

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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

April 15, 2021

Introduction

1. In *J&E Egg Farm v BC Egg Marketing Board* (J&E appeal), the BC Farm Industry Review Board (BCFIRB) directed the BC Egg Marketing Board (Egg Board) as follows:
 141. Pursuant to s. 8(9)(c) of the NPMA, the panel is referring the issue of the necessary and/or appropriate requirements, including licensing, for producer-vendors and any related changes to the NPP in the Consolidated Order back to the Egg Board with the following directions:
 - a) Within 30 days of this decision, the Egg Board is to advise BCFIRB of its consultation plan setting out the transparent, inclusive, fair and accountable process it will follow before recommending potential amendments to the producer-vendor category, including licensing and NPP application requirements of the Consolidated Order.
 - b) As part of its consultation plan, the Egg Board is to advise BCFIRB of how it intends to consult with the appellants and its other stakeholders.
 - c) The Egg Board is to provide its recommendations on potential amendments to the Consolidated Order and NPP not later than 120 calendar days from the date of this decision, fully supported by a process consistent with the SAFETI principles.
 - d) Revisions to the producer-vendor category and NPP are subject to BCFIRB prior approval (s. 37(c) of the Scheme). As part of that prior approval process, BCFIRB will determine what further steps, if any, the Egg Board is required to undertake and any additional process it determines is necessary before any amendment can be enacted.
2. BCFIRB received the Egg Board consultation plan within 30 days as directed. It agreed the plan reflected "...a transparent, inclusive, fair and accountable process" and recommended the Egg Board ensure clarity on what information would be available to stakeholders as the consultation process progressed.
3. Based on an Egg Board request, BCFIRB extended its deadline for final recommendations from December 22, 2020 to February 21, 2021.
4. On February 19, 2021 the Egg Board submitted its proposed amendments to its producer-vendor category, New Producer Program (NPP) and Consolidated Orders to BCFIRB.

Issue

5. The issues before BCFIRB are:
 - a) Prior approval of the Egg Board's revision to its producer-vendor category;

- b) Prior approval of related changes to the Egg Board's Consolidated Order; and,
- c) Prior approval of related changes to the Egg Board NPP.

Legal Authorities

- 6. 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).
- 7. 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. 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]".
- 8. Section 37(c) of the Egg Scheme requires BCFIRB prior approval before the Egg Board varies quotas the Egg Board has issued to producers and "...the terms and conditions upon which they [quota] shall be issued or transferred...".

Analysis

Process

- 9. The Egg Board conducted an effective, inclusive and transparent consultation process. Consultation included meetings with the J&E appeal appellants, registered producers (those who chose to attend), small lot permit holders, and NPP participants. Information was obtained both through meetings and a survey. The Egg Producers Association (EPA) and the BC Egg Industry Advisory Committee (EIAC) provided input on the survey results and raised additional key issues. The draft recommended changes were provided to the EPA and EIAC for review and feedback.
- 10. BCFIRB commends the Egg Board for its thorough approach to consultation, including its careful consideration of the challenges of being a producer-vendor and recognizing flexibility is needed for producer-vendor start up success through the amount of quota available and the ability to take on increasing production over time.

Producer-Vendor Definition

- 11. A key issue arising in the J&E appeal was the Egg Board's Consolidated Order definition of "producer-vendor" and how the definition should be interpreted. The

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Egg Board recommends amending its Consolidated Order to make the definition consistent with the Egg Scheme definition as follows:

“Producer-Vendor” means a Producer who produces and Markets, offers for sale, sells, stores or transports a minimum of 75% of the Regulated Product produced by him or her, but does not process, Market, offer for sale, sell, store or transport the Regulated Product produced by any other Person.

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"producer-vendor" means any grower who produces and markets, offers for sale, sells, stores or transports all or any portion of the regulated product grown by him but does not process, market, offer for sale, sell, store or transport the regulated product grown by any other person.

12. Ensuring consistency between Scheme and Consolidated Order definitions is accountable and will mitigate risk of future disputes.
13. Specific producer-vendor requirements established to deliver on the policy objectives behind producer-vendor licences is now covered in the NPP Policy. The NPP requirements bring clarity to the Egg Board’s self-marketing expectation to meet the policy intent of the producer-vendor licence.

New Producer Program Rules (Consolidated Orders)

14. The Egg Board recommends several amendments to its NPP Rules in its Consolidated Order.
15. One set of amendments clarifies the Egg Board’s authority to set program participation conditions (i.e. restrict program participation based on class, region, and production mode). Related amendments clarify that successful NPP participants must follow both the applicable Consolidated Order requirements and the NPP policy and conditions under which they received their licence. These amendments address a key issue arising in the J&E appeal by providing clarity going forward as to what conditions NPP producers must adhere to.
16. A second set of amendments focuses on NPP administrative requirements. This includes removing the Wait List section, as wait lists are not required, and an additional essay requirement for applicants to state how they will confirm with the applicable rules and conditions. It is unclear how an applicant is to meaningfully confirm that they will apply with the rules and conditions beyond a simple statement that they will. Whether this is an effective approach to mitigating potential compliance issues such as those resulting in the J&E appeal remains to be seen.

