



October 24, 2013

File: 44200-20 MMB_SUCC

DELIVERED BY EMAIL

Bob Ingratta
Chief Executive Officer
BC Milk Marketing Board
200-32160 South Fraser Way
Abbotsford BC V2T 1W5

Dear Mr. Ingratta:

QUOTA TRANSFER ASSESSMENTS – REQUEST TO ADD NIECES AND NEPHEWS AS EXEMPT PERSONS

Thank you for your October 16, 2013 letter requesting the BC Farm Industry Review Board (BCFIRB) consider the addition of nieces and nephews to persons exempt from quota transfer assessments in order to “...support the immediate needs of succession planning within a family corporate farm”. I would like to note up front that this is a significant policy request.

The information provided below accords with the general expectations of BCFIRB’s members.

BCFIRB agrees with the importance of succession planning in building and maintaining a strong, sustainable dairy industry in BC. I see the BC Milk Marketing Board is actively recognizing the importance of succession through its inclusion in strategic planning and the [Quota Governance Review](#). As we discussed, this Review is an opportunity for the Milk Board to demonstrate leadership in the regulated marketing sector’s shift to principles-based regulation.

You are correct that any changes to quota transfer assessment directions set by BCFIRB on the basis of sound marketing policy under the *Natural Products Marketing (BC) Act (NPMA)* would require BCFIRB approval. BCFIRB’s directions were made on the basis of an extensive, in-depth process to address outstanding quota governance concerns in the BC supply-managed sectors. Any changes would need to take into consideration overall sound marketing policy, including impacts on other aspects of quota management, for the dairy industry as well as the public interest – a process reflected in Quota Governance Review – where succession is raised as a specific question for stakeholders and the Milk Board to consider and potentially act on.

The following sets out a bit of background on BCFIRB’s established quota transfer assessment directions (including reasons), considerations, and a summary, including an option for the Milk Board and the corporate family farms to consider should immediate action be warranted.

British Columbia
Farm Industry Review Board

Mailing Address:
PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5
Telephone: 250 356-8945
Facsimile: 250 356-5131

Location:
1st Floor, 780 Blanshard Street
Victoria BC V8W 2H1
Email: firb@gov.bc.ca
Website: www.firb.gov.bc.ca

Background

Conditions on quota transfer were set by BCFIRB in 2005 and 2007 following a comprehensive review (“[Specialty Review](#)”) of significant issues with quota management by BC’s supply-managed boards. Some of these inter-related issues included:

- availability of quota for people wanting to enter the industry and for farmers wanting to grow their current business;
- availability of quota to meet emerging markets and build new, value added markets;
- whether quota held by producers was being actively produced; and,
- windfall profits realized by producers through ‘flipping’ quota that they had received at no cost from the boards.

The Specialty Review incorporated feedback from all supply-managed sectors and other stakeholders including the public, as well as consideration of the Ministry of Agriculture’s policy objectives, including its [Regulated Marketing Economic Policy](#).

Based on the results, BCFIRB issued directions (2005 and 2007) to all supply-managed boards regarding quota transfer assessments. These directions have been reflected in all board and commission orders since that time. The directions related to the Milk Board request are:

[BCFIRB Specialty Market and New Entrant Submissions – Policy, Analysis, Principles and Directions](#)
– September 1, 2005

In the cases where direct assessment has been proposed, exceptions to assessment are to be limited to direct family members only – these being defined as spouse, sons and daughters – and for business reorganization where the ownership percentages do not change.

[Review of Specialty Production and New Entrant Programs – Improving Access to the Supply Management System – Exemption of Siblings from Quota Transfer Assessments](#) – January 26, 2007

...it was mutually agreed that an exemption for quota transfers between siblings would be approved under one condition. This condition is that the exemption is limited to transfers between siblings for reasons related to succession planning, and where the quota amount being transferred is and will remain attached to the “family farm” in question. Any transfer to a sibling, for any purpose, that results in quota being moved off the “farm”, except to a person exempted in accordance with BCFIRB’s original September 2005 Direction, will require a transfer assessment to be imposed.

This further exemption applies to all boards when using direct assessments on quota transfers.

Quota transfer assessments and other related requirements were intended to ensure quota is managed in a manner that addresses the issues listed above (quota availability, production of quota, windfall profits). I note that while at the time BCFIRB rejected a recommendation that there be no exemptions from quota transfer assessments, BCFIRB also did not accept recommendations from the Milk and Egg Boards that exemptions be broadened beyond immediate family (e.g., encompass nephews and nieces). Broad exemptions were generally seen as a risk to boards being able to effectively resolve the historical quota management issues.

Considerations

The October 16, 2013 letter advises that the request for inclusion of nieces and nephews as exempt persons originates from two corporate family farms involved in succession planning.

