



September 23, 2014

File: 44200-60 MILK QUOTA  
REVIEW

**DELIVERED BY E-MAIL**

Jim Byrne  
Chair  
BC Milk Marketing Board  
200 – 32160 South Fraser Way  
Abbotsford, BC V2T 1W5

Dear Mr. Byrne:

**SUPERVISORY REVIEW DECISION - BC MILK MARKETING BOARD QUOTA  
GOVERNANCE REVIEW**

Quota management forms one of the three pillars of supply management<sup>1</sup> and is a core BC Milk Marketing Board (Milk Board) responsibility. The Milk Board undertook a full review of its quota policies and programs as part of a BC Farm Industry Review Board (BCFIRB) supervisory process starting in October 2012. The objective of the Milk Board's review was to "...evaluate BC dairy quota policy through a transparent consultative process with the aim of developing an effective quota allocation and governance policy that will preserve, build and transition the BC dairy industry for future generations."

The Milk Board's process resulted in a final report with recommendations ("BC Quota Policy & Governance Consultation" April 2014), to BCFIRB on the following items:

General quota allocation	Whole Farm Transfers
Graduated Entrant Program	Specialty production
Declining transfer assessment	Cottage Industry Program
Quota Exchange	Lifestyle milk and innovation policies

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<sup>1</sup> Production control, price control, import control

Under s. 7.1 of the *Natural Products Marketing (BC) Act (NPMA)*, BCFIRB is responsible for the general supervision of all marketing boards and commissions in the province, including the Milk 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*]”.

BCFIRB reviewed the Milk Board report and related documents, correspondence and stakeholder input. BCFIRB also held an information meeting with the Milk Board (May 15, 2014).<sup>2</sup>

## **BCFIRB Findings**

BCFIRB has determined, for the reasons set out in this letter, that:

1. BCFIRB is satisfied the Milk Board process met BCFIRB’s expectations.
2. BCFIRB accepts and adopts the Milk Board’s recommendations with respect to:
  - General quota allocation;
  - Quota Exchange;
  - Whole Farm Transfers;
  - Specialty production;
  - Cottage Industry Program; and,
  - Lifestyle milk and innovation policies.
3. Subject to the following condition, BCFIRB accepts and adopts the Milk Board’s recommendations with respect to the Graduated Entrant Program (GEP). Prior to the Milk Board undertaking its recommended actions on the GEP it must satisfy BCFIRB that the proposed approach to clearing the current wait list will mitigate “double dipping”<sup>3</sup>.
4. The Milk Board recommendation to amend BCFIRB’s directions to expand the transfer assessment exemption list will be reviewed and assessed in fall 2014 with related submissions from the BC Egg Marketing Board, BC Chicken Marketing Board, BC Turkey Marketing Board and BC Broiler Hatching Egg Commission.

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<sup>2</sup> BCFIRB members with Jim Byrne, BC Milk Marketing Board Chair, Garth Green, Member (Milk Industry Advisory Committee representative), Bob Ingratta, Chief Executive Officer.

<sup>3</sup> A situation where a new producer receives GEP quota from the Milk Board (at no cost) then shortly thereafter receives further quota from a family member where the quota transfer is excluded from a transfer assessment.

## **BCFIRB Reasons**

BCFIRB conducted a thorough review to assess whether there were any outstanding issues requiring further supervisory process. As part of this assessment, BCFIRB considered whether the Milk Board met SAFETI<sup>4</sup>-based process and outcome expectations. These expectations are summarized as follows:

### *Process Expectations*

Has the Milk Board:

- Effectively and strategically engaged with its stakeholders?
- Evaluated whether current quota policies and programs are effective and strategic in meeting sound marketing policy objectives?
- Identified issues and gaps?
- Proposed solutions?
- Reported its findings, recommendations and rationale to BCFIRB (and to its stakeholders)?

### *Outcome Expectations*

Do the Milk Board recommendations:

- Adhere to legislative requirements?
- Reflect the intent of supply management?
- Consider provincial agricultural policy?
- Reflect a principles-based approach to regulation?

## **1. Process Expectations**

The Milk Board used a multi-stage process to reach its final rationale and recommendations.

In Stage 1, producers were notified of the consultation process in spring 2013. This was followed by a set of questions delivered by the Council of Marketing Boards (COMB) to help establish the focus of the review. The Milk Board developed a final consultation plan, preliminary discussion document and public stakeholder list based on the survey results and stakeholder discussions. An external consultant was retained to develop the discussion document and facilitate regional meetings. Focus groups were used to test a consultation questionnaire. The Milk Board issued a notice with the final discussion paper and questionnaire to its public stakeholder list and requested feedback. Concurrently, facilitated regional meetings were held based on the discussion paper.

