

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND  
QUOTA ASSESSMENT TOOLS SUPERVISORY REVIEW

February 2, 2018

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

*Contents*

INTRODUCTION.....	4
<i>Changing operating context.....</i>	<i>5</i>
<i>Quota Assessment Tools Supervisory Review .....</i>	<i>7</i>
ISSUE .....	8
BACKGROUND .....	8
<i>Quota basics.....</i>	<i>8</i>
<i>Quota management policies and rules framework.....</i>	<i>10</i>
<i>2005 Transfer Assessment and New Entrant Policies and Directions .....</i>	<i>11</i>
<i>General overview of quota movement in BC .....</i>	<i>12</i>
SUPERVISORY REVIEW PROCESS.....	13
SUBMISSIONS OVERVIEW .....	13
<i>Commodity board process.....</i>	<i>13</i>
<i>Commodity board outcomes.....</i>	<i>14</i>
ANALYSIS – IS THERE A CASE FOR CHANGE? .....	16
<i>New Entrant Quota – Transfer Assessments.....</i>	<i>16</i>
<i>Industry entry, exemptions and succession .....</i>	<i>16</i>
<i>Growth Quota – Transfer Assessments.....</i>	<i>17</i>
<i>Is there a case for change? .....</i>	<i>27</i>
<i>Other.....</i>	<i>27</i>
ANALYSIS – PROPOSED CHANGES.....	28
<i>Overview.....</i>	<i>28</i>
<i>Cross sectoral decision-making.....</i>	<i>28</i>
<i>New Entrant Quota – Transfer Assessments.....</i>	<i>29</i>
<i>Industry entry, exemptions and succession .....</i>	<i>31</i>
<i>Growth Quota – Transfer Assessments.....</i>	<i>32</i>
<i>Setting quota price.....</i>	<i>34</i>
<i>Conclusion.....</i>	<i>35</i>
DECISION.....	35
<i>2005 Specialty Review directions .....</i>	<i>35</i>
<i>All quotas.....</i>	<i>36</i>
<i>New entrant quota and programs .....</i>	<i>36</i>
<i>Growth quota .....</i>	<i>37</i>

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

<i>Quota available to the boards</i> .....	37
<i>Quota value</i> .....	37
<i>Next Steps</i> .....	38
<i>Accountability and transparency</i> .....	38
CLOSING .....	39
<b>DISSENTING REASONS</b> .....	41
SUMMARY .....	41
<i>Some preliminary comments</i> .....	43
DISSENT REGARDING THE EXERCISE OF BCFIRB'S SUPERVISORY ROLE .....	46
DISSENT REGARDING A CASE FOR CHANGE AND REMOVAL OF LIFO AND MODIFICATION OF 10/10/10 .....	48
<i>Interprovincial competitiveness</i> .....	48
<i>LIFO and 10/10/10</i> .....	49
<i>Right-sizing</i> .....	51
<i>The case regarding economic advantages for producers</i> .....	52
<i>Movement and value of quota</i> .....	55
DISSENT REGARDING CHANGES TO NEW ENTRANT PROGRAMS .....	57
DISSENT REGARDING CHANGES TO BROAD PUBLIC POLICY .....	58
CONCLUSION .....	60
BCFIRB DISSENT SAFETI RATIONALE .....	61
 APPENDIX A – BCFIRB 2005 QUOTA TRANSFER POLICIES AND DIRECTIONS....	63
APPENDIX B – BCFIRB MAJORITY SAFETI RATIONALE .....	67

## INTRODUCTION

1. Under s. 7.1 of the *Natural Products Marketing (BC) Act (NPMA)*, the BC Farm Industry Review Board (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*]”. 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. 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*.
2. The BC supply managed marketing boards and commissions are comprised of the BC Broiler Hatching Egg Commission, BC Chicken Marketing Board, BC Egg Marketing Board, BC Milk Marketing Board and the BC Turkey Marketing Board (commodity boards). These commodity boards that BCFIRB supervises have extensive authorities granted under the *NPMA* and their respective regulations (Schemes). Authorities include production control (including quota management), price setting, and exercising provincial and delegated federal power. These commodity boards are the first instance regulators of their industries and are expected to exercise good governance to deliver sound marketing policy for the benefit of the province.
3. How BCFIRB decides to use its supervisory authorities in order to strategically, effectively and accountably meet its legislated mandate depends on the circumstances. Ideally BCFIRB operates at a principles-based level in its supervisory role, such as taking a proactive approach to potential issues, providing high-level direction where required to support sound marketing policy, and overseeing good governance by the commodity boards. However, in order to be accountable to its legislated responsibilities, at times BCFIRB needs to be more directive. Successful industry and public outcomes depend on the commodity boards (as first instance regulators) and BCFIRB (as supervisory body) exercising good governance and a principles-based approach to decision-making in a transparent and accountable manner.
4. In the early 2000’s it was becoming increasingly clear to BCFIRB and the BC Ministry of Agriculture that supply managed commodity boards were struggling with achieving sound marketing policy. This was particularly evident when specialty production started to develop in British Columbia (BC).
5. For example, there was litigation related to commodity boards taking a hard line on specialty/organic producers operating “outside” of the regulated system; BCFIRB was dealing with multiple appeals; and, organic producers were lobbying for their own

commodity board as they did not see their needs being met. Some commodity boards attempted to address specialty production by creating a parallel permit system, where specialty producers were not receiving the same benefits as mainstream producers. In some cases, specialty production had been captured by a few large producers who became vocal opponents to opening up the industry to competitors. In addition, while most supply managed commodity boards had new entrant programs to help reduce quota-related barriers to entry, these programs were not as effective as they could have been in BCFIRB's assessment.

6. The government of the day clearly did not see the commodity boards as exercising appropriate leadership or moving quickly enough to address these significant issues.
7. BCFIRB's review of specialty production and new entrant programs was completed in 2005 (2005 Specialty Review<sup>1</sup>). Its primary goals were to develop policies and principles to support and promote specialty production and entry opportunities in the supply management system, consistent with the Ministry of Agriculture's Regulated Marketing Economic Policy (2004)<sup>2</sup>. This policy focused on areas such as new entrants, specialty production and regional economic development in the regulated sector.
8. As a result of the 2005 Specialty Review, BCFIRB established overarching quota management policies and specific directives (including quota transfer assessment directives and related exemptions – see Appendix A). These policies and directives were developed in consultation with the supply-managed commodity boards, industry stakeholders and the Ministry of Agriculture.
9. Following the 2005 Specialty Review, BCFIRB extended its quota transfer policies and directions to all quotas issued by BC commodity boards<sup>3</sup>. In its decision BCFIRB noted that while all classes of quota should be managed separately, commodity board policies for administering quota should be similar for all classes with exceptions only when necessary.

### ***Changing operating context***

10. Supply managed commodity production, associated value chains, and commodity board governance have changed considerably since 2005. When looking at changes over time, it is important to keep in mind that supply management is a federal-provincial system. BC is impacted by both provincial and national changes in production, processing and consumer demands.
11. For instance, in dairy, “milk pools” (Western Milk Pool, P5) are used as vehicles to coordinate regional (west, east) production and pricing across provinces. As discussed

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<sup>1</sup> 2005 September 1. BCFIRB. Specialty Market and New Entrant Submissions: Policy, Analysis, Principles and Directions.

<sup>2</sup> [Regulated Marketing Economic Policy \(2004\)](#)

<sup>3</sup> 2005 September 2. BCFIRB. Quota Transfer.

later, provincial poultry production volumes are established at the national level, while major processors operate across multiple provinces and production and pricing is managed on a provincial level. BC commodity boards must be aware of, take into account and act on international, national and provincial considerations in the regulation of their respective industries.

12. In 2005 markets were generally stagnant outside of the emerging specialty sectors. Today, some commodities are seeing significant growth in production and diversification, particularly dairy, eggs, and chicken – and by extension, hatching eggs. Turkey faces a more challenging market environment.
13. Consumer demands are shifting due in part to changing nutritional guidance and growing interest in areas such as animal welfare. Production methods have also changed considerably. Examples include technology, animal care and biosecurity. Retail and processor consolidation continues not only provincially, but also nationally and globally, with associated pressures on market share. Other provinces are now entering markets previously dominated by BC (e.g. specialty eggs and chicken) and are aggressively seeking increased production shares. Ongoing international trade negotiations add a new level of market uncertainty for supply managed commodities. Finally, the pace of these changes is accelerating along with rapidly shifting public demands and increased interest in where food comes from and how it is produced.
14. In order to have successful BC supply managed sectors that operate in the public interest within this rapidly changing environment, good governance and sound decision-making by BCFIRB and the commodity boards is a must. Towards this end, all BC commodity boards now have government appointed chairs (intended to be independent of financial interests in the commodity being regulated). Some boards also have other non-producer members, alongside elected producer members, to bring additional skills and perspectives.
15. Between 2011 and 2016, BCFIRB and the commodity boards established and implemented a principles-based approach to regulation. The overall goal is to use good governance and sound decision-making to position the BC supply managed system to deliver outcomes that matter.
16. In relation, BCFIRB and the commodity boards defined six principles used to guide actions and decision-making. These six principles are collectively referred to as "SAFETI" principles<sup>4</sup> (Strategic, Accountable, Fair, Effective, Transparent, Inclusive). As of June 6, 2016 commodity boards are required to consistently show they are meeting their responsibilities as first instance regulators using principles based regulation and SAFETI.<sup>5</sup> Full and proper use of these principles enables BCFIRB to step back and take a less prescriptive approach to supervision.

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<sup>4</sup> 2011 September 13. BCFIRB. BCFIRB's 6 Higher Level Principles – Definitions and Guidance.

<sup>5</sup> 2016 June 6. BCFIRB. Delivery of Principles-Based Regulation – Expectations Going Forward.

17. By adopting, publicizing and using a consistent, SAFETI based principles-based framework, BCFIRB and the commodity boards can be held to account by the public they serve for their decisions and actions. This accountability works in parallel with the traditional approach to public accountability carried out through the courts and the Ombudsperson.

### ***Quota Assessment Tools Supervisory Review***

18. As part of the 2005 Specialty Review, BCFIRB committed to conducting a formal performance review and establishing criteria and capacity for ongoing monitoring of specialty program performance by 2008. This current review is in partial fulfillment of that commitment as it considers the quota transfer assessment tools put in place as part of the Specialty Review, and looks at the need for transparent, accountable reporting on policy and governance outcomes.
19. The 2008 review itself did not happen due to competing priorities overtaking the limited resources available to BCFIRB. However, BCFIRB remained responsive to changes proposed by commodity boards. The majority of proposed changes focused on transfer assessments and related exemptions.<sup>6</sup> BCFIRB approved some of the requested changes (e.g. extending transfer assessment exemptions to additional family members in dairy). Others were not approved due to a lack of data, rationale or other due process considerations. Informal producer and stakeholder input to BCFIRB and the commodity boards continued to be received on the effectiveness, utility and continued appropriateness of the assessment tools.
20. In 2016 BCFIRB determined a review of its 2005 quota policies and directions was warranted to support continued delivery of sound marketing policy. Its decision was based on industry developments over the last twelve years, previous and anticipated requests to amend its quota transfer assessment directions, and the adoption of principles-based approach to regulation.
21. On November 22, 2016, BCFIRB notified the supply-managed commodity board chairs that it would be conducting a review. As part of the notification, BCFIRB informed the

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<sup>6</sup> January 2007 – Siblings exempted from transfer assessments with conditions. July 2006 – Turkey Board change from “direct transfer assessment” to “deemed transfer assessment”. September 2009 – Turkey Board change from “deemed transfer assessment” to “direct transfer assessment”. May 2014 – Egg Board requested amendments to transfer assessment directions. The Egg Board withdrew its requests before BCFIRB reached any decisions. May 2014 – Chicken Board requested transfer assessment exemptions on new entrant quota. BCFIRB requested further clarification. No response was received. July 2014 – Turkey Board supported Egg and Milk Board proposed changes to transfer assessments. BCFIRB requested further clarification. No response was received. January 2015 – Milk Board addition to transfer assessment exemptions approved with conditions. The Milk Board considered whether there was a need to amend the BCFIRB transfer assessment directions, but determined no changes were required at that time.

chairs that it anticipated working in coordination and cooperation with the commodity boards on the review, including finalizing the focus and determining roles, processes and timelines. A comprehensive consultation of producers and other members of the value chain by the commodity boards was a clearly communicated expectation.

22. Following consultation with the commodity boards, BCFIRB determined the review would focus on quota transfer assessments. Neither the commodity boards nor BCFIRB identified a need to evaluate the core focus of the 2005 Specialty Review – the state and future of specialty and niche markets, nor the overall state of new entrant programs at this time. BCFIRB communicated that the commodity boards could broaden the focus if they thought it would be strategic.

## ISSUE

23. The specific issues before BCFIRB and as established in the February 28, 2017 Terms of Reference<sup>7</sup> are:
- a) Evaluating whether, and to what extent, the current structure of BCFIRB directed transfer assessments is impacting the movement of quota between producers and related consequences.
  - b) Evaluating whether, and to what extent, the current programs and tools used to reduce quota-related barriers to entry continue to support industry entry by new farmers (i.e. people new to the industry who are not part of family-farm succession planning). This includes an evaluation of whether, and to what extent, existing transfer assessment exemptions continue to serve their intended purposes.
24. As this review progressed, it became apparent to BCFIRB that an objective evaluation of the impacts of transfer assessments and changes to farm succession was evolving to include a general review and examination of problems or challenges reported by the commodity boards and producers that may have roots in the 2005 BCFIRB directions. BCFIRB accepted this broadened focus.

## BACKGROUND

### *Quota basics*

25. Quota is a licence to produce. It sets a specified amount of production to be achieved in a fixed time period. It is used to remove variability in production and related marketplace instability by limiting overproduction and helping ensure a minimum level of production. As a production control tool it forms one of the three pillars of supply management. The other two regulatory pillars are price setting and import restrictions. Taken together, the

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<sup>7</sup> 2017 February 28. BCFIRB. Final Project Terms of Reference Quota Assessment Tools Evaluation.



three pillars are intended to support a fair return for efficient farmers and a safe, continuous supply of regulated product for consumers.

26. Quota provides producers who hold it with the privilege of a stable market for commodity production at a price intended to provide a fair return. With that privilege comes specific responsibilities. A licence to produce requires producers to produce the quota they hold and operate within the legislation, regulations, policies and rules established by federal and provincial governments, BCFIRB and the provincial commodity boards. Legislation, policies and rules are intended to balance industry considerations with the public interest.
27. The amount of quota available in each province is limited. Quota, by its nature, is limited. The share of national production a province receives is established through federal-provincial agreements. Increases or decreases in provincial allocations are dependent on national market requirements, which are based on population growth and changes in consumer demand. Because quota is limited, who gets it and how much becomes a strategic question for commodity boards. Provincial commodity boards are responsible for issuing quota to producers.
28. In BC, quota is distributed by the commodity boards at no cost to producers, and producers can subsequently transfer it amongst themselves with commodity board approval. Under the respective Schemes, the supply managed commodity boards have the authority to establish, issue, alter or cancel quotas, including establishing the terms and conditions that apply to the issuance, alteration or cancellation of quotas. While only three Schemes (Milk, Hatching Eggs and Turkey) expressly prohibit the boards in question from attaching monetary value to quota, BCFIRB remains of the position that the overall legislative intent is that all BC supply managed commodity boards are not to attach value to quota.<sup>8</sup> Quota remains the property of the board, even though it is ‘held’ by producers<sup>9</sup>
29. How quota is initially distributed and transferred influences the structure of the industry and what is produced by whom. How quota is distributed and transferred can influence farm size (e.g. a few large or many small), where farms are located (e.g. Lower Mainland, Interior, Vancouver Island) and the density of farms in a region. For example, if all quota is dedicated to ‘mainstream’ type production, there may be no production allocated to fill organic, free range, grass fed, other specialty or niche markets and/or new and emerging markets.<sup>10</sup>

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<sup>8</sup> BC Broiler Hatching Egg Scheme s. 8(b); BC Turkey Marketing Scheme s. 28(b); and the BC Milk Marketing Board Regulation s. 7(2)(a)

<sup>9</sup> Under the respective Schemes, quota remains the property of the board. BC Chicken Marketing Board Scheme s. 4.01(c.1); BC Broiler Hatching Egg Scheme s. 8(b); BC Egg Marketing Scheme s. 37(c); BC Turkey Marketing Scheme s. 28(b); BC Milk Marketing Board Regulation s. 7(2)(b)

<sup>10</sup> 2005 Sept 1. BCFIRB. Specialty Market and New Entrant Submissions: Policy, Analysis, Principles and Directions.

