

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND

THE PRIOR APPROVAL OF THE
BRITISH COLUMBIA EGG MARKETING BOARD
NEW PRODUCER PROGRAM 2016

DECISION

March 1, 2016

DECISION SUMMARY

1. In British Columbia, the production and marketing of eggs is regulated under the *Natural Products Marketing (BC) Act (NPMA)* and the British Columbia Egg Marketing Scheme, 1967 (Egg Scheme).
2. Quota management forms one of the three pillars of supply management¹ and is a core BC Egg Marketing Board (Egg Board) responsibility. It also supports long-standing and current government policy objectives.
3. On July 17, 2015, BCFIRB directed the Egg Board to conduct its comprehensive review of its New Producer Program (NPP) by June 30, 2016, rather than “...sometime in 2017” as originally proposed by the Egg Board. The Egg Board submitted its request to BCFIRB to amend its NPP on December 15, 2015 (“New Producer Program 2016”).
4. The issues before the BC Farm Industry Review Board (BCFIRB) are:
 - a) Prior approval of changes to the Egg Board “New Producer Program Rules” as set out in its Amending Order 015 – Schedule 1 to the Consolidated Order of May 12, 2010; and,
 - b) Prior approval of the Egg Board NPP operational details (how many producers in what categories, timeframe and location) of its 2016 draw for 12 new producers.
5. BCFIRB reviewed the Egg Board’s request, previously communicated expectations and new information provided by the Egg Board in support of this request at the February 11, 2016 board to board meeting. BCFIRB also considered its role in ensuring a principled approach² to quota management outcomes in the interest of sound marketing policy.
6. Decision:
 - a) BCFIRB approves the Egg Board amendments to its NPP Rules as set out in its Amending Order 015 - Schedule 1.
 - b) BCFIRB determined it was not necessary or advisable to prior approve the operational details – how many producers (with the 12 proposed representing a minimum as per paragraph 25), in what categories, timeframe and location – of the 2016 NPP draw. As the Egg Board itself discovered following the 2015 draw, such decisions are subject to ongoing changes in market and industry requirements. These decisions are for the Egg Board to confirm following

¹ 2015 July 17. [Prior Approval Review of the BC Egg Marketing Board Quota Distribution Policy](#). BCFIRB

² [SAFETI – Strategic, Accountable, Fair, Effective, Transparent, Inclusive](#)

demonstrated assessment and consideration of all market and policy requirements. These decisions will be subject to appeal under s. 8 of the *NPMA* as are other orders, decisions or determinations of commodity boards.

7. There has been significant growth in allocation since 2013. The Egg Board's market response decisions have focused, in large measure, on *pro rata* distribution to existing quota holders. Given the opportunity this significant growth presents, BCFIRB directs the Egg Board to aggressively pursue other public policy objectives over the next year. This includes demonstrating that the Egg Board identified and considered such opportunities as: bringing in additional new entrants (including supporting early entry to production where feasible); regional and value added opportunities; and, other measures to use quota allocations to sustain the overall market demand for B.C. eggs.

INTRODUCTION

8. Quota management forms one of the three pillars of supply management³ and is a core Egg Board responsibility. The facilitation of new producers supports government policy objectives⁴ and is a public commitment in the Ministry of Agriculture's 2015 growth strategy.⁵
9. In British Columbia, the production and marketing of eggs is regulated under the *NPMA* and the Egg Scheme. The Egg Board, formed under the Egg Scheme, is the first instance regulator of the production and marketing of eggs in BC.
10. BCFIRB is responsible for general supervision of the Egg Board, including specific prior approval requirements under the Egg Scheme:
 - a) Under s. 7.1 of the *NPMA*, BCFIRB is responsible for the general supervision of all marketing boards and commissions in the province, including the Egg Board. This supervisory authority can be exercised "at any time, with or without a hearing, and in the manner [BCFIRB] considers appropriate to the circumstances" (s. 7.1(2)).
 - b) 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*]".
 - c) Under s. 37(c) of the Egg Scheme BCFIRB is responsible for prior approving "...the terms and conditions upon which they [quota] shall be issued or transferred..."

³ Production control, price control, import control

⁴ [2004. July 26. B.C. Ministry of Agriculture. Regulated Marketing Economic Policy.](#) s. 4 "The British Columbia regulated marketing system facilitates the entry of new producers to sustain and renew regulated industries in new and existing markets"

⁵ [2015. B.C. Ministry of Agriculture. The BC Agrifood and Seafood Strategic Growth Plan.](#) p. 12

11. On July 17, 2015, BCFIRB directed the Egg Board to conduct its comprehensive review of its New Producer Program (NPP) by June 30, 2016, rather than "...sometime in 2017" as originally proposed by the Egg Board.⁶ The Egg Board submitted its request to BCFIRB to amend its NPP on December 15, 2015 ("New Producer Program 2016").

