

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND  
THE PRIOR APPROVAL OF QUOTA-RELATED REVISIONS TO THE BC EGG  
MARKETING BOARD CONSOLIDATED ORDERS

August 29, 2019

## DECISION SUMMARY

1. No revisions to the BC Egg Marketing Board's Consolidated Order require BCFIRB prior approval with the exception of the "Business Unit" definition.
2. BCFIRB directs the BC Egg Marketing Board to reconsider the definition of "Business Unit" and submit its new definition to BCFIRB for approval prior to revising its Consolidated Orders.

## INTRODUCTION

3. On May 24, 2019 the BC Egg Marketing Board (Egg Board) requested BC Farm Industry Review Board (BCFIRB) approval for quota management-related changes to its Consolidated Orders. These recommended changes arise from BCFIRB's February 2, 2018 Quota Assessment Tools Supervisory Review<sup>1</sup> quota management directions.
4. Concurrently, the Egg Board asked BCFIRB to prior approve distribution of new growth allocation from the Egg Farmers of Canada and recommended changes to the Egg Board's New Entrant Program. BCFIRB determined at the time that it was in the best interest of the industry to prioritize decisions on the allocation distribution and New Entrant Program. Now that those decisions are made, BCFIRB is prepared to address the Egg Board's recommended Consolidated Order changes.
5. One of BCFIRB's supervisory responsibilities is to ensure a principled, evidenced-based approach to quota management for transparent, accountable results -- sound marketing policy in the public interest.

## ISSUE

6. What, if any, revisions to the Egg Board Consolidated Orders resulting from BCFIRB's Quota Review directions require BCFIRB prior approval under s. 37(c) of the Egg Marketing Scheme?

## LEGAL AUTHORITIES

7. In British Columbia, the production and marketing of eggs is regulated under the *Natural Products Marketing (BC) Act (NPMA)* and the British Columbia Egg Marketing Scheme, 1967 (Egg Scheme).

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<sup>1</sup> 2018 February 2. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and Quota Assessment Tools Supervisory Review.](#)

8. Under s. 7.1 of the *NPMA*, BCFIRB is an independent administrative tribunal 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*]”.
9. As the supervisory agency 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.
10. Section 37(c)<sup>2</sup> of the Egg Scheme requires the Egg Board to obtain BCFIRB prior approval to vary quotas the Egg Board has issued to producers, and the terms and conditions upon which quota shall be issued or transferred.

## BACKGROUND

11. In BCFIRB’s February 2, 2018 Quota Assessment Tools Supervisory Review (Quota Review) decision, BCFIRB left it to BC’s supply management commodity boards as to when to implement the BCFIRB directed quota rule management changes. BCFIRB did require that boards develop and publically communicate their implementation plans.
12. Concurrently, BCFIRB reminded the Egg Board that it must seek BCFIRB’s prior approval under s. 37(c) of the Egg Scheme before prescribing any quota management terms and conditions that may be in addition to those directed by BCFIRB.
13. Following the Quota Review decision, the Egg Board asked BCFIRB on August 3, 2018 to expand the types of quota transfers that would not trigger the 12 month moratorium on receiving growth under paragraph 179(c):
  179. If boards cease to use LIFO (on all quota held by a producer) and 10/10/10 (on growth quota), these quota management rules are to be replaced with the following:  
....
    - c) Quota holders are not eligible to receive growth quota for 12 months following a transfer of any quota, with one exception as follows:
      - i. If a quota transfer does not result in an overall change in total quota holdings within a business unit (e.g. within a corporation), quota holders within that business unit remain eligible to receive growth.

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<sup>2</sup> S. 37(c) ... such quotas to remain at all times the property of the board and, subject to prior approval of the Provincial board, to vary such quotas and prescribe the terms and conditions upon which they shall be issued or transferred...

14. Specifically, the Egg Board asked BCFIRB to expand the one 12 month moratorium exemption to include transfers between specific family members.
15. In its February 26, 2019 decision<sup>3</sup>, BCFIRB rejected the Egg Board's recommendation. Rather, it provided a one-time amendment to the first period of time referred to in paragraph 179 (c), following the Egg Board's adoption of rules to implement the Quota Review directions: Quota holders would not be eligible to receive growth for 6 months, rather than 12 months, following a transfer of any quota.

## **EGG BOARD SUBMISSION**

16. In its May 24, 2019 submission, the Egg Board reported it consulted with the Egg Industry Advisory Committee in reaching its recommended Consolidated Order revisions. In regards to its implementation plan, it reported that it had considered various timeline options, and concluded that "...for business continuity, fulsome producer training and producer choice to conduct their plans before or after the new rules are applied, a minimum of two years notice must be provided."
17. As of June 1, 2021 the Egg Board plans to change its Consolidated Orders to incorporate BCFIRB's February 2, 2018 quota transfer assessment directions. Until that time the Egg Board will continue to operate under BCFIRB's 2005 Specialty Review directions.
18. The Egg Board stated that it will:
  - Remove Last In First Out (LIFO) and will not replace with another direction;
  - Replace the 10/10/10 declining assessment schedule with 10/10/0 to be applied to the first transfer of all growth quota and incentive quota issued to date and going forward;
  - Remove the 5% assessment on quota issued by boards prior to 2005;
  - Adopt the 12 month moratorium on receiving growth detailed in paragraph 179(c) and 179(c)(i) of the Quota Assessment Review decision; and,
  - Establish definitions for Base Quota, Business Unit and Growth Layer Quota.