30. Boards may prioritize quota distribution based on market needs and/or policy objectives (e.g. on-farm efficiency, supporting a developing market, new entrants, encouraging regional development). Boards generally distribute growth quota on a pro-rata basis. Some boards may prioritize a portion of provincial production for new entrants or other public policy objectives. They do not distribute quota using direct economic distribution tools, such as auctions, due to provincial regulatory prohibitions on boards affixing a value to quota. That said, commodity boards could further explore alternative distribution options (e.g. allocation model, formula or framework) that would fall within BC's regulatory prohibitions while taking into account economic efficiency and public policy objectives.
31. Transferability allows quota to move between producers based on their business objectives. Producers may want to transfer or acquire quota for different reasons, for example, to establish an optimal farm size for efficiency and/or other business reasons, to enter or exit the industry, support succession/retirement planning and/or to generate revenue.
32. When quota is transferred between producers, the producer quota marketplace assigns a value to those transactions<sup>11</sup>. The value is determined by a quota buyer's expectation of future profits, the limited availability of quota and certain business advantages. The fact that quota can be transferred between producers influences individual producer decisions, creates the expectation of, and enables financial returns on quota transfers or "sales", and, in turn, shapes the structure of the industry.
33. Because quota is required to produce a supply managed product, the overall availability of quota and the cost of quota acquisition in the producer quota market creates barriers to enter these industries. Other barriers include the price of land, and the cost of establishing necessary infrastructure.

### ***Quota management policies and rules framework***

34. BC commodity board quota management policies and rules must be in accord with:
  - a) *Federal legislated intent*: Provide efficient producers the opportunity of earning a fair return for their labour and investment, and consumers a continuous and adequate supply of high quality products.
  - b) *Provincial legislation and regulations*: Reflect sound marketing policy, which builds on the principles of fair returns to producers who supply high quality products to consumers on a consistent basis, and regulatory requirements such as boards not affixing value to quota and quota remaining the property of the commodity boards.

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<sup>11</sup> For example, one unit of dairy quota (roughly equivalent to the daily butterfat production from one cow) was transferring for \$38,500 and one unit of egg quota (equivalent to one laying hen) was transferring for \$360 in December 2017.

- c) *BCFIRB policies and directions*: Reflect any policies and/or directions established by BCFIRB.

### ***2005 Transfer Assessment and New Entrant Policies and Directions***

35. The 2005 Specialty Review established several quota management policies that reflect federal intent and provincial legislation and regulations. The four key policies applied to this review were:
- a) Quota is intended to be produced.
  - b) Quota is transferable.
  - c) Quota holders are actively engaged and committed to the industry
  - d) Boards have quota available to address barriers to entry, changing markets and other public policy objectives; even when there may be no growth in overall production, markets and/or provincial shares of national production.
36. BCFIRB's 2005 directions included transfer assessment tools. Transfer assessment tools were not the focus of the 2005 Specialty Review. Rather, these tools were intended to help commodity boards meet the policy objectives listed above in paragraph 35 – all in light of quota being transferable between producers. These assessment tools were:
- a) Last In – First Out (LIFO). LIFO requires all producers to transfer the last quota they received first. It applies to all quota held by a producer, whether that quota is obtained from the board, from a family member or from another producer.
- LIFO, in conjunction with 10/10/10 (described below), was intended to act as a disincentive to quota being transferred/sold by the first producer receiving it at no cost from the board, rather than being produced, in the first instance. Commodity boards remained fully responsible for ensuring all provincial quota was produced.
- b) Quota issued prior to 2005-2007<sup>12</sup> by the Milk, Egg, Hatching Egg and Turkey boards is subject to a 5% assessment (i.e., return of that quota to the board) the first time it is transferred. BCFIRB approved the Chicken Board using a deemed transfer assessment where the assessment is deducted from the provincial allocation before production rights are distributed to producers. The deduction is based on 5% of the three-year moving average of all producer transfers, with no exemptions.

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<sup>12</sup> Hatching Egg Commission April 1, 2006; Chicken Board September 1, 2005; Egg Board September 1, 2005; Milk Board September 1, 2005; Turkey Board May 1, 2007.

- c) Quota issued after 2005-2007 is subject to a 10 year declining transfer assessment – 10/10/10. If a producer transfers quota in the first year it is received, 100% of the quota returns to the board. In the second year 90%, 3rd year 80% and so on. After ten years and beyond, 10% is assessed the first time that quota is transferred.
  - d) New entrant quota is subject to the same 10 year declining transfer assessment.
- 37. BCFIRB, on the recommendation of the commodity boards, established a list of the types of family members (e.g. children, sibling) exempt from transfer assessment for the purposes of family succession, along with related rules to prevent “double dipping” (for example, in the dairy industry, a person receiving new entrant quota cannot receive an exempt family transfer for 10 years). These transfer assessment exemptions do not apply to the transfer of new entrant quota.
  - 38. Boards remained able to apply their own additional assessments on the first and/or subsequent transfers as they deemed appropriate, and have done so.
  - 39. In 2005, BCFIRB also formally established that commodity boards must maintain new entrant programs which provide quota at no cost to new producers who meet minimum BCFIRB eligibility criteria. These programs were to give priority to those new producers who want to fill specialty, regional or other market needs.
  - 40. A description of BCFIRB’s 2005 transfer and new entrant related policies and assessment directions are in Appendix A.

### ***General overview of quota movement in BC***

- 41. Producers hold a “portfolio” of quota. The “portfolio” is made up of quota acquired over time from a commodity board as new entrant quota or growth, acquired from other producers and/or potentially quota acquired from succession related transfers.
- 42. For example, a producer may have entered the industry in the 1990’s through a quota transfer from a family member (succession). Others may have entered recently through acquiring quota from another producer. A producer could, at different points in time, receive growth quota from the commodity board, or have quota retracted by the board due to declining markets or a breach of board directives. The same producer may have acquired quota from other producers at different points in time and transferred out some of their quota. Incorporated multi-generational farms will also influence the ultimate structure of a quota portfolio. It is fair to observe that every quota portfolio is unique in its makeup and in how it is affected by transfer assessments.
- 43. Because of BCFIRB’s LIFO and related assessment directions, the structure of the “portfolio”, when and how the producer received quota, and how much quota the producer wants to transfer, will dictate whether and how much quota will be returned to a board as an assessment before the balance of quota transfers to another producer. This impacts the

financial return a producer may expect to receive on the quota transfer and potentially influences a producers' decision on whether or not to transfer quota at all.

## **SUPERVISORY REVIEW PROCESS**

44. This supervisory review process was carried out in three phases. The first phase involved establishing the evaluation framework, information requirements and timelines in consultation with the commodity boards. During the second phase the commodity boards collected information, consulted with stakeholders, conducted analysis of the inputs and reached decisions on what recommended changes were needed to BCFIRB's 2005 transfer assessment and new entrant related directions. The final phase involved BCFIRB analysis of commodity board submissions, including follow-up questions and in person discussions with the commodity boards and a further opportunity to provide updated submissions in support of final decision-making. All review related process information and documents were posted to the BCFIRB web site in a timely way.
45. As part of the process, BCFIRB notified the Ministry of Agriculture regarding the role of the Ministry's Regulated Marketing Economic Policy (2004), legislation and regulations in the evaluation.

## **SUBMISSIONS OVERVIEW**

### ***Commodity board process***

46. BCFIRB established specific process expectations of the commodity boards in its February 28, 2017 letter "Quota Assessment Tools Evaluation – BCFIRB Expectations and Looking Forward".<sup>13</sup> Overall commodity boards were expected to use a SAFETI-based process. This included stakeholder consultation, regular communication of interim process outcomes, discussion with fellow commodity boards, collection of specific information, and legal counsel review.
47. Boards generally followed a SAFETI-based process. BCFIRB observed unevenness across commodity board submissions related to collection of meaningful information. In some instances consultation questions may have been too narrow to elicit a full response, and boards varied in terms of the depth and type of information explored in relation to the competitiveness and strategic direction of their industry.
48. Overall the boards were able to complete their consultation and information collection within the four months allotted to them. Most boards engaged with value-chain stakeholders using multiple formats (on-line, written and in person) with supporting discussion documents and questions provided to inform the conversations. Most boards demonstrated accountability by setting out their consultation processes, communicated the

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<sup>13</sup> 2017 Feb 28. BCFIRB. Quota Assessment Tools Evaluation – BCFIRB Expectations and Looking Forward.

processes and followed through on them. The process gap that BCFIRB observed for all commodity boards was a lack of clearly communicated criteria and decision-making frameworks for objectively evaluating the impact of transfer assessments on the respective sectors.

49. For several of the commodity boards (Chicken, Turkey and Hatching Eggs), fully consulting about the impacts of LIFO and 10/10/10 was challenging given that producers (outside of new entrants) had no first-hand experience with this transfer assessment as growth quota had not been issued since prior to 2005. Consultation in the egg and dairy industries provided the bulk of stakeholder experience with LIFO and 10/10/10.

### ***Commodity board outcomes***

50. In addition to its process expectations, BCFIRB set out a list of specific quantitative and qualitative information commodity boards were to provide.<sup>14</sup> In relation to this information, BCFIRB outlined that commodity boards were to:

Consider the quantitative and qualitative information collected through consultation and research, as outlined in the point above, to provide an evaluation on whether the 2005 Specialty Review policy objectives related to transfer assessments and industry entry are being fulfilled, why, and how, and if not, why not.

Consider the quantitative and qualitative information collected through consultation and research, again as outlined in point two above, to provide an evaluation of:

- Consequential negative industry and/or public interest impacts or inefficiencies resulting from the current transfer assessment structure.
- Whether there are other opportunities to further support industry entry in light of industry renewal through succession planning and new farmers entering through a means other than family-succession planning.

51. Finally, boards were to identify what, if any changes were to be requested. BCFIRB expected boards to show how any proposed changes:

- Accord with legislation, regulations and any agreements;
- Meet the intent of the 2005 transfer assessment and industry entry related policy objectives, as identified previously in this letter;
- Are supported by industry (value chain members), to what extent, and why, and if not supported, to what extent, and why. The value chain members that support and/or do not support any proposed change(s) should be broken down by type and size.

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<sup>14</sup> 2017 Feb 28. BCFIRB. Quota Assessment Tools Evaluation – BCFIRB Expectations and Looking Forward.

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

- Reflect the 2004 Ministry of Agriculture Regulated Marketing Economic Policy (attached).
  - Fulfill sound marketing policy – for example, demonstrate expected implications to industry in both the short and long-term, alongside value chain stakeholders, including the consumer and public. Discussion of the pros and cons should be included. An overview of cost implications to producers, the industry and the boards should be included.
  - Fulfill the public interest – the rationale and implications of recommended changes must clearly balance the interests of industry with those of the value chain and consumers, along with being in the overall economic interest of British Columbia.
  - Reflect any joint considerations and outcomes between your boards
52. None of the commodity boards met all of BCFIRB's quantitative and qualitative information requirements. Nor was there always a clear link between the issues identified and proposed changes. Arguments for change in some cases were contradictory. For example, while boards reported that LIFO and 10/10/10 was effective in ensuring new producers were engaged in the industry (not just there for 'free quota'), some still proposed changes that would see further regulatory controls placed on new entrant quota while reducing regulatory controls for quota held by established producers. Some of these gaps were resolved through the in-person meetings with the commodity boards following their submissions. For example, clarification on board proposed changes, and the specific producer and board issues the boards hoped to address through change.
53. The submissions highlighted the differences between industry contexts and commodity board management of quota and new entrant programs. BCFIRB observes that industry context and specific production and marketing challenges, combined with individual commodity board approaches to quota management, played a significant role in influencing a commodity board's rationale for change and proposed changes. The submissions generally commented on overall sectoral challenges and issues in addition to any responses to BCFIRB's specific questions.
54. BCFIRB found overall there was sufficient information to inform BCFIRB's decision-making. BCFIRB members have considerable collective background in, and understanding of, agriculture and regulated marketing, including commodity board governance and industry context. Even though the information and analysis provided was not ideal, BCFIRB gave all of it careful consideration and assessment. The panel majority is satisfied that it was provided with sufficient information to enable it to evaluate the information provided in light of its collective expertise, and to provide supervisory directions for the reasons set out in this decision. With deference to the dissenting member's opposing view, the majority panel does not agree that it is necessary to extend the evaluation process. BCFIRB used its experience and expertise to assess and work with the information that was provided. The majority panel is satisfied that it was able to collect sufficient information to make the marketing policy judgments set out in this decision.

## **ANALYSIS – IS THERE A CASE FOR CHANGE?**

55. The following sections discuss whether there is a sufficient case to change BCFIRB's 2005 transfer assessment related directions in light of the overall evolution of industry and changes to commodity board governance since 2005.
56. The core challenge for BCFIRB and the commodity boards remains, as it did in 2005, how to effectively and strategically balance quota transferability with the obligation that quota be produced (not treated as a commodity for financial return), and that producers be actively engaged and committed to the industry. It is not uncommon to periodically revisit how competing interests and policies are managed and balanced based on changing contexts.
57. As stated in the Ministry's Regulated Marketing Economic Policy (2004):

The regulated marketing system operates in the interests of all British Columbians. Boards and Commissions operating under the authority of the *Natural Products Marketing (BC) Act* are responsive to the needs of British Columbia producers, as well as to processors, consumers and other participants in the British Columbia food system.

### ***New Entrant Quota – Transfer Assessments***

58. All boards reported that the combination of LIFO and 10/10/10 was effective in supporting active engagement in the industry and provided a sufficient disincentive to people who may want to enter the industry for the sole purpose of receiving quota at no cost and then selling it for a profit. There were no direct concerns raised by the boards that LIFO and 10/10/10 on new entrant quota is unduly impacting the movement of quota for new entrants. As it is generally expected that new entrants are not meant to be reducing their quota holdings (unless in exceptional circumstances), BCFIRB is not surprised at this outcome.
59. All boards recommended that after ten years, new entrant quota be managed under the same rules as other quota issued by the boards, rather than continuing in perpetuity as "new entrant quota". The boards noted that after ten years it is reasonable to assume producers are committed to the industry, and as such they do not need to continue to be distinguished as a 'new entrant' by the type of quota they hold. Some observed that this change would simplify rules and administration for both producers and the boards.
60. BCFIRB agrees that the boards presented sufficient grounds for change on this issue.

### ***Industry entry, exemptions and succession***

61. All boards provided some overview of the number of new entrants (entering through the respective new entrant programs and purchase of quota).



62. The Egg and Milk Boards alerted BCFIRB that they already had plans in place to review their new entrant programs starting in the fall of 2017. However, as part of the evaluation process, both boards proposed changes to BCFIRB's transfer assessment exemptions to include non-family members. Changes are proposed on the basis that farm succession planning is no longer strictly a family affair and may involve others such as key or long-term employees.
63. The Egg Board also proposed that its transfer exemption list be extended to match the Milk Board's exemption list, but unlike the Milk Board in its 2012-13 Quota Governance Review, the Egg Board did not provide a rationale for this expansion beyond an interest in having the same exemptions as the Milk Board.
64. The Hatching Egg and Turkey Boards did not report on whether and to what extent existing transfer assessment exemptions are supporting farm succession and did not propose any changes. The Chicken Board also did not report on transfer assessment exemptions in relation to farm succession. This is not surprising as, under the deemed assessment model, there are no direct transfer assessments and related exemptions.
65. In relation to BCFIRB's new entrant directions, the Egg and Milk Boards adequately demonstrated there is interest for farm succession to expand beyond family members (e.g. employees). However, under BCFIRB's current directions, only certain family members are eligible for exemptions from transfer assessments. This scenario can act as a barrier to non-family members participating in farm succession planning and industry entry.
66. BCFIRB agrees there is a case for examining its exemption directions in relation to succession planning and non-family members. Any changes would necessarily be contingent on any changes to LIFO, 5% transfer assessment, and 10/10/10 transfer assessment.

### ***Growth Quota – Transfer Assessments***

67. BCFIRB's transfer assessment directions were intended to support commodity boards in meeting three fundamental policy objectives – quota is produced, producers are actively engaged, and quota is available to the board for new entrant and other program needs. All boards as part of this evaluation generally agreed that BCFIRB's directions were effective in helping meet these policy objectives.
68. Based on the submissions, the degree to which transfer assessments supported the amount of quota made available to the boards has varied.
69. The Egg Board reported that transfer assessments (5% and 10/10/10) resulted in 45,141 quota units returned to the board, while it has issued 75,000 units of new entrant quota since 2005. Given the shortfall of quota made available through assessment, the Egg Board has taken a portion of its share of recent national production increases to hold enough quota in reserve to fund its new entrant program through to 2025 as it is currently

structured. In terms of supporting specialty markets, between 2005 and 2016 the Egg Board explains that these markets have grown from 2.5% to 23% of the BC egg industry. This represents a total of approximately 700,000 quota units.