As part of Stage 2 the Milk Board published a summary of what the Milk Board heard in the consultations along with its analysis and preliminary policy and program recommendations. It engaged with key industry stakeholders and regional producer associations on the document and also sought input through a public written process. Following the public release of the final report, which included rationale for its recommendations, supporting documents and description of the review process, the Milk Board held an information meeting with BCFIRB.

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

Throughout the review process the Milk Board made its schedule, consultation documents, supporting materials and interim and final reports clearly available on the front, public facing page of its web site. It released regular notices and updates to its stakeholder list.

BCFIRB is satisfied the Milk Board process met BCFIRB's expectations.

## **2. Milk Board Recommendations (excluding GEP and transfer assessments)**

BCFIRB is satisfied the Milk Board recommendations met outcome expectations and accord with sound marketing policy under s. 9 of the *NPMA*. BCFIRB accepts and adopts the Milk Board's recommendations with respect to:

### *General quota allocation*

In discussions with the Milk Board stakeholders identified two questions related to general quota allocation. One was the method of allocation (currently pro-rata to licensed producers) and the second was differential allocation. On the general allocation the Milk Board heard proposals to return to the 50/50 model<sup>5</sup>, which then generated discussion on both allocation and retraction methodologies. In relation to differential allocation there were several proposals, including using a sleeve allocation in uncertain times (rather than allocating quota); allocating only to those who can produce the quota at that time; sell all quota allocations on the Exchange; and providing differential allocation to regions. Another proposal was the Milk Board hold back allocations to fund programs (e.g. GEP).

The Milk Board found the current distribution methodology is fair and equitable to all producers and does not impact one specific group in a negative manner. It had concerns with transparency of allocation and retractions if policy methodologies differ and if policies hinder producers based on their quota holdings. It found the current policy compliments the national allocation and is consistent with other western provinces. It also found the current policy creates no significant swings in production for individual farms.

General Allocation Methodology: "The Board recommends the distribution of general allocations remain on a pro-rata basis in order to meet the principles and objectives of the quota allocation policy. The best balanced decision is consistent with MIAC<sup>6</sup> recommendations."

General Allocation – Differential Allocations: "The Board recommends no application of differential allocation policies in order to meet the principles and objectives of the quota allocation policy."

### *Quota Exchange*

The Quota Exchange is used to coordinate the sale of quota between producers where transfer assessment exceptions or other policies do not apply (e.g. family transfers). In its consultation, the Milk Board heard concerns about the limited volume of quota on the Exchange and the possibility that producers are bidding up the market price of quota. These factors can impact producers

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<sup>5</sup> 50% based on equal share, 50% based on amount of Continuous Daily Quota

<sup>6</sup> Milk Industry Advisory Committee

looking to expand. The Milk Board reported most producers agreed the Exchange was running well (operationally including fairness, transparency and equity) and there was no need to change the model. Some producers suggested the current model is not fair to small producers and should be amended to fill a higher percentage of smaller bids. Various solutions to seeing more quota available on the Exchange were proposed such as removing quota transfer assessments, maintaining the Whole-Farm Transfer policy and addressing the quota shortage at the national level.

The Milk Board found the current Exchange model is fair, equitable and transparent and meets the current provincial objectives of quota transfers. It found the model is consistent with BCFIRB's previous directions. Concerns were heard about quota availability. The Milk Board believes there is opportunity under the current model to increase production through consistent bids.

Quota Exchange: "The Board recommends no changes be applied to the Quota Exchange at this time."

#### *Whole Farm Transfers*

The Whole Farm Transfer policy is intended to facilitate the purchase of dairy farms (industry sustainability) while ensuring the availability of quota on the Quota Exchange. Stakeholders shared their concerns that the current policy of putting 50% of the quota on the Exchange as part of a whole farm transfer was inefficient and impacts small and mid-sized farms. In the 2010/11 Milk Board review of this policy (which at the time allowed 100% transfer of quota with the farm) the Milk Board heard that the policy was unfair as quota was being transferred off the Exchange and was reducing regional access to quota. One suggestion was to allow 100% transfer of quota, but restrict mergers for a period of time. Other suggestions included changing 50% on the exchange and 50% with the farm to 25% on the Exchange and 75%. The 50% - 50% would only apply if a merger with another farm occurs (same ownership).

The Milk Board found that the current policy works for growth opportunity but there is need for a mechanism to allow 100% of the quota to remain with a farm in specific circumstances.