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<sup>3</sup> 2019 February 26. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and BC Egg Marketing Board Recommendation – Additional Exemptions from BCFIRB Quota Assessment Tools Direction](#)

19. As part of its submission, the Egg Board provided full SAFETI<sup>4</sup> analyses for its Consolidated Order revisions and its implementation plan.

## ANALYSIS

20. Overall the Egg Board recommended Consolidated Order changes align with BCFIRB's Quota Review directions, with one notable exception.
21. The Egg Board recommends defining "business unit" (as per BCFIRB's Quota Review direction 179(c)) as follows:
- "Business Unit" means a Registered Producer and:
- (a) that Registered Producer's spouse, sibling, parent, child, or child and the child's spouse;
  - (b) another Registered Producer that is a Related Corporate Producer in relation to that Registered Producer
22. BCFIRB had chosen not to define "Business Unit" in the Quota Review decision as it wished to acknowledge the differences that can exist in business structures across sectors. Rather, it left the commodity boards, including the Egg Board, to define it as best suited to the various business structures across the different sectors. While the Egg Board has the flexibility to define "Business Unit", BCFIRB has some serious concerns with the recommended definition.
23. Including "spouse, sibling, parent, child, or child and the child's spouse" in the proposed Egg Board definition of "Business Unit" means quota could transfer between family members without triggering the 12 month moratorium on receiving new growth quota. From BCFIRB's point of view, this would essentially be the same outcome as if BCFIRB had agreed to the Egg Board's August 3, 2018 recommendation to expand the one moratorium exemption to include quota transfers between family members.
24. BCFIRB stated in its Quota Review decision that it felt some degree of check and balance was still needed with the removal of Last In / First Out (LIFO). The decision established that BCFIRB was prepared to remove LIFO, which then applied to all quota held by producers, and partially remove 10/10/10 on growth quota issued previously and going forward on the basis of specified conditions, including the condition that all quota holders become ineligible to receive growth quota for 12 months following a transfer of any quota, with the one exception.

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<sup>4</sup> Strategic Accountable Fair Effective Transparent Inclusive

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25. The Egg Board's May 2019 submission reflected its August 3, 2018 rationale that the transfer of quota between related registered producers, or related registered corporate producers, should not trigger the 12 month moratorium on receiving new growth quota as it will hinder succession planning. The Egg Board did not provide data or additional information on this matter in its May 2019 submission. It also restated that family members are less likely to transfer quota for profit than "3rd parties."
26. In its February 26, 2019 decision, BCFIRB said the following in relation to the Egg Board's succession and profit arguments:
34. BCFIRB did not find the Egg Board's family succession rationale convincing. There was little substantive information as to scale of the concern and any related long-term industry impacts. BCFIRB was not convinced that current family succession plans would be impacted to such a degree that individuals would be unduly impacted and the sustainable future of the egg industry would be at risk. From BCFIRB's perspective, if a parent is transferring quota to their child or children as part of a succession plan, the parent would be considered as planning to exit the industry – even if that eventuality is a few years down the road. At this point growth quota, although being produced, could be seen as primarily being sought to maximize the benefit to a select group of people, that is, only those family members implementing family succession plans. **This would be in conflict with BCFIRB's position that mechanisms should not unduly advantage a specific group of producers.** (*emphasis added*) Exemptions from transfer assessments will continue to support family succession plans after the Egg Board decides to adopt the Quota Review directions. Families remain primarily responsible for succession planning in a changing business environment, which includes BCFIRB directions, commodity board rules, government tax law changes and other considerations.
46. BCFIRB also does not agree with basing the outcome of its policy objective on the argument that family members are less likely to transfer quota received at no cost from the board for immediate financial gain than "third parties".
27. Rather than repeating it here, BCFIRB's full analysis and rationale related to exempting family members from the 12 month moratorium can be read in its February 26, 2019 decision. In its analysis and rationale, BCFIRB addresses the Egg Board's arguments related to succession planning, changing industry infrastructure/operating context, and that quota is intended to be produced.

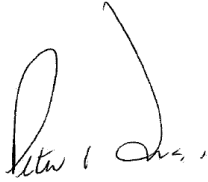
## DECISION

28. No revisions to the BC Egg Marketing Board's Consolidated Order require BCFIRB prior approval with the exception of the "Business Unit" definition.

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29. BCFIRB directs the BC Egg Marketing Board to reconsider the definition of “Business Unit” and submit its new definition to BCFIRB for approval prior to revising its Consolidated Orders.

Dated at Victoria, British Columbia, this 29<sup>th</sup> day of August 2019.



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Peter Donkers  
**Chair**



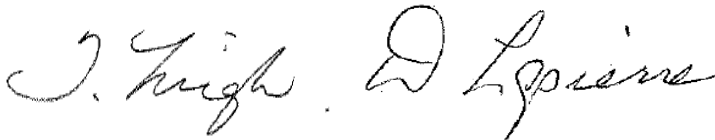
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Al Sakalauskas  
**Vice Chair**



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Daphne Stancil  
**Member**



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Tamara Leigh  
**Member**

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Dennis Lapierre  
**Member**



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Pawan Joshi  
**Member**