70. The Milk Board reported that it does not use the amount of quota assessed as a parameter for managing its public policy programs, as demonstrated in 2007-08 when 62,877 kilograms of quota (equivalent to 172 kg/day on a CDQ<sup>15</sup> basis) was assessed and 95,318 kilograms of quota (equivalent to 261 kg/day CDQ) was allotted to new entrants and specialty programs (a difference of 32,441 kg or 88.88 kg/day CDQ). Looking at the overall picture, the Milk Board reported that 771,404 kilograms of quota (2113 kg/day CDQ) were assessed between August 1, 2007 and May 1, 2017. Over the same time period, 355,781 kilograms of quota (974 CDQ) were used for new entrants and 323,563 kilograms of quota (886 kg/day CDQ) were used to fill the organic market. As of May 1, 2017, 92,060 kilograms of quota (252 kg/day CDQ) remained available for allocation.
71. The Turkey Board submitted that its various transfer assessments (not specified which assessments) and a “Grower Vendor Conversion” provided 478,821 units of quota, of which 426,900 were issued, leaving 51,921 quota units remaining for distribution. No dates were provided.
72. The Chicken Board reported that it issued 814,180 units of quota between 2006 and 2016 to new entrants. While it reports that this quota arose from its deemed transfer assessment it did not provide how much quota was assessed versus distributed. In a follow-up meeting, the Chicken Board advised that all quota returned to the board since 2006 from the deemed assessment has been issued to new entrants. It also advised that its new entrants now constitute almost 20% of its total number of producers. In addition, it demonstrated that it has used its new producer program to serve specialty and regional markets, including supporting the development of three new processing facilities in BC to serve these markets.
73. The Hatching Egg Commission confirmed it has started some new entrants since 2005. However it did not provide how much quota was assessed or how much quota was issued to new entrants.
74. BCFIRB agrees with the commodity boards that transfer assessments did play a role in supporting commodity boards having quota available for reducing barriers to entry and other public policy objectives, such as supporting developing markets. Having quota available for new entrants and other public policy objectives was a significant issue addressed in the 2005 Specialty Review. Some boards – particularly the Egg Board – have demonstrated that since 2005, and in circumstances where transfer assessments did not provide sufficient quota for their programs, they took additional quota “off the top” of the overall allowable provincial production to meet program needs.

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<sup>15</sup> Continuous Daily Quota

### 5% Assessment

75. No boards reported negative impacts on quota transferability due to the 5% transfer assessment assessed on growth quota issued before 2005. The Egg Board did point out that BCFIRB created two ‘classes’ of quota with the 5% transfer assessment on growth quota issued prior to 2005, and 10/10/10 on growth quota issued after 2005. Some boards proposed alternatives to ensure they have quota on hand for policy programs, rather than using the 5% assessment.
76. Based on the alternatives proposed in the submissions BCFIRB is satisfied there is a case for change.

### LIFO and 10/10/10

77. The transfer assessment directions that drew the most attention in this review were LIFO (applied on all quota held by a producer) and 10/10/10 (applied on growth quota allocated since 2005). This is not surprising. These directions were intended to act as a disincentive to quota being transferred (instead of produced) by the first producer to receive it at no cost from a commodity board. The tool creates an inherent tension with quota being transferable. The tension can be exacerbated depending on market conditions, how commodity boards manage quota and the financial return producers may expect when quota is transferred or “sold” in the producer quota market.
78. For instance, a producer may decide to transfer some of their quota for business reasons. Depending on the structure of their quota “portfolio”, the producer may need to transfer more quota than originally intended in order to receive an equivalent financial return because of transfer assessments. For example, producers who would like to transfer 5% of their quota holdings may need to transfer up to 30% to realize a financial return equivalent to transferring 5% of their quota. While these producers may potentially realize the financial return they were seeking on transferring some quota, the return or forfeiture of quota to the commodity board to achieve that net return impacts how much they can continue to produce, and hence their cash flow, possibly making an intended transfer untenable. Overall, this may create a structural financial disincentive to sell any quota at all.
79. Boards generally agreed that LIFO in conjunction with 10/10/10 was effective in helping fulfill the policy intent that quota is intended to be produced. Boards also use other tools to help ensure quota is produced (e.g. Egg Board requires hens to be placed before quota is received, Milk Board uses under and over production credits which allows producers to move production between themselves on a temporary basis). Several boards observed that in retracting or static markets, the impact of BCFIRB’s transfer assessment directions on quota movement was not considered to be a significant issue for their industries.
80. However in a growth market, boards reported that BCFIRB’s LIFO and 10/10/10 directions do (Egg and Milk Boards) or may (Chicken, Hatching Egg and Turkey Boards)

have negative impacts on quota movement. Dairy and egg producers in particular voiced concerns about LIFO and 10/10/10 unduly constraining responsiveness and flexibility (e.g. ability to downsize or grow or make other changes to farms). When there is a steady issuance of growth quota over several years, this increases the amount of quota returned to a board before any quota moves to another producer.

81. To assess the reported industry issues, it is important to start with what has changed with these sectors since 2005.
82. In the early 2000's and up until a few years ago, growth in most supply-managed markets was tracking population growth.
83. As reported by the Milk and Egg Boards, the egg and dairy industries are seeing an increase in market demand over the last few years beyond that related to population growth. This is at least in part due to changing dietary advice that now encourages the consumption of eggs and butterfat.
84. The Milk Board is unique among BC's commodity boards in that quota is allocated and retracted on a monthly basis throughout the year using a system called CDQ implemented in 2010 (CDQ). CDQ results in a very market responsive structure and supports BC in regularly meeting its production requirements. It also means that when market demand is continuously growing, any transfer of quota likely triggers 10/10/10, and can result in a producer having to return an increasing percentage of quota to the board (amount determined by the number of years that growth quota has been produced). While milk production is surging, the price BC dairy producers receive is being impacted by the recent national Ingredient Strategy (at this time lowering price) and price incentives to produce more butterfat.
85. In eggs, quota is allocated to producers on an 'as needed' basis determined by production increases received by the province from Egg Farmers of Canada. As there were several allocations of growth quota over the last eight (8) years, producers who accepted growth quota and now want to transfer quota may face a 10/10/10 assessment requiring them to return a percentage of their quota to the board.
86. The increase in demand for domestic eggs was further compounded by the 2015 avian influenza outbreak in the US, and a change by the Egg Farmers of Canada to its allocation formula (from determining market demand based on retrospective market conditions to prospective market conditions).
87. Chicken is seeing a similar increase in market demand beyond that expected by population growth, due at least in part to improved enforcement of imports as well as chicken continuing to be seen as a lower-cost animal protein source in comparison to pork and beef. Given the increasing demand for chicken, BCFIRB expects to see a related increase in demand for broiler hatching eggs. The turkey market is remaining generally stable.

88. Unlike the egg and milk sectors, each of the Chicken, Hatching Egg and Turkey Board's directs their producers as to what percentage of their holdings to produce each period. As such, additional or growth quota is not necessarily allocated to producers when the overall share of provincial production grows. The three poultry boards have not issued quota since the 1990's, meaning that their producers (except for new entrants) are not subject to 10/10/10 on growth quota. In turkey, commercial growers are producing about 87-90% of their quota holdings every period, and new entrants about "100% +" since 2006/07 to today. Hatching egg producers saw their production varying around 82-88% of their quota holdings from 2005 to 2015, with a jump to 93% in 2016 and an expectation of reaching 100% in 2018.
89. With the increase in domestic chicken production, a growing number of chicken producers are generally producing over 100% of their quota holdings. The Chicken Board has chosen to date to not issue new quota to manage provincial production growth. This is discussed further in paragraph 111 later in this decision.
90. In assessing the arguments for change to LIFO and 10/10/10, BCFIRB focused on three main questions.
91. The first question is whether LIFO and 10/10/10 is causing the reported issues with quota movement and subsequent industry challenges in a growth market?
92. The generally shared rationale across most of the commodity boards for change is that LIFO and 10/10/10 does (egg and dairy) or may (chicken, hatching egg and turkey) create an undue barrier to "quota movement" in a growth market. The Egg and Milk Boards say quota is not moving quickly to producers who want to or can produce it (quota availability). In addition, there is argument that reduced quota movement between producers creates an upward pressure on quota price which in turn increases barriers to industry entry and opportunities for growth for small producers. Some boards also stated concerns about loss of on-farm efficiency, ability to access quota in a timely way in some circumstances, and the need expressed by the Milk and Egg Boards for some producers to realize a financial return on quota transfers in order to invest in capital improvements or expansion.
93. While these assertions are logical, and lending institutions have reported that they lend on the basis of quota holdings, it is difficult to empirically assess the actual impact of these assertions. On one hand the Egg and Milk Boards are reporting undue impacts on quota movement; however, the quota transfer data provided in the submissions does not clearly show a decline in the total amount of quota transferred during the recent period of market growth. Milk Board data shows a steady trend of increased volumes of quota transfers on its quota exchange between 2010/2011 and 2016/17. Egg Board data shows no clear pattern with variable amounts of quota transferred over the years, with spikes in 2006, 2008 and 2016. Spikes in quota transfers can be due to factors such as changes in tax law, commodity board orders or personal circumstances.

94. Milk Board quota exchange results from August 2010 to July 2017 indicate that demand for quota is largely exceeding its availability over time, although priority purchaser needs (e.g. Cottage Industry Program and Graduated Entry Program participants) seem to be being met. Fill rates<sup>16</sup> for non-priority exchange participants<sup>17</sup> range broadly from lows of approximately 3% (of demand met) up to a one time spike of 95%. Overall the fill rates are variable and generally fall under 50% for non-priority purchasers. In relation to quota being available for sale in order for the quota exchange to run (monthly or twice a month), 21 of 87 (25%) exchanges did not run because there was insufficient quota available for transfer. It is interesting to note that fill rates seemed to increase in 2017, ranging from 56% to a high of 82%. It is noted that these are general observations based on data provided by the Milk Board and do not include off-exchange quota transfers. There are other hard to quantify factors besides LIFO and 10/10/10 which may impact quota availability on the exchange. For example, federal tax changes reportedly had an impact on quota transfer decisions.
95. The Milk Board notes that it saw a drop in quota available on its quota exchange in 2010 after the shift to CDQ. However there was no discussion about the role of changing to a new quota unit in relationship to impacts being reported due to LIFO and 10/10/10.
96. In the dairy industry, the issue of getting quota quickly to those who want to or can produce it is further complicated by the Milk Board requirement that all producers must accept growth quota. If a producer cannot or does not want to produce growth quota, it seems contrary to sound marketing policy to force producers to receive growth as it puts them and the province at risk of not meeting production obligations (even with existing rules to help ensure production such as quota credits). The Milk Board's recommendation is to remove LIFO and 10/10/10 so producers can freely transfer quota they receive from the board in the short term without an obligation to produce it. BCFIRB observes that requiring producers to accept growth quota combined with no disincentive for it to be transferred/sold without being produced is inconsistent with quota being managed as a licence to produce.
97. It is difficult to accurately assess the impact LIFO and 10/10/10 may have on quota movement in the dairy industry should producers have the choice whether to accept growth quota. However, the Egg Board information does fill in this gap somewhat, given egg producers do have the choice of whether to accept growth.
98. The Egg Board reported that LIFO and 10/10/10 results in a disincentive to some producers to exit the industry ('tying up' quota) and creates a serious loss of on-farm efficiency when there is a whole farm transfer. It also states that quota transfers are required to finance changes to layer housing (driven by consumer pressures). The Egg

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<sup>16</sup> The actual amount of quota a producer is able to purchase on the quota exchange versus how much quota they registered to have wanted to purchase.

<sup>17</sup> Participants who are not classified as "priority" on the Exchange.

Board's argument for change reflects the rule it has in place to address the competing tension between immediate quota transfer and quota being produced by the one who received it from the board in the first instance. The Egg Board now requires producers to demonstrate that hens are placed before the Egg Board will issue growth quota. It argues this measure is sufficient and LIFO and 10/10/10 is not required to buffer against quota being traded as a commodity for financial return versus being produced.

99. Also in relation to quota movement, one of the Milk Board's other core rationales for the removal of LIFO (on all quota held by a producer) and 10/10/10 on growth quota is the impact on the ability for farms to "right size". According to the Milk Board, "right sizing" refers to producers managing their farm size to maximize the efficiency of their production unit, while effectively dealing with changing technologies, increasing production requirements under the national ProAction program (e.g. animal welfare) and other considerations. Right sizing could involve farms growing bigger or reducing their size. It states that change to encourage right sizing is necessary for the sustainability of the BC dairy industry given the growth market, the importance of remaining provincially competitive in terms of production volumes, being an attractive business environment to retain farmers, and meeting increasing public expectations for traceability, food safety, biosecurity, animal care and the environment. The Milk Board is concerned that as quota is moving more freely in other provinces, transfer assessments play a negative role in BC's competitive position.
100. In order for right sizing to happen in a timely way, the Milk Board argues that it is important for producers to be able to freely transfer quota without assessment. It says the benefits would include quota moving quickly to those who want to or can produce it without undue loss of on-farm efficiency and/or financial returns to the transferor, providing some producers the ability to finance capital investments through transferring quota (e.g. lower farm costs through purchasing automation equipment such as robotic milkers), and acting as a form of compensation to producers for declining milk prices and producer investments in the industry through paying marketing levies. For example producers could expand quickly through access to required amounts of quota on the exchange. For others, farm business planning is now being done in 50 cow increments due to robotic milker considerations on cost versus return.
101. Given that quota is transferable and the producer quota market currently attaches a value to quota, it is unsurprising that producers would expect a financial return and seek to maximize it when transferring quota. Producers may also see quota value as a form of financial security in addition to the regulated market and price protections already in place. Whether or to what extent an expectation of, or realized, return on quota transfers is acceptable or unacceptable from a public interest perspective, the 'financial gain incentive' must be recognized as a factor in quota management so long as quota is transferable and is in limited quantity.

102. BCFIRB observes that regardless of these financial incentives, commodity boards have an on-going responsibility to hold producers accountable for producing their full individual quota holdings should those producers accept growth quota.
103. BCFIRB does recognize the Egg Board argument that there is potential for 10/10/10 to have a negative impact on farm efficiency when there is a whole farm sale (farm and quota sold together) in circumstances where there is no family transfer assessment exemption.
104. In terms of the argument that quota transfers are required to finance on-farm capital investments in face of changing consumer demands, new technology to bolster on-farm efficiency and aging infrastructure – this may signal a concerning economic frailty in certain commodities which neither the boards nor BCFIRB investigated as part of this review. BCFIRB holds a similar opinion regarding arguments related to the need to transfer quota to compensate for falling producer prices.
105. BCFIRB also heard that, in an environment where quota is allowed to move without assessments, occasional small transfers of quota can be strategically valuable in setting the stage for long-term growth and success of the farming enterprise. This demonstrates a more positive aspect to the use of quota to finance farm development.
106. BCFIRB appreciates that producers contribute to the industry through the payment of marketing levies, but it does remind boards and producers that these levies allow the system to operate for the overall benefit of producers. Levies are part of the expected ‘cost’ of the business protections provided to producers by supply management.
107. Finally, as discussed earlier, requiring producers to accept growth also plays a role in the reported concerns related to right sizing.
108. Both the Milk and Egg Boards argue that the removal of LIFO and 10/10/10 would incentivize retiring producers to exit their respective industries in a timely way, making additional quota available to producers who want to expand. Specifically, the Egg Board raised the example of quota then being free to move to a producer who may have a more modern facility, potentially bettering the overall state of the BC industry. Or in other words, there would be a potentially increased incentive to retire because of the potential prospect of a greater financial return on quota. This is one of the management challenges resulting from quota being transferable.
109. Other side effects of LIFO and 10/10/10 in a growth market reported by the Milk and Egg Boards relate to rising quota values and availability of quota. Quota value is a sensitive and challenging topic. While the commodity boards cannot attach a monetary value to quota, they also cannot ignore the operational outcomes resulting from quota value when it is transferred between producers. Boards report that taken together, LIFO and 10/10/10 increase the cost of quota because it restricts quota movement (the more limited an item is, the higher its price). This in turn makes it more challenging for new people to acquire



quota from another producer and for smaller producers to expand. The Milk Board in particular reports that BC dairy quota has the highest value in the country.

110. It is impossible to predict with any certainty that quota values would ease if LIFO and 10/10/10 is changed, given the number and type of variables involved. There are also issues with comparing values across provinces as quota management practices and other factors vary.
111. The Chicken Board is concerned that if it issues growth quota in the near future, there would be a decrease in quota movement under LIFO and 10/10/10. The Chicken Board noted this is a serious consideration as it looks at whether it will be issuing quota. The Chicken Board anticipates that decreased quota movement would put upward pressure on quota values and make it more difficult for new entrants to grow. It also notes that retaining LIFO and 10/10/10 would "...complicate orderly marketing at both the board and farm level". However it does not explain what it means by this statement. Although it has no experience with LIFO and 10/10/10 on growth quota, the Chicken Board states there is no evidence that the absence of LIFO and 10/10/10 would result in quota being transferred (for immediate financial gain), rather than produced. It proposes that growers receiving growth quota would be required to demonstrate they have adequate barn space to house the additional chickens before receiving that quota.
112. Like the Chicken Board and its producers, the Turkey Board and producers have no experience with LIFO and 10/10/10 (excluding new entrant quota). While the Turkey Board does not anticipate issuing quota in the near future as its market is static, it looks to the experience of the Egg and Milk Boards. As such, it argues that LIFO and 10/10/10 in a growing market impacts quota movement, complicates record keeping and creates confusion. The Turkey Board also reports that it continues to use, and intends to continue to use, its own declining transfer assessment on all transfers of quota (not only on quota the first time it is transferred). The assessment is intended to deter short-term speculation in quota. It is based on a three year structure where 30% of quota is assessed in the first year it is transferred, 20% in the second year, and 10% in the third year.
113. BCFIRB has already addressed the Chicken and Turkey Board arguments under discussion of the Egg and Milk Board rationales for change. See paragraphs 93 to 110.
114. The Hatching Egg Commission did not specifically argue that changes need to be made. It states that it is familiar with and understands the issues raised by the Egg and Milk Boards. The Commission recommends, regardless of what the outcome of the evaluation is, that any changes must be effective (in light of the overarching policy objectives of government and BCFIRB) and be straightforward and streamlined as much as possible to reduce regulatory administration.
115. Several boards noted that, particularly when there is a steady allocation of growth quota, LIFO and 10/10/10 adds a considerable layer of administrative complexity for boards and

producers. As such, there are additional administrative expenses and related staff and technology resources to be dealt with.

