisions to circumvent the general order and policy. Both Prokam and IVCA did not meet with the Commission to explain their intentions. The Commission had clearly and repeatedly articulated that the agency licence application submitted in November 2016 was not sufficient for satisfying PART XV of the General Order regarding the marketing of new or additional regulated product and parts XV, XVI and XVII that establish the rules for delivery allocation that are applied to all regulated storage crop vegetables.

53. Par.33 of BCFIRB's decision provides some context as to the extent of interdependence IVCA had with Mr. Dhillon in achieving growth aspirations. This business arrangement was an equal three way partnership and Mr. Dhillon, as stated in par.33, was a "force to be reckoned with. Prokam was a big player in IVCA, in contrast to the other smaller growers; its production in 2017 amounted to 9% of

the potato production in BC.” And furthermore, as stated in par.34 “All three parties had something to gain. IVCA wanted the tonnage fees, Prokam wanted the early market (periods A and B) for its potatoes to grow DA, Thomas Fresh wanted a cheap supply of premium potatoes to take to the market.”

27. Mr. Dhillon, either in his role as the principal of Prokam or as a director of IVCA, did not seek approval from the Commission before producing or shipping regulated product not covered by or in excess of Prokam’s DA as required by the General Orders.

54. Delivery Allocation (DA) is allocated specifically to a producer but remains the property of the Commission¹. The decisions to plant Kennebec potatoes without delivery allocation, plant additional acreage in early potatoes that would yield a massive volume of potatoes way in excess of DA, and to not seek approval by the Commission rests with the producer. The producer is responsible for ensuring that they are in compliance with the General Order and the Commission’s authority. Mr. Dhillon was also a member of the IVCA board and was aware of Commission regulations and policy that guide how a designated agency is expected to perform to promote orderly marketing of regulated vegetables. These were deliberate decisions that were intentionally taken by Prokam. As a director and vice-president of IVCA and one of the two dominant producers in IVCA’s producer group, Prokam used its power and influence to get his way. Prokam would not have invested significant capital in the planting of an enormous crop of regulated vegetables if they did not intend to have the product marketed and sold. It is believed that Prokam was fixated on an opportunity to circumvent the orderly marketing system of regulated BC grown vegetables that was based on their understanding of the limitations on the BCVMC pricing authority. It had intentions to sell early potatoes for cheap for interprovincial sales to Thomas Fresh to take to the market. It had no intention to comply with the BCVMC general order and seek approval from the Commission because it was assumed by Prokam that these sales were outside of the Commission’s authority and an enormous GAP in the market was being filled. In fact, since the Commission was operating in a manner that controlled the contracted and minimum pricing on BC product to this market, the only reason why this opportunity existed was because of the cheap price that would be paid for the over 300 acres of potatoes that would be grown by Prokam without approved DA. If a coordinate pricing approach to the market was sustained, this opportunity would not have existed.

55. As stated in par. 47 – 48 of the BCFIRB in its decision, the Commission had not availed itself of this authority by complying with the Statutory Instruments Act. Under the current wording in the British Columbia Vegetable Order, SOR/81-49, it is not practical to do so and therefore minimum pricing jurisdiction remains limited to sales within BC.

40. Section 4 of the Scheme makes clear that the Commission’s power to regulate marketing is limited to activities “in the Province”. Further, to the extent that section 4 of the Scheme includes all of the powers of section 11 of the NPMA, we note that it contains an express geographic limitation in relation to the establishment of minimum prices. Specifically, section 11(1)(k) provides the power “to set ...minimum prices at which a regulated product ... may be bought or sold in British Columbia” (emphasis added). This is the only provision of section 11 that expressly contains such a limitation.

56. Regardless of the findings that there was no valid minimum price that could be issued on the inter-provincial sales, Prokam did not comply with the Commission’s authority over DA and approving

¹ General Order PART XVI Par.3 Delivery and Production Allocations are a privilege granted by the Commission under a Producer’s license. Delivery and Production Allocations shall have no monetary value.

new DA to service new markets. The massive volume of potatoes that was produced by Prokam dwarfed its actual approved DA. Planting 380 acres when you have DA for 60-70 acres is a deliberate action that is not constituted as a "GAP Filler". Prokam's actions were intentional and a direct violation of the principles of DA and the producer's obligations that are part of this privilege. Applicable excerpts from the General Order that apply,

PART XVI PRODUCTION AND DELIVERY ALLOCATIONS – GENERAL

1. The purposes of the Delivery and Production Allocation Procedures contained in Part XVII and Part XVIII are to identify the principles and guidelines by which the Commission will support and enhance a regulated marketing system for the intraprovincial, interprovincial and export trade of regulated crops.

These purposes include:

- (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.

2. In the event a Producer or any other Person realizes a benefit or advantage in regard to the application of the Procedures contained in Part XVII and Part XVIII, or the utilization of or access to Delivery or Production Allocations, that are not consistent with the object and purpose of these Procedures, the Commission may deny such Producer or Person that benefit or advantage and may interpret these Procedures in a manner consistent with the object and purpose of the policy as articulated in section 1 of this Part.

3. Delivery and Production Allocations are a privilege granted by the Commission under a Producer's license. Delivery and Production Allocations shall have no monetary value.

57. The rules that are in place in PARTs XV, XVI and XVII of the General Order are there to ensure that orderly marketing is maintained and that they facilitate an orderly process to manage growth. Prokam was aware of the volume of DA it was privileged to. The acceptable and appropriate approach to the "opportunity" by Prokam would have been to seek approval first by the Commission to be allocated additional DA, well in advance of buying the seed and planting the significant increase in acreage. As part of this approval process a business plan, including a marketing plan that is sponsored by their designated agency, would have been required to be submitted. Without a confirmed approval by the Commission, Prokam should not have been shipping potatoes to Thomas Fresh. Unless Market access is granted, these potatoes should have remained in the field or in storage.

58. In the appellant's submission, the appellant took the position that it is the responsibility of the agency, not the grower, to seek approvals by the Commission. Documentary evidence was also provided that shows that the extent of this failure to seek approval was a deliberate decision of IVCA President Mr. Michell, and the new business was to remain confidential between the IVCA general manager, the President (Mr. Michell) and Prokam (Mr. Dhillon). It is the panel's opinion that this evidence supports the fact that all three parties consented to what was being done and each played a role in the deceptive behavior and unsanctioned business opportunity. Such behavior is not acceptable and will not be tolerated by the Commission. The correct behavior would have been to

comply with the Commission's authority, consult with the Commission, and formally apply for new market DA approval. It appears that the actions were deliberate by both Prokam and IVCA.

Panel Recommendation:

59. The Class IV Licence issued to Prokam be replaced with a Class III License

60. It is expected that all producers comply with the Commission's General Order, respect its regulatory authority, and act in a manner that demonstrate regard to the privilege of Delivery Allocation (DA) granted under a Producer's license. Actions taken by a producer are expected to be conducive of the principles on which DA is granted.

61. The panel finds that Prokam's actions constitute a deliberate effort to circumvent the authority of the Commission and the regulated marketing scheme for BC grown vegetables. Mr. Dhillon would have known of the rules both as a producer and as a director of IVCA. The board of directors are in charge of the management of the company's business; they make the strategic and operational decisions of the company and are responsible for ensuring that the company meets its statutory obligations. He is expected to be aware that the actions he took would require to be sanctioned by the Commission. The scale of the action is not insignificant or minor, and therefore does not qualify for a Class I or Class II licence. This was a major non-compliance and is deserving of a Class IV licence. However, as noted in BCFIRB's decision par.52, "this case involves a very complex set of facts, interconnected parties, challenging relationships, deficient administrative processes" Some of this blame for why this situation occurred is equally attributed to the dysfunctional nature of the IVCA agency, and not just Mr. Dhillon in his role as the director and vice president. Both parties had something to gain. As a director and one of the two dominant producers in IVCA, Prokam used its power and influence to get his way to his own benefit. It is the panel view that the actions taken by Prokam were a consequence of a significant modification to the standard operational practices expected of an agency in the regulatory framework. A properly functioning agency should have been able to manage and control the situation and ensure that they are operating in compliance of the General Order and Commission authority. For this reason, the panel classifies the severity of the non-compliance as Moderate, and therefore Prokam is deserving of a Class III licence.

62. Prokam does not qualify to apply for a Producer-Shipper Licence

63. For the Commission to even consider an application from a producer for a producer-shipper licence, that producer would need to be deserving of the privilege, and therefore in good standing with the Commission. Once Prokam's Class III licence reverts back to a Class I licence it may submit an application to the Commission. As long as Prokam is an active producer growing regulated vegetables for the retail, wholesale, or food service markets, and remains compliant over the next three licence periods, this opportunity could be available to Prokam for the 2022/23 Crop Year.

BCfresh

64. Question: *Should BCfresh be the designated Agency for Prokam and should Prokam sign a GMA under the Agency standard terms?*

Agency designation Questions to be Reconsidered:

20. In determining the designated Agency, the Commission has reflected upon the following questions:

- 1) Does the Agency have sufficient staff with the necessary experience to effectively manage the producer's supply and market the regulated product?
- 2) Does the move to this Agency enhance orderly marketing?
- 3) What benefits, if any, not currently available to Prokam will accrue to this producer if their regulated product is marketed through this Agency?

BCFRIB Findings of Key Facts to be Considered:

18. BCfresh is also a designated agency with its office in the Lower Mainland. BCfresh is the largest agency in BC and is a private company owned by its 31 grower/shareholders who provide approximately 90% of the regulated volume of vegetables it ships.

