

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

**Prior Approval Review of the
British Columbia Egg Marketing Board
New Producer Program Rules**

DECISION

November 30, 2009

INTRODUCTION

1. In British Columbia, the production and marketing of eggs is regulated under the *Natural Products Marketing (BC) Act* and the *British Columbia Egg Marketing Scheme, 1967*. Section 37(c) of the Egg Marketing Scheme requires that any new allocation of quota to producers, and any terms and conditions for the allocation of quota established by the British Columbia Egg Marketing Board, be approved by the British Columbia Farm Industry Review Board (BCFIRB).
2. On July 23, 2009, the Egg Board submitted its New Producer Program Rules to BCFIRB for prior approval. The Rules set out the proposed terms of the Egg Board's revised program for new entrant egg producers, including matters respecting qualification, selection, ongoing requirements and enforcement.
3. BCFIRB invited industry stakeholders and interested persons to submit written comments on both the New Producer Program Rules and the Egg Board's proposed Quota Distribution Policy that had also been submitted for BCFIRB approval. BCFIRB received several submissions in response to this invitation.
4. On September 22, 2009, BCFIRB wrote to the Egg Board with follow-up comments and questions on the Egg Board proposals and the stakeholder submissions, to which the Egg Board responded on October 7, 2009. BCFIRB invited industry stakeholders and interested persons to make final comments on the Egg Board proposals, and received additional submissions. BCFIRB then invited the Egg Board to submit final comments in response but did not receive any further submissions from the Egg Board.
5. In its October 30, 2009 Decision approving the Egg Board's proposed Quota Distribution Policy, BCFIRB confirmed that in 2009 the Egg Board will allocate 12,000 layers (i.e. laying hens) of quota to its New Producer Program with preference being given to specialty (organic, free range and free run) production, and directed the Egg Board to allocate a further 12,000 layers to the New Producer Program in 2010.

BACKGROUND

6. BCFIRB has in the past noted that new entrant programs are desirable as a matter of sound marketing policy to encourage persons to enter the supply management system. Making new entrant quota available to new producers diversifies the producer base and encourages innovation.
7. On September 1, 2005, following its review of specialty production and new entrant programs, BCFIRB issued a report titled 'Specialty Market and New Entrant Submissions: Policy, Analysis, Principles and Directions'. The report included a number of supervisory directions (the September 2005 directions) to supply managed marketing boards relating, in part, to new entrant programs.

8. Anticipating at the time that demand for new entrant quota would likely exceed supply, BCFIRB was concerned that there be integrity in the application, waiting list and invitation procedures for new entrant programs. In the September 2005 directions, BCFIRB required boards to establish new entrant waiting lists that would reflect the eligibility criteria set out in the directions. Boards were encouraged to provide priority to specialty and regional market needs in issuing new entrant opportunities.
9. The Egg Board amended its Standing Order to provide for a waitlist-based new entrant program. In a letter dated July 18, 2006, BCFIRB approved the Egg Board's new entrant program, subject to several further supervisory directions. In that letter, BCFIRB noted that aspects of the Standing Order as they related to specialty and new entrant programs would be the subject of ongoing dialogue and review and adjustments and amendments might still be needed.
10. On May 3, 2007, BCFIRB issued further supervisory directions to all supply managed boards setting out core eligibility criteria to be adopted for all new entrant programs.
11. At the end of May 2007, the Egg Board decided to change its new entrant program from a waitlist-based model to a lottery-based model. BCFIRB indicated to the Egg Board that the terms of a new program would require prior approval, and that persons on the current waitlist should be notified of the Egg Board's decision in case they wished to appeal. The Egg Board notified persons on the new entrant waiting list in a June 13, 2007 letter. No appeals followed.
12. This decision concerns BCFIRB approval of the Egg Board's revised New Producer Program Rules submitted on July 23, 2009. The decision does not consider special circumstances applications that were considered in connection with the New Producer Program Rules; decisions with respect to the special circumstances applications have been issued separately.

DECISION PROCESS

13. The panel considered expectations previously communicated to the Egg Board, including those in the July 2004 Ministry Regulated Marketing Economic Policy and BCFIRB's September 2005 and May 2007 supervisory directions respecting new entrant programs.
14. The panel carefully reviewed all submissions but in making its decision considered only those matters that touch directly on the New Producer Program Rules.