116. The second question BCFIRB considered is whether market growth, which is part of the justification boards advance for the changes they seek, is a short or long-term trend.
117. Making substantive changes to fundamental quota management directions based on circumstances as they exist at a certain point may not result in sound marketing policy. On the other hand, it is not sound marketing policy for quota management policies and rules to generate undue issues when markets are in different states. From a principles-based regulatory and sound marketing policy basis, quota management policies and rules should endeavor to be effective, strategic and accountable under all market conditions (barring exceptional circumstances).
118. The third question BCFIRB considered is whether some of the issues reported by the commodity boards may be better solved by changing how quota is initially distributed by a commodity board.
119. The Milk Board noted that changing how growth quota is initially distributed is a potential solution to getting quota quickly to producers who want to and are able to produce it. But it also noted that there are difficulties and complications around tailoring distribution of quota, and that distribution would "...likely go to larger farms with resources that quickly buy cows, expand, or rent space." While agreeing that tailoring quota distribution would be difficult and complicated, the overall predicted outcome is not as obvious to BCFIRB. The Milk Board could choose to prioritize a portion of the growth to smaller farms with demonstrated expansion plans or use other formula-based approaches. The Egg Board raised consideration of alternative distribution models as well, but it did not explore the concept at any depth.
120. BCFIRB recognizes that how quota is initially distributed was not a key focus of this review. However, BCFIRB is taking this opportunity to proactively look at the distribution question given it was raised in some of the board submissions. As discussed earlier, there are regulatory restrictions on commodity boards using direct economic based quota distribution tools that would help support quota being initially distributed to efficient producers. Allowing quota to be transferable as a means to resurrect the 'free hand of the market' does support quota 'moving to those who want to and can produce it'. However, it also brings with it the public interest question of producers expecting a return on quota transfers and making business plans on this basis.
121. BCFIRB encourages commodity boards to continue to explore alternative tools for distributing quota beyond the current practice of pro-rata. If done well (procedurally fair, strategic, accountable), alternative approaches may be more effective at addressing the issues raised about 'quota moving to those who want to and are able produce it' than through changing quota transfer rules. There is also potential opportunity to better support public interest objectives such as opportunities for new entrants and smaller producers to

enter and grow and regional economic development. In its simplest form, all growth does not have to be automatically distributed to all current producers. BCFIRB does appreciate this is a very challenging, complex and potentially fraught proposition. On the other hand, it supports focusing on outcomes that matter to optimize industry and public interest benefits.

***Is there a case for change?***

122. Arriving at a judgment on whether there is a sufficient case for changing LIFO and 10/10/10 is not a scientific calculation. Making policy judgments requires some degree of risk prediction and the exercise of judgment about the potential consequences of one approach versus another. It also involves weighing of competing benefits against risks in the BC context. How to ensure quota is managed in accord with legislation, regulation, provincial policy and public interest while achieving strategic industry outcomes is a common challenge across all provincial commodity and supervisory boards in Canada.
123. As seen in the argument summaries above, most of the commodity boards take the position that there is a sufficient case for change to LIFO and 10/10/10. In this context, BCFIRB wishes to state that there are no magic bullets that make "all things good". As reflected in BCFIRB's comments on the board rationales, very few fundamental quota management questions have black or white answers. It is inherent in marketing policy that regulators must make choices between difficult options, and draw lines between competing policy objectives, recognizing that quota management approaches are never final judgments and they need to change with the circumstances and with experience. Having carefully assessed all the recommendations and information we have received on this review, we are satisfied that there is sufficient information before us to warrant the policy conclusion that LIFO and 10/10/10 should be changed with a view to encouraging quota movement in a growth market.
124. These considerations, together with the passage of time, the rapidly changing operating environment (provincially and nationally), and improved commodity board governance since 2005, satisfies us that there are sufficient sound marketing policy reasons for changing LIFO and 10/10/10.

***Other***

125. The Turkey Board proposed changes to other 2005 Specialty Review directions in their submission, along with other proposed changes to how the Turkey Board manages quota. Following the release of this decision BCFIRB will discuss with the Turkey Board whether it will be revising any of its other proposals on the basis of this decision and then determine how to best proceed.
126. BCFIRB was encouraged to see the Turkey Board take a proactive approach to this review and use it as an opportunity to consider changes to other aspects of its quota management policies and rules, particularly in relation to new entrants and small commercial producers.

## **ANALYSIS – PROPOSED CHANGES**

### ***Overview***

127. BCFIRB reaffirms that the Ministry of Agriculture's Regulated Marketing Economic Policy (2004) continues to apply to commodity boards as do BCFIRB's 2005 quota management policies. Specific BCFIRB 2005 policies include:
- a) Quota is intended to be produced.
  - b) Quota is transferable.
  - c) Quota holders are actively engaged and committed to the industry
  - d) Boards have quota available to address barriers to entry, changing markets and other public policy objectives; even when there may be no growth in overall production, markets and/or provincial shares of national production.
128. As per the 2005 commitment to reporting, and under a SAFETI-based approach to regulation, boards are expected to regularly and publically demonstrate the above policies are being fulfilled (for transparency and accountability) in a strategic and effective manner.
129. BCFIRB recognizes that by allowing quota to be transferable, producers expect a financial return on the quota itself when they transfer it to another producer as has been the case to date. This situation does not negate the policy that quota is intended to be produced (and not treated as a commodity to be traded). Rather, it means that it is important that BCFIRB and the commodity boards have tools in place that help ensure the following objectives are met:
- a) Quota holders do not receive direct immediate financial benefit by transferring quota received from the board, rather than producing it in the first instance; and,
  - b) Quota issued by the board goes to producers in the first instance who are able and willing to produce it (quota holders have the option of accepting or refusing growth quota).

### ***Cross sectoral decision-making***

130. At the outset of the review BCFIRB indicated it would determine whether to take an individual board or a cross-commodity board approach to decision-making. After receiving the final submissions and meeting with the commodity boards, BCFIRB determined a high-level cross-board approach would be the most strategic. Overall, BCFIRB's supervisory role is to ensure that commodity board activities and decisions are administratively fair, comply with legislation/regulations, and accord with sound marketing policy. It does not act as first instance regulator, unless otherwise required to do

so by a failure on the part of the commodity boards or to resolve a particularly complex and/or divisive issue.

131. In considering changes proposed by the commodity boards, BCFIRB did not give its 2005 transfer assessment directions, nor the proposed changes, particular deference. Instead, it took the whole of the information available to consider what may be an effective and strategic way forward for delivering sound marketing policy today.
132. Commodity boards generally took a holistic approach to proposed changes to BCFIRB's directions, submitting a package of desired reforms. BCFIRB agrees that a holistic approach is effective given the degree to which quota management rules interact.
133. BCFIRB observes that industry context combined with individual commodity board quota management policies and rules played a significant role in influencing the commodity board rationale and proposed changes to BCFIRB's directions. Several themes emerged from the submissions:
  - a) LIFO and 10/10/10 may have a negative impact on quota movement when the market is growing. Impacts may vary depending on how a commodity board manages quota allocations and retractions and can interfere with commodity management objectives.
  - b) LIFO and 10/10/10 interacts with board quota management policies and rules, and producer business decisions.
  - c) Transfer assessments do help ensure boards have some quota available for new entrants, developing markets and other public policy objectives. Transfer assessments may not provide all the quota a board may need to fulfill new entrant and other policy objectives but commodity boards are still finding ways of meeting these policies.
  - d) A mechanism continues to be needed to ensure new entrants are committed to the industry.

### ***New Entrant Quota – Transfer Assessments***

134. All boards proposed that after 10 years new entrant quota be managed under the same quota management rules as growth quota. BCFIRB agrees that after a period of time new entrant quota simply becomes quota and can be managed as all other quota issued by the board that is held for more than 10 years (see Growth Quota – Transfer Assessments). This approach reflects fair and equitable treatment and acknowledges producer commitment to the industry.

135. The Broiler Hatching Egg, Chicken and Turkey boards recommended retaining LIFO and 10/10/TBD<sup>18</sup> for new entrant quota. The review demonstrated that the policy objectives were being met (quota intended to be produced, producers actively engaged and committed) under LIFO and 10/10/10 without significant adverse industry impacts. BCFIRB agrees that a declining transfer assessment on the first time new entrant quota is transferred between producers continues to be consistent with sound marketing policy.
136. The Milk and Egg Boards originally proposed that LIFO and 10/10/10 on new entrant quota be replaced with 0% transferability for 10 years. If a new producer transferred quota in the first 10 years, all quota would return to the board. This proposal does not meet the policy intent that quota be transferable. It also does not reflect managing quotas issued by the boards under the same terms unless otherwise necessary. As reflected in BCFIRB's September 19, 2017 letter<sup>19</sup> to the commodity boards, BCFIRB does not accept this proposal.
137. The Milk Board also originally proposed that specialty incentive quota (e.g. Cottage Industry Program) and any associated growth quota be non-transferable for 10 years. BCFIRB does not accept this proposal for the reasons stated in the above paragraph. Subsequently, the Milk Board proposed a 10% 10 year declining transfer assessment on new entrant and specialty incentive quota. After 10 years the proposed global assessment of 5% would be applied on the quota when it is transferred. The Milk Board later amended its proposal to 10/10/TBD on new entrant and incentive quota. As noted above (para 136), BCFIRB agrees this approach aligns with sound marketing policy.
138. Regarding new entrant quota issued to date, the Milk Board proposed all new entrant quota issued between 2004 and 2019 would be subject to 0% transferability going forward. BCFIRB reaffirms its position originally stated in its September 19, 2017 letter:
- From BCFIRB's perspective, imposing 0% transferability retroactively on certain quotas previously issued over the last number of years is not equitable, and may have a significant negative impact on existing business plans. Accordingly, the proposal that 0% transferability be applied retroactively will not be considered further by BCFIRB.
139. The Egg Board proposed that new entrant quota continue to be subject to a declining 10% assessment for ten years.<sup>20</sup> Ten years after it was issued the new entrant quota would cease to be a distinct class of quota and be subject to the same quota management rules as "base quota". "Base quota" being the quota held by a producer regardless of source.

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<sup>18</sup> It is to be determined (TBD) whether there will be an on-going assessment of some amount on the first transfer of new entrant quota after 10 years.

<sup>19</sup> 2017 Sept 19. BCFIRB. Quota Assessment Tools Evaluation – BCFIRB Initial Proposal Analysis and Related Outcomes.

<sup>20</sup> If transferred in the first year it was received from a board, 100% of new entrant quota returns to the board; if transferred in the second year it was received from a board, 90% returns to the board...if transferred in the 10th year it was received from a board, 10% returns to the board.

140. Based on the proposed changes reflected above, and the discussion later in this decision under Growth Quota – Transfer Assessments, new entrant quota is to be subject to a declining 10/10<sup>21</sup> assessment the first time it is transferred between producers. After 10 years, new entrant quota ceases to be “new entrant” quota and is to be managed as all other quota issued by a board that is held for more than 10 years. Adoption of 10/10 applies to previously issued new entrant quota and new entrant quota issued by a board following this decision. LIFO no longer applies to past and current new entrant producer quota holdings.
141. Commodity board new entrant programs have come a long way since 2005 when BCFIRB had to take direct action to ensure these programs were effective. The resulting positive outcomes since 2005 can be fairly attributed to the work of the boards themselves. BCFIRB expects boards to be bringing in new entrants on an annual or regular basis through new entrant programs that provide access to the industry through quota. BCFIRB also reminds commodity boards to regularly review their new entrant programs to ensure they remain both effective and strategic. It is not effective to become stuck on “what number does BCFIRB want?” in terms of number of new entrants and quota volumes. BCFIRB expects boards to take a proactive approach on this matter for the benefit of their industries and the public.
142. Overall, BCFIRB expects boards to ensure policies and rules for administering quota are similar for all classes of quota received from the board (e.g. new entrant, growth quota) with exceptions only where necessary.

### ***Industry entry, exemptions and succession***

143. Exemptions to transfer assessments were originally established by BCFIRB to support family farm succession planning and for the purposes of supporting business reorganization where the quota holding percentages do not change. At the time supporting family succession planning was deemed to be important to the future of the industries, as was business reorganization.
144. The Milk Board proposed that non-family members be eligible for exempt quota transfers under specific conditions, as did the Egg Board. Changes are proposed on the basis that farm succession planning is no longer strictly a family affair. The Egg Board proposed that its list of exempt persons be expanded to match the Milk Board’s exemption list, however little rationale was provided.
145. The Chicken, Hatching Egg and Turkey Boards did not propose changes to transfer assessment exemptions given they are not impacted by them. The Turkey Board did

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<sup>21</sup> if transferred in the first year it was received from a board, 100% of new entrant quota returns to the board; if transferred in the second year it was received from a board, 90% returns to the board...if transferred in the 10th year it was received from a board, 10% returns to the board.

originally consider exemptions for Whole Farm transfers. However it decided to remove this proposal upon reviewing alternative approaches for funding its new entrant program. The Chicken Board deemed assessment formula does not include assessment exemptions.

146. BCFIRB observes that if the 5% transfer assessment and LIFO and 10/10/10 are changed, the need for assessment exemptions is potentially eliminated. Indeed, retention of exemptions on growth quota in this scenario risks being perceived as special treatment for particular producers along with impacting a board's ability to have quota on hand for new entrants and other program needs.
147. If some form of direct transfer assessment on growth quota is retained, BCFIRB needs to consider whether changes are needed to its transfer assessment exemptions. See Growth Quota – Transfer Assessments below.
148. In terms of new entrant quota, BCFIRB remains of the position that transfer assessment exemptions cannot be applied to the first transfer of new entrant quota.

#### ***Growth Quota – Transfer Assessments***

149. Transfer assessments on growth quota were originally established to help ensure boards had quota available for new entrants and other public policy objectives, as well as to deter quota being transferred for financial gain before it was produced.

#### **Quota available to the board**

150. The Milk, Egg, and Chicken Boards specifically recommended the removal of the 5% assessment on quota issued prior to 2005- 2007. Several boards proposed alternatives to the current transfer assessment structure in order to support having quota available.
151. The Milk Board originally proposed a “market responsive” assessment and later amended its proposal to a 5% global transfer assessment on all non-exempt quota transfers or the option of a deemed transfer assessment approach. The Egg Board proposed a “Reserve Responsive Assessment” along with a 10% hold back on any provincial growth in production shares. The Turkey Board revised its original proposal to one where it would make quota available from the general provincial allocation and any 10/10/10 assessments on new entrant quota transfers. The Chicken Board would retain its deemed transfer assessment model. No firm proposals were made by the Hatching Egg Commission but it did contemplate adoption of a deemed transfer assessment model.
152. First, BCFIRB observes that both direct and ‘off the top’ assessment mechanisms did support the boards in having quota on hand. However some boards took additional quota ‘off the top’ of provincial production on their own initiative to support new entrant and other public policy related programs/actions if assessments were not providing sufficient quota. Previous to 2005 several boards were reluctant to divert production from established producers unless directed to do so.



153. As pointed out by the Hatching Egg Commission, some form of assessment mechanism is likely necessary to help ensure boards have quota available, especially when a sector is experiencing static or little growth (as was generally the case for the BC industries at the time of the 2005 Specialty Review). BCFIRB agrees that some form of assessment mechanism is necessary, whether it is based on transfers or another methodology.
154. Any mechanism should be applied in such a manner that it does not unduly advantage or disadvantage a particular producer or specific group of producers. It should also be developed and applied in a manner that fulfills the goal of providing quota to the board for new entrants and other programs.

Managing the financial gain incentive

155. The Milk, Egg, Chicken and Turkey Boards recommended the removal of LIFO (on all quota held by a producer) and 10/10/10 (on growth quota).
156. The Egg and Chicken Boards put forward mechanisms to support growth quota being produced by the first producer to receive it from the board. The Egg Board reports it already has sufficient mechanisms in place (hens are to be placed before quota is received). The Chicken Board plans to introduce a new requirement that producers demonstrate they have sufficient barn space for 100% of their quota holdings before growth quota would be issued.
157. The Milk Board originally accepted that with the removal of LIFO and 10/10/10, some quota received by producers may be transferred without it being produced in the first instance. It subsequently proposed a mechanism to mitigate the ‘transfer without production’ risk by not issuing growth quota to a producer if the producer transferred quota within 12 months of receiving that allocation.
158. BCFIRB agrees that the Egg and Chicken Board mechanisms support, but not sufficiently, the intent of growth quota being produced by the first to receive is met. It is BCFIRB’s understanding of the Chicken Board proposal that producers would provide “new space” (either already built or being built). BCFIRB does not support chicken producers selling quota to create space for new growth quota.
159. BCFIRB agrees with the Milk Board that its proposed policy of a producer not receiving growth quota for a period of 12 months if the producer transfers quota is one step towards mitigating the risk of a producer transferring growth quota without producing it. However BCFIRB does not agree that this is by itself an adequate disincentive against quota being transferred versus being produced by the first to receive. An additional check and balance is required.
160. BCFIRB sees the various commodity board proposals as having some merit. However, the individual proposals are not sufficient to help to ensure quota holders do not receive direct immediate financial benefit by transferring quota received at no cost from the board –

rather than producing the quota in the first instance – if both LIFO and 10/10/10 are removed at this time.