BCFRIB Findings and Reasons to be considered:

88. The appellants made arguments that the Commission made decisions in the absence of any evidence giving two examples, that there was no evidence before the Commission at the time the cease and desist orders were issued that Thomas Fresh had done anything wrong, nor was there evidence before the Commission to support the findings about the adequacy of BCfresh as an agency. Given that these arguments are relevant to Orders 48.1, 48.3, 48.5, which orders we have remitted back to the Commission for reconsideration, there is no need to address them further.

Panel Findings and Reasons:

65. The panel finds that BCfresh is well positioned to represent Prokam in the market. For the reasons stated in in the BCVMC's December 22, 20187 decision, BCfresh has the resources and experience in the market that can support Prokam's growth ambitions within the constraints of the regulatory framework. BCfresh as the designated agency for Prokam is endorsed by both Okanagan Grown Produce Ltd. (OGP) and Vancouver Island Farm Products Inc. (VIFP) and its acceptance by BCfresh is confirmed in BCfresh's submission in the reconsideration process:

"BCfresh agrees with the analysis set out in the December 22, 2017 decision of the VMC and confirms that BCfresh is willing and able to act as agency for Prokam and will treat Prokam, as a producer, fairly and effectively, in the marketing of its produce. BCfresh will also work with Prokam to identify ways within the General Order that they can increase their future Delivery Allocation to accommodate some of their expanded production plans.

The above referenced reasons for the decision of the VMC to designate BCfresh as the agency for Prokam meet the standards of a S.A.F.E.T.I. analysis.

BCfresh has a long history of acting as an agency while, at the same time, acting in compliance with the VMC's General Orders."

66. However, the panel also believes that other licensed storage crop agencies have the ability to market Prokam’s regulated vegetables, but chose to express support for BCfresh as the preferred choice.
67. To understand why this is, we must revisit why this instance of non-compliance happened in the first place. Prokam, through IVCA, supplied Thomas Fresh with cheap bulk product that could be graded, sized and repacked into product packaged for end use². Giving the product in bulk to Thomas Fresh enables them to compete against agencies and permits them to be a de facto agency. By relinquishing control of the regulated BC grown product in the scale that was permitted, IVCA abdicated its implicit responsibility to act in a manner that enhances orderly marketing. IVCA lost control of its obligations to BC producers and the Commission over pricing and other aspects of marketing that it is delegated to carry out under the authority granted to it by the Commission, and pre-approved by the BCFIRB. Agencies need to maintain control over market access. A Wholesaler has no legal obligation to represent the interests of producers of regulated vegetables grown in BC. The volume of potatoes sold by IVCA to Thomas Fresh amounted to 9% of the 2017 potato production in BC and the bulk of the potato volume that was managed by the agency.
68. It is also the responsibility of agencies to represent growers and market the product in a manner that maximizes net grower return for the benefit of all producers. In the current and foreseeable market, net grower returns are maximized by an agency business model that adopts as its core business the marketing and sale of product packed for end use. An agency is not a commission salesperson who brokers product by arranging transactions between a buyer and a seller for a fee. This licence category is defined and already exists within the regulatory framework. The overarching mandate of an Agency is to represent a group of licensed producers and carry out the marketing duties of regulated vegetables;
- i. in compliance of the Consolidated General Order;
 - ii. in respect of the operating principles of the orderly marketing system;
 - iii. for the benefit of its producers;
 - iv. in agreement with the interests of the industry.
69. Regardless of whether or not a new market exists, it is paramount that the regulated product being placed into the market is food safe and that the actions of an agency, or of a producer of regulated BC grown vegetables, do not expose the industry to unnecessary food safety risk that can be mitigated under our regulatory authority. Food safety risk is mitigated when the washing, grading and packing of the regulated vegetable into a product packaged for end use are managed at the source, where the Commission and agencies have oversight.
70. Increasing our control over how we market product is within the Commission’s authority do so by the powers granted to it under the Natural Products Marketing (BC) Act. Providing clarity on the market that must be an agency’s primary target market segment enhances orderly marketing.
71. Therefore, the panel believes that it is in the best interest of the industry to introduce an Interim Order adopting the definition “Packed For End Use³” and mandating that products be marketed by an agency as “ Packed For End Use³” in all instances except where the express, prior, written

² “Packed For End Use” means graded and packaged in a Container in the manner in which the food: (a) is ordinarily sold to, used by, or purchased by, a retailer or a consumer; or (b) may reasonably be expected to be obtained by a food service institution; such that no further repacking occurs, or is necessary or contemplated.

approval of the Commission is sought and obtained. The section titled 'Interim Order' in this document provides details on the order that is to be enacted.

Panel Recommendation:

72. With the enactment of this interim order, the panel offers Prokam with three options:
- Prokam can chose to continue to not produce any BC regulated vegetables, or, to grow unregulated vegetables, and therefore does not require a designated Agency.
 - If Prokam chooses to grow regulated vegetables, it is directed to market through BCfresh under the terms of the three-year GMA that was entered into in February 15, 2018.
 - If BCfresh releases Prokam from the GMA, Prokam can consult with other licensed storage crop agencies to represent the grower in consideration of the new interim order.
73. Regardless of what Prokam decides to do and which agency is the designated agency for Prokam, both the Producer and Agency need to comply with the Interim Order and the rules of DA. If the producer intends to plant in excess of their DA, for their designated agency to market this additional regulated product they need to comply with *PART XV of the General Order, Marketing Of "New" Or Additional Regulated Product By Existing Agencies and Producer-Shippers*.

IVCA

74. Question: *Should any compliance or remedial actions be taken with or to IVCA?*

Prima Facie Evidence to be reconsidered:

7.1. IVCA was engaged in the selling of Prokam potatoes to Thomas Fresh on fourteen occurrences between the dates of August 23rd and October 4th, 2017, at a price that was in contravention of the minimum price set by the Commission for that period, and executed without commission authorization.

7.2. A total of 170 short tons (340,450lbs) of regulated BC grown product was sold by IVCA between two cents (5%) and 34 cents (59%) below the Commission approved minimum price. This price is set weekly and in accordance with the approved policy for establishing weekly minimum prices for all BC grown regulated storage crops. All storage crop agency managers participate in establishing the weekly minimum price and are responsible to ensure that all agency sales are in compliance of the approved minimum price.

7.4. The evidence also suggests that IVCA was not permitted to offer the product at a lower price than what was stated on the product quote sheet issued by IVCA to Thomas Fresh. Prices on each product quote sheet issued by IVCA to Thomas Fresh for the subject transactions were quoted at the Commission approved minimum price.

7.5. The total volume of product acquired by Thomas Fresh at below minimum price and supplied from Prokam over this period is 2.688565 Million pounds.

7.6. IVCA was engaged in the selling of Prokam potatoes to Thomas Fresh on a total of 125 occurrences between the dates of July 30th, 2017 and September 24th, 2017 at a price that was below the minimum price set weekly by the Commission over this period, and executed these sales without commission authorization.

7.8. The evidence also suggests that IVCA was not permitted to offer the product at a lower price than what was stated on the price quote sheet. Prices on each quote sheet issued by IVCA to Thomas Fresh for the subject transactions were quoted at the Commission approved minimum price.

7.9. The evidence suggests that in week numbers 37 and 38, Kennebec Potatoes had been shipped by Prokam and sold by IVCA. Prokam does not have any delivery allocation rights for Kennebec Potatoes and therefore is not permitted to ship Kennebec Potatoes into the market, without special permission granted by the Commission. As the designated agency for Prokam, IVCA is also to be held accountable for allowing this product to enter the market without regard to delivery allocation rights of other IVCA producers and the industry.

7.14. Bob Gill has deleted records from IVCA's order entry system. This action has put IVCA into non-compliance with accounting traceability requirements and may provide further evidence to support the revocation of Bob Gill's authority to handle regulated product.

7.18. Through the actions of Bob Gill (IVCA Sales Associate), IVCA had permitted an unauthorized contract to be signed directly between a wholesaler, Thomas Fresh, and a producer, Prokam, and facilitated the activity by allowing this contracted sale to be processed through the agency.

7.19. Through the actions of Bob Gill (IVCA Sales Associate), IVCA allowed for the shipment of product to the market through an un-licensed producer (Sam Enterprises Ltd.)

Preliminary Findings to be considered:

13.1. Bob Gill, an employee of IVCA entered into contracted pricing on potatoes with Thomas Fresh at pricing that was not approved by the Commission and facilitated the selling of product at below minimum price. Furthermore, these contracts were established with Sam Enterprises, an unregistered producer with no delivery allocation rights for any regulated vegetable.

13.6. IVCA sold product to Thomas Fresh at pricing that was below the established FOB minimum price and did not have approval to do so by the Commission.

13.9. The IVCA office staff and members of the board have willfully complied with Commission staff to provide evidence on the matter. However, IVCA is also to be held accountable for the issues that have materialized.

13.11. The Commission designates its marketing authority to Agencies. For the system to be effective, Agencies need to be diligent in managing their responsibility and robust in maintaining compliance to commission regulations and in applying commission policies in its decision making. Agencies are to be held accountable for ensuring that all Commission regulations and polices are followed and a coordinated approach to the market is sustained.

BCFIRB Findings of Key Facts to be considered:

17. Island Vegetable Co-operative Association (IVCA) is a designated agency of the Commission with its office on Vancouver Island. It is a cooperative with a board comprised of representatives of four of its approximately 8 growers. Since 2014, Prokam has shipped regulated and unregulated vegetables to IVCA and in 2017, was its largest shipper of potatoes with approximately 80 -90% of IVCA's volume. Mr. Michell is IVCA's president and Mr. Dhillon is its vice-president.