FACILITATING NEW ENTRANTS AND ADDRESSING MARKET DEMANDS

15. The panel has considered the New Producer Program Rules presented by the Egg Board and, subject to the supervisory directions and requested clarifications and changes set out in this decision, approves the Rules. In the panel's view the Rules will then provide for an efficient, fair and transparent new entrant program that will facilitate the entry of new producers into the egg industry and also permit the Egg Board to take into consideration specialty and regional market needs.
16. The lottery system proposed for the New Producer Program is a departure from the waitlist system contemplated by the September 2005 directions to the Egg Board. The panel has considered this departure and is satisfied that the proposed lottery system provides for integrity in the application, selection and invitation procedures of the New Producer Program. The panel notes this is not the first time a lottery-based system has been used in a new entrant program; BCFIRB approved a lottery-based new entrant program for the BC Chicken Marketing Board in 2006. The panel also notes that when the September 2005 directions were issued, BCFIRB anticipated that changes might be required once experience was gained in administering new entrant programs and recommended that marketing boards and BCFIRB not be inflexible to changing procedures going forward.
17. Consistent with the September 2005 directions, the panel is satisfied that the New Producer Program Rules will allow the Egg Board to provide priority to specialty and regional market needs in issuing new entrant opportunities. The Rules clearly state that the Egg Board may, at its discretion, restrict application to the New Producer Program lottery to those willing to produce a single specialty egg type (or range of specialty egg types), and/or to those willing to produce eggs in a particular region (or group of regions). The Rules preclude new entrants who enter the program on a restricted lottery basis from switching out of their established egg type(s) and/or region.
18. The question is how will the Egg Board determine when a restriction to the New Producer Program lottery is necessary to address specialty, short market egg type or regional demand. The Egg Board has indicated that the indicators for restriction will be grader sign-off and utilization of the specialty buy-back fund.
19. The panel expects, as a matter of principle, that Egg Board decision-making with respect to restricting the New Producer Program lottery (and with respect to quota allocation generally) will be evidence-based. Echoing concerns expressed in its October 30, 2009 Prior Approval Decision respecting the Egg Board's Quota Distribution Policy, the panel is of the view that there is a need for the Egg Board to obtain and consider a fuller set of data with respect to mainstream, specialty and regional markets. While grader sign-off and utilization of the specialty buy-back fund will act as useful market signals, the Egg Board is directed to source, or develop its own mechanisms to obtain, improved market data to better inform its decision making going forward.

20. In its September 2005 directions, BCFIRB recommended that the Specialty Markets Advisory Committee (Specialty Committee) “be charged with assisting to develop criteria, research and reporting procedures regarding the unfilled specialty market needs that would give priority to new entrants.” The panel notes that, while some progress has been made to this end, the Egg Board has yet to establish a fully functioning Specialty Committee as envisioned in the September 2005 directions. The Specialty Committee has an important role to play in helping to determine ongoing specialty market needs in British Columbia, and any corresponding need to restrict the New Producer Program lottery in the future. The Egg Board is directed to establish a Specialty Committee as soon as possible and, in any event, not later than six months from now.

SIZE OF NEW ENTRANT QUOTA ALLOTMENT

21. BCFIRB noted in its September 2005 report that marketing boards face a challenge in determining the appropriate size of a new entrant quota incentive. Ultimately, boards must find a balance in providing for a number of new entrants, providing a meaningful incentive amount, ensuring the operation has a chance to be viable, and respecting the rights of established producers. Stakeholders commented that the New Producer Program quota allotment of 3,000 layers may be insufficient to sustain a viable farm operation. This raises the question: What is the right amount for a new entrant quota incentive in the Egg Board’s New Producer Program?
22. The Egg Board has submitted that the selection of 3,000 layers per new entrant reflects their consideration of the costs involved in supporting and housing hens as well as the scale at which an operation could become cost-effective – for example, with respect to the size of feed bins and the construction of loading facilities at the farm gate. The Egg Board also considers that grader pick-up of eggs would become cost effective at the 3,000 bird level.
23. The panel has considered this issue, and accepts that the Egg Board has found an appropriate balance with a new entrant allotment of 3,000 layers. The panel notes that this one-time allocation of 3,000 layers is an improvement on the graduated entry approach of the old new entrant program, which in some circumstances may not have been economically viable.
24. In light of the concerns raised, the panel considers it important to note that new entrant quota is not intended to guarantee new producers success in the industry, but rather to set them off to a good start. New entrant programs can boost the potential of committed new entrant producers by granting access to a significant asset with the potential to generate revenue.
25. While aimed to improve access to supply managed industries, new entrant programs are not intended to award quota on a strictly random basis. Rather, a rigorous set of requirements for selection and entry into the programs is designed to

ensure that entrants are aware of and prepared to meet the realities of producing their new entrant quota allotment. For example, the New Producer Program Rules explain that, upon being randomly selected under the lottery, the successful applicant must submit to the Egg Board, among other things, “proof, in a form satisfactory to the Board, that the applicant has economically viable plans to sustain the production of eggs.” To target the program effectively, the Egg Board is expected to be vigilant in assessing the entry submissions of applicants selected through the new entrant lottery.