161. Given that industries are operating in a rapidly changing environment with diverse demands that need timely responses by commodity boards and producers and, commodity board governance has shown improvement, BCFIRB agrees these are reasons for removing LIFO and 10/10/10, but they are not sufficient. In light of the overall importance (and BCFIRB's responsibility) of balancing industry considerations with the public interest BCFIRB is prepared to remove LIFO but not fully remove 10/10/10.
162. BCFIRB is prepared to remove LIFO, which currently applies to all quota held by producers, and partially remove 10/10/10 on growth quota issued previously and going forward on the basis of the following conditions:
  - a) 10/10/0 is to be applied to the first transfer of all growth quota issued to date and going forward.
  - b) Quota holders have the option to refuse or accept growth quota.
  - 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.
  - d) Receipt of growth quota cannot be deferred. Offer and acceptance of growth quota is a one-time opportunity.
163. At this time, BCFIRB's directions regarding transfer assessment exemptions will remain (see Appendix A, Table 3). BCFIRB is of the opinion that the removal of LIFO and the on-going 5% and 10% assessments on growth quota will sufficiently facilitate non-family farm succession for now.
164. If commodity boards decide there is a sound marketing policy rationale for change to these quota management directions, BCFIRB will require substantive, objective information with a supporting SAFETI analysis that includes considerations such as industry competitiveness and public policy objectives.

### ***Setting quota price***

165. Although not in direct relation to BCFIRB's 2005 directions, several boards made recommendations related to affixing value to quota. BCFIRB remains of the position that the overall legislative intent is that all BC supply managed commodity boards are not to attach value to quota.

166. The Milk Board originally proposed to directly set the price of quota to prevent volatility in quota values should LIFO and 10/10/10 be changed. However the Milk Board later retracted this proposal after discussing its rationale and BCFIRB's regulatory concerns with BCFIRB.
167. The Turkey Board proposed setting the value of quota in two ways. First, it proposed to provide additional quota to new entrant and small commercial producers in return for a marketing levy. The levy would be used to fund industry marketing and promotion. Second, it proposed that the levy would be used to establish the value of quota on a quota exchange dedicated to new entrant and small commercial producers.
168. BCFIRB is of the view that the Turkey Board's proposals do not fall within its regulatory authority.

### ***Conclusion***

169. BCFIRB undertook this process recognizing that despite its broad legal power to regulate, the decision to exercise regulatory power in any particular case requires sound justification. BCFIRB's task is not to reward or penalize changes proposed by the commodity boards, but to look at all of the positions and arguments and determine, according to its best assessment, what will on balance best serve the BC supply managed industry going forward in the public interest.
170. Alongside the commodity board submissions, the passage of time, and industry changes, BCFIRB took into consideration the evolution in commodity board governance. As commodity board governance improves, BCFIRB is able to focus on ensuring that commodity board activities and decisions are administratively fair, comply with legislation/regulations, and accord with sound marketing policy. However regulatory powers come with many obligations. As set out in a December 15, 2015 BCFIRB letter,

[BCFIRB] is prepared to place more focus on supervising through a risk and evidence-based level of oversight. In return the commodity boards must demonstrate that they are capable of earning and retaining that regulatory dividend. [emphasis added]

### **DECISION**

#### ***2005 Specialty Review directions***

171. BCFIRB rescinds the following 2005 quota transfer assessment related directions:
- a) Last In-First Out (LIFO) on all quota held by a producer.
  - b) Deemed transfer assessment on quota issued prior to September 1, 2005 by the Chicken Board.

- c) 5% transfer assessment on quota issued by boards prior to 2005-2007 (as per individual commodity board dates in their General Orders).
172. While BCFIRB rescinds the above directions, this does not bind the commodity boards to change their quota management rules. Commodity boards can continue to operate under BCFIRB's 2005 directions until such time they decide it is strategic and effective to adopt the following directions.

### ***All quotas***

173. All quota distributed by a board, including new entrant quota or other program quota such as Cottage Industry Program, and any associated growth, are to remain transferable in some form. See the following section "New entrant quota and programs".
174. Policies and rules for administering quota received from a commodity board should be similar for all classes of quota with exceptions only when demonstrably necessary.<sup>22</sup>

### ***New entrant quota and programs***

175. If boards cease to use LIFO (on all quota held by a producer) and 10/10/10 (on new entrant quota) 10/10 is to be applied to the first transfer of new entrant quota issued to date and going forward.
176. After 10 years new entrant quota is to be managed under the same rules as other quota issued by a board and held by an established producer for more than 10 years.
177. BCFIRB's direction that no transfer assessment exemptions are to be applied to the first transfer of new entrant quota remains.
178. BCFIRB expects commodity boards to:
- a) Bring in new entrants through new entrant programs on an annual or regular basis;
  - b) To regularly review and update new entrant programs to ensure the programs remain effective and strategic; and,
  - c) Continue to support regional and specialty/niche development opportunities through new entrant programs.

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<sup>22</sup> See "Growth quota" paragraph 179.

### ***Growth quota***

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:
- a) 10/10/0 is to be applied to the first transfer of all growth quota issued to date and going forward.
  - b) Quota holders are to have the option to refuse or accept growth quota.
  - 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.
  - d) Receipt of growth quota cannot be deferred. Offer and acceptance of growth quota is a onetime opportunity.
180. At this time, BCFIRB's directions regarding transfer assessment exemptions remain (see Appendix A, Table 3).

### ***Quota available to the boards***

181. Boards are to have some form of mechanism in place to ensure quota is available to the commodity board for new entrants and other policy program needs (market demands/public interest) on an on-going basis.
182. Mechanisms should be applied in such a manner that they do not unduly advantage or disadvantage a particular producer or specific group of producers.

### ***Quota value***

183. BCFIRB accepts boards using pricing mechanisms to help ensure quota exchanges function transparently and accountably where these mechanisms derive quota value from producer quota market input and forces.
- a) Boards are not to directly set quota price. In managing quota exchanges boards may be informed by and reflect quota prices established on the basis of producer quota markets; and,
  - b) Boards are not to directly charge levies in return for distributing quota to producers.

### ***Next Steps***

184. Having set out the foregoing conditions, it is now open to the commodity boards to implement quota rule management changes related to this decision once they have developed and publically communicated an implementation plan.
185. The Egg Board is reminded it must seek BCFIRB's prior approval before prescribing any quota management terms and conditions that may be in addition to those directed by BCFIRB: s. 37(c) of the BC Egg Marketing Scheme.

### ***Accountability and transparency***

186. In order to support on-going accountability and transparency, along with facilitating any future requests to amend the directions in this decision, commodity boards will be required to report publically and annually to demonstrate whether quota management policies and rules continue to be reflective of sound marketing policy and serve the public interest.
187. A BCFIRB member and staff team will work with the commodity boards to develop reporting criteria and performance measures to evaluate the effectiveness and impact of the quota management rules and policies established by each board on an on-going basis.
188. The criteria and measures are to be established and published no later than September 1, 2018. The first standalone public report based on these criteria and measures is scheduled for April 1, 2019.
189. The reporting criteria and measures will use objective data, be made public and evaluate and demonstrate whether sound marketing policy continues to be met under each of the board's quota management rules and policies. The reporting criteria and measures will be incorporated into a broader set of reporting expectations and performance measures around commodity board governance to be developed in consultation with all commodity boards in the future. The outcomes of the criteria and performance measures will form a standalone public report.

The reporting criteria will demonstrate accountability to the following regulatory and policy framework:

- a) Quota is managed in accord with legislation, regulations and any agreements.

- b) Quota management supports effective, strategic delivery of the Ministry of Agriculture Regulated Marketing Economic Policy (2004) and/or other strategic direction for agriculture established by the BC government.<sup>23</sup>
  - c) Quota management meets the intent of the 2005 Specialty Review transfer assessment and industry entry related policy objectives, including:
    - i. Quota is intended to be produced
    - ii. Quota is transferable
    - iii. Producers are actively engaged and committed to the industry
    - iv. Quota is available to commodity boards to support policy objectives, including development of specialty markets and providing for new entrants in the supply management system.
  - d) Quota management reflects the directions given in this decision.
  - e) Quota management supports commodity board strategic plans for the sustainable direction of their respective industries.
  - f) Quota management is fulfilling the public interest by clearly balancing the interests of industry with those of the value chain and consumers, along with being in the overall economic interest of British Columbia.
190. BCFIRB expects the reporting criteria will evolve over time as regulatory and policy requirements and priorities change and experience is gained with reporting. Any changes to the reporting criteria and performance measures will be determined by BCFIRB, in consultation with the commodity boards.

## CLOSING

191. The overall goal for BCFIRB and the commodity boards is to use good governance and sound decision-making in order to position the BC supply managed system to deliver outcomes that matter for the province.
192. This review was an opportunity for BCFIRB and the commodity boards to revisit how competing interests and policies are managed and balanced given the changes in context since 2005. BCFIRB will monitor the outcomes of this decision and act, if needed and as appropriate, to meet its responsibilities. The right of appeal will continue to provide ongoing accountability where stakeholders are aggrieved or dissatisfied by decisions of the commodity boards arising from the directions in this decision.

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<sup>23</sup> For example, maintaining and gaining markets, serving BC demand, providing for regular new entry opportunities; providing for the production of high quality, safe food, recognizing and participating in standards programs, and contributing to regional economic activity and stability.

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

193. If, in the future, commodity boards decide there is a sound marketing policy rationale for change to the following quota management directions, BCFIRB will require substantive, objective information with a supporting SAFETI analysis that includes considerations such as industry competitiveness and public policy objectives.



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John Les  
**Chair**



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Daphne Stancil  
**Member**



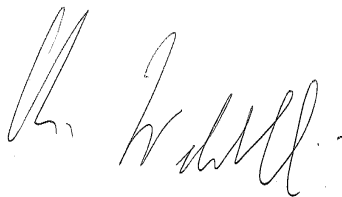
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Al Sakalauskas  
**Member**



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Diane Pastoor  
**Member**



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Chris Wendell  
**Member**



## DISSENTING REASONS

### SUMMARY

194. I respectfully dissent from the majority decision. Regrettably, where the majority decision finds reason and structure in the arguments presented, I find ambiguity and a lack of concrete evidence or justification to support the need for change. Because my conclusions depart from those of the majority on almost every aspect of this review and decision, and because I know of no previous case where a BCFIRB member has dissented on a supervisory review, I find it necessary to clearly explain the reasons for my disagreement.
195. Before I turn to the reasons for my dissent, however, I want to set out the areas where I think there is agreement with the majority.
196. I agree with my colleagues that it is vital that individual producers be permitted to refuse to accept growth quota<sup>24</sup> (commodity boards differ on how they handle this point, and, interestingly, those who complained the loudest that mandatory producer acceptance of growth quota created problems, were also the most vocal that it would be foolish for a producer to refuse growth quota). Mandatory acceptance of growth quota, which producers have an obligation to produce, can place an unfair and unwanted burden on some producers, due to quantities, personal situations, business planning challenges, or timing.
197. I agree that this review must take a cross-sectoral approach and look at the question of change and outcomes for all commodity boards combined, rather than dealing with the five individual supply-managed commodity boards. However, as stated below, I am not sure the majority decision achieves this cross-sectoral approach given the majority decision permits individual commodity boards to choose whether or not they will continue operating under BCFIRB's 2005 transfer assessment directions or amend their quota assessment rules as set out in the majority decision.
198. I also agree with some of the Introduction presented in the majority decision, though I find it incomplete in that it fails to fully address the far larger public policy, public interest arguments, and philosophies that form the foundation on which I base my minority dissent. This approach reflects my broad background in public protection and the fact that I do not have any past or present industry connections upon which to base my judgments.
199. And I agree with my colleagues that BCFIRB is responsible for the general supervision of the marketing boards and is responsible for ensuring the supply-managed sector achieves sound marketing policy. Where I differ with my colleagues is in how I view a reasonable exercise of the supervisory power, necessity of the tools used to achieve sound marketing policy, and in this case, specifically how the supervisory power should be exercised in

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<sup>24</sup> Growth quota is quota issued by a commodity board as a result of an increase in the provincial allocation from the national agency. It is generally issued pro rata to all producers at no cost to the producer.

relation to two main areas of this review: quota transfer assessments, and quota-related barriers to entry/new entrant programs.

200. BCFIRB's 80-plus year history, makes it abundantly clear that this Board's primary responsibility is independent decision-making in the public interest. BCFIRB makes sure supply-managed commodity boards meet their legislated responsibilities in the production, processing, and marketing of supply-managed agricultural products to ensure a safe, high-quality, and readily and reliably available food source for British Columbians. Part of that responsibility was, and is, to ensure that individual marketing boards operate fairly and within the law. However, BCFIRB's job is not only, or even mainly, to deal with legal issues. BCFIRB was created to confront marketing policy issues, and to do so from its independent perspective, to act as a counter-balance to the individual boards' significant interests and broad powers to both control their production and marketing efforts and exert their powers in a way that is fair, both as it relates to sound marketing policy and as a matter of process, all in protection of the public interest.<sup>25</sup>
201. For readers new to supply management, quota is a license for producers to legally produce a specific amount of supply-managed commodity in British Columbia (and Canada) - specifically, chicken, broiler hatching eggs, table eggs, turkey, and milk. Quota is a licence that gives the producers who hold it the great privilege of being a member of, and operating within, a closed but stable market and receiving a fair return on the supply managed commodities they produce. In British Columbia, quota is the property of the commodity boards, which may not assign any value to that quota. While the boards cannot directly affix a value to quota or "sell" it to producers, it is transferrable between producers, either privately or in some cases on quota exchanges, such as those run by the Milk and Egg Boards. This has meant that, while the commodity boards have, at all times, retained property in the quota they issue, and have the regulatory power to remove, reduce, or limit quota, quota has nonetheless grown up in practice to have significant monetary value in the private producer quota marketplace and has been treated by producers and others as a producer-owned asset.
202. If it were true in practice that quota had no value, there would be no need for this review. In all practical terms, however, quota has significant value for the quota holder, both through the returns on selling product allowed to be produced under quota, and the quota itself. Farming is often, though not always, big business. Farms can be large, sophisticated, automated businesses held under extremely complex corporate structures. Quota holders may fall prey to the idea that quota is their own personal property, and as such, quota

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<sup>25</sup> See *Global Greenhouse Produce Ltd. v. B.C.M.B. et al*, 2003 BCSC 1508, *Ponich Poultry Farm Ltd. v. British Columbia (Marketing Board)*, [2002] B.C.J. No. 2194 (S.C.), *British Columbia Chicken Marketing Board v. Brad Reid*, 2002 BCSC 1451, *Hallmark Poultry Processors Ltd. v. British Columbia (Marketing Board)*, [1999] B.C.J. No. 2980 (S.C.).

holders may naturally tend to gravitate to regulatory outcomes that would allow them to keep and transfer as much quota as possible.

***Some preliminary comments***

203. Rather than go through the majority decision paragraph by paragraph, I choose to group my dissent: dissent regarding the exercise of BCFIRB's supervisory role, dissent regarding a case for change and removal of LIFO and modification of 10/10/10, dissent regarding changes to new entrant programs, and dissent regarding changes to broad public policy.
204. I cannot begin to comment on any of these areas of dissent without first commenting on the process used to reach our dissent and majority decisions. Process is a key part of any review, including this one.
205. My basic starting point is that we should be basing our decisions solely on the information that was presented to the panel during this supervisory process. I am concerned that some of the information considered by some of the panel was not collected through the review process. This can pose a challenge in any supervisory process where, as is only natural, commodity board members (most of whom are elected) tend to relay anecdotes and complaints they have heard about various regulatory policies. Some of those concerns and complaints can, from time to time, even filter up to BCFIRB members who necessarily interact informally with various commodity boards, producers, and other stakeholders in the regulated marketing system.
206. However, listening to what may be a privately expressed concern or complaint cannot take the place of a clearly articulated policy argument for change supported by evidence that a commodity board is willing to subject to testing. In my view, if a concern is worth putting forward by a commodity board or anyone else to justify regulatory change, it should be put forward to the full panel, not just to one member, and then transparently explained to the full panel so that all panel members can critically assess its merit. I make this point because, while some of the points advanced in favour of commodity board positions were vigorously advanced and in many cases reflected stakeholder input from consultations the boards carried out, I found that some positions often had very little actual evidence in support, as I will set out in more detail below.
207. I am also distressed by the seeming wave that captured the commodity boards overseeing two of BC's major supply managed commodities, namely the Milk and Egg Boards, resulting in them producing very similar presentations and recommendations. At the same time, the Chicken and Turkey Boards submissions in favour of removing LIFO and 10/10/10 were strongly based on the experiences of the Egg and Milk Boards. I am cognizant of the fact that BCFIRB encouraged commodity boards to work together and pursue joint outcomes if they made sense to those boards. But it is apparent to me that once these commodity boards arrived at their joint recommendation that LIFO and 10/10/10 be removed for established producers, they were then unwilling or unable to further explore other changes or outcomes, beyond those originally explored, that could

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

have produced desirable results without the inherent, in my view, risk of windfall gains for individual producers (a topic which I will expand upon later in this dissent).