20. In 2017, Prokam increased its production of potatoes well in excess of its DA to 380 acres in response to IVCA's growth plan to fill the premium early wholesale retail market. In April 2017, Mr. Dhillon's

brother-in-law Mr. Gill was hired as IVCA's mainland sales representative primarily to sell Prokam's potatoes.

21. As early as 2015 IVCA, through its previous general manager and its president, was actively soliciting out-of-province sales with Thomas Fresh in Calgary and Saskatoon. IVCA supplied Prokam potatoes to Thomas Fresh in 2016. In March 2017, Thomas Fresh sent signed 60-day forward contracts to IVCA and in April 2017, Mr. Gill executed these contracts to supply Thomas Fresh with Prokam's potatoes at a set price.

22. The Commission was aware of Prokam's decision to plant potatoes in excess of its DA and in late January 2017, initiated a review process to coordinate agency production planning. Despite numerous requests to IVCA to submit a production plan, confirm planting intentions and agency growth expectations, IVCA remained silent on its planned market for Prokam's potatoes and its business relationship with Thomas Fresh, preferring to rely on an earlier submission in the Vancouver Island Agency Review.

23. The Commission made it clear that this earlier application for agency license was not a marketing plan for IVCA's regulated product and issued a warning notice, but IVCA remained non-compliant with Part XV of the General Orders requiring Commission approval where an agency intended to market new product (product not covered by DA). Mr. Dhillon in his role as vice-president of IVCA and Mr. Gill as an IVCA employee participated in these decisions to thwart Commission authority.

32. Much evidence was heard at the hearing of the dysfunctional nature of IVCA. The Commission's view is that Mr. Dhillon, with the assistance of Mr. Gill, essentially co-opted the regulatory authority of IVCA and bypassed agency staff, allowing Prokam to sell potatoes in excess of DA directly to Thomas Fresh at prices below the Commission's minimum pricing. Mr. Dhillon disputed this characterization and downplayed his role within IVCA describing himself as a very busy farmer with little time to spare in the growing season who relied on his agency to meet any regulatory responsibilities. He denied putting undue stress on the agency or creating a toxic environment and distanced himself from Mr. Gill.

33. Having heard all the evidence, we find Mr. Dhillon's role to be a bit more nuanced than found by the Commission. Mr. Dhillon, in his role as IVCA vice-president and director, was a force to be reckoned with. Prokam was a big player in IVCA, in contrast to the other smaller growers; its production in 2017 amounted to 9% of the potato production in BC. This production significantly increased IVCA's capacity. Mr. Dhillon acknowledged that IVCA needed Prokam as a grower, both financially and for growth. Mr. Dhillon was not beneath threatening to fire staff or pulling his money from the agency in order to get his way. With respect to Mr. Gill, Mr. Dhillon was instrumental in bringing him into IVCA and supported his employment handling IVCA's "mainland sales" which in fact were the sales of Prokam potatoes to Thomas Fresh. While Mr. Dhillon denied paying part of Mr. Gill's salary, we accept Mr. Gill's evidence that Mr. Dhillon negotiated half his salary to be paid through Mr. Dhillon's father's company, Sam Enterprises.

34. However, it is also clear that IVCA through its previous general manager and its current president actively solicited the Thomas Fresh account over several years. While Mr. Gill may have signed the contracts, he did so in full knowledge that IVCA wanted a long term agreement with Thomas Fresh to access the tonnage fees to address agency cash flow problems. While the current general manager may have been late to a realization that the contracts were signed and the implications of those contracts, the inescapable conclusion is that the management of IVCA (not just Mr. Dhillon) actively participated in obtaining these contracts. All three parties had something to gain. IVCA wanted the tonnage fees, Prokam wanted the early market (periods A and B) for its potatoes to grow DA, Thomas Fresh wanted a cheap supply of premium potatoes to take to the market.

BCFRIB Findings, and Reasons to be considered:

43. It is not necessary for us to engage in a complex exercise of finding the “locus” of the contract. There does not appear to be any real dispute that the transactions at issue involved potatoes grown in British Columbia, by a British Columbia producer, being sold by a British Columbia agency to customers in another province, with physical delivery of the potatoes outside the province. Put simply, they involve the sale of regulated product outside of BC.

47. There is no compelling reason to stretch the interpretation of the provincial regime to find for the Commission authority to regulate minimum prices for product sold outside BC on the basis that such authority would be an integral part of an overall effective regime for management within BC. This is because the Commission already has the power to regulate minimum price setting for interprovincial transactions under the federal Agricultural Products Marketing Act and the supporting British Columbia Vegetable Order.

48. But in order to actually avail itself of this authority under the federal legislation, the Commission is required to comply with the Statutory Instruments Act. This is accepted by the Commission, which stated in its submission, “in practical terms, this means that any order made by the Commission which depends on delegated federal legislative authority will only come into force after the order has been “Gazetted”. There is no dispute that Commission has not yet done so in respect of any orders related to minimum pricing.

52. However, we also note that this case involves a very complex set of facts, interconnected parties, challenging relationships, deficient administrative processes and some remaining findings against Prokam in respect of DA issues (discussed below). We further note that a full review of the materials presented to us makes clear the conduct of Prokam and/or its officers was not beyond reproach.

- **Finding The panel does not accept the appellants’ submission that there is any basis to vary or rescind Commission order 48.2 and no reconsideration of that order is required.**

The reasons for this BCFIRB finding (par. 69 through 79) can be found under the Prokam Licence reconsideration section of this document on pages 13 through 20. Rather than restate these paragraphs please refer to these pages.

82. The panel concludes that the Commission placed too much weight on IVCA’s cooperation with the Commission’s investigation and not enough weight on the regulatory responsibility of IVCA as an agency. The very reason that this compliance issue arose rests with IVCA and its aggressive growth aspirations. It was IVCA that pursued Mr. Dhillon and his early land. It was IVCA that pursued the re-packer/wholesaler business of Thomas Fresh. It was IVCA that failed to meet its obligations under the General Orders as an agency to disclose its business plans to the Commission and actively pushed off the Commission’s efforts to plan growth and ensure orderly marketing. These fundamental failings on the part of the designated agency are not in any way rectified or mitigated by the cooperation of IVCA staff in the subsequent compliance investigation.

83. While we observe that the appellants were critical of how the Commission dealt with IVCA, the December decision did not make any orders in relation to IVCA. However, the panel finds that there are many unanswered questions about IVCA’s role in the events leading up to these appeals. We have significant concerns about whether IVCA has demonstrated the ability to perform the requisite front line role to ensure that marketing is conducted in an orderly fashion according to the General Orders and provide fair market access to all registered growers. As such, and as a matter of both our appellate and supervisory jurisdiction, we believe this is a matter that requires reconsideration by the Commission.

Panel Findings and Reasons:

75. Fundamentally, IVCA failed to fulfill its responsibilities as a designated agency of the Commission insofar as it failed to ensure that it was marketing “New” or additional regulated product with Commission approval. IVCA is not merely an industry stakeholder, it is a delegate of the Commission charged with the responsibility to promote orderly marketing. If IVCA did not understand its responsibility to promote orderly marketing by adhering to the General Order, which includes PART XV MARKETING OF “NEW” OR ADDITIONAL REGULATED PRODUCT BY EXISTING AGENCIES & PRODUCER-SHIPPIERS, then questions may arise about whether IVCA is a suitable entity to exercise that delegated authority. British Columbia potatoes are sold throughout Canada, and it would obviously be detrimental to orderly marketing if agencies fail to observe the regulations.

76. The following passages from the BCFIRB’s January 31, 2017 Supervisory Decision were also quoted in the BCVMC decision issued on December 22, 2017 that reveal there were matters of concern with IVCA and its operations at that time and its growth ambitions would need to be monitored:

4. In British Columbia, the production and marketing of vegetables is regulated under the NPMA, the NPMA Regulation (“the Regulation”), and the British Columbia Vegetable Scheme (Scheme). The Scheme (s. 4(2)) grants the Commission the power set out in s. 11(1)(a) of the NPMA to “regulate the time and place at which and designate the agency through which a regulated product must be marketed”. The Commission has issued General Orders which govern the regulated industry actors, including designated agencies.

7. The specific rules governing agencies differ depending on the needs of the particular regulated industry. What is common across all regulated industries, however, is the agencies are licensed entities whose purpose is to market regulated product on behalf of registered producers. Agencies are licensees whose regulatory role is to harness the collective power of producers to enhance market access for regulated products. They minimize burdens on each producer regarding finding outlets for sales of their delivery allocation (a mechanism for producers to share market access). Agencies also store, ship, and label product for producers. For consumers, they help ensure a steady supply of BC product by contributing to orderly marketing. In all this, one of their key roles is to grow the industry by looking for new markets. As was noted in the March 31, 2016 Workshop Report that was part of the current process, at p. 4: “Agencies competing for the same buyer with the same product do little, if anything, for Producers or Buyers”. Agencies thus play both a key front line role, and a larger strategic role, in assisting the Commission to regulate, manage and grow the industry in an orderly fashion: see generally January 7, 2013 Supervisory Decision, paras. 34 - 38; see also the Commission’s September 21, 2015 Stakeholder Engagement Discussion Paper, pp. 4 - 6.

