

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT*
AND
AMENDMENT OF BC FARM INDUSTRY REVIEW BOARD
QUOTA TRANSFER DIRECTIONS TO THE BC MILK MARKETING BOARD
FOR THE PURPOSES OF NON-FAMILY SUCCESSION PLANNING

August 7, 2019

INTRODUCTION

1. Currently quota transfers between producers in BC's supply managed dairy industry are required to take place on a public "Quota Exchange", and may be subject to a portion of the quota being returned to the BC Milk Marketing Board (Milk Board), unless the quota transfer occurs between specified exempted family members, or as part of specified exempted business transfers.
2. The BC Farm Industry Review Board (BCFIRB) established these rules around quota transfers over several years, starting in 2005. The intent was to balance farm succession planning with procedurally fair, inclusive access to quota (via public Quota Exchanges) for anyone interested in acquiring quota.
3. Under BCFIRB directions, a producer transferring quota to a non-family member for any purpose, including succession planning, is required to post the quota on the public Quota Exchange. In this scenario the quota could be acquired by any successful bidder, not necessarily an intended non-family succession individual, and the quota would leave that farm. The quota could also then potentially be subject to a transfer assessment where some of the quota must be returned to the Milk Board, which may further reduce the production and investment capacity of the farm.
4. The Milk Board is requesting BCFIRB amend its directions to reduce quota-transfer rule related barriers to non-family succession planning in the dairy industry.

ISSUE

5. The issue before BCFIRB is whether to amend its quota transfer related directions to allow for certain transfers of quota to non-family members to:
 - a) Take place off of the Milk Board Quota Exchange; and,
 - b) Not to be subject to BCFIRB-directed transfer assessmentsfor the purposes of dairy farm succession planning.

LEGAL AUTHORITIES

6. In British Columbia the production and marketing of cows' milk is regulated under the *Natural Products Marketing (BC) Act (NPMA)* and the British Columbia Milk Marketing Board Regulation (Regulation). The Milk Board, formed under the Regulation, is the first instance regulator of milk production and marketing in BC.
7. Under s. 7.1 of the *NPMA*, BCFIRB is responsible for the general supervision of all marketing boards and commissions in the province. Section 7.1(2) of the *NPMA* provides for this supervisory authority to be exercised "at any time, with or without a hearing, and in the manner [BCFIRB] considers appropriate to the circumstances". Under s. 9 of the *NPMA*, BCFIRB "has exclusive jurisdiction to inquire into, hear

and determine all those matters and questions of fact, law and discretion arising or required to be determined by [BCFIRB] under [the *NPMA*]”. As the supervisory body under the *NPMA*, BCFIRB is responsible for ensuring the provincial supply managed sector, which is part of the national supply management fabric, achieves its legislated objective – sound marketing policy.

8. In addition to its supervisory responsibilities, BCFIRB also hears appeals as part of its adjudicative function from those “aggrieved” by commodity board decisions under s. 8 of the *NPMA*.

BACKGROUND – BCFIRB POLICY OBJECTIVES AND DIRECTIONS

9. The BCFIRB 2005 Specialty Review¹ established the following policy objectives as being in accord with sound marketing policy:

- a) Boards and commissions (boards) will have quota available for new or established producers to meet changing markets; and,
- b) Boards will have quota available for new producers in order to reduce barriers to entry.

10. When the 2005 policy objectives were put in place, there were questions as to whether the commodity boards had the governance capacity to ensure the policy objectives would be met. To address these questions, BCFIRB directed that a portion of any quota transferred between producers be returned to the board in question. Some immediate family members and specific business transactions were exempted from this quota transfer assessment (spouse, sons, daughters, and for business reorganization purposes where ownership percentages don’t change).