Whole Farm Transfers: "The Board recommends the following policy for whole farm transfers:

1. Continue to apply the current whole farm transfer policy in which 50% of the quota remains with the transfer and 50% is sold on the Quota Exchange after all relevant retractions and assessments are taken.
2. In the event a whole farm transfer is purchased with the intention to keep 100% of the quota on the farm, this farm should be advised of the following policy parameters;
  - a. No merging of quota with any other farm (same ownership) or quota (includes family transfers) for a period of 10 years;
  - b. Should any of these parameters be violated during the 10 year period, the 50/50 transfer policy will be applied at the next available date."

### *Specialty production*

The Milk Board currently uses a three step system to address differential growth in specialty production (relative to conventional production) to fill growing and changing market demand. Some stakeholders suggested the current system gives specialty producers preferential treatment. Specialty producers told the Milk Board that there should be a quota crystallization process and that they see the current system as meeting market demand while balancing the need to increase the number of specialty producers alongside the expansion of existing specialty farms.

The Milk Board found the current policies and processes are working well and address the fair and equitable entry in to the market and distribution of quota. The Milk Board recommended:

Specialty production: “The Board is recommending no changes to policies in the specialty market at this time.”

### *Cottage Industry Program (CIP)*

The Cottage Industry Program facilitates small scale, on-farm production of dairy products (e.g. yogurt, cheese). The majority of stakeholders told the Milk Board that the CIP fills an open market, compliments larger producers and processors, improves sales across the sector and draws positive public attention and support for the dairy industry. Suggestions were made to improve the transparency around the program and that similar programs could be made accessible to existing producers looking to add on-farm processing. A concern was raised about participants who had outgrown the program (addressed by the Milk Board in 2013 through policy changes). Another concern was the limited scope of the license. The Milk Board noted there was little discussion at the face-to-face sessions and overall feedback was limited.

The Milk Board found the current policies are working well and growth options are available for CIP participants.

Cottage Industry Program: “The Board is recommending no changes to policies to the Cottage Industry Program at this time.”

### *Lifestyle Milk and Innovation Policies*

The Canadian Dairy Commission Dairy Innovation Program (DIP) provides dairy processors access to milk to encourage the development of innovative dairy products. This program was revised by the Canadian Dairy Commission in 2013, requiring the Milk Board to develop new policies. As part of this process, the Milk Board added Lifestyle Milk<sup>7</sup> to its DIP policies in its consolidated orders. The Milk Board received no comments from stakeholders in the review process.

The Milk Board found that since policies for Lifestyle Milk and innovation are under development and no comments were received there were no recommendations to make at this time.

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<sup>7</sup> Milk with nutritional ingredients that makes it distinct from conventional milk.

Lifestyle Milk and innovation policies: “[T]he Board has no recommendations for Lifestyle milk and innovation at this time. The Board will provide FIRB with policies as they are developed.”

### **3. Graduated Entrant Program (GEP)**

The GEP is intended to help support the sustainability and social licence of the supply managed milk industry by providing an effective way for new people to enter as producers. The GEP wait list currently has 42 names on it and has been closed to additional names since December 2005.

The Milk Board heard most stakeholders agree that the wait list is too long to be effective. Stakeholders emphasized the need to exhaust the current list quickly and to create a new program that would not create the same issues (timeliness of opportunity issue and lack of opportunity for potential new entrants who cannot get on the wait list). Suggestions were made that the immediate creation of a new program would bring much needed transparency to the public and producers.

In terms of program length, suggestions were made to increase the program from 10 years to 15 or 20 years to prevent producers from entering with free quota, then selling out. Many producers proposed the initial amount of quota be increased with a restriction on transferability to ensure long-term investment. Others suggested that it is not the Milk Board’s responsibility to ensure a new entrant has an operation that is financially sustainable. Opinions were mixed on whether the GEP should be used for succession planning (e.g. family member eligible for an exempt family transfer and be able to participate in GEP to receive quota at no cost).

The Milk Board acknowledged the current GEP is not a responsive, effective or strategic approach to ensure new people can enter the industry, and noted stakeholder support for change. It considered the challenges of changing a program in mid-stream while being fair and equitable.

In order to revise the GEP, the Milk Board recommended the following actions.

“[I]nvitations be provided to all 42 candidates immediately advising of a start date within the next 5 years. All potential candidates will be required to start in a staged priority approach within the five year period, no extensions will be provided beyond 2019.”