208. I was frankly baffled that the commodity boards arrived at the conclusion that LIFO and 10/10/10 be removed given the dearth of support they provided for their conclusions. The options they explored seemed very limited to me and, in my view, I could not see how they arrived at their final conclusion. They did not adequately, in my view, investigate or research alternate solutions or provide sufficient evidence to support their views. Most boards presented to BCFIRB, in essence, a recommendation that for the viability of the industry, LIFO and 10/10/10 had to be removed. The Milk Board further stated that removal was needed in fairness to British Columbia, when compared to other provinces. Period, full stop. Given the lack of convincing support for the removal of LIFO and 10/10/10 (for instance, commodity boards said they needed this change because it is fair, because it permits flexibility, because it opens up success, and because it renews the industry; all blanket motherhood statements presented without adequate and compelling supporting arguments), I cannot accept that this topic was fully explored.
209. I am still unsure why it was so vital to the majority of commodity boards (all except the Hatching Egg Commission) that LIFO and 10/10/10 be removed now. In 2014, for instance, the Milk Board concluded that no changes were necessary when considering quota transfer assessments. What could possibly have happened in the past two years to create such an urgent need for change? I understand that milk, eggs, and chicken have seen significant market growth over the past few years, with consumer demand for these products increasing. Significant amounts of free growth quota have been issued to producers in milk and eggs over the past few years. This quota is currently subject to LIFO and 10/10/10. With these current rules in place, any producer who wants to transfer quota may likely see some of their quota returned to the commodity board, reducing the producer's financial gain. The Milk and Egg Boards were indicating that due to market growth, harms caused by LIFO and 10/10/10 have become critical, threatening the health of these industries because producers were not transferring quota.
210. This brings us to the core of the issue. I wanted to learn how the quota transfer assessment tools were hurting supply-managed commodities, and why the tools needed to be changed now, not two years ago, and how they should be changed. I also wanted to know what those proposed changes would look like from all angles, not just from the producer perspective.
211. As I heard the producer and commodity board arguments throughout this review, I found that their arguments to support a case for change were inadequate and poorly supported, and from that, I ultimately conclude that if the commodity boards cannot present ample compelling support for change, then change is not needed. The commodity boards failed, in my view, to address how the current transfer assessment tools negatively impacted the province's sound marketing policy enough to warrant change. The boards failed to adequately address, in my view, how the current transfer assessment tools impacted the

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

movement of quota between producers or how they created or affected barriers to entry (new entrant programs).

212. The commodity boards collectively failed, in my view, to sufficiently explore other possibilities or options to address industry challenges they were identifying that were related to transfer assessments and the movement of quota, both within their submissions and in subsequent discussions with BCFIRB. I found it suspect that the four boards collectively stood behind only one recommendation – complete removal of LIFO and 10/10/10. I realize that the Broiler Hatching Egg Commission did not take the position that change was necessary, and I realize that both the Chicken and Turkey Boards also adopted positions supporting the need for change based on a lack of experience with quota allocations and assessments and a reliance on the experience of the Milk and Egg Boards. It is for that reason that most of my dissent focuses primarily on the Milk Board and somewhat lesser on the Egg Board.
213. As already noted, the commodity boards for the most part adopted one recommendation (regarding LIFO and 10/10/10) based on the joint experience of the Milk and Egg Boards and of those two, my impression was that the Egg Board appeared to simply follow the Milk Board's lead. Given how this matter proceeded, I would have preferred a re-opening of the entire process to redirect the boards to further explore alternatives other than the total elimination of LIFO and 10/10/10. [For instance, BCFIRB was willing during the process to direct boards NOT to consider a 0% transferability for new entrant quota. Similarly, BCFIRB could have also directed the boards to come up with scenarios that did NOT include the removal of quota transfer assessments.]
214. Paragraph 52 of the majority decision acknowledges "None of the commodity boards met all of BCFIRB's quantitative and qualitative information requirements. Nor was there always a clear link between the issues identified and proposed changes. Arguments for change in some cases were contradictory."
215. In my view, the collective wisdom at the supply-managed marketing board tables surely should have been sufficient to enable them to act as masters in presenting the reasons for their desired changes. Yet at this most important juncture, these commodity boards failed, even in the view of the majority panel. So I continue to ask myself, what is not being said? If the commodity boards cannot provide compelling industry-specific reasons for BCFIRB to change its course, why is BCFIRB changing its course? It is a question I suspect many readers will ponder.
216. Upon re-reading paragraph 24 of the majority decision which sets out the terms of reference, I read this as saying that BCFIRB wished to conduct a review, and was to evaluate quota assessments and their impacts, and upon not receiving adequate information from the commodity boards, the majority of BCFIRB felt they could use their own experience and expertise to assess and work with the information provided. While this may have been satisfactory for the majority of the panel, in my view, the better course would

have been to extend the evaluation process as I suggested, to consult other interest groups in British Columbia (paragraph 55).

217. Against this backdrop, I also note that the time allotted for the review process was compressed. BCFIRB had publicly committed to getting a decision on this review to the commodity boards by the end of 2017. Pressure increased significantly throughout the year from the commodity boards and individual producers to BCFIRB for this decision to be made as soon as possible.
218. It would be unfair, or at least unsophisticated, to suggest BCFIRB had been at the process for a year. While the review was launched in November 2016 and the process of inviting input may have begun in February 2017, commodity board submissions were not due until the end of June. There was inadequate and missing information in board submissions, given what was asked for in BCFIRB's February 28, 2017 Letter of Expectations. BCFIRB had to return to several of the commodity boards multiple times to ask questions and direct them to provide specific information. In reality, the last of the BCFIRB-commodity board consultations occurred on October 2, 2017, leaving only about two to two and half months for BCFIRB deliberation before a final decision needed to be reached by the end of 2017, which was then extended twice to conclude early in February.

#### **DISSENT REGARDING THE EXERCISE OF BCFIRB'S SUPERVISORY ROLE**

219. Reduced to its most simplistic statement, commodity boards and, apparently, the majority of BCFIRB, want to simplify the regulatory landscape to permit boards to be more "responsive". The majority decision suggests that BCFIRB, by empowering boards, will cease standing in the way of supply-managed agriculture's economic success, of which there was no evidence it had, in my view. The majority decision further proposes that by doing away with or modifying the policies in question, BCFIRB's supervisory function can still be enabled to provide a layer of protection of the public. I disagree with this proposition.
220. The majority decision relies heavily on the fact that commodity boards are led by independent government-appointed chairs, and such independent leadership, combined with a principles-based decision-making protocol, would adequately ensure the public's best interests are met.
221. I cannot accept this view and rationale as it was not, in my view, supported by the written and oral submissions of the commodity boards or the behaviour of some boards' members at the meetings with BCFIRB. In fact, my impression was that in some cases, the exact opposite was apparent.
222. Asking pointed, difficult questions of commodity boards is not for the faint of heart. During a presentation by the Milk Board, a board member advised me, as a result of some of my questions, that my job, as a BCFIRB member, was to "partner" with him. When I advised him that I did not share his view of my job, and that instead I viewed my job as

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

one of protecting the public interest and specifically not acting as a producer partner, I was heckled by several of the Milk Board members. Disturbingly, the independent board chair was one of the hecklers. Toward the end of that meeting, a member of the Milk Board's advisory committee suggested that my fellow BCFIRB members take me to task for not understanding my role.

223. Given this example from the most vocal commodity board, I do not have the confidence that commodity boards and independent chairs are certain to have an understanding of their roles and responsibilities and limitations and thus, I am not confident that they would be able to focus adequately on public policy objectives. At the very least, this example emphasizes that the very purpose of BCFIRB – which was created to provide independent supervision of commodity boards – is as important today as it ever was, even if this purpose is sometimes misunderstood by the commodity boards themselves.
224. The majority decision contemplates that commodity board oversight can be managed with annual reporting and suggests that if BCFIRB removed or modified its specific quota management directions and acted more as a supervisor, it could rely on outcomes, outputs, and reporting, always ready to step in if reports were not fulsome or if BCFIRB saw the results of actions it did not find palatable. There seems to be the belief that despite any deficiencies commodity boards may have had in their governance abilities in the past (and in my view, there were many), today, with principles-based decision-making, commodity boards are now ready, willing, and able to make judicious decisions.
225. I find the contrary to be true. In my tenure with BCFIRB, I can point to a number of supervisory processes and appeals involving significant deficiencies in how commodity boards used their regulatory powers. These include commodity boards failing to appropriately consult, necessitating numerous requests and, ultimately, directions to do so by BCFIRB; failing to respond to requests for information and requiring ongoing supervisory requests for documents and meetings to obtain basic reporting; and repeatedly failing to provide adequate details to support a quota allocation decision despite BCFIRB's instructions to do so over six previous allocations between 2014 and 2016.<sup>26</sup> There was also a Supervisory Report on an issue of potential non-compliance related to a transfer of quota<sup>27</sup>. BCFIRB requested information in January 2016, and directed the production of documents in April before ultimately receiving them in June.
226. This does not provide me with the confidence that BCFIRB could reasonably exercise its supervisory mandate on issues so clearly tied up with the financial interests of producers and the commodity board members who are accountable to them simply by requesting annual reporting.

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<sup>26</sup> 2017 Turkey Board Election Rules review, 2017 Egg Board Quota Allocation Review.

<sup>27</sup> 2012-2016 Milk Board supervisory process related to transfer of quota within corporate producer

227. Looking at recent appeals, in 2016 BCFIRB heard an appeal of the Hatching Egg Commission's regulation of Asian hatching egg production and the panel found significant errors with its policy development and process. In 2017, there was an appeal relating to the Egg Board's management of its new entrant program and the panel found procedural flaws in its decision-making process which perpetuated a lack of response to the needs of the market, inconsistent with sound marketing policy. In 2016, there was an appeal related to the Milk Board's new entrant program and the panel found that the Milk Board failed to properly exercise its discretion in light of an earlier commitment made to the appellant.<sup>28</sup> None of these examples provide me with the confidence that commodity boards are in the best position to set certain quota management rules and exercise them, with BCFIRB's late-stage oversight coming after the fact. I'm afraid the proposed late-stage oversight may be a case of 'too little, too late.'
228. Ultimately, these combined examples provide me with ample information to conclude that the commodity boards, along with their independent chairs, are not always the best at acting in a responsive, principles-based manner. I am therefore unable to agree with the majority decision to lessen BCFIRB's direct supervisory involvement in commodity board quota management as it would not, in my view, be in the public's best interests.
229. Should anyone believe that my assessment of the ability of commodity boards to govern more independently is misguided, they need only re-read the majority's decision at paragraph 6 on the history of boards, where specialty production at that time was "captured by a few large producers who became vocal opponents to opening up the industry to "competitors". In my view, the same foundation of protectionism may exist today (just look at the discussion on new entrant programs below), with commodity boards for the most part being comprised of producers themselves, oftentimes the very producers who stand to benefit most, financially, from the recommendations they make to BCFIRB.
230. I'm not convinced that the changes in governance practices or attitudes since 2005 have been adequate enough to find that these commodity boards can now manage their own affairs with only annual reporting. Problems, if found, could be more than a year old by the time BCFIRB discovers them.

## **DISSENT REGARDING A CASE FOR CHANGE AND REMOVAL OF LIFO AND MODIFICATION OF 10/10/10**

### ***Interprovincial competitiveness***

231. There were few to no comments made in the submissions about what other provinces do in relation to quota transfer assessments, which is how I will refer collectively to LIFO and

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<sup>28</sup> Skye Hi Farms Inc. et al v. British Columbia Broiler Hatching Egg Commission (March 29, 2016), Sunshine Valley Organics Inc. v. British Columbia Egg Marketing Board (October 3, 2017), Jacobsen v. British Columbia Milk Marketing Board, (February 27, 2017)



10/10/10 for the purposes of this dissenting decision. Very little effective information on this topic was actually submitted to BCFIRB as part of this review.

232. Based on statements made by the Milk Board, it would appear that other provinces do not have quota transfer assessments for dairy quota. The message from the Milk Board was that such assessments affected British Columbia's interprovincial competitiveness. In response to my question of whether industry competitiveness would improve if these transfer assessments were removed, the answer from the Milk Board was no - removal was only a supportive tool in the elimination of a regulatory environment which had the effect of creating differences. I interpret this response to mean that transfer assessments are not in themselves detrimental to farming in British Columbia; they are just different.
233. This interpretation became even more clear to me when I questioned the Milk Board specifically about interprovincial competitiveness. It responded by saying that a new processing plant was being built which will allow more milk to be processed in Western Canada, and that, the Milk Board said, would resolve any competitiveness problems with the eastern provinces within two years.
234. The fact is that different provinces operate under different legislation with varying degrees of oversight from their provincial boards. This is neither good nor bad; it is what it is. And although our collective participation in a federal-provincial system means we do care what happens elsewhere, my view is that a direct "apples to apples" comparison is not possible nor advisable, especially as any individual policy or regulation must be looked at in light of that industry as a whole within a particular province. In British Columbia, we have chosen a principles-based decision-making approach to regulation, and that, coupled with the *NPMA* and its regulations, is the framework within which we, and I, make decisions.

### ***LIFO and 10/10/10***

235. As my colleagues state, and I agree, the 2005 Specialty Review decision contemplated that the supervisory decision and the directions made in that decision would be reviewed in the future. However, it should be noted, as it is in the majority decision, that the supervisory directions have not merely sat dormant for the past decade. During the intervening time between the 2005 Review and today's review, individual commodity boards have reached out with specific requests, summarized here:
- a. January 2007 – Siblings exempted from transfer assessments with conditions.
  - b. July 2006 – TMB changed from "direct transfer assessment" to "deemed transfer assessment."
  - c. September 2009 – TMB changed from "deemed transfer assessment" to "direct transfer assessment."
  - d. May 2014 – EMB requested amendments to the transfer assessment directions. The EMB withdrew its requests before FIRB reached any decisions.

- e. May 2014 – CMB requested transfer assessment exemptions on new entrant quota. FIRB requested further clarification. No response was received.
  - f. July 2014 – TMB supported EMB and MMB proposed changes to transfer assessment exemptions and assessments. FIRB requested further clarification. No response was received.
  - g. January 2015 – MMB addition to transfer assessment exemptions approved with conditions. The MMB considered whether there was a need to amend the FIRB transfer assessment directions, but determined no changes were required at that time.
236. As is apparent, when commodity boards felt particular aspects of BCFIRB's regulatory direction were problematic, they were willing to approach BCFIRB. I note with some emphasis that not one commodity board felt it necessary to pursue in any meaningful way a request to remove or modify transfer assessments such as LIFO or 10/10/10 until this current review was initiated by BCFIRB. When I asked the Milk Board why the removal of these transfer assessments was suddenly so urgent and had such dire consequences to the agriculture industry of BC it was unable to answer to my satisfaction, citing market growth as the primary reason. Particularly, that growth, along with LIFO and 10/10/10, magnifies the perceived loss of financial gains for individual producers, thus reducing the movement of quota between producers to the detriment of the industry. What is evident to me is that with the current review, and without any demonstrated history of need, the commodity boards (other than the Hatching Egg Commission) found themselves with a pack leader in the Milk Board, prepared to lead the charge to remove quota transfer assessments, and they willingly saddled up for the ride. Unfortunately, in doing so, they neglected to bring with them any but the flimsiest of rationales for such a drastic change.
237. Paragraph 99 of the majority decision refers to the Egg Board's position that LIFO and 10/10/10 results in a disincentive to some producers to exit the industry. In my view, it is preposterous that BCFIRB suddenly has to change its quota assessment rules to permit producers to exit an industry unscathed by assessments.
238. There are legions of British Columbians who must daily make personal decisions including selling assets, selling or divesting interests in businesses, cashing in retirement products, and the like, all with economic and taxation consequences. They do not have the benefit of having the regulators remove impediments to improve personal economic factors; rather, these things are simply considerations in making personal or business decisions.
239. Here is the key point: BCFIRB should not be in the business of removing assessments where the primary outcome, in my view, is to facilitate economic gain to individual producers including those exiting the industry. The argument that regulated producers have other demands on their assets such as tax implications, debt, family obligations, or even succession or estate planning considerations, in my view, misses the mark. BCFIRB should not be in the business of altering its decisions primarily to permit individuals to pull more money out of their businesses assessment-free, especially when those businesses

involve producing a regulated product (under a quota system impressed with the public trust) for a fair and guaranteed return. These multiple considerations are simply the cost of doing business, as many British Columbians well understand.