ISSUES

12. The issues before BCFIRB are:
- a) Prior approval of changes to the Egg Board "New Producer Program Rules" as set out in its Amending Order 015 – Schedule 1 to the Consolidated Order of May 12, 2010; and,
 - b) Prior approval of the Egg Board NPP operational details (how many producers in what categories, timeframe and location) of its 2016 draw for 12 new producers.

DECISION PROCESS

13. BCFIRB reviewed the Egg Board "New Producer Program 2016" request (December 15, 2015) which included a description of the changes to the NPP Rules, the proposed draw structure for 2016, an update on previous BCFIRB recommendations, and "lessons learned" from the 2015 NPP draw.
14. BCFIRB also considered its expectations within recent prior approval decisions to the Egg Board and new information provided by the Egg Board in support of this request at the February 11, 2016 board to board meeting.
15. BCFIRB then determined whether the Egg Board:
- a) met BCFIRB's general supervisory expectations -- including a SAFETI-based process and outcome that was in accord with the Egg Scheme; and,
 - b) ensured a principles-based approach to quota management outcomes in the interest of sound marketing policy.

REASONS

SAFETI

16. BCFIRB expects B.C.'s regulated boards and commission to use principles based regulation (PBR) supported by the demonstrated application of BCFIRB's SAFETI

⁶ 2015, July 17. [Prior Approval Review of the BC Egg Marketing Board Quota Distribution Policy](#). BCFIRB

principles.⁷ PBR is a regulatory approach that focuses on outcomes that matter to achieve sound marketing policy outcomes. SAFETI is a tool to test whether decision-making processes and decision outcomes, such as the management of new entrants, are reasoned, defensible and in accord with sound marketing policy. These checks and balances help ensure that the Egg Board's distribution of quota is seen as transparent, market responsive and meeting public policy objectives.

17. From a principles-based regulation perspective, BCFIRB used the following general supervisory process and outcomes expectations as part of its decision making:

Process

- a) Has the Egg Board:
 - i. Effectively and strategically engaged with all its stakeholders?
 - ii. Evaluated whether its NPP is effective and strategic in meeting sound marketing policy objectives?
 - iii. Identified issues and gaps in addition to any other questions it determines are important from a sound marketing policy and public interest point of view?
 - iv. Proposed solutions?
 - v. Reported its findings, recommendations and rationale to its stakeholders and BCFIRB?

Outcome

- b) Do the Egg Board proposed amendments:
 - i. Adhere to legislative requirements, including sound marketing policy (e.g., flexibility to meet market demands, supports innovative, efficient approaches to production, supports opportunity for industry growth and development of markets)?
 - ii. Reflect the intent of supply management?⁸
 - iii. Consider provincial agricultural policy?
 - iv. Reflect a principles-based approach to regulation?

⁷ [SAFETI – Strategic, Accountable, Fair, Effective, Transparent, Inclusive](#)

⁸ to provide a continuous supply of safe, high quality products to consumers while ensuring a fair return to producers.

18. Overall, the Egg Board generally met BCFIRB's process expectations. Documents on the Egg Board's website substantiate that a review process was conducted. The process included stakeholder input, public interest concerns and reflected consideration of sound marketing policy.
19. In its request, the Egg Board describes issues and gaps with the NPP, including restricting production types when market demands are rapidly changing. It notes it will not limit new entrants by production type going forward. This allows for the industry to be responsive to market needs – an effective and strategic approach to supporting success of new entrants and meeting market demand.⁹
20. The Egg Board could have better met process expectations by including information on how the additions of the essay to assess an applicant's knowledge and interest in the industry, waitlist provisions and other rule amendments contribute to fair process and sound decision-making. Although BCFIRB appreciates why the Egg Board has a rigorous screening process for new entrant applications, it is important that the Egg Board clearly communicates its expectations to prospective applicants. This includes the administrative requirements that may impact on whether an application is accepted.
21. Overall the Egg Board met BCFIRB's outcome criteria. The proposed amendments provide improved guidance to both applicants and decision makers with regard to the application process, evaluation process, wait list and the expectations for, and requirements of, new producers. Better guidance to applicants and stakeholders is an important component of a fair process, as well as being strategic and accountable. This is essential given the level of investments at stake in the NPP process and outcome. The amendments also take into account new and changing market demands and provide flexibility to support innovative production – both are important components of sound marketing policy.