74. With respect to IVCA, the Commission concluded that IVCA does contribute to the vision of regulated vegetable marketing on Vancouver Island, but that its growth ambitions need to be monitored to ensure that any such ambitions that extend beyond the Vancouver Island market are not merely seeking to displace existing markets. With respect to promoting collaboration, the Commission noted that IVCA does work with other agencies, but it is not clear how it manages delivery allocation, and it needs to be more transparent in how it manages earned market entitlement between all its producers. With respect to IVCA’s demonstration of good governance, the Commission stated “yes, but needs improvement”. The Commission noted IVCA’s long history as a non - profit co - op, its focus on growth and its new investment in technology and infrastructure. However, the Commission repeated its concern about the need to monitor delivery allocation, and noted that IVCA does not have written GMAs, which does not sufficiently protect the interests of growers. With respect to business planning, the Commission stated that IVCA “appears to have a focused vision and strategic direction for its business. It is committed to working with its growers to identify products that can be grown successfully in local soils”. With respect to market

demand, the Commission answered this as a positive, but expressed concern that IVCA's recent move to uniform packaging did not sufficiently differentiate Vancouver Island grown product. The Commission also noted that IVCA's agency designation does not currently extend to greenhouse crops and it had requested such an extension. The Commission agreed that "[it] would strengthen its competitive position in the Vancouver Island market by giving it the ability to represent all types of vegetables". (emphasis added)

77. IVCA's failure to fulfil its responsibilities as an agency could provide a basis for the Commission to decide to terminate that agency designation. IVCA bears ultimate responsibility, but the circumstances in which this non-compliance arose cannot be ignored. The panel agrees with the BCFIRB findings that are outlined above (par. 17,20,21,22,23,32,33,34,43,47,48,52,69,70,71,72,73, 74,75,76,77,78,79,82,83).
78. This compliance issue arose because of a business opportunity that took advantage of the failure of the Commission to comply with the Statutory Instruments Act in order to have the legal federal authority to regulate minimum prices for product sold outside BC, and the failure of IVCA to seek approval from the Commission to market "new" or additional regulated product under PART XV of the General Order . "All three parties had something to gain. IVCA wanted the tonnage fees, Prokam wanted the early market (periods A and B) for its potatoes to grow DA, Thomas Fresh wanted a cheap supply of premium potatoes to take to the market."
79. The IVCA board of directors (including Mr. Dhillon) are in charge of the management of the company's business; they make the strategic and operational decisions of the company and are responsible for ensuring that the company meets its statutory obligations. The IVCA board of directors enabled the deceptive behavior and unsanctioned business opportunity. Such behavior by an agency is not acceptable by the Commission. The correct and acceptable action taken would have been to consult with the Commission, comply with Commission authority, and formally apply for approval to market the "new" or additional regulated product
80. It is the panel's opinion that IVCA has demonstrated a lack of capacity to perform the requisite front line role to ensure that marketing is conducted in an orderly fashion according to the General Order and provide fair market access to all registered growers.

Panel Recommendation:

81. It is expected that IVCA would ensure that it was marketing "New" or additional regulated product with Commission approval. To do so IVCA would have needed to comply with PART XV of the General Order and submit a business and marketing plan to the Commission for its consideration and final approval.
82. The Panel finds that IVCA's actions were deliberate to circumvent the authority of the Commission and the regulated marketing scheme for BC grown vegetables. The mandate of an agency is to represent a group of producers and carry out the marketing duties of the Commission's regulated vegetables;
 - 82.1. In compliance of the consolidated general order,
 - 82.2. In respect of the operating principles of the orderly marketing system, and,
 - 82.3. For the benefit of its producers and the industry.

83. IVCA failed to deliver on all three expectations of an agency in carrying out its marketing duties. The severity of this non-compliance is classified as catastrophic and deserving of a Class V license. Agencies play a strategic role in assisting the Commission to regulate, manage, and grow the industry in an orderly fashion. However, Noted in BCFIRB's decision par.52, "this case involves a very complex set of facts, interconnected parties, challenging relationships, deficient administrative processes" As was stated previously in the decision regarding Prokam's licence class, some of this blame for why this situation occurred is equally attributed to Mr. Dhillon in his role as the director and vice president and not just the dysfunctional nature of the IVCA agency. It is the panel view that the actions taken by Prokam were a consequence of operational practices and an agency governance structure that were endorsed by IVCA that allowed Mr. Dhillon to act in the manner that he did. For this reason the panel holds both Prokam and IVCA equally responsible, but for the different stated reasons.
84. Therefore, it is the panel's recommendation that the Class I Licence issued to Island Vegetable Cooperative Association (IVCA) be revoked and replaced with a Class III License with the following conditions attached:
- IVCA production growth is limited to its current delivery allocation. Planted acreage is to yield production that is commensurate with the delivery allocation that IVCA currently manages;
 - IVCA is not permitted to represent any additional or new producers of regulated vegetables;
 - An independent board member is to be appointed to the IVCA board by the Commission and is to remain on the board until a Class I licence is re-instated;
 - An audit is to be completed by the Commission on internal procedures, protocol and management practices within the IVCA Agency.

INTERIM ORDER

85. As noted, the Panel believes that the British Columbia market is at risk when cheap, bulk product is made available to a wholesaler. When this occurs, the agency is essentially abdicating its responsibility to market regulated product as expected by the Commission. When cheap, bulk product is received by a wholesaler, it acts as a de facto agency – but without any of the responsibilities of an agency. It can therefore compete against agencies and detrimentally affect the return to producers.
86. In this case, IVCA lost control of its obligations to BC producers and to the Commission over pricing and other aspects of marketing that it is delegated to carry out under the authority granted to it by the Commission. Agencies need to maintain control over market access. A Wholesaler, on the other hand, has no legal obligation to represent the interests of producers of regulated vegetable grown in BC. The volume of potatoes sold by IVCA to Thomas Fresh amounted to 9% of the 2017 potato production in BC and the bulk of the potato volume that was managed by the agency.
87. It is also the responsibility of agencies to represent growers and market the product in a manner that maximizes net grower return for the benefit of all producers. In the current and foreseeable market, net grower returns are maximized by an agency business model that adopts as its core business an offering of products packaged for end use to the market. An agency is not a commission salesperson who brokers product by arranging transactions between a buyer and a seller for a fee. This licence category is defined and already exists within the regulatory framework. The overarching

mandate of an Agency is to represent a group of licensed producers and carry out the marketing duties of regulated vegetables;

- i. in compliance of the Consolidated General Order;
- ii. in respect of the operating principles of the orderly marketing system;
- iii. for the benefit of its producers;
- iv. in agreement with the interests of the industry.

88. Also, it is paramount that the regulated product being placed into the market is food safe and that the actions of an agency, or of a producer of regulated BC grown vegetables, do not expose the industry to unnecessary food safety risk that can be mitigated under our regulatory authority. Food safety risk is mitigated when the washing, grading and packing of the regulated vegetable into a product packaged for end use are managed at the source, where the Commission and agencies have oversight.

89. For all these reasons, the Panel believes that it is in the best interest of the industry to introduce an Interim Order adopting the definition “Packed For End Use” and mandating that product be marketed by an agency as “Packed For End Use” in all instances except where the express, prior, written approval of the Commission is sought and obtained. The complete ‘Interim Order’ to be enacted is provided below:

**INTERIM ORDER
TO PRESERVE THE ORDERLY MARKETING OF STORAGE CROPS
PENDING FURTHER REVIEW**

**MADE BY THE
BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION
ON NOVEMBER 18, 2019**

WHEREAS the British Columbia Vegetable Marketing Commission (the “Commission”) has established orders providing for the orderly marketing of storage crops that reflect three core principles: (1) coordinated marketing of regulated product by agencies on behalf of producers; (2) compliance by producers and agencies with delivery allocation rules; and (3) compliance by agencies with the minimum prices set by the Commission.

AND WHEREAS there is an urgent need to maintain the orderly marketing of storage crops pending a broad-based consultative process that will be undertaken with a view to effecting substantial revisions to the General Order.

NOW THEREFORE, the British Columbia Vegetable Marketing Commission orders as follows:

Application

1. (1) This Order supersedes and replaces all provisions in the Commission’s General Order concerning Delivery Allocation as applicable to Storage Crops.
- (2) In the event of any inconsistency between this Order and the Commission’s General Order, the provisions of this Order shall prevail.

- (3) The Commission's General Order continues to apply except to the extent of any inconsistency with the provisions hereof, and except with respect to the provisions in the General Order that concern Delivery Allocation as applicable to Storage Crops.

Definitions

2. In this Order:

"Container" means a sack, box, bag, crate, hamper, basket, carton, package, barrel, or any other type of receptacle used in the packaging, transportation, sale, or other handling of potatoes.

"Marketing Period A" means the period from the start of a new Storage Crop to July 31.

"Marketing Period B" means the period from August 1 to September 30.

"Marketing Period C" means the period from October 1 to January 31.

"Marketing Period D" means the period from February 1 to the end of an old Storage Crop.

"Packaged For End Use" means graded and packaged in a Container in the manner in which the food:

- (a) is ordinarily sold to, used by, or purchased by, a retailer or a consumer; or
- (b) may reasonably be expected to be obtained by a food service institution;

such that no further repackaging occurs, or is necessary or contemplated.

Books, Records and Accounts

3. (1) Every Storage Crop Producer, Storage Crop Producer-Shipper, and Agency shall keep complete and accurate books, records and accounts of all matters relating to the production, transportation, packing, storage and marketing of Storage Crop Regulated Product.
- (2) All books, records and accounts required to be kept under subsection (1) must be retained for a period of three years and shall be available for inspection by:
 - (a) the Commission;
 - (b) any officer or auditor of the Commission; and
 - (c) any other Person as may be authorized by the Commission from time to time.