240. I also disagree with the majority panel's statement at paragraph 124, where it concludes that most commodity boards take the position that "there is sufficient case for change to LIFO and 10/10/10..." and "it is inherent in marketing policy that regulators must make choices between difficult options, and draw lines between competing policy objectives...." In my view, there is little evidence that this actually is the case.
241. My conclusion, as stated above, is that there was no sufficient case for change proven. In my view, the argument for change should have failed for lack of evidentiary support. But it did not. The majority panel concluded that regulators must choose between difficult and competing policy objectives but the conclusion the commodity boards arrived at, in my view, was one that provided the opportunity for personal profit and windfall financial gains, not a resolution to competing and difficult objectives. In fact, I cannot locate any discussion in the majority decision of these competing and difficult objectives.
242. This isn't to say that things don't change, and it is certainly open for commodity boards at any time to approach BCFIRB for guidance or to request change to its policies, but such requests need to be well-researched, well-consulted, and well-supported. In the case of this review, I have not seen sufficient evidence of this beyond broad consultation efforts.
243. This all leaves me with an uneasy feeling that something is being left unsaid. The support for change was presented in nebulous phrases like "reduction of barriers" (without substantive proof of what barriers and how they would be reduced) and "increased flexibility" (only that such flexibility should exist, not why). While copious amounts of industry data were provided by the Milk and Egg Boards, there was no clear line of sight for me between the numbers, the issues, and the proposed outcomes.
244. I heard that if LIFO and 10/10/10 were not removed, producer success and renewal within supply-managed markets would be at risk, particularly for the dairy and egg industries. Yet I was not provided with proof that BCFIRB's 2005 quota management policy objectives (quota must be produced, quota must be transferable, quota holders must be actively engaged and committed to the industry, and commodity boards have quota available to address public policy objectives) were not being met under the current transfer assessment environment. I find that the commodity boards' risk assessments of the current industry situation and their "proposed solutions" did not adequately demonstrate that sound marketing policy was not being achieved today, consistent with BCFIRB's policy objectives.

### ***Right-sizing***

245. What I did hear, often, was that quota transfer assessments needed to be removed to allow farms to "right-size" and that the failure to provide the regulatory flexibility for right-

sizing was creating impediments to the health of the industry (I pause here briefly to note that when I asked the Milk Board if producers would prefer to refuse new growth allocation of quota if they thought their farms needed to be right-sized downward, they thought the idea was preposterous: why would anyone refuse free quota?). As commodity boards and their producers acknowledged during the review, when transfer assessments are gone, it will be up to them to right-size their farms up or down as they see fit.

246. The commodity boards and producers are simply incorrect when they assert that they are currently prevented from right-sizing due to quota transfer assessments. There is nothing in any BCFIRB direction that prevents right-sizing.
247. What the producers are actually saying is that should they choose to right-size, they may not realize a return on selling their quota that is as high as they would like, and not as high as if it was sold without a transfer assessment. How the personal economic desire of an individual farmer becomes an industry-wide regulatory problem for BCFIRB to resolve baffles me.
248. According to figures from some of the commodity boards themselves, about 30% of producers' quota holdings are impacted by the combination of LIFO and 10/10/10. What this means is that the effect of applying LIFO and 10/10/10 is that only about 70% of quota, when sold, will produce revenue and profit for the individual producer. The remainder would return to the commodity board to be reallocated to fund new entrant programs or other targeted regulatory initiatives.
249. Some quota is, of course, purchased by producers from other producers at not insignificant costs. But it should be pointed out that a producer would have known since 2005 that such quota they accepted from a board would be subject to an assessment upon transfer. Wrongly, in my view, these same producers view the return of quota to the commodity boards as a 30% financial "loss".
250. While producing any quota, purchased or freely allocated, the producer earns revenue from that production. That is the license to produce in a system where quota necessarily excludes free market competition.
251. There was never a promise, in supply management, of a pot of gold at the end of the rainbow.

### ***The case regarding economic advantages for producers***

252. Like any business owner, quota holders use their revenue to support their businesses and families, and like any astute business owner, they plan for expansion or marketing. However, the fact that commodity boards and producers complained during the review that they have to pay levies out of their revenue stream to support animal welfare programs or marketing programs is a concern to me. These programs are necessary for a safe and viable industry and are the cost of doing business. The fact that these are mandatory programs is

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

in the public interest and is also, in my view, the cost of operating in the supply management system, which confers many special privileges on producers.

253. I heard from commodity boards and producers that in many instances, they needed to sell quota to finance expansion of their operations, often due to industry growth or changing market demands or conditions. I see this, again, as an individual business need, not an industry need, as quota will be produced no matter what an individual farmer does.
254. Moving to a system where a producer can sell quota without assessment provides producers with an advantage not available to most British Columbians: the ability to sell a license to produce a regulated commodity which may not have been purchased (growth quota). They can finance further expansion, acquire more quota (which provides a revenue stream), or sell quota to pay for purely personal purposes unrelated to the business; none of the reasons for selling matter, in my view.
255. Quota, in my view, in these circumstances, begins to act as a personal banker; using a production right offered as part of the public trust, to finance a going business concern or personal lifestyle. I do not think BCFIRB's role is to facilitate this, but in my view, that is the actual result of the majority decision.
256. My opposition to the majority decision is that I do not agree that BCFIRB should create an environment that opens the door to unrestricted monetization of quota as I do not believe this serves the public interest nor do I believe this is consistent with sound marketing policy.
257. It is vital that the readers understand the type of quota values we are discussing. While the quota values I point out below do not include consideration of taxes or other personal or business factors that can affect any producer's net profit or gain from quota sales (factors many other British Columbians must consider in their own decision-making), these values from an industry-wide perspective are vast and tremendously significant.

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

258. For example, in milk, with one unit of quota, the licence to produce 1 kg of butterfat per day – the equivalent to about one cow – was worth about \$38,500 on the producer quota market in December 2017. Dairy farms in BC can have quota licences worth values ranging from \$2 million for the average small farm (60 quota units X \$38,500) up to \$138 million for the largest farm (3,600 quota units X \$38,500), with the average medium (140 units) to large farms (400 units) sitting at about \$5 to \$15 million. The value of recent growth quota (the free quota to which I often refer) distributed by the Milk Board over a dairy year currently ranges from about \$39,000 to over \$2.8 million, depending on farm size.<sup>29</sup>
259. For eggs, one unit of quota, the licence to produce eggs from one hen, was worth about \$360 on the producer quota market in December 2017. Egg farms in British Columbia can have quota licences ranging in value from \$1.5 million for the average small farm (4,300 quota units X \$360) to \$44 million for the largest farm (123,400 X \$360), with average medium (18,300) to large farms (47,700) sitting at about \$6.5 million to \$17 million. The value of recent growth quota (the free quota) distributed by the Egg Board in the last allocation currently ranges from about \$48,000 for the average small farm to over \$1 million, depending on farm size.<sup>30</sup>
260. I recognize that these are approximate gross values, dependent on the marketplace and other factors.
261. Of course, none of this takes into account the actual revenue stream earned by the producer from the commodity production associated with the quota itself, which is the actual foundation of supply management.
262. Remember, these producers do not, contrary to most other types of business owners, have to worry about whether there will be buyers for their products. Supply management

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<sup>29</sup> Values based on data provided by the BC Milk Marketing Board. Average farm sizes range from approximately 60 quota units to just over 400 quota units, with the largest farm holding about 3,600 quota units. Total quota holding values estimated by multiplying number of quota units held by December 2017 quota unit value. Approximate amount of growth quota issued pro-rata to an average sized farm in a dairy year ranges from 1 unit of quota to 8, with the largest receiving about 72 units of quota. Growth quota pro-rata distribution based on 2% growth over one dairy year. While the percentage of growth over a year can vary (e.g. in August 2017 it was 4%), it is more usual to see growth in the 2-3% range. Under pro-rata allocation, the exact amount of growth quota a licenced producer receives depends on their total quota holdings at the time growth quota is distributed.

<sup>30</sup> Values based on data provided by the BC Egg Marketing Board. Average farm sizes range from about 4,000 up to 47,800 quota units, with largest farm holding about 123,000 quota units. Total quota holding value estimated by multiplying number of quota units held by the December 2017 quota value. Approximate amount of growth quota issued pro-rata to an average size farm in the last allocation ranged from 130 quota units to 1,500, with the largest at about 3,900 units. Growth quota pro-rata distribution of 3.148% (last growth quota allocation). Under pro-rata distribution, the exact amount of growth quota a licenced producer receives depends on their total quota holdings at the time growth quota is distributed.

assures that the regulated commodity produced under quota has a market and receives a fair price. Unregulated competitors are kept out. Producers do not have to find buyers; their levies provide for marketing and delivery programs that take care of that part of the supply chain.

### ***Movement and value of quota***

263. Quota, in my view, is a relationship of obligation and reward. There is the obligation, whether quota is acquired through purchase or free allocation, to produce the commodity according to provincial industry standards and requirements. In return, that commodity will be purchased at a fair price, part of the supply chain will be managed on their behalf, and producers will have been given the privilege to sell the quota at any time (although some of it may be returned to board). In other words, there is payment for production of quota, as well as the ability to sell quota, with the potential for return, within existing constraints.
264. Since BCFIRB began this review process, BCFIRB has heard from the Egg and Milk Boards that quota has been failing to transfer between producers on the exchanges as there has been a buzz in the industry that the 2005 quota transfer assessments might be removed. In my view, producers are hanging on, apparently, for the bigger pay-off. This convinces me that transfer assessments are more of an economic or business concern than one of production or right-sizing.
265. I will note as well that in December 2017, after almost a year of non-trading, quota was recently sold on the Milk Board exchange after it implemented a change to its quota exchange rules. This also convinces me that there is more than one answer to questions around how to keep quota moving; removing or modifying existing transfer assessments is not the only answer.
266. As I read the majority decision, the view is expressed that speculation in quota would be discouraged by retaining the first two 10s of the declining transfer assessment 10/10/10 and only eliminating the final 10 – the 10% assessment from year 10 onward – essentially moving to 10/10/0. I understand that this measure would mean that in the first ten years of selling growth quota, the seller would see a declining amount of quota retracted or “clawed-back” by the commodity boards, until the ten-year mark after which the claw back by the boards would be zero.
267. I respectfully disagree that this modification from 10/10/10 to 10/10/0 on growth will be sufficient to discourage speculation in quota. Economically, with LIFO and transfer assessments modified (LIFO is the main gatekeeper of fairness in this equation, in my view), it will be possible, especially for established producers, to enjoy significant financial gains from selling quota immediately once this change is made and over time.
268. I have also heard comments that transfer assessments keep producers who want to retire from retiring. As I’ve said elsewhere, this is not true. Anyone can retire; they just won’t

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

retire today free from transfer assessments. They will still get a pay-out but it is smaller than what they had wanted or had hoped to receive if quota transfers were free from assessments by commodity boards. That does not persuade me to remove existing transfer assessments. Since quota must be produced, there is no risk that British Columbians will run out of locally produced, supply-managed food. Someone will produce the food.

269. I do accept that whole-farm transfers may create a challenge for the recipient as the transfer assessment can result in a smaller volume of quota on the farm, which in turn could impact farm efficiencies. However, this alone is not sufficient to convince me to modified existing quota transfer assessments.
270. I also heard comments that quota values would decrease if transfer assessments were removed, and this may make it easier for new entrants to increase the size of their farms. In my view, this is not necessarily true as there is no straightforward equation or set of circumstances that regulates the value of quota. I agree with the majority panel that the price of quota is influenced by many factors in a very complex environment.
271. Despite the majority panel's declaration in paragraph 156 that assessments should not unduly advantage a particular group, in my view, their decision to modify 10/10/10 and remove LIFO, combined with an additional exemption allowed on the ability to receive growth quota without the 12-month time restriction period (beginning after quota is transferred) inside a business unit, may advantage a particular group of producers, namely those large, often complex business units.
272. Under the majority directions, quota can move around within a business unit without triggering the 12-month waiting period before growth can be received (if there is growth). Combined with the removal of LIFO, business units can choose to sell quota within the unit that is not subject to transfer assessments. These directions do support bringing in non-family members as part of succession planning. However, long established business units may look to maximize short-term financial gains from selling older quota, free of transfer assessments, to new partners or shareholders, while remaining eligible to receive any growth quota being offered by a commodity board. In my view, the potential for abuse exists, and I am opposed to BCFIRB, in this decision, creating such potential for abuse.
273. None of this is to say that there should never be regulatory change in this area. But again, the commodity boards seemed singularly focused on total removal of transfer assessments, so other possibilities were not sufficiently explored in this review, in my view.
274. Despite the information presented by the commodity boards, I remain unconvinced that the current quota transfer assessments established in 2005 impede orderly marketing or create any disadvantage to the public interest, so I decline to agree with the removal of LIFO and the modification of 10/10/10.



## **DISSENT REGARDING CHANGES TO NEW ENTRANT PROGRAMS**

275. Interestingly, the transfer assessments that we heard no longer worked for established producers were regarded as being acceptable for new entrants. As described in the majority decision, commodity boards believe that a combination of LIFO and 10/10/10 were effective in supporting active engagement in the industry and provided a sufficient disincentive to people who may want to enter the industry for the sole purpose of receiving quota at no cost and selling it for a profit. There were no direct concerns raised by the commodity boards that LIFO and 10/10/10 on new entrant quota is unduly impacting the movement of quota for new entrants.
276. I also found it interesting that the Milk and Egg Boards initially proposed, publicly through their submissions to BCFIRB, replacing LIFO and 10/10/10 for new entrants with a 0% quota transfer policy for 10 years. Under this proposal, 100% of all new entrant quota would be retracted by the commodity board within the first ten years should a new entrant sell quota or exit the industry, although the same commodity boards did not find it necessary to ask for transfer assessments for non-new entrant producers. This proposal was rejected by BCFIRB during the review process.
277. Quota is quota is quota. Free quota issued by the board is free quota, regardless of who gets it. I like that new entrants are given assistance to enter the market with an allocation of free quota as I understand the desire, as well as the need, for new producers to be assisted to enter the regulated industries and to be able to cover expenses, if not earn a living.
278. While the majority decision, in an effort to find equitable treatment, has decided that commodity boards should treat new entrant and new growth quota to established producers similarly, I would have preferred to explore an expanded new entrant program that provided, perhaps, additional quota to actually allow new entrants to get to a large enough size to stay on farm and not have to work off farm, and I would have welcomed a discussion of the possibilities, like an expanded “buy one get one” type program that might offer an incentive strategy to promote growth of new entrants. The Turkey Board did take a closer look at its new entrant program and access to quota, which I know will be addressed in a forthcoming decision. I acknowledge that the Egg and Milk Boards did explain that they already had a review of their new entrant programs scheduled for the fall of 2017 and, as such, chose not to delve into these programs as part of this review process.
279. I do understand that some commodity boards, which may have historically underutilized new entrant programs, have been steadily increasing new entrants since 2005 at the direction of BCFIRB. However, in some circumstances, further BCFIRB intervention was required, such as with the Egg Board, which had to be further directed to start new producers through its new entrant program.
280. I have not been convinced that there is a case for removing LIFO and modifying 10/10/10 and in my view, that applies to all quota including quota for new entrants. There has been

no convincing evidence, in my view, that current new entrant quota assessment rules are a hindrance to sound marketing policy, nor was there any convincing evidence to persuade me that changes are required to protect sound marketing policy.

281. Further, I do not agree with the characterization that commodity boards have come “a long way” (paragraph 143) without some sort of qualifier that they came along because BCFIRB forced them to. One such example was where BCFIRB withheld an allotment of growth quota until such time as the Egg Board met its commitments to its new entrant program.
282. There are additional ways, along with LIFO and 10/10/10, to try to ensure that a new entrant is committed to the industry. Commodity boards can continue to improve on advanced screening techniques to evaluate new entrant applicants at the outset to try to improve their likelihood of success. Commodity boards could also look at developing educational programs to assist individuals in choosing farming as a career. Commodity boards can allocate greater resources to finding new and improved ways to encourage entry into the industry and then support those who make the choice. Commodity boards and indeed producers might want to continue to explore and use mentorship programs to truly grow and support the industry.
283. I do agree that there needs to be consistent definitions of what constitutes a new entrant and when new entrant quota changes designation to become “base quota” (quota held by established producers). The majority decision establishes that this should be ten years. But given my fundamental disagreement with the majority decision, this topic remains unexplored to my satisfaction, and I am unable to support the majority decision regarding their conclusions about the management of new entrant quota.

## **DISSENT REGARDING CHANGES TO BROAD PUBLIC POLICY**

284. Despite the lack of evidence to convince me to change course - especially the radical change of course found in the majority decision, and despite my being convinced that the process did not allow a complete, transparent, thorough, and inclusive review, and despite my not sharing the majority decision’s confidence in the ability of commodity boards to act in a thorough, timely, objective, and transparent manner, I have asked myself one question: “So what? What would be the harm to British Columbians, I ponder, if I simply agree with the majority and send the message to commodity boards that they can make more autonomous decisions, with less regulation, and have the ability to potentially enjoy greater financial gain on quota sales?”
285. In fact, a member of the Hatching Egg Commission asked me this very question and was adamant that I answer it. That member wanted to know what was so wrong with producers cashing out quota at the end of their careers (what I’ve described as windfall gains) given the immense sacrifices they had made: the long hours, the lack of time off, the missing of family time due to work constraints, the investment in updated facilities and operating

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

practices, the early mornings, the late evenings, the tireless, physically demanding work many producers had devoted to their farms.