NUMBER OF NEW ENTRANTS STARTED EACH YEAR

26. In its September 2005 directions, BCFIRB required that all boards’ new entrant programs provide for a defined minimum number of new entrants per year. In its July 18, 2006 letter to the Egg Board, BCFIRB subsequently directed that the Egg Board provide for a minimum of two new entrants per year. The Egg Board’s determination that 3,000 layers will be allotted to each individual new entrant, together with BCFIRB’s direction that 12,000 layers will be allocated to the New Producer Program in each of 2009 and 2010, will allow the Egg Board to start four new entrants for each of these two years.
27. As a further consideration, since the New Producer Program may not be in full effect before the end of 2009, it follows that the four new entrants for 2009 will likely not be started as new entrants until early 2010, and there may be some delay in selecting and approving the next four new entrants for 2010, resulting in possible slippage into 2011. Given the Egg Board’s delay in putting into place a fully operational new entrant program, the panel urges the Egg Board to minimize any such slippage of time.
28. Consistent with prior supervisory directions, in addition to the total of eight new entrants to be started for 2009 and 2010, the Egg Board is directed to start a minimum of two new entrants per year for 2011 and subsequent years. While this sets a floor for the program going forward, it does not limit the maximum number of new entrants to be started in future years. That number is to be assessed annually by the Egg Board based on market needs and demand for the program.

ENCOURAGING INNOVATION

29. Concerns were raised in stakeholder submissions that the lottery-based program would not be an effective way to reward innovation in the industry. The panel would like to clarify that, while making new entrant quota available to new producers is likely to encourage innovation in the supply management system, it is not intended that new entrant programs will be vehicles to ‘reward’ innovation.
30. As noted in the October 30, 2009 BCFIRB Prior Approval Decision of the Egg Board’s Quota Distribution Policy, the panel is satisfied that the ‘industry management sleeve’ that the Egg Board proposes to maintain by reserving 1.5% of

its national allocation provides for sufficient room to encourage and address innovation in the industry. It is from this reserve that the Egg Board will allocate Special Product License Quota (SPLQ), the innovation permits for the industry.

PROTECTING INTEGRITY OF THE NEW PRODUCER PROGRAM

31. Stakeholders also voiced concern around the possibility that new entrant quota holders might not be actively engaged in the production of that quota, and that new entrant quota might be won only to be sold.
32. In response to this concern, the panel notes that the Egg Board's proposed New Producer Program, like other new entrant programs in the supply managed sectors, features mechanisms to avoid such manipulation. The panel accepts that the conditions and qualifications established by the Egg Board for application to the lottery, the submissions required upon entry to the program and the ongoing requirements with respect to quota issued under the program will each help to protect the integrity of the program. Specifically, the restriction that an entrant must be actively engaged in egg production – if monitored effectively by the Egg Board – will help to keep the program operating as intended.
33. The panel notes that the Egg Board's Standing Order also provides mechanisms to avoid manipulation of the New Producer Program. These include restrictions relating to all quota transfers and specific restrictions respecting transfers of specialty or regional quota, as well as provisions for partial surrender upon transfer. For example, the declining '10/10' surrender provisions of the Standing Order apply to commercial transfers of New Producer Program quota and provide for surrender of 100 per cent of the quota sought to be transferred in the first year. The amount to be surrendered then declines by 10 per cent per year until it reaches a minimum assessment of 10 per cent for transfers in year 10 and following. In this way, new entrants are restricted in their ability to sell quota acquired through the New Producer Program.
34. The provision for Egg Board auditing of new entrants' farm operations is an important element of the Rules; however, in order to be effective, it must be backed up by a willingness on the part of the Egg Board to take enforcement action when considered necessary. In this regard, we reiterate a previous BCFIRB direction that, in addition to a strong audit program, the following are necessary elements to avoid manipulation of new entrant programs:
 - effective monitoring of compliance with new entrant program requirements at the time of application, at the time quota is allotted and on an ongoing basis;
 - timely investigation of instances of possible non-compliance that come to the attention of the commodity board; and

- prompt enforcement action in cases where there appears to be a breach of the commodity board's orders, including the cancellation of quota where appropriate.