11. Following on the 2005 Specialty Review, on July 19, 2006², BCFIRB directed that:

The Milk Board is to require all quota to be transferred through the Quota Exchange except transfers for which assessment exemptions are provided at paragraph 24. In addition, the Milk Board may choose to except a whole-farm transfer (milk production unit and quota) from the exchange when the farm and quota stay intact. In this situation, the transfer assessment provisions still apply except as provided in paragraph 24.

12. Paragraph 24, referenced in the above quote stated:

Exemptions from quota transfer assessment are to be limited to family members, defined as spouses, sons and daughters, for business reorganizations where the ownership percentages do not change, and quota swaps where each party to the swap begins and

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

² 2006 July 19. BCFIRB. [Review of Specialty Production and New Entrant Programs – Improving Access to the Supply Management System.](#)

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ends with the same amount of quota and the swap is solely for the purpose of balancing annual production within quota.

13. Similarly, BCFIRB also directed on July 18, 2006³ that:

The Egg Board is to require all quota to be transferred through the Quota Exchange to provide transparent and equitable opportunity for all producers to offer quota for transfer or to seek to acquire quota by transfer. This approach has benefits for all producers, particularly those in regions outside the Fraser Valley.

The only exceptions from the requirement for transfer on the exchange are the exceptions outlined in paragraph 22. In addition, however, the Egg Board may choose to except a whole-farm transfer (egg production unit and quota) from the exchange when the farm and quota stay intact. In this situation, the transfer assessment provisions still apply except as provided in paragraph 22.

14. Paragraph 22, referenced in the above quote stated:

FIRB accepts that exemptions from the assessment on quota transfer may be provided for spouses, children and business reorganization where the percentage of ownership does not change.

15. On January 26, 2007⁴ BCFIRB expanded the types of transfers exempt from quota assessments to transfers between siblings for reasons related to succession planning, and where the quota amount being transferred is and will remain attached to the farm in question. As such, transfers between siblings for this stated purpose were no longer required to take place on the Milk Board Quota Exchange.
16. On January 26, 2015⁵ BCFIRB again expanded the types of transfers exempt from quota transfer assessments to include the nieces, nephews and grandchildren of quota holders, and the nieces, nephews and grandchildren of the spouses of quota holders based on specific conditions (Milk Board only). This expansion meant these transfers were no longer required to take place on the Milk Board Quota Exchange.
17. Between 2016 and 2018, BCFIRB carried out a review of its quota transfer assessment directions, including consideration of reducing quota related barriers to non-family succession. In their Quota Assessment Tools Supervisory Review (Quota Review) submissions, the Milk Board and the BC Egg Marketing Board (Egg Board) requested BCFIRB amend its directions to allow producers to directly transfer quota to non-family members off their respective public Quota Exchanges, and free of all

³ 2006 July 18. BCFIRB. [Review of Specialty Production and New Entrant Programs – Improving Access to the Supply Management System.](#)

⁴ 2007 January 26. BCFIRB. [Review of Specialty Production and New Entrant Programs – Improving Access to the Supply Management System – Exemption of Siblings from Quota Transfer Assessments.](#)

⁵ 2015 January 26. BCFIRB. [Supervisory Review Decision – BC Milk Marketing Board Request to Extend Quota Transfer Exemption List.](#)

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quota transfer assessments, to non-family members for the purposes of succession planning.

18. In its final February 2, 2018 Quota Review decision⁶, while BCFIRB significantly amended its quota transfer assessment directions, it decided to retain the existing directions regarding transfer assessment exemptions (see Table 1). The decision did not directly address or amend directions to allow non-family succession quota transfers to happen off of the public Egg and Milk Board Quota Exchanges.

Table 1

Direction	Rationale
<i>Spouse, sons, daughters (2005)</i>	“to provide for efficient transfer of the farm within the family”
<i>For business reorganization purposes where ownership percentages don’t change (2005)</i>	To accommodate a quota holder's corporate restructuring, which may be necessary from time to time as personal or business circumstances change.
<i>Siblings where the quota being transferred remains attached to the farm in question (2007)</i>	“to address continuity of the family farm and succession planning matters”
<i>Nieces, Nephews and Grandchildren of quota holders and the spouses of quota holders (2015); <u>BC Milk Marketing Board Only</u></i>	Family succession for industry sustainability. Conditions established to prevent double dipping with the new entrant program.