Obligation to Furnish Information and Permit Inspection

4. (1) Every Storage Crop Producer, Storage Crop Producer-Shipper, and Agency shall, upon request, furnish to the Commission, or to any officer or auditor of the Commission, or to any other Person as may be authorized by the Commission from time to time, any information or documentation relating to the production, transportation, packing, storage and marketing of Storage Crop Regulated Product.
- (2) Every Storage Crop Producer, Storage Crop Producer-Shipper, and Agency shall make specific answers to any questions relating to the production, transportation, packing, storage and

marketing of Storage Crop Regulated Product, as submitted to that Person by the Commission, or by any officer or auditor of the Commission, or by any other Person as may be authorized by the Commission from time to time.

- (3) Every Storage Crop Producer, Storage Crop Producer-Shipper, and Agency shall permit the Commission, or any officer or auditor of the Commission, or any other Person as may be authorized by the Commission from time to time, to search vehicles in which Storage Crop Regulated Product is transported, and to inspect all farm or business premises owned, occupied or controlled by such Storage Crop Producer, Storage Crop Producer-Shipper, or Agency.

Agency Reporting to Commission

5. Every Agency shall, at the earliest possible opportunity, furnish the Commission with true and detailed reports disclosing:
 - (a) the name and address of each Storage Crop Producer from whom the Agency has received Storage Crop Regulated Product;
 - (b) the volume of Storage Crop Regulated Product received from each Storage Crop Producer in each Marketing Period, expressed in tons;
 - (c) the volume of Storage Crop Regulated Product marketed in each Marketing Period, expressed in tons;
 - (d) the volume of Storage Crop Regulated Product marketed as Packaged For End Use in each Marketing Period, expressed in tons;
 - (e) the volume of Storage Crop Regulated Product marketed as other than Packaged For End Use in each Marketing Period, expressed in tons; and
 - (f) the net return payable to each Storage Crop Producer expressed as an amount per ton, for each type and grade of Storage Crop Regulated Product, for each Marketing Period.

Marketing Obligations and Prohibitions

6.
 - (1) Each Agency is obliged to market Storage Crop Regulated Product with a view to securing the highest net return payable to each Storage Crop Producer for each type and grade of Storage Crop Regulated Product, for each Marketing Period.
 - (2) All Storage Crop Regulated Product must be marketed by each Agency as Packaged For End Use, except where the Agency has obtained the prior, express, written approval of the Commission.

DATED at Surrey, British Columbia on _____

BRITISH COLUMBIA VEGETABLE MARKETING COMMISSION

Debbie Etsell, Chair

John Newell, Member

ORDERS

90. The Commission orders are therefore as follows:

91. Thomas Fresh Licence Class

The Class IV Licence issued to Thomas Fresh is to be revoked and replaced with a Class I License.

Thomas Fresh is to be refunded the difference in cost between what it has paid to be licenced as a Wholesaler under a Class IV Licence vs a Class I Licence.

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.

93. The INTERIM ORDER TO PRESERVE THE ORDERLY MARKETING OF STORAGE CROPS is enacted as of the date of this decision.

94. BCfresh as the Agency Designated to Prokam Enterprises Ltd.

With the enactment of this interim order, the panel offers Prokam with three options:

- Prokam can chose to continue to not produce any BC regulated vegetables, or, to grow unregulated vegetables, and therefore does not require a designated Agency.
- If Prokam chooses to grow regulated vegetables, it is directed to market through BCfresh under the terms of the three-year GMA agreed to on February 15, 2018.
- If BCfresh releases Prokam from the GMA, Prokam can consult with other licensed storage crop agencies to represent the grower in consideration of the new interim order.

95. Island Vegetable Co-Operative Association (IVCA) Agency Licence Class

IVCA's Class I Licence be revoked and replaced with a Class III License with the following conditions:

- IVCA production growth is limited to its current delivery allocation. Planted acreage is to yield production that is commensurate with the delivery allocation that IVCA currently manages;
- IVCA is not permitted to represent any additional or new producers of regulated vegetables;
- An independent board member is to be appointed to the IVCA board by the Commission and is to remain on the board until a Class I Licence is re-instated;
- An audit is to be completed by the Commission on internal procedures, protocol and management practices within the IVCA Agency.

These are the decisions and reasons of the Commission as “first instance regulator”. A person aggrieved by this decision may appeal the decision to the BC FIRB.

S.A.F.E.T.I. PRINCIPLE

96. This decision satisfies the S.A.F.E.T.I. principles that are a foundation of the BC FIRB accountability framework and guide decision making by the Commission. Commissioners are committed to be proactive risk managers and applying principles-based decision making to achieve responsive governance. These decisions are determined to be in the best interest of sound, orderly marketing within British Columbia and reflects a principle-based approach to regulation. They are validated for the following reasons:

STRATEGIC	<ul style="list-style-type: none"> • Supports the fundamental principles of the existing Regulatory Framework for the accountabilities and responsibilities of an Agency and a Grower. • Supports the fundamental principles of the existing Regulatory Framework and its purpose to assist, to support, and to sustain Growers. • Appropriately reflects the severity of the findings on non-compliance. • Specifies an agency’s target market segment and enhances its responsibility to mitigate food safety risk.
ACCOUNTABLE	<ul style="list-style-type: none"> • Maintains accountability for the rights of all Growers and for the privilege of the existence of the Regulatory Framework in BC. • Ensures Grower and Agency accountability to their licensed requirements and the authority delegated to them by the Commission. • Demonstrates integrity to the intended objectives of the Regulatory Framework under section 11 NPMA (BC) Authorities that govern the BCVMC.
FAIR	<ul style="list-style-type: none"> • The process and decision-making framework used by the Commission allowed the management of presumptive bias(es) and full contribution of panel members in reviewing the entire set of documents and to the making of fair, unbiased, and defensible decisions. • Demonstrates fairness to all growers, wholesalers and agencies in consideration all circumstances that lead to the non-compliance, and fairness to the continued existence of the regulatory framework in BC.
EFFECTIVE	<ul style="list-style-type: none"> • Considers established levels of trust required by an agency and a grower to productively grow, and fairly market, a high quality, food safe product within the regulatory framework. • Demonstrates effective use of consequence at the appropriate level for the finding of non-compliance by Prokam and IVCA.
TRANSPARENT	<ul style="list-style-type: none"> • Provides clarity on grower and agency obligations.
INCLUSIVE	<ul style="list-style-type: none"> • Demonstrates sufficient consultation and that all appropriate interests have been considered including “the public interest” on application of regulatory oversight that is fair, transparent and accountable.

Respectfully submitted on behalf of the BC Vegetable Marketing Commission,



Debbie Etsell, Chair

APPENDIX A

PART IV LICENSING

Licences – Agencies

1. No Person other than an Agency shall purchase Regulated Product from a Producer or market Regulated Product, within British Columbia or in interprovincial or export trade, except that:
 - (a) Regulated Product may be purchased from a Producer by a Consumer or by a Processor licensed by the Commission as permitted by these General Orders;
 - (b) Regulated Product may be marketed by a Producer, Producer-Shipper, Processor, Commission Salesperson or Wholesaler who is licensed in accordance with these General Orders in the manner permitted by the term of the licences, these General Orders, and any other Order of the Commission; and
 - (c) A Person who is specifically exempted from the requirements of this section pursuant to these General Orders or otherwise by Order of the Commission may market Regulated Product as permitted by the Commission.

2. A Person is authorized to act as an Agency if the Person:
 - (a) registers with the Commission and is designated as an Agency of the Commission;
 - (b) is qualified to and obtains annually from the Commission one of the appropriate licences herein described; and
 - (c) Pays to the Commission annually the fees for such licence as described in Schedule III to these General Orders.
 - (d) A Class I Licence may be issued on the initial application to the Commission or on any subsequent application if that Person or Agency has not had a licence of any class suspended or cancelled pursuant to Section 5.
 - (e) If any licence is suspended or cancelled, the Commission may issue a Class II, Class III, Class IV or Class V licence at its discretion; such a classification will be for a minimum of one year unless otherwise ordered by the Commission.

Licences – Packinghouse

3. No Person other than a Packinghouse shall receive Regulated Product from a Producer for the purpose of washing / sorting / grading / sizing and packing the produce within British Columbia, except that:
 - (a) A Person who is specifically exempted from the requirements of this section pursuant to these General Orders or otherwise by Order of the Commission may pack the Regulated Product as permitted by the Commission.

4. The Packinghouse shall be assigned a designated Agency. No other Agency shall receive Regulated Product from a Packinghouse without approval of the assigned designated Agency unless otherwise ordered by the Commission.

5. No Person other than the assigned designated Agency shall have the authority to ship Regulated Product from the Packinghouse except that:
 - (a) A Person who is specifically exempted from the requirements of this section pursuant to these General Orders or otherwise by Order of the Commission may ship Regulated Product from the Packinghouse as permitted by the Commission.

6. A Person is authorized to act as a Packinghouse if:
 - (a) The Person is registered with the Commission and is designated as a Packinghouse of the Commission;
 - (b) The Person is qualified to and obtains annually from the Commission one of the appropriate licenses herein described; and
 - (c) The designated Agency pays to the Commission annually the fees for such license as described in Schedule III to these General Orders;
 - (d) A Class I License may be issued on the initial application to the Commission or on any subsequent application if that Person or Agency has not had a license of any class suspended or cancelled pursuant to Section 5.
7. If any license is suspended or cancelled, the Commission may issue a Class II, Class III, Class IV or Class V at its discretion; such a classification will be for a minimum of one year unless otherwise ordered by the Commission.