REQUESTED CLARIFICATIONS AND CHANGES

35. In its letter dated May 3, 2007 to the Egg Board and the other supply managed boards, BCFIRB provided supervisory directions establishing a uniform set of provisions and principles with respect to eligibility criteria for new entrant programs. The panel notes that the proposed New Producer Program Rules have largely addressed these requirements, with the following exceptions:
- While the Rules require applicants to file a statutory declaration, the proposed declaration does not require full disclosure with regard to the prior direct or indirect holdings of any supply managed quota by the applicant or the applicant's spouse.
 - The proposed statutory declaration does not require that the applicant confirm their understanding that all rights and privileges subsequently obtained under the New Producer Program may be revoked without compensation.
 - While the proposed Rules indicate that the Egg Board will announce on its website that a New Producer Program lottery will be held, they do not specify that the announcement will remain in place for at least 30 days for applications to be made.

The Egg Board is required to incorporate the necessary changes in the New Producer Program Rules.

36. The New Producer Program Rules at section 2(7)(h) state "*neither the applicant, nor the Spouse of the applicant, nor any co-applicant, may have, or have had at any time, any financial interest in quota or any similar transferable production right issued or allotted by a supply managed commodity board or commission in British Columbia, including Layer Quota, whether directly or indirectly, through any organization or entity.*" The panel has two concerns with the section:
- The Egg Board's intent in using the wording "...may have, or have had at any time, any financial interest..." is not clear to the panel and the panel considers it may be limiting. Subject to further explanation and consideration, the panel requests that this wording be changed to read "...may hold, or have held at any time, any interest in...". The panel also requests that the Egg Board delete the words "or commission" from this section. The panel notes that these requests are consistent with its prior May 3, 2007 directions.

- The panel is also concerned that this section might be read by some as a restriction on the eligibility of innovative permit holders, i.e. Special Product License Quota (SPLQ) holders or producers under the Small Lot Authorization Program (SLAP) who, but for their current SPLQ or SLAP production, would otherwise be eligible applicants under the Rules. The Egg Board is requested to clarify, through changes to the Rules or other applicable Standing Order provisions, that such producers remain eligible to apply under the New Producer Program.
37. The New Producer Program Rules at section 2(4)(c) and (d) require that a lottery applicant provide proof of Canadian citizenship or permanent resident status as well as proof of permanent resident status in British Columbia. The panel is uncertain as to the Egg Board's intention as to the ongoing application of these requirements. The Egg Board is requested to amend the Rules to either list these as ongoing requirements for entry and continuation in the program, or to specifically provide that these requirements will be factors to be considered in determining whether an entrant is actively engaged in egg production.
 38. Throughout the proposed New Producer Program Rules, reference is made to an "*acceptable*" Independent Production Unit. The panel feels that this wording may be unclear. The panel suggests that, if the Egg Board intends to communicate that it must approve an Independent Production Unit prior to a new entrant commencing production, it may wish to revise the Rules to replace the term "*an acceptable Independent Production Unit*" with "*an Independent Production Unit acceptable to the Board.*"
 39. The New Producer Program Rules indicate that all quota issued under the program will be subject to the '10/10' surrender assessment provisions and the principle of 'Last In, First Out'. In order to make this clearer to prospective new entrants, the panel requests that the Egg Board add a cross-reference in the New Producer Program Rules to the applicable sections of the Standing Order.
 40. The panel is also concerned that new entrants understand that the Standing Order provisions respecting quota transfer apply to all quota and that transfer of quota in any manner whatsoever requires prior Egg Board consent and, with very limited exceptions, must be carried out through the Provincial Quota Exchange and in accordance with any restrictions respecting transfers between regions and transfers of specialty quota. The Egg Board is requested to refer in the Rules to the applicability of the transfer provisions of the Standing Order to all new entrant quota and to cross-reference the applicable sections.

CONCLUSION

41. The panel approves the Egg Board's proposed New Producer Program Rules, subject to the supervisory directions and requested clarifications and changes set out in this decision.

42. The Egg Board is directed to make all necessary amendments to the New Producer Program Rules and the Standing Order to incorporate and make the New Producer Program effective as soon as possible. Copies of the final New Producer Program Rules and all related Standing Order amendments are to be provided to BCFIRB.
43. BCFIRB will continue to monitor developments as the New Producer Program is implemented. This monitoring will include ongoing dialogue between BCFIRB and the Egg Board regarding the New Producer Program and any issues that may arise. BCFIRB reserves the right to issue further supervisory directions to the Egg Board with respect to the New Producer Program.

Dated at Victoria, British Columbia, this 30th day of November 2009.



Sandi Ulmi
Vice Chair



Ron Bertrand
Member



Suzanne K. Wiltshire
Member