BCFIRB's Previous Direction

22. On March 4, 2015, BCFIRB instructed the Egg Board to incorporate a draw into the NPP new entrant selection process and to clearly and publically communicate procedures and criteria at the start of the entry process.¹⁰ This direction was satisfied. The Egg Board clearly and publically communicated procedures and criteria as part of its October 2015 NPP selection process and used a draw to make final entrant selections. Amending Order

⁹ as per BCFIRB's 2014 direction: [2014, July 28. BCFIRB Prior Approval of the British Columbia Egg Marketing Board 2013 Quota Distribution Policy and Egg Core Review Part I. \(p. 13\)](#)

¹⁰ [2015, March 4. BC Egg Marketing Board 2014 Quota Distribution Policy – New Producer Program. BCFIRB](#)

015 shows that the Egg Board will continue to use a draw-based system to make its final entrant selections.

23. BCFIRB's July 28, 2014 allocation prior approval¹¹ reiterated its on-going expectation of the Egg Board to regularly bring in new entrants:

- a) in a manner that demonstrates the Egg Board is responsive to market needs and is fulfilling other policy objectives; and,
- b) so that priority be given to at least one Small Lot Permit Holder and at least one entrant allocation outside of the Lower Mainland.

24. The Egg Board's general approach as reflected in its 2016 NPP request continues to fulfill these BCFIRB expectations. The proposed process sets out a draw for 12 new producers in the following categories: three Outside Lower Mainland; one Terrace area; four that are currently Small Lot Permit Holders; and four from any region in B.C. The Egg Board suggests new producers could start on the following schedule: 2017 (four, one from each category); 2018 (three, one from each category); 2019 (three, one from each category); and, 2020 (two, one from each category). As the Egg Board itself discovered following the 2015 draw, such decisions are subject to ongoing changes in market and industry requirements. These decisions are for the Egg Board to confirm following demonstrated assessment and consideration of all market and policy requirements.

25. There has been significant growth in allocation since 2013. The Egg Board's market response decisions have focused, in large measure, on *pro rata* distribution to existing quota holders. Given the opportunity this significant growth presents, BCFIRB directs the Egg Board to aggressively pursue other public policy objectives over the next year. These include demonstrating that the Egg Board has identified and considered such opportunities as: bringing in additional new entrants beyond the 12 committed to in its request (including supporting early entry to production where feasible); regional and value added opportunities; and, other measures to use quota allocations to sustain the overall market demand for B.C. eggs.

BCFIRB's Expectations Going Forward

26. For future allocation prior approvals, the Egg Board will provide a full SAFETI analysis as part of its written submissions and/or through other transparent means (process and outcome) so it is clear to BCFIRB and all stakeholders that the process and decision

¹¹ [2014, July 28. Prior Approval of the British Columbia Egg Marketing Board 2013 Quota Distribution Policy and Egg Core Review. BCFIRB.](#) Paragraph 15

reflect good governance by the Egg Board. This will also support timely and accountable statutory approval decisions by BCFIRB.

27. The Egg Board will implement its “Transparency Initiative” as shared at the February 11, 2016 board-to-board meeting and post future prior approval submissions to BCFIRB, along with BCFIRB’s responses, on its public-facing website.

DECISION

28. BCFIRB approves the Egg Board amendments to its NPP Rules as set out in Amending Order 015.
29. BCFIRB determined it was not necessary or advisable to prior approve the operational details – how many producers (with the 12 proposed representing a minimum as per paragraph 25), in what categories, timeframe and location – of the 2016 NPP draw. As the Egg Board itself discovered following the 2015 draw, such decisions are subject to ongoing changes in market and industry requirements. These decisions are for the Egg Board to confirm following demonstrated assessment and consideration of all market and policy requirements. These decisions will be subject to appeal under s. 8 of the *NPMA* as are other orders, decisions or determinations of commodity boards.
30. In accordance with s. 57 of the *Administrative Tribunals Act*, “an application for judicial review of a final decision of (BCFIRB) must be commenced within 60 days of the date the decision is issued.”
31. Administrative decisions made by the Egg Board in the implementation or application of its New Producer Program – as approved by BCFIRB – are appealable under s. 8 of the *NPMA* within 30 days of an Egg Board decision.

Dated at Victoria, British Columbia this 1st day of March, 2016.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



John Les, Chair

cc: BCFIRB web site