Licences – Producer

8. No Producer, shall grow, process or market Regulated Product unless that Producer:
 - (a) registers with the Commission;
 - (b) is qualified to and obtains annually from the Commission one or more of the appropriate licenses herein described; and
 - (c) Pays to the Commission annually the fees for such licences as described in Schedule 3 to these General Orders.
9. A Class I Licence may be issued to any Producer on the initial respective application to the Commission, or on any other subsequent application by any respective Producer who has not had a licence of any class suspended or cancelled pursuant to Section 6 of this Part.
10. If any licence is suspended or cancelled, the Commission may issue a Class II, Class III, Class IV or Class V Licence at its discretion; such a classification will be for a minimum of one year unless otherwise ordered by the Commission.

Licences - Processor, Wholesaler, Commission Salesperson

11. No Processor, Wholesaler or Commission Salesperson shall grow process or market Regulated Product unless he:
 - (a) registers with the Commission;
 - (b) is qualified to and obtains annually from the Commission one or more of the appropriate licences herein described; and
 - (c) Pays to the Commission annually the fees described in Schedule 3 to these General Orders.
12. A Class I Licence may be issued to any Person under this section on the initial respective application to the Commission, or on any other subsequent application by any respective Person under this section who has not had a licence of any class suspended or cancelled pursuant to Section 6 of this Part.
13. If any licence is suspended or cancelled, the Commission may issue a Class II, Class III, or Class IV Licence at its discretion; such a classification will be for a minimum of one year unless otherwise ordered by the Commission.

Licenses – Producer - Shippers

14. No Producer-Shipper shall grow and market Greenhouse or Storage Vegetable Crops unless he:
 - (a) Registers with the Commission;
 - (b) Is qualified to and obtains annually the appropriate license from the Commission;

- (c) Pays to the Commission annually the fees for such licenses as described in Schedule III to these General Orders.

Licences - Issuance, Cancellation or Suspension

15. Every licence is subject to cancellation or suspension by the Commission:
 - (a) for a period of time to be determined by the Commission at its discretion if, in the opinion of the Commission, the licence holder has violated any Order, policy or direction of the Commission or if, in the opinion of the Commission, the actions of a licence holder are detrimental to the best interests of the industry.
 - (b) Before cancelling or suspending a licence, the Commission shall notify the licensee in Person, by facsimile transmission or email and by registered mail, to appear before the Commission to address the alleged violation and, where appropriate, to show just cause why the licence in question should not be cancelled or suspended for a period of time. The licensee may be represented by legal counsel, an agent or himself. If the licensee, his legal counsel or agent, do not appear before the Commission at the hearing, the hearing shall proceed and the licensee shall be sent, by registered mail, a copy of the decision of the Commission.
 - i. If the Commission cancels or suspends a licence, the Commission shall notify the licensee or his legal counsel or agent by facsimile transmission or email and by registered mail.
 - ii. If the Commission suspends or cancels a licence, the licensee may be subject to a Commission service fee, representing all or part of the expenses associated with the investigation, hearing and determination of the Commission leading to the cancellation or suspension of the licence.
16. Licenses are valid for one (1) year for the period commencing the day after the due date described in each instance below and expiring on the next annual due date. Every application for a license whether it is an initial application or a renewal must be made on a form prescribed by the Commission and shall be submitted to the Commission no later than the following due dates of each year:
 - (a) Producers *and Producer-Shippers* of Greenhouse Vegetable Crops– November 1.
 - (b) Other Producers *and Producer-Shippers of Storage Crops – May 1st*.
 - (c) Designated Agencies, Processors, Wholesalers and Commission Salespersons – March 1st.
17. Each application for a Producer's or producer-Shipper licence made in the name of a Person, farm, partnership or corporation must list on the licence application, the name of each owner, partner or shareholder, including percentage of shareholdings, as appropriate, and must identify the signing or voting authority for the farm, partnership proprietorship, or corporation, as the case may be, and must identify an individual who operates the farm.
18. Each licence issued by the Commission shall be issued to a named individual, or an individual and a corporation jointly, or to an individual and a farm name jointly, or, in the case of a partnership, to the partnership, at least one of the partners and an individual jointly.
19. No Producer, Producer-Shipper, Commission Salesperson, Processor, Wholesaler or Agency shall operate without a licence.
 - (a) Any Person who plans to act or who acts as an Agency must obtain an Agency licence and must be designated by the Commission as an Agency.
 - (b) Any Person who plans to act or who acts as a Processor must obtain a Processor's licence.
 - (c) Any Person who plans to produce or who produces Regulated Product must obtain a Producer's licence.
 - (d) Any Person who plans to act or who acts as a Wholesaler must obtain a Wholesaler's licence.

- (e) Any Person who plans to operate or who operates as a Producer-Shipper must obtain a Producer-Shipper licence.
 - (f) Any Person who plans to act or who acts as a Commission Salesperson must obtain a Commission Salesperson's licence.
20. Producers holding, in aggregate, less than 5,000 m² of Greenhouse Vegetable Production Allocation are not required to be licensed as Producer-Shippers nor are they required to market through an Agency unless otherwise directed by the Commission. Multiple registrations on the same physical site or several facilities under common ownership and management shall be considered single units for the purposes of determining applicability of this 5,000 m² exemption.

PART V AGENCIES

1. Designated Agencies and the Regulated Crops each are authorized to handle are listed on Schedule I to this General Order.
2. An Agency shall maintain an office located within the Regulated Area.
3. Agencies may, with the approval of the Commission, issue Transport Orders for specific Regulated Product. If authorized by the Commission, Transport Orders may contemplate that Regulated Product will be received, washed, graded and marketed and the proceeds pooled.
4. Each Agency shall deduct the appropriate Commission service fees from the Producer's net proceeds as prescribed by these General Orders or as directed by the Commission for the Regulated Product which the Agency is authorized to market, and for each month's sales Agencies shall hold such funds in trust and shall remit the funds to the Commission not later than the 20th day of the following month.
5. The Commission may withdraw the authority of an Agency to market Regulated Product and may cancel or suspend an Agency licence and strike the name of an Agency from the records of the Commission for failure to comply with an Order, directive or resolution of the Commission.
6. No Agency shall receive or market any Regulated Product from a Person in respect of which there has occurred any violation of, or non-compliance with, any Orders or directions of the Commission unless specifically ordered by the Commission to do so.
7. No Agency shall receive or market any Regulated Product from a Producer who does not have a current Producer Licence unless the net value of the Producer's shipments to date in the current year, including the shipment in question, does not exceed one thousand dollars (\$1,000).
8. No Agency shall receive any Regulated Product from a Producer that was not grown by that Producer unless expressly authorized by the Commission.
9. Every Agency shall be entitled to charge each Producer the service fees from time to time approved by the Commission for packing, cooling, grading, storing, washing, handling, transporting and Marketing the Regulated Product.
10. An agreement between an Agency and a Producer, which addresses terms and conditions upon which the regulated product shall be provided by the Producer and sold by the Agency (e.g., a Grower Marketing Agreement), shall be reduced to writing and is to be consistent with Commission policy.
11. All agencies shall cooperate with each other in the Marketing of Regulated Product and enter into inter-

Agency agreements when directed by the Commission. This may mean that Agencies with an excess of Regulated Product will be required to sell Regulated Product to Agencies in need of Regulated Product. On-going communication between Agencies is encouraged by the Commission in this regard.

12. Each Agency is authorized to and may conduct a pool or pools as directed by the Commission, for the distribution of all proceeds received from the sale of the Regulated Product. Each Agency shall distribute the proceeds of sale of each pool, after deducting necessary and proper disbursements, expenses and charges as permitted or required by the Commission.
13. All Agencies shall distribute the proceeds of sales not more than 20 days following the month during which the sales were made. If an Agency is unable, or does not wish to pay the proceeds within the specified time frame, it may apply to the Commission for a variance, stating the reasons for the request, the duration of the variance and the payment schedule requested. The Commission may approve, amend, or deny the request as it sees fit.
14. Prices for all Regulated Crops subject to Commission minimum pricing must be approved by the Commission before coming into force or effect, unless otherwise authorized in writing by the Commission.
15. All Agency facilities must meet minimum health standards of the regional district, municipality, area or city in which the facilities are located.
16. An Agency must have a valid business license and must be legally able to use any brand name it may adopt.

Products of Unmarketable Quality

17. An Agency or a Processor shall be entitled to refuse to accept or market any Regulated Product delivered to it, which in the opinion of the Agency or Processor, is not of marketable quality.
18. Any person who is aggrieved by the refusal of an Agency or Processor to accept or market Regulated Product may file a complaint with the Commission for a remedy and the decision of the Commission shall bind both the Agency or Processor and the aggrieved Person, subject to appeal provisions of the Act.
19. Any Person who is aggrieved by the manner in which Regulated Product is handled by an Agency or Processor may file a complaint with the Commission for a remedy and the decision of the Commission shall be binding on both the Agency or Processor and the aggrieved Person, subject to the appeal provisions of the Act.
20. Due to the perishability of some regulated products, a person filing a grievance under Sections 19, 20, or 21 of this Part, may request an expedited adjudication of their complaint and the Commission will make its best efforts to resolve the matter within the time constraints required.

PART VII AGENCY RESPONSIBILITIES

1. Each Agency marketing crops subject to Commission minimum pricing shall notify the Commission and obtain approval from the Commission for the establishment of any price or change in price.
2. Each Agency marketing crops subject to Commission minimum pricing shall file with the Commission a copy of any price list, local or export, and particulars of any sales other than at listed prices.
3. No pricing for crops subject to Commission minimum pricing, below listed price can be made without the prior approval of the Commission.

