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Bruce Cook, Chair
British Columbia Broiler Hatching Egg Commission

Ron Kilmury, Chair
British Columbia Chicken Marketing Board

David Taylor, Chair
British Columbia Egg Marketing Board

Blaine Gorrell, Chair
British Columbia Milk Marketing Board

Ron Charles, Chair
British Columbia Turkey Marketing Board

Dear Sirs:

**REVIEW OF SPECIALTY PRODUCTION AND NEW ENTRANT PROGRAMS –
IMPROVING ACCESS TO THE SUPPLY MANAGEMENT SYSTEM – ELIGIBILITY
CRITERIA FOR NEW ENTRANT PROGRAMS**

As you are aware, in September 2005 the BC Farm Industry Review Board (BCFIRB) provided supervisory directions under the *Natural Products Marketing (BC) Act (NPMA)* concerning new entrants programs. Specifically, BCFIRB stated:

Under s. 5.12, New Entrant Eligibility:

1. Eligibility criteria for new entrant status should include, at a minimum residency, not having been previously involved in supply management quota ownership, and a commitment by the applicant to be actively involved in the farming operation.

Under s. 514 New Entrant Waiting Lists

2. Where Boards have existing waiting lists, they are to be reviewed and modified to reflect the new eligibility and invitation criteria developed by the Boards.

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Farm Industry Review Board

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3. Boards are encouraged to provide priority to specialty and regional market needs in issuing new entrant opportunities.

BCFIRB's intention was to provide basic direction at a relatively high level and to have each supply management board and commission (commodity board) develop detailed provisions, appropriate for the specific context of its scheme and industry, for review and approval by BCFIRB. That process was completed and the commodity boards were advised at the time that all orders arising from the specialty review would be subject to revision and change as experience and circumstances warrant.

Since that time, BCFIRB has received specific inquiries from the BC Egg Marketing Board (Egg Board) regarding the criteria to be used by commodity boards in determining the eligibility of persons for its New Entrant Program. Similar or related questions have arisen with respect to the BC Turkey Marketing Board and the BC Milk Marketing Board new entrant programs. BCFIRB's direction has been sought concerning the new entrant program eligibility of persons related to a past or existing quota holder by marriage or family relationships.

We have recently reviewed the new entrant policies of the various commodity boards on the subject of eligibility. There are presently material differences between the various policies on these issues, and in some cases, a lack of clarity on what the requirements are. The question of who should be eligible to apply for new entrant quota is sufficiently important to the system as a whole that we think those policies should be consistent across the system unless there is good reason for a difference in a particular commodity sector.

Accordingly, in response to the inquiries we have received, BCFIRB considers it necessary to provide additional direction. Set out below is a set of draft supervisory directions. We welcome any comments you may have on this proposal so that we may consider your views before they are finalized.

Proposed supervisory direction

Each commodity board would be directed to amend its new entrants program to ensure they contain the provisions specifying;

1. That no person who owns or has previously held quota in one of the SM5 sectors (milk, eggs, turkey, chicken, broiler hatching eggs) is eligible to apply for or receive new entrant quota.
2. That for purposes of requirement 1:
 - (a) "person" includes that person in their own name, any partnership in which that person is or was a partner, or any company or limited partnership in which that person holds or has held shares; and