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17. There are two specific NPP Rule sections I want to bring to Egg Board's attention, acknowledging that these sections are part of the 2019 BCFIRB NPP prior approval decision and were not addressed at the time.
18. Section 1(4)(i) states that the farm must be within economic access of a grading station, unless applying as a producer-vendor. There is a question of whether or how this section would apply as part of the producer-vendor to grader progression.
19. Under section 2(6) qualified applicants are required to make a \$10,000 Performance Deposit. The Egg Board NPP Rules provide flexibility to apply for and receive between 400 and 3,000 units of layer quota. Previously the amount of new producer quota was set at 3,000 quota units, for which a \$10,000 deposit was required. The Egg Board may wish to consider a pro-rata sliding scale deposit. Smaller scale applicants (e.g. 400 quota units) could find the \$10,000 deposit an undue barrier, particularly when taken in addition to the 2019 increased application fee from \$250 to \$750.¹
20. There is also a potential future conflict between meeting policy objectives established by BCFIRB, the Ministry of Agriculture, Food and Fisheries, and the Egg Board, and the Egg Board's quota management rules. There are specific concerns with regional production policy objectives.
21. As per BCFIRB's February 3, 2018 Quota Assessment Tools Review decision, quota issued under the NPP is subject to transfer assessments until year 11 (10-10-0). In year 11, along with being released from BCFIRB's quota transfer assessment requirements, the Egg Board releases producers from all NPP rules and conditions, including those related to regional production. The Egg Board's stated intent is to ensure that all producers are treated as equally "... as much as possible".
22. It is unclear if or how releasing producers from regional production conditions after 10 years will impact meeting related regional policy objectives. Annual data collected and reported as part of the Public Accountability and Reporting Project (PARP) will enable BCFIRB and the Egg Board to monitor changes in regional production over time.

¹46. The proposed application fee increase from \$250 to \$750 does concern BCFIRB. This is a substantive increase and not in-line with the lower application fees charged by the other BC supply managed commodity boards. It accepts the Egg Board's rationale about reducing duplicate spousal applications and helping offset program administration costs and will revisit this issue after seeing how the fee change impacts application numbers for the next NPP draw." 2019 July 3. BCFIRB. [The Prior Approval of the British Columbia Egg Marketing Board Quota Distribution Policy, Multi-Allocation Policy and Procedure, Temporary Allotment Program, New Producer Program and Quota Reserve Policy.](#)

New Producer Program Policy

23. BCFIRB's March 1, 2016 Prior Approval of the BC Egg Marketing Board New Producer Program decision states:
 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.
24. BCFIRB continues to be of the view that it is not necessary or advisable to prior approve the operational details of the NPP.
25. However, without trying to fetter the Egg Board, the Egg Board may want to consider the following as it finalizes its 2021 NPP Policy.
26. The Egg Board's intention of developing new policy documents for each iteration of the NPP enables reflection of the market and industry requirements at the time. However, this approach adds uncertainty for prospective new applicants given specific rules and conditions may change year to year. Allowing for a longer planning window (perhaps two years) may be more appropriate.
27. In its submission, the Egg Board states it will restrict 2021 applications to current Small Lot Permit program producers as they have experience in egg production, marketing and Egg Board animal welfare and food safety programs. While this may be appropriate in the short term, a question arises whether moving an existing producer from a permit holder to a licence holder is within the spirit and intent of a new producer program.
28. The Egg Board also identifies encouraging registration of backyard flock producers in the Small Lot Permit program as a strategic goal of the revised New Producer Program. Presumably the intent is to incentivize registration in the Small Lot Permit program by providing preferential access to quota (starting at 400 layers). This approach appears to be based on the premise that there is a meaningful number of backyard flock producers who want to increase production and are willing to invest in a Small Lot Permit, potentially for several years, in the event they can become a successful NPP applicant. As part of its New Producer Program assessment the Egg Board may want to consider if the number of Small Lot Permit registrations increase (and why) or if it needs to adjust its approach to its backyard flock registration goal.

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Decision

29. BCFIRB is satisfied the recommended revisions to the producer-vendor definition and New Producer Program Rules (Consolidated Order) reflect sound marketing policy.
30. Implementation of the New Producer Program Rules through the New Producer Program Policy remains subject to appeal to BCFIRB.

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.”

Dated at Victoria, British Columbia, this 15th day of April 2021.

A handwritten signature in black ink, appearing to read 'A Sakalauskas', written over a horizontal line.

Al Sakalauskas
Vice Chair