4. Each Agency shall supply to the Commission as requested or required, details in respect to the application of Delivery or Production Allocations and Producer's individual shipments. These details are required to be supplied to the Commission within 60 days of the close of a pool period or in the case of storage crops within 60 days of the close of a Delivery Allocation period.
5. Each Agency shall provide pool settlement statistics showing quantities, price ranges and final pool prices to the Commission on request.
6. Before finalizing a contract each Agency shall provide to the Commission for its prior approval as to form any proposed contracts with Processors or other firms approved by the Commission located in BC that are to receive regulated products regardless of end use.
7. Each Agency shall file with the Commission a copy of their year-end financial statements. A financial audit shall be undertaken if requested by the Commission.
8. Each Agency shall file a business plan or Marketing plan with the Commission upon request.
9. Each Agency shall file with the Commission all signed Grower Marketing Agreements with all Producers of Regulated Product shipped through that Agency by June 1st of each year.
10. Each Agency shall have a trace-back and recall system which adequately identifies and traces Regulated Product from the time it is specifically shipped by a particular Producer until it is received and purchased by a Wholesaler or Retailer.
11. Each Agency shall file with the Commission names of staff to be authorized to issue Transport Orders by April 1st of each year; any changes, which may occur subsequently, must also be filed.
12. Each Agency shall file with the Commission, for approval each year, a proposed list of fees or charges for Agency services provided to Producers for Marketing. Any fee or charge that has not been submitted to the Commission for its approval is a nullity. Where the Commission has exercised its discretion to decline to approve a fee or charge, such fee or charge becomes a nullity.
13. Each Agency shall provide the Commission with any other information relevant to Agency or inter-Agency transactions as may be required by the Commission from time to time.
14. An Agency shall accept for marketing, and shall market the regulated product from any licensed producer directed to that Agency by the Commission. If the Commission directs a producer to an Agency, that producer's regulated product shall be marketed, and he shall receive returns, in the same manner as other persons delivering regulated product to that Agency.

PART IX GENERAL PROHIBITIONS

1. No Person shall transport a Regulated Product unless it has been packed in a container authorized by a designated Agency or by the Commission.
2. A Wholesaler shall only buy, accept or receive a Regulated Product from an Agency *or Producer-Shipper*.
3. A Retailer located in BC shall only buy, accept or receive a Regulated Product from an Agency, a Processor, a Wholesaler, a Producer-Shipper in accordance with Part VIII of these Orders, or a Producer as authorized by a Manifest sales program.

4. No Processor shall sell or offer for sale or supply the Regulated product except in a processed or manufactured form.
5. No Processor shall buy, accept or receive Regulated Product from any Person other than a Wholesaler licensed by the Commission, an Agency designed and licensed by the Commission, or pertaining and limited to Processing Crops a Producer licensed by the Commission.
6. No Person, Producer or Processor, unless otherwise ordered by the Commission, shall grow, deliver, receive, accept or market Regulated Product for Processing, freezing, canning or preserving in any way unless there is a signed Commission approved Processing Crop contract which complies with all Commission Orders; such a contract shall be in compliance with and shall not deviate from the Master Contract negotiated for the Regulated Product in question and shall include a service charge.
7. No Person shall sell, offer to sell, supply or deliver the Regulated Product to any Person other than an Agency or such other Person as the Commission may expressly direct or authorize.
8. No Person other than a member or employee of the Commission shall move, destroy, sell or offer for sale any Regulated Product on which there has been put a detention tag or seizure tag, or with respect to which a notice of seizure has been given by any member or employee of the Commission or individual authorized by the Commission to effect such seizure, without the written authority of the Commission.
9. No Producer or Agency shall sell or offer for sale Regulated Crops subject to Commission minimum pricing, and no Person shall buy Regulated Crops subject to Commission minimum pricing, at a price less than the minimum price fixed by the Commission from time to time for the variety and grade of the Regulated Product offered for sale, sold or purchased, unless authorized by the Commission.
10. No Processor, or other authorized receiver of Regulated Product for Processing, shall receive or pay for any Regulated Product unless the Producer is currently registered with the Commission and is party to a current Commission approved Processing contract.
11. No Producer, shall market or transport any Regulated Product unless the Producer is currently licensed with the Commission, except as expressly authorized by the Commission pursuant to Section 4 of Part IV of the General Order.
12. No Producer shall produce or ship Regulated product without a Delivery or Production Allocation for the product in question, unless otherwise authorized by the Commission.
13. No Producer-Shipper shall sell or offer to sell Regulated Product to, or buy or offer to buy Regulated Product from, an Agency, other Producers, other Producer-Shippers or Wholesalers except as specifically provided for in these Orders or as otherwise authorized by the Commission.
14. A Wholesaler cannot be licensed as a Packinghouse.

PART XIV PROCEDURES FOR DESIGNATION OF AGENCIES

1. The purpose of this Part is to facilitate and direct:
 - (a) the designation and appointment of new Agencies; and
 - (b) the conduct of periodic reviews of existing Agencies.
2. The designation of new Agencies and the review of existing Agencies may involve combinations of meetings scheduled by the Commission in its supervisory capacity and/or hearings conducted by the Commission to grant, review or revoke Agency designations.

Designating New Agencies

3. Any business that wishes to be designated as an Agency shall apply to the Commission in writing. The application shall consist of a detailed business plan outlining the following considerations:
 - (a) the proposed Agency's short and long term goals;
 - (b) the rationale for establishing the proposed Agency including such factors as:
 - (i) an indication of marketplace requirements and potential requirements that the proposed Agency will address, including customer and Producer support;
 - (ii) a description of the benefits to the primary producers of Marketing the Regulated Product through the proposed Agency;
 - (iii) anticipated benefits to the industry as a whole;
 - (iv) possible consequences, beneficial or adverse, to other existing Agencies.
 - (c) the type of Regulated Product intended to be marketed;
 - (d) the commencement date of the proposed Agency;
 - (e) the method by which, and time limits through which, existing Producers may transfer to the proposed Agency;
 - (f) steps taken to meet with, and seek the cooperation of, existing Agencies;
 - (g) the identities of the principals of the proposed Agency;
 - (h) the identities of all shareholders and/or individuals with a financial interest in the proposed Agency;
 - (i) letters of commitment from Producers who wish to market Regulated Product through the proposed Agency;
 - (j) a statement of financial worth, along with a forecast of the anticipated earnings, cash flow and sales forecasts to indicate the fiscal viability of the proposed Agency's operations;
 - (k) a business licence;
 - (l) the facilities out of which the proposed Agency will operate, including any office, warehouse or other facility;
 - (m) the management and staff complement of the proposed Agency, including the marketing experience and skill level of staff;
 - (n) the steps the proposed Agency wishes to take in relation to quality assurance, particularly with respect to such matters as:
 - (i) food safety including an acceptable trace-back and recall system for Regulated Product sold;
 - (ii) grade compliance;
 - (iii) handling and distribution;
 - (iv) record keeping;
 - (v) legal requirements; and
 - (o) an assessment of market supply and demand in areas where the proposed Agency wishes to market the Regulated Product;

- (p) the names of customers who wish to purchase Regulated Product from the proposed Agency;
- (q) letters of commitment from proposed customers who wish to market Regulated Product from the proposed Agency;
- (r) letters of reference from financial institutions which support the establishment of the proposed Agency;
- (s) details of a proposed contingency plan which addresses how Producers would be paid for their product if the Agency encounters financial difficulties. This contingency plan may include the posting of a bond, a letter of credit or other security; and
- (t) details of a label or product identification system whose objective is not to create confusion with other Agencies or product identifications.

Commission's Internal Investigation of a Proposed Agency Application

4. Once a completed Agency application is received by the Commission, the Chair of the Commission shall designate a five-member panel of the Commission ("Panel") to consider the Agency application.
5. This Panel will meet with the proposed Agency in its supervisory capacity to discuss its Agency application. At this meeting, the proposed Agency will be required to present its application and to disclose all information relevant to its application.
6. Following this meeting, and three weeks prior to a hearing where interested parties within the industry will be given an opportunity to be heard, the proposed Agency will prepare a briefing document for distribution to interested parties; this briefing document shall be filed with the Commission who will then distribute it to interested parties. This briefing document must address all matters contained in the Agency application; only information of a confidential, competitive nature may be omitted.
7. In conjunction with the proposed Agency, the Commission shall establish a date for the public hearing and will distribute a Notice of Hearing to all interested parties.
8. The issues to be considered by the Commission at this hearing will include, but will not be limited to:
 - (a) whether there is a market requirement for another Agency and whether the designation of another Agency would benefit the industry as a whole;
 - (b) assuming there is a requirement for another Agency, whether the evidence as a whole supports the designation of the specific Agency in question;
 - (c) whether the proposed Agency has the expertise to operate as an Agency;
 - (d) whether the proposed Agency intends to follow Commission Orders and the enabling legislation and regulations;
 - (e) where applicable, whether the proposed Agency intends to apply for approval to increase the Marketing of Regulated Product and/or new Regulated Product; and whether the proposed Agency has Producer support.

Criteria for Evaluating Proposed and Designated Agencies

9. The Commission will consider the following criteria when recommending new Agencies and reviewing existing Agencies:
 - (a) whether all criteria and terms and conditions outlined above in this Part have been satisfied;
 - (b) whether a potential conflict of interest exists in the appointment of an Agency by the Commission; if the Commission determines that a potential conflict of interest exists, it will refer the matter to the BC Farm Industry Review Board;
 - (c) whether existing Agencies have been given adequate notice of the proposed Agency application, sufficient to enable submissions to the Commission of:
 - (i) oral and written comment and/or objections;
 - (ii) proposals for the coordination of the existing Agencies with the proposed Agency;

- (d) whether affected Producers have been given the opportunity to address the proposal on the same basis as existing Agencies;
- (e) the adequacy of the proposed contingency plan;
- (f) whether the proposed Agency is aware of the Commission's General Orders and regulations concerning pricing, fees, levies, accounting requirements, record keeping and other related matters; and
- (g) whether the proposed Agency is willing to cooperate with existing Agencies and with the Commission to ensure that the Commission is able to carry out its governance responsibilities.