- (b) “person” includes spouse. A spousal relationship is a relationship in which persons (i) are married or (ii) are cohabiting in a conjugal relationship, having so cohabited for a continuous period of at least one year.
- 3. That to be eligible to remain on or be added to a waitlist, every applicant is required to file with the commodity board a sworn or notarized document:
 - (a) Making full disclosure with regarding to items 1 and 2, and undertaking that the applicant will promptly notify the commodity board of any new information or developments pertaining to required disclosures at any time while the person remains on the waiting list.
 - (b) Undertaking that the applicant understands and is prepared to comply with all the requirements of the new entrant program as they exist from time to time, including the requirement to operate any quota granted under the program as an independent production unit, and be involved in the day-to-day operations of the farm.
 - (c) Confirming that all the rights and privileges subsequently obtained under the new entrant program, including quota subsequently granted, may be revoked without compensation if it is determined that the applicant has provided false or misleading information, or has failed to comply with the requirements of the program.
 - (d) Confirming that the applicant understands and agrees to the publication of that person’s name on the waitlist, or that person’s name as a successful applicant, as a requirement of participation in the new entrant program.
- 4. That before any vacancy on the new entrant waiting list is filled, the commodity board will notify the public of that vacancy on the board’s website and provide a reasonable time period (in no case less than 30 days) for applications to be made.
- 5. That there will be public access on the commodity board’s website to the new entrant waiting list as it exists from time to time.
- 6. That before the quota is issued the commodity board must be satisfied that the applicant’s business plan makes clear that the quota will be grown on an independent production unit, i.e., a production unit that is separate and apart from any farm on which quota is actively being grown by another person, and that the business plan is adequate.¹
- 7. That each new entrant must required at all times actively engaged in production and operate as an independent production unit, and that the board or commission take

¹ While most of the new entrant programs reflect the points 4 and 5 in one way or another, the Egg Board’s Orders may be read as merely requiring a business plan to be produced. To ensure clarity on this matter, the Egg Board would be directed to amend s. 7(v) and (vi) of its orders to reflect the requirement that business plans must not only be produced but must be satisfactory to the Egg Board before new entrant quota is issued.

steps to actively monitor (see, for example, Schedule 1, and ss. 4 and 6 of the BC Broiler Hatching Egg Commission Orders)

8. That persons aggrieved by or dissatisfied with an order, decision or determination of a board with respect to their own or another's placement on a waiting list, or the offering of a new entrant quota to another person on the list, are advised that they have the right of appeal to BCFIRB.

The draft requirements set out above reflect the view that family members of persons who presently hold quota should not be categorically excluded from applying for new entrant quota where they genuinely wish to develop a farm operation independent from that of the quota holder. For this reason, BCFIRB proposes to exclude only spouses of quota holders from eligibility on the basis that they are fairly presumed to be in a relationship of economic codependency with the quota holder. The policy goals of the new entrant program as it relates to other family members are more properly addressed through the other requirements related to transparency of process and operation of independent farm operations. Those latter requirements are intended to address the concern that new entrant quota is not granted to persons that may use it to augment an existing farm operation. We believe this represents a fair, reasonable and workable accommodation on this complex and important question.

BCFIRB recognizes that no set of rules can address every eventuality, and there will undoubtedly be cases where commodity boards will be called upon to make decisions that are not specifically contemplated by the rules, where the rules are ambiguous, or where exceptional circumstances are asserted in favour of an exemption from their orders (which each of the schemes allows, based on power delegated from s. 11(1)(e) of the *NPMA*). When exercising these judgments, boards and commissions must have regard to the purposes or principles underlying the new entrant program:

- new entrant programs exist because they are desirable as a matter of sound marketing policy to encourage persons to enter into the supply management system;
- these persons should be genuine new entrants to that system and not have personally profited from that system by having previously held quota either personally or through their financial interests in a corporation or partnership;
- new entrant programs should recognize that diversification of the producer base is equitable and desirable having regard to the history and development of the quota system; and
- making new entrant quota available to new producers encourages innovation, regional priorities and diversity, new ideas and new voices in the supply management system.

Next steps

BCFIRB proposes to provide these supervisory directions in the interests of ensuring an appropriate degree of consistency on eligibility for new entrant quota, and to ensure public confidence in the new entrants programs, having regard to the principles discussed above and the questions that have arisen to date.

BCFIRB welcomes your comments on the above, and would appreciate any such responses be provided no later than March 15, 2007.

Yours truly,

A handwritten signature in dark ink, appearing to read "R. Bullock", is written over a light-colored rectangular background.

Richard Bullock
Chair

pc: BCFIRB Website