PROCESS

19. Submissions received during BCFIRB’s Quota Review indicated that farm succession is broadening beyond the traditional family model. As such, both the Milk and Egg Boards considered how to reduce quota transfer rules related barriers to farm succession for non-family members.
20. In its June 2017 QATE submission, the Milk Board proposed to BCFIRB that farm employees meeting specific requirements be added to the quota transfer assessment “exempt persons” list for the purpose of succession planning. These requirements would include:
- a) 5 years of verified service using T4s;
 - b) The farm must provide the primary source of income;

⁶ 2018 February 2. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and Quota Assessment Tools Supervisory Review](#).

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- c) The employee must be in a management or senior type role;
 - d) Residency must be in BC;
 - e) Ownership limit is 5% on the farm; and,
 - f) All transfers require Milk Board approval.
21. The Egg Board proposed that “long-standing farm managers” be added to the “exempt persons” list, with one requirement:
- a) 7 years of verified service using T4’s showing that the farm they would obtain ownership in was their main source of income.
- The Egg Board later withdrew its recommendation to reduce quota transfer rules related barriers to non-family farm succession, reporting that changes were not currently needed for its industry.
22. On February 9, 2018 the Milk Board requested BCFIRB provide a response to its original proposal made on June 30, 2017 as BCFIRB had not addressed the Milk Board’s request related to non-family farm succession.
23. In a May 30, 2018 letter to the supply management boards, the Quota Review majority panel recognized it had not spoken directly to the matter of allowing non-family member succession quota transfers to happen off the public Quota Exchanges. The majority panel sought further input from the boards through a series of questions. The questions were asked with the goal of informing SAFETI⁷-based deliberations on whether including non-family members on the exempt persons list supports sound marketing policy; and, if so, whether the criteria that establishes acceptable non-family members should be prior approved by BCFIRB.
24. Submissions were received from the Milk Board (with revised recommendations), BC Chicken Marketing Board, and the BC Turkey Marketing Board in response to the Quota Review’s majority panel’s questions. The Egg Board and the BC Broiler Hatching Egg Commission did not make submissions. With the exception of the Milk Board, no substantive responses were received from the other boards. BCFIRB determined it would move forward with the Milk Board’s request rather than going back to the other boards at that point in time.
25. The revised Milk Board recommendation removed the 5% ownership cap and proposed a separate “exempt transfer sale” list to reflect a new policy objective of non-family succession (versus family).
26. On November 8, 2018, BCFIRB requested further information from the Milk Board on why it was sound marketing policy to distinguish between family and non-family

⁷ Strategic Accountable Fair Effective Transparent Inclusive

farm succession. BCFIRB also noted that while it was not going to comment on the recommended criteria, it suggested the Milk Board review the criteria in light of the Milk Board's New Entrant Program criteria.

27. The Milk Board consulted with stakeholders at its spring and fall producer meetings from 2017-2019 and used the feedback received to develop a final revised recommendation submitted to BCFIRB on May 31, 2019.
28. In its May 2019 submission, the Milk Board removed its recommendation that a separate policy and "list" be established. It retained the following criteria for off-Exchange, assessment free quota transfers for the purposes of non-family farm succession:
 - a) The quota recipient has permanent resident status in the Province of British Columbia;
 - b) The quota recipient has served in a senior executive or managerial capacity with respect to the Producer's Dairy Farm for not less than 5 consecutive years as evidenced by T4 statements; and,
 - c) The quota recipient has derived the majority of his or her income from employment as a senior executive or manager with respect to the Producer's Dairy Farm for the past 5 years.

