



August 27, 2018

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DELIVERED BY EMAIL

Katie Lowe
Executive Director
BC Egg Marketing Board

Dear Ms. Lowe:

**QUOTA ASSESSMENT TOOLS EVALUATION -- AUGUST 3, 2018 BC EGG
MARKETING BOARD QUESTIONS**

This letter is in response to several questions from the BC Egg Marketing Board related to the BC Farm Industry Review Board (BCFIRB) February 2, 2018 Quota Assessment Tools Supervisory Review¹ decision (Quota Review decision). These questions were provided on August 3, 2018 in relation to the Egg Board's May 2018 allocation prior approval request.

The majority panel of the Quota Assessment Tools Supervisory Review asked me to respond to the Egg Board's questions on their behalf.

The Egg Board questions for clarification, as the majority panel understands them, are summarized as:

1. The majority panel previously clarified February 2, 2018 as the effective date for 179(c)² "regardless of when a commodity board chooses to amend its Orders to reflect the Quota Review decision". Can the Egg Board, in light of paragraph 172³, apply 179(c) in a forward looking manner after it amends its Consolidated Orders on October 1, 2018,

¹ 2018 February 2. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and Quota Assessment Tools Supervisory Review](#).

² 179(c) quota holders are not eligible to receive growth 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 with that business unit remain eligible to receive growth.

³ 172. 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.

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thereby making the effective start date for 179(c) to a date determined by the Egg Board (e.g. October 1, 2018) instead of February 2, 2018?

2. Are the Egg Board's allocation acceptance rules in the current version of its Consolidated Orders in accord with BCFIRB's direction in 179(d)⁴?

In relation to question one above, the Egg Board asked BCFIRB to reconsider the start date of paragraph 179(c) to "...allow the BCEMB to implement a forward looking order without retrospective implications". If, after reviewing the clarification provided below, the Egg Board decides it still wants BCFIRB to reconsider the February 2, 2018 start date, it would be a matter for the full BCFIRB board to decide after a specific request from the Egg Board.

The Egg Board also requested BCFIRB expand the limited exemption to the twelve month transfer-related moratorium on producer eligibility to receive growth as set out in 179(c)(i) to include those currently listed in Part V of its Consolidated Orders⁵. This is a new issue. As such, it is appropriate for the full BCFIRB board to consider this request. BCFIRB will be responding to the Egg Board in the near future as to next steps in terms of its consideration of this request.

Clarification

Effective date of paragraph 179(c) and application of paragraph 172

The majority panel's view, as previously expressed, is that the effective date of paragraph 179(c) is the date of the Quota Review decision – February 2, 2018, where "effective" refers to the date from which this direction begins to speak. What may not have been clear in our earlier correspondence is that for a particular commodity board or commission, the critical date is when they choose to enact their new orders. For example, the BC Milk Marketing Board enacted its new orders February 15, 2018 and as such paragraph 179(c) became applicable in the milk industry on that date.

The Egg Board is correct in interpreting the intent of paragraph 172 as commodity boards and commissions having the discretion as to when to adopt and apply the Quota Review directions as part of their Consolidated Orders. The Egg Board is free to adopt the Quota Review directions on October 1, 2018 or on any other date it considers effective and strategic. It does not require BCFIRB approval to do so. BCFIRB expects that the Egg Board would give producers appropriate notice of Quota Review related changes to the Consolidated Orders so producers can make any necessary business decisions.

⁴ 179(d). Receipt of growth quota cannot be deferred. Offer and acceptance of growth quota is a one time opportunity.

⁵ Where quota is transferred to a spouse, child, or child and child's spouse; transferred among related corporate producers; transferred from one sibling related corporate producer to another with the Independent Production Unit; transferred by way of permissible lease; one or more producers transfer quota to a corporate producer and the direct or indirect interest of each such transferor in the corporate producer is proportionate to the layer quota so transferred by each such transferor; two or more producers enter into an agreement of partnership and the partnership interest of each such producer is proportionate to the layer quota registered in the producers name; the amount of layer quota deemed to have been issued to a producer having an interest in a partnership remains registered in that producers name upon dissolution of the partnership.

If the Egg Board enacts new Consolidated Orders on October 1, 2018, paragraph 179(c) would apply to the egg industry from that date forward, meaning that if the Egg Board makes the changes it has indicated to adopt the Quota Review directions, persons who transferred quota in the 12 months preceding a growth allocation are ineligible to receive growth quota. For example, if the Egg Board changed its Consolidated Orders on October 1, 2018 and then offered growth quota on October 2, 2018, producers who had transferred quota any time between October 2, 2017 and October 2, 2018 would be ineligible to receive growth.

The majority panel's intent in relation to paragraph 172, the "effective date" and application of paragraph 179(c) was to forestall a scenario where a board issues quota under BCFIRB's 2005 Specialty Review directions, then, very shortly thereafter, amends its Consolidated Orders to reflect the 2018 Quota Review directions. In this scenario the majority panel considered that the risk of quota being treated as a commodity to be sold for a profit (or in other words "flipped"), rather than being produced would be high. This scenario was a key consideration for the majority panel given the BCFIRB principle – first formally established as part of the 2005 Specialty Review, and confirmed again in the Quota Review decision – that quota is intended to be produced.

The majority panel is aware that, despite its original intent, the scenario set out above will likely be playing out. It assumes the Egg Board will be offering producers growth quota under BCFIRB's 2005 directions once BCFIRB provides its allocation prior approval decision later this month and shortly thereafter will be amending its Consolidated Orders (i.e. October 1, 2018 as set out in the August 3 letter) to adopt the Quota Review directions. Given the likelihood of further growth being allocated to the province within the next twelve months, those producers who choose to take advantage of the Consolidated Order changes and transfer quota will be ineligible to receive a share of any forthcoming growth quota occurring within that 12 month period.

The majority panel acknowledges that the wording of the Quota Review decision and subsequent clarification letters could have been clearer. The majority panel allowed the discussions at the board-to-board meeting to overshadow the central issue that all the Quota Review directions apply upon a commodity board enacting new orders as expressly provided in paragraph 172. It regrets any resulting confusion and thanks the Egg Board for its considered submission bringing these important clarification questions to its attention.

Alignment of current Consolidated