The Milk Board goes on to recommend the following program parameters for the revised GEP:

1. “Producer selection will take place through a lottery system administered by an independent Audit firm as directed by the BCMMB.
2. Potential candidate must reside in BC and be the age of majority to apply
3. 3-5 Candidates will be chosen per year as directed by the BCMMB
4. \$10,000 deposit required if selected
5. Program length will remain 10 years
6. Initial allotment will remain 13.7kg/day
7. Matching quota will be increased to a maximum of 13.7kg/day
8. Declining Transfer Assessment will continue to be applied to all quota
9. No exempt transfers will be permitted for a period of 10 years
10. The farm production unit must be on a new location”

Producers entering the dairy industry under the revised GEP (lottery system) would not be eligible to receive quota through exempt family transfers in the first ten years. This measure – which flows from a 2008 Milk Board and BCFIRB review – is being proposed to address “double dipping”. “Double dipping” is where a new producer receives GEP quota (at no cost) from the Milk Board then shortly thereafter receives further quota from a family member that is exempt from transfer assessments<sup>8</sup>. BCFIRB finds “double dipping” – benefitting from the pool of new entrant quota without contributing to that pool through transfer assessments – is not consistent with sound marketing policy.

BCFIRB believes the Milk Board’s proposed changes to the GEP address the fundamental issues with the current program and will help build a strategic and accountable approach to bring new producers in to the dairy industry in a fair, effective and transparent manner. However, BCFIRB is not yet satisfied that the proposed changes adequately address “double-dipping”<sup>9</sup> in clearing the current GEP waitlist. BCFIRB requires the Milk Board to establish a clear, transparent and enforceable mechanism to ensure that “double-dipping” is mitigated in clearing the wait list.

BCFIRB suggests the Milk Board may wish to consider running a lottery system every two or three years, rather than annually. This could help provide a greater planning horizon for new entrants, as well as achieve potential cost savings for the Milk Board. For example, the Milk Board could conduct a lottery for 15 candidates with staged entry covering a three year period. BCFIRB also expects the Milk Board to put a time limit on when the selected candidates must commence actively farming or use another related mechanism so as not to recreate the timeliness issue seen with the current GEP waitlist.

#### **4. Extending Quota Transfer Assessment Exemptions**

In 2005 BCFIRB directed that a portion of any quota transferred between producers be returned to the Milk Board.<sup>10</sup> Immediate family members were exempted from this quota transfer assessment.<sup>11</sup> Stakeholders requested policy changes that would “broaden the family tree” – allowing more distantly related family members, or others, based on a farms’ succession plan, to benefit from a transfer assessment exemption. The Milk Board recommended extending the exemption transfer list to include nieces, nephews and grandchildren.

The Milk Board based their recommendation on their strategic assessment that the core future of the dairy industry depends on building from within — employing and leveraging the experience and human capital embodied in existing farm families. They believe this approach would help address increasing farm succession planning questions and help ensure there are enough farmers to supply BC dairy products in the future.

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<sup>8</sup> Transfer assessments – where a portion of the quota being transferred is returned to the Milk Board to be used for new entrant programs and managing changing markets/innovation.

<sup>9</sup> New producer receives GEP quota (at no cost) from the Milk Board then shortly thereafter receives further quota from a family member that is exempt from transfer assessments

<sup>10</sup> [http://www.firb.gov.bc.ca/specialty\\_review.htm](http://www.firb.gov.bc.ca/specialty_review.htm)

<sup>11</sup> Quota transferred to a spouse, son, or daughter is exempt from transfer assessment (2005). Quota transferred to a sibling is exempt where the quota being transferred remains attached to the farm in question (2007). Any transfer to a sibling that results in quota being moved off the farm requires a transfer assessment be applied (2007).

BCFIRB's 2005 and 2007 transfer assessment directions resulted from an extensive, in-depth review process across all BC supply managed industries. As such, BCFIRB has deferred consideration of these Milk Board recommendations at this time. Instead, they will be considered alongside related applications from the BC Egg Marketing Board, BC Chicken Marketing Board, BC Turkey Marketing Board and BC Hatching Egg Commission in fall 2014.

### **Closing**

BCFIRB congratulates the Milk Board on its thorough and principled approach to reviewing its quota management policies and programs. Positive stakeholder feedback on the Milk Board process is indicative of an effective, fair, inclusive and transparent approach to the review. BCFIRB views the Milk Board process as a positive model for other boards and commissions to consider if undertaking similar policy and program reviews.

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."

Administrative decisions made by the Milk Board in the implementation or application of its recommendations – as approved by BCFIRB – are appealable under s. 8 of the *NPMA* within 30 days of a Milk Board decision.

If you have any questions, please feel free to contact BCFIRB.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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Andreas Dolberg  
Vice Chair

cc: BCFIRB web site