ANALYSIS

29. The February 2018 QATE decision reflected BCFIRB's agreement with the Milk and Egg Boards that "...there is a case for examining its exemption directions in relation to succession planning and on-family members" (Quota Review paragraph 66). In paragraph 65 of the Quota Review decision, BCFIRB agreed that the 2005 Specialty Review directions acted as a barrier to non-family members participating in farm succession planning.
30. The future of the industry, current business structures, barriers to entry and the obligation to ensure a continuous supply of product were considered by the Milk Board. Through several submissions the Milk Board argued that if non-family farm succession is not supported there would be risk of dairy farms being lost to competing land interests and, in the future, potentially a smaller number of large farms which could increase risk of supply chain disruption. If a producer has no family successors, there is full reliance on non-family successors to retain the farm.
31. The Milk Board also argued that reducing quota related barriers to non-family succession would provide opportunity for farm employees, ensuring a long-term interest in farm success; and, creates another opportunity for industry entry in addition to the existing New Producer Program and Cottage Industry Program.

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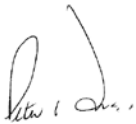
32. Overall, the Milk Board concluded that the benefits of quota being transferred off the Quota Exchange without transfer assessments, for the purposes of non-family farm succession, outweigh the risks of less quota being available generally on the public Quota Exchange. Its position is that setting specific criteria and requiring that the quota transfer receive Milk Board approval will deter transfers off the exchange to non-family members that are not for the purpose of farm succession.
33. The intent of BCFIRB's past directions was to balance farm succession planning with procedurally fair, inclusive access to quota (via the Quota Exchange) for anyone interested in acquiring quota. BCFIRB agrees with the Milk Board's rationale for reducing quota rules related barriers to non-family succession planning and that reducing those barriers is sound marketing policy. However there are several additional considerations when viewed in light of the intent behind BCFIRB's past directions.
34. First, as identified by the Milk Board, is the importance of ensuring quota transfers off-Exchange, and assessment free, are truly for the purposes of succession and retention of the farm.
35. BCFIRB is not prepared at this time to approve the Milk Board's recommended criteria as approval would remove the right of appeal for impacted parties. However, BCFIRB expects that the Milk Board's criteria will help to ensure that the quota recipient has a demonstrated strong commitment to the farm in question, without being unduly restrictive. In turn, applicants must expect to clearly demonstrate to the Milk Board that the transfer is for farm succession planning purposes.
36. After the quota is received either directly by the individual or by any business structure the individual may establish, BCFIRB requires that the Milk Board will continue to monitor any potential subsequent quota transfers to ensure they are made with the intent of farm retention.
37. Finally, data collection and reporting will be needed in order to ensure the Milk Board and BCFIRB can review the balance between the goals of effective farm succession planning and having procedurally fair, inclusive access to quota on the public Quota Exchange over time.
38. The Milk Board remains responsible for ensuring it has quota on hand to support the entry of new dairy producers and provide for changing markets.

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DECISION

39. BCFIRB amends its January 19, 2006 and February 2, 2018 directions to allow for assessment free transfers of quota to non-family members off the Milk Board Quota Exchange on the basis of the following conditions being met:
- a) The quota amount being transferred is and will remain attached to the farm in question;
 - b) The transfer is for demonstrated succession planning purposes; and
 - c) The Milk Board criteria reflects the quota recipients' demonstrated strong commitment to the farm.
40. Going forward, the Milk Board's Public Accountability and Reporting Project (PARP) annual report is to include data showing the amount of quota being transferred off the Quota Exchange, broken down by family transfers and non-family transfers.

Dated at Victoria, British Columbia, this 7th day of August 2019.



Peter Donkers
Chair



Al Sakalauskas
Vice Chair



Daphne Stancil
Member



Dennis Lapierre
Member



Tamara Leigh
Member



Pawan Joshi
Member



Mary O'Callaghan
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