286. In answer to this question, and at the heart of my dissent, is that I see the windfall gain as being a violation of the public trust that British Columbians have inherently placed in British Columbia's government and regulators of supply management (and I do recognize and applaud the incredibly hard work these dedicated producers invest into producing safe food for British Columbians). Producers of the commodities in question enter into a trust relationship with British Columbians to produce adequate quantities of safe local food, and in return are rewarded with a system closed to competition and with a fair return on commodities produced on an efficiently run farm. That's it, and that is more than many businesses and families enjoy.
287. I am not opposed in any way to a producer growing his or her business. And I certainly don't fault any producer for advancing self-interested positions to take advantage of potential financial gains by recommending the elimination of LIFO and 10/10/10 to BCFIRB as it is understandable. However, it is just not right, in my view.
288. My opposition is only to BCFIRB facilitating such personal gain as, in my view, it is a violation of the public trust. For instance, with LIFO gone and 10/10/10 modified, long-established producers may not trigger an assessment unless selling most or all of their quota. And while I appreciate the majority panel's attempt to 'stop the flow' with a new one-year moratorium on receiving growth quota from a commodity board for those who sell quota, I don't accept that it is sufficient to stop producers from finding ways to unduly profit through quota sales. To me, the one-year moratorium seems like a small window of 'discontent' to endure for a larger payoff, especially if additional quota is purchased, as growth quota is currently pro-rata.
289. In my view, BCFIRB should not be encouraging the sense of entitlement that appears to have entered into the mindset of some commodity boards and producers where they feel entitled to get this pay-out at times of their choosing or at the exit of their careers; a pay-out which I understand can range into multi-millions of dollars. In my view, this was never part of the trust relationship they entered into. It is unfair, in my view, for producers to enjoy a potentially greater financial gain on quota sales as a matter of broad public policy, especially when it was never contemplated upon the giving of free growth quota. Public policy cannot, in my view, be changed simply to provide an economic advantage to a select group of people. It is unfair, in my view, for producers to use the allocation of free quota to provide a cash flow to finance their business expansions or improvements or other personal aspirations, especially while they simultaneously enjoy a guaranteed revenue stream.
290. I do understand that producers who purchase quota (and who receive pro rata growth quota reflecting their total quota holdings) feel economically impacted in that they cannot choose which quota to sell under LIFO. The impact of the quota transfer assessments on the first transfer of growth quota and new entrant quota is to return a percentage of quota to the

commodity board. If a producer wants to sell some quota, under LIFO it might have to be that growth quota, part of which would have to be returned to the board due to transfer assessments. As such, a producer may receive less financial return. However, there is another way of looking at this equation. Producers who buy quota are actually buying the opportunity to produce a commodity which generates a revenue stream. It is the producer expectation of being able to sell any quota at any point in time that creates this unfulfilled expectation of full value for quota upon sale.

291. The license to produce, associated with holding quota, was and still is a privilege; and levies are an obligation that form part of the cost of doing business. If producers believe that the price they receive for producing their product is not adequate, I agree with the majority that this supervisory review is not the correct forum to address that very complex issue.
292. Simply put, an unfettered or only slightly fettered (as is the case of the proposed 10/10/0, when combined with a removal of LIFO) selling of quota which is received at no cost, in my view, is a violation of a trust relationship with British Columbians. It is unfair, at the end of the day, for producers to exchange that portion of their quota that was given to them without cost, and which created an income and revenue stream for them which they have benefitted from, for cash. This is not a type of transaction that is available to other British Columbians. Even the shorter-term and limited constraints (with exemptions) on the transfer of freely acquired quota, as the majority decision rests upon, is, in my view, inadequate to prevent a violation of the public trust and public policy objectives which, as far as I know, was never intended to include windfall gains. This includes the eventual gains received from the significant amounts of growth quota issued by the Milk and Egg Boards over the last few years or potentially new quota going forward that is delayed for one year under specific circumstances. In my view, a windfall gain does not need to be realized instantly upon the release of this decision to still be a windfall gain.

## CONCLUSION

293. There was no credible evidence, in my view, that current quota transfer assessment directions jeopardize sound marketing policies, which BCFIRB is legislatively responsible for, as set out in the *NPMA*.
294. Current transfer assessments provide a needed disincentive to prevent windfall financial gains. In my view, the impacts on the production and movement of quota, as described by the commodity boards, are not legitimate reasons for change in light of the risk of windfall gains.
295. One of the difficulties, of course, with acting in the public interest is that decision-makers each have their own definitions and interpretations of how that public interest is protected. When the majority decision says, as it does in paragraph 171, that it looked at “all of the positions and arguments and determine, according to its best assessment, what will on balance best serve the BC supply managed industry going forward in the public interest”,

it says so without adequate support of that statement, in my view. It gives me no pleasure at all to dissent, but in my view, the majority reasons do not meaningfully explore what exactly was needed to protect the public interest.

296. Producers who make up these supply-managed commodity boards cannot recommend changes to quota assessment policies and rules that have a ‘friends and family’ flavour to them. This view I have taken is strengthened by the majority’s order that, despite their declaration of needing a cross-sectoral approach, they do not insist on all commodity boards immediately adopting BCFIRB’s new transfer assessment directions. Instead each board may continue with BCFIRB’s 2005 transfer assessment directions until such time as the commodity board decides it is effective and strategic to adopt the changes in the majority decision. In my view, BCFIRB’s authority must be enacted strictly to counter the actual benefit, or appearance of such benefit, to specific groups of producers, hence my dissenting opinion.

### **BCFIRB DISSENT SAFETI RATIONALE**

In the final analysis, BCFIRB directs the commodity boards, as part of their decision-making, to conduct SAFETI analyses on their decisions. For clarity, here is mine:

#### **Strategic:**

I do not agree with the majority decision as it relates to quota transfer assessments. In my view their decision is not strategic as it fails to take into account the broader issue of public policy and the fact that BCFIRB can only manage risks with commodity boards after the fact. The majority decision operates on the premise that if BCFIRB discovers something going off track or being taken advantage of, it can step in and address it. This is true, if it is discovered (and if the situation can actually be resolved after the fact, which might be very difficult where financial transactions have already taken place). In my view, a better strategy would be to prevent any misuse from occurring in the first place. There was not, in my view, a fulsome exploration of how and why current transfer assessment tools prevented the orderly marketing of product in the best interests of British Columbians.

#### **Accountable:**

I have listed numerous examples above of commodity boards failing to discharge responsibilities and/or report adequately on their performance, even when directed to do so by BCFIRB. In my view, the majority decision, with its approach to the supervisory power, fails to be accountable and further, in my view, introduces a level of risk to orderly marketing.

#### **Fair:**

The majority decision creates an opportunity for immense wealth to be created for a very select group of people currently involved in regulated commodity production. In my view, this is unfair to British Columbians who likely never contemplated that the regulated system, with BCFIRB as a supervisor, would permit these kinds of windfall gains. Despite the majority decision’s recognition of the negative perception this action would have and its implementation of some minor restrictions such as 10/10/0 and making producers ineligible for allocation of

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

growth quota for a short period of time, the majority decision fails, in my view, to adequately address the potential for windfall gain. As stated at the start of my dissent, I do not find the process and some of the non-responsive answers to have provided adequate information to base a decision for change.

**Effective:**

There was no convincing evidence from the commodity boards that the 2005 quota transfer assessments prevented or interfered with the orderly marketing of regulated product. Quota was and is being produced, and is transferable. The majority decision, by removing quota transfer assessments, does so, in my view, under a dearth of evidence. In my view, there are too many questions unanswered and the majority decision's reliance on commodity board reporting is misplaced, given the ongoing governance concerns I have articulated above.

**Transparent:**

In my view, the commodity boards collectively did not adequately explore alternate scenarios other than removal of quota transfer assessments which, as I have already expressed, provide an inordinate opportunity for windfall gains. I was not satisfied that there was a need for change to existing BCFIRB directions, nor am I satisfied that the majority decision creates adequate oversight processes and measures, in my view.

**Inclusive:**

There is, in my view, a great difference between pronouncing that the public interest has been served and protected, and actually serving and protecting the public interest. I am not convinced that the fact that commodity boards want transfer assessments removed so they can right-size farms and protect farming in BC in the public interest to be a serious or supported statement. In fact, in my view, the possibility for windfall gain seems to be somewhat minimized in the commodity boards' presentations. I would have preferred to hear compelling arguments specifically about how orderly marketing was impacted in the current situation and how those impediments could be removed without creating individual economic windfalls by allowing producers to sell production rights allocated by the commodity board as free growth quota without requiring a sufficient commitment from the producer to actually produce that growth quota.

Dated at Victoria, British Columbia, this 2<sup>nd</sup> day of February 2018.



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Corey Van't Haaff  
**Vice Chair**

## APPENDIX A – BCFIRB 2005 QUOTA TRANSFER POLICIES AND DIRECTIONS

*Table 1: BCFIRB quota transfer related policies (2005)*

Policy Direction	Rationale
<i>Quota is intended to be produced</i>	<ul style="list-style-type: none"> <li>Quota is a licence to produce. The purpose of quota is to remove variability in production and related marketplace instability. Quota must be produced for this purpose to be fulfilled.</li> </ul>
<i>All quota is to be transferable</i>	<ul style="list-style-type: none"> <li>Transferability allows quota to move from less to more efficient producers.</li> <li>It fosters innovation and flexibility in the sector.</li> <li>It is reasonable that a business built around producing and marketing a regulated product requires an ability to transfer quota in concert with the fixed assets (e.g., barn) so as not to negatively impact the business.</li> </ul>
<i>Quota should be transferable within, and not between, classes of quota.</i>	<ul style="list-style-type: none"> <li>This supports meeting specialty market demand and maintaining orderly marketing.</li> </ul>
<i>Quota administration policies should be the similar for all classes with exceptions only when necessary</i>	<ul style="list-style-type: none"> <li>This promotes fair and equitable treatment.</li> </ul>
<i>Quota holders are actively engaged and committed to the industry</i>	<ul style="list-style-type: none"> <li>This reflects policy objective that quota is intended to be produced and, by extension, not treated as a commodity to be traded.</li> </ul>
<i>Boards have quota available to address barriers to entry, changing markets and other public policy objectives.</i>	<ul style="list-style-type: none"> <li>This supports public interest along with innovation and industry development.</li> </ul>

## BCFIRB 2005 QUOTA TRANSFER POLICIES AND DIRECTIONS Con't

**Table 2: BCFIRB transfer assessment related directions (2005)**

Direction	How it works	Rationale
<i>Last In-First Out (LIFO)</i>	Producers must transfer the last quota they received first.	LIFO, in conjunction with 10/10/10 (see below), was intended to act as a disincentive to quota being transferred/sold by the first producer receiving it at no cost from the board rather than being produced, in the first instance – supporting the policy objective that quota is intended to be produced. Commodity boards remained fully responsible for ensuring all provincial quota was produced.
<i>10/10/10<sup>31</sup> declining transfer assessment</i>	Applies to the first transfers of quota issued by a board AFTER 2005-07.  Exemptions apply except for new entrant quota (see Table 3).	<ul style="list-style-type: none"> <li>• In conjunction with LIFO, 10/10/10 was intended to support the policy objective that quota is intended to be produced.</li> <li>• To ensure quota is available to the board to meet changing markets and public policy objectives.</li> <li>• Provides “an earned-in approach”</li> <li>• Producers are actively engaged and committed to industry</li> </ul>
<i>5% transfer assessment</i>	Applies to the first transfer of quota issued by a board PRIOR to 2005-07 <sup>32</sup>	5% assessment ensures quota is available to the board to meet changing markets and public policy objectives.
Direct assessment	<ul style="list-style-type: none"> <li>• EMB, TMB, MMB and BHEC (not CMB)</li> <li>• Assessment is taken on each transfer of quota between producers</li> <li>• Applies to all quota issued by board, regardless of class</li> <li>• Exemptions apply (see Table 3)</li> </ul>	
Deemed assessment	<ul style="list-style-type: none"> <li>• CMB only</li> <li>• Assessment deducted from the provincial allocation before production rights are distributed to farmers</li> <li>• Deduction based on 5% of the three-year moving average of all producer transfers</li> <li>• Exemptions do not apply</li> </ul>	

<sup>31</sup> If transferred in the first year 100% is returned to the board. If transferred in the second year, 90% is returned to the board, in the third year 80% returns to the board. Each subsequent year the “tax” is reduced by 10% until year 10 and beyond when the transfer assessment remains at 10%.

<sup>32</sup> Broiler Hatching Egg Commission April 1, 2006; Chicken Board September 1, 2005; Egg Board September 1, 2005; Milk Board September 1, 2005; Turkey Board May 1, 2007.



## BCFIRB 2005 QUOTA TRANSFER POLICIES AND DIRECTIONS Con't

*Table 3: BCFIRB directed transfer assessment exemptions (2005)*

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.

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

## BCFIRB 2005 QUOTA TRANSFER POLICIES AND DIRECTIONS Con't

**Table 4: BCFIRB new entrant program policies and directions (2005)**

Direction	Rationale
<i>Programs are to provide for a defined minimum number of new entrants per year, or per quota cycle</i>	To ensure regular opportunities are provided for industry entry.
<i>Care should be exercised that there is integrity in the programs and that entrants remain actively engaged</i>	The quota amounts offered are sizable in most cases which creates an incentive for accepting quota for the purposes of sale versus production.
<i>All incentive quota provided by the new entrant programs is to be subject to the declining transfer assessment schedule.</i>	Quota received by producers from the board (at no cost) would be used by the first recipient to produce regulated product – fulfilling the policy objective that quota is intended to be produced and that producers are actively engaged.
<i>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</i>	“ensure that new entrants are truly new entrants and not previous producers emerging in a new incarnation”
<i>New entrant waiting lists are to be established where they do not currently exist</i>	Supports process integrity and while addressing reality that the number of those interested and eligible to enter the industry exceed the quota available.
<i>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</i>	Supports a fair, accountable process.
<i>Boards are encouraged to provide priority to specialty and regional market needs in issuing new entrant opportunities.</i>	Considering market needs in conjunction with “seniority” on a waitlist helps ensure markets are met
<i>The Specialty Markets Advisory Committees should be charged with assisting to develop criteria, research and reporting procedures regarding the unfilled specialty market needs that would give priority to specialty new entrants</i>	Supports a strategic, accountable new entrant process that fully considers specialty market considerations.

## **APPENDIX B – BCFIRB MAJORITY SAFETI RATIONALE**

### **Strategic:**

Given the diversity of the five sectors involved, and the rapidly changing environment within each of those sectors operates, it is important for commodity boards to strategically and effectively govern their industries as first instance regulators. Boards need to be able to adjust their policies and rules in a timely manner for the benefit of the province.

Being strategic and responsive requires an application of the broad policy context within which the supply managed sector operates and includes balancing industry interests with other public interest considerations and policies (e.g. new entrants, new markets, regional development).

A key strategic approach for demonstrating that boards are operating on the basis of good governance and making sound marketing policy decisions is the use of robust, meaningful annual public reporting.

Quota management practices should be regularly reviewed, with opportunities for change as needed to ensure sound marketing policy continues to be met.

### **Accountable:**

By reviewing and adjusting its quota management directions with the commodity boards, BCFIRB is meeting its accountabilities to ensure its directions continue to support delivery of sound marketing policy (legislated responsibility) in a rapidly changing environment.

Robust, annual, public reporting supports commodity board accountability to BCFIRB (supervisor) and the public in return for the extensive regulatory authorities granted to commodity boards.

### **Fair process:**

Given the potential magnitude of the consequences of the review outcome, BCFIRB worked with commodity boards to establish the terms of reference and expectations for their submissions. The review process, terms of reference and BCFIRB's expectations were communicated and available on BCFIRB's web site, as were regular updates as the review progressed.

There were multiple opportunities for full value chain input through commodity board processes (e.g. producers, processors, financial advisers and other stakeholders were generally consulted). Collaboration between the sectors was also encouraged, and acted upon by the commodity boards.

### **Effectiveness:**

BCFIRB expects this decision will support continued effective delivery of sound marketing policy through facilitating timely industry adjustments and supporting the commodity boards in having flexibility in how best to meet public policy objectives.

British Columbia Farm Industry Review Board  
Quota Assessment Tools Supervisory Review  
February 2, 2018

BCFIRB expects this decision will continue to support effective delivery of Ministry of Agriculture and BCFIRB policy objectives through the checks and balances it provides regarding quota management.

**Transparent:**

The review process and related documents were published on BCFIRB and commodity board websites. BCFIRB and commodity boards regularly and publically communicated with stakeholders as the process unfolded. E.g., Through this process BCFIRB acknowledges that a shared and clear understanding of the timing of public communication of documentation is necessary to support transparency.

The final decision sets out the background, process, BCFIRB's rationale and final decisions (this also relates to fair process).

**Inclusive:**

The review development was inclusive of the commodity boards. The process itself was generally inclusive of value chain stakeholders with a wide range of interests (e.g. different scales of production, production types and business positions along with processors, financial institutions and others).

The decision takes into consideration multiple commodities and related operational considerations. It recognizes that each commodity board may need to seek adjustments to their own (and BCFIRB's) rules to fit the changing needs of their sectors.