Reviewing of Existing Agencies

10. As considered necessary by the Commission in its discretion, a letter will be sent to a designated Agency or Agencies requesting a meeting to discuss ongoing operational issues which may be affecting the industry.
11. Following delivery of this letter, a meeting shall be scheduled with the Agency in question and an agenda will be drafted in cooperation with the Agency to address issues which may be of concern both to the Commission and the Agency. The Commission may review the Agency's operations at this time and may request further documentation from the Agency concerning volume of annual sales, grading, quality of product sold, and overall expenses of the Agency, as well as any issue the Commission deems relevant to the conduct of its responsibilities.
12. In cases where the Commission is of the view that the viability of an Agency is at serious risk, the Agency shall develop a plan, as directed by the Commission, to address issues that require attention.
13. At any time, when the Commission has serious concerns about the viability of an Agency, a hearing may be scheduled, at the discretion of the Commission, which will address whether the Agency designation should be continued, amended or revoked.
14. The designation of an Agency by the Commission is not a warranty concerning any aspect of the Agency's business, including the ability of the Agency to pay for products marketed by it.
15. The designation of an Agency is a privilege under the Act. It is non-transferable and it is not an approval in perpetuity. The designation of any Agency may be reviewed by the Commission upon any material changes in the conditions giving rise to its initial approval.
16. Any sale of all or a portion of an Agency by way of sale of assets or shares, must receive approval from the Commission. Without prior approval, the Agency designation in question will terminate.

PART XV MARKETING OF "NEW" OR ADDITIONAL REGULATED PRODUCT BY EXISTING AGENCIES

1. No new or additional Regulated Product shall be marketed by existing Agencies without Commission approval.
2. An Agency seeking to market new or additional Regulated Product shall submit a Business Plan covering a period of time specified by the Commission which addresses matters relating to promotion, market development and planned expansion. In the case of agencies marketing regulated greenhouse crops, this requirement will occur within the Procedures outlined under General Orders Part XVI and XVIII.
3. At its discretion, the Commission may determine whether a hearing will be held, in either oral or written form, concerning the application by an existing Agency to market new or additional Regulated Product. In exercising its discretion, the Commission will consider:
 - (a) if and how other existing Agencies, if any, will be affected;
 - (b) how the Commission will notify interested parties of the application and its decision to approve or dismiss the application.
4. The Commission shall consider:
 - (a) what benefits, if any, not currently available to Producers will accrue to them if new or additional Regulated Product is marketed by the Agency;
 - (b) whether the Agency has sufficient staff with the necessary experience to market the new or additional Regulated Product;
 - (c) whether a market exists for the new or additional Regulated Product; and
 - (d) whether the new or additional Regulated Product would enhance orderly Marketing.

PART XVI PRODUCTION AND DELIVERY ALLOCATIONS – GENERAL

1. The purposes of the Delivery and Production Allocation Procedures contained in Part XVII and Part XVIII are to identify the principles and guidelines by which the Commission will support and enhance a regulated marketing system for the intraprovincial, interprovincial and export trade of regulated crops.

These purposes include:

 - (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.
2. In the event a Producer or any other Person realizes a benefit or advantage in regard to the application of the Procedures contained in Part XVII and Part XVIII, or the utilization of or access to Delivery or Production Allocations, that are not consistent with the object and purpose of these Procedures, the Commission may deny such Producer or Person that benefit or advantage and may interpret these Procedures in a manner consistent with the object and purpose of the policy as articulated in section 1 of this Part.

3. Delivery and Production Allocations are a privilege granted by the Commission under a Producer's license. Delivery and Production Allocations shall have no monetary value.
4. Only Persons eighteen (18) years of age and over and holding a valid Producer's licence from the Commission may hold or be assigned Delivery or Production Allocations.
5. Only Persons holding Canadian citizenship or Permanent Resident Status may hold Delivery or Production Allocations. If the applicant for a Delivery or Production Allocation is a corporate applicant, then 51% common beneficial ownership must be retained by a Person or Persons holding Canadian citizenship or Permanent Resident Status.
6. A change of name on a registration or a Delivery or Production Allocation does not necessarily constitute a transfer of a Delivery or Production Allocation.
7. A change of name on a registration of a Delivery or Production Allocation does not negate any Grower Marketing Agreement between a Producer and an Agency.
8. Throughout the Regulated Area Delivery and Production Allocation is transferable between and among licensed producers and prospective producers intending to obtain a producer license. For the purpose of reaching decisions and determinations regarding the transfer of Production and Delivery Allocation the VMC will rely on what is provided for in Part XVII and Part XVIII of this General Order as well as policies established regarding Production and Delivery Allocation transfer, which may change from time to time.
9. Designated Agencies having the authority to market storage crops 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 Delivery Allocation period.

PART XVII PROCEDURE FOR DETERMINING DELIVERY ALLOCATION FOR STORAGE CROPS

1. This Part covers Storage Crops as defined in Part I (5), *as follows*:
"Storage Crops" mean potatoes, onions, parsnips, cabbage, carrots, beets, rutabagas, white turnips and any other crop designated by the Commission.
2. *Only Regulated Product shipped through an Agency or Producer-Shipper of the Commission shall be used for the calculation of Delivery Allocation levels or adjustments for Crops under this Part.*
3. Delivery Allocations shall be established on a rolling 5-year average for Storage Crops, unless otherwise directed by the Commission.
4. Subject to section 5 and 6 in this Part, no Producer shall ship a quantity of Storage Crops in excess of their Delivery Allocation, unless otherwise authorized by the Commission.
5. 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.
6. After one round (100 percent) of all Delivery Allocations has been shipped for any Storage Crop in any Delivery Allocation period, Delivery Allocations shall be awarded equally to each registered producer. For the purposes of this section registered Producers operating as a Family Unit may be grouped together and in those instances the Family Unit will receive the Delivery Allocation of only one registered Producer.

7. Where a Producer is called to provide Regulated Product and cannot or will not supply the Regulated Product demanded by the market, that Producer will be bypassed and will be deemed to have shipped the quantity of Regulated Product requested, and other Producers will be contacted. Producers holding a Delivery Allocation will be contacted first and new Producers will be contacted if Producers holding a Delivery Allocation cannot supply the Regulated Products requested.
8. Regulated Product produced outside of British Columbia shall not be used to fill or increase a Delivery Allocation for a Producer.
9. Regulated Product produced by one Producer may not be used to fill or increase a Delivery Allocation of another Producer.
10. Unless there are special circumstances, if a Producer ceases production for two consecutive years, then the Commission shall rescind their Delivery Allocation.
11. If a Producer is found guilty of violating a Commission Order, the Commission shall have the authority, in addition to any other measures set out in these orders, to suspend a Producer's Delivery Allocation for a period of time. Sales made during the period of violation will not be allowed to build Delivery Allocation.

Transfer of Delivery Allocations

12. Except in extenuating circumstances, transfer of a Delivery Allocation by any Producer can only take place once a year and is subject to the following conditions:
 - (a) all applications for transfer of a Delivery Allocation must be on a form prescribed by the Commission;
 - (b) all applications for transfer of Delivery Allocations must be filed with the Commission not later than March 15 each year; and;
 - (c) unless otherwise specified by the Commission, all transfers of Delivery Allocation shall take effect the following crop year.
13. When transferring a Delivery Allocation, only that portion of a Delivery Allocation that has been earned can be transferred. Earned Delivery Allocation constitutes Delivery Allocation based on actual shipments and shall not include any Delivery Allocation that has been previously granted by the Commission.
14. In the case of potatoes only, to qualify for transfer, the minimum earned Delivery Allocation must total an aggregate ten tons when all categories and Delivery Allocation periods are combined.
15. Any Delivery Allocation earned or acquired must be utilized by the licensed Producer for a minimum of two (2) years before it may be transferred, except in extenuating circumstances.
16. Delivery Allocation periods for Storage Crops shall be as set out in Schedule VI – *Delivery Allocation Periods for Storage Crops*.

Schedule III Annual Licence Fees

Licensee	Class 1	Class 2	Class 3	Class 4	Class 5
Designated Agency					
\$500 plus an amount equivalent to 0.025% of annual sales*	Base amount	Class 1 times 2	Class 1 times 3	Class 1 times 4	Class 1 times 5
Packinghouse	-----	\$1,250	\$2,500	\$12,500	\$50,000
Producer					
Storage / Greenhouse / Processing Crops (except Strawberries)	\$250	\$1,250	\$2,500	\$12,500	\$50,000
Processing – Strawberries	\$50	\$1,250	\$2,500	\$12,500	\$50,000
Producer - Shipper					
\$500 plus an amount equivalent to 0.025% of annual sales*	Base amount	Class 1 times 2	Class 1 times 3	Class 1 times 4	Class 1 times 5
Processor	\$1,000	\$2,000	\$6,000	\$10,000	N/A
Wholesaler	\$1,000	\$2,000	\$6,000	\$10,000	N/A
Commission Salesperson	\$50	\$2,000	\$6,000	\$12,000	N/A

*Annual Sales based on most recently completed financial statement