As noted earlier, changes to who is exempt from quota transfer assessments is a significant policy request, requires BCFIRB approval and has implications within the dairy industry, for the other supply-managed sectors and for the public interest. BCFIRB's directions established in 2005 and 2007 were well communicated at the time, and continue to be communicated through the Milk Board Consolidated Orders – which all quota holders are expected to be generally familiar with and take into account in their business planning.

Following our discussion last Friday, I further reviewed BCFIRB's 2005 and 2007 directions to the Milk Board regarding who is exempt from transfer assessments and observed the directions give the Milk Board no discretion. The Consolidated Order definition of "Exempt Person" is an administrative action taken by the Milk Board to carry out BCFIRB's directions. A decision made by the Milk Board based on the BCFIRB directions in this circumstance is not appealable. As set out in *Salmon Arm Poultry Farm Ltd., Cedarcroft Holdings Ltd., J & A Poultry Farm Ltd. and Penner Poultry Farm versus the BC Egg Marketing Board:*

Where the BCMB [BCFIRB] has, as here, exercised its uncontested supervisory authority to issue specific directions to a commodity board to issue orders, the appropriate remedy is to challenge the BCMB [BCFIRB] by way of judicial review. It is not to appeal those very same decisions to the BCMB [BCFIRB] under the fiction that they are decisions "of" the commodity board merely because that board has carried out that which the BCMB [BCFIRB], after due supervisory deliberation, required it to do.

If BCFIRB's direction were broader (e.g. only referring to "immediate family members" with no further specifications), the Milk Board would have discretion to define who an "immediate family" member is and make a related decision – which would then be appealable. Unfortunately this is not the present circumstance.

While the letter argues the requested change in exempt persons would "...support renewal of the industry, consistent with the Board's strategic plan, and bring new producers to the dairy industry within a family corporate farm structure", it is likely the same argument could be made for any expansion of the exempt persons list. However, there is more to be consider here than succession planning for two farm corporations. That is, do the current restrictions on exempt transfers create a significant succession issue for the dairy industry, and if so, what considered examination is necessary to reach effective, strategic solutions for the industry in light of other quota management responsibilities? This type of question, along with the purpose and effectiveness of current quota management overall – such as the Graduated Entry (new entrant) Program (GEP) – is at the heart of the Quota Governance Review. These matters are already the subject of significant debate between producers, much less other stakeholders who will also have input into the review.

I point out that, although the October 16 letter frames the request to BCFIRB in terms of a change "...providing clear direction for family corporate farms by extending the exemption to deemed transfers ... to include nephews and nieces", extending the exemption does not in fact clarify any further for family corporate farms what they may expect in terms of quota transfer requirements. These terms have been clearly set out in Milk Board's Consolidated Orders for some time.

Summary

At this time:

- BCFIRB's 2005 and 2007 directions gives the Milk Board no discretion in deciding who is exempt from quota transfer assessments;
- any Milk Board decision made in this circumstance based on BCFIRB's directions is not appealable;
- the requested approval involves changing a long-standing sound marketing policy with implications for all supply-managed sectors and the public interest;
- the request is absent of any indication to BCFIRB that the current quota transfer exemption directions are creating a significant issue for the dairy industry;
- there is a Quota Governance Review underway that includes questions related to quota management, succession planning and related matters such as the GEP; and,
- transfer assessment information is readily available from the Milk Board, and has been for several years now, in the form of the Consolidated Orders – which all quota holders are expected to be familiar with.

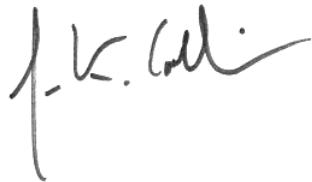
Although I have now advised that this issue is not appealable, if the Milk Board considers the addition of nieces and nephews to those exempt from transfer assessments a critical matter at this time, it can make a more substantive request to BCFIRB for a supervisory decision to amend the current directions prior to the completion of the Quota Governance Review. The corporate family farms also have the option of making a strongly substantiated request to BCFIRB for a supervisory decision prior to the completion of the Quota Governance Review.

In either case, BCFIRB would require detailed, supported reasoning for the requested change. BCFIRB's supervisory approach, starting with an initial decision to proceed or not, would likely take into account the Quota Governance Review, associated items such as the GEP and the individual circumstances of the two farms concerned. It is very likely that any supervisory approach here would mirror elements of an appeal process, including other interested parties being offered opportunity to respond to the applications.

In closing, I agree it is important to revisit directions, such as those related to exempt transfers, to ensure they are still meeting sound marketing policy and that demonstrably critical issues are addressed. The Quota Governance Review is exactly that type of opportunity. BCFIRB expects any proposed changes to the 2005 and 2007 directions will be brought forward by the Milk Board with substantive reasons as part of the Review in due course.

If you have any questions or wish to discuss further, please feel free to contact me.

Yours truly,



Jim Collins
Executive Director

cc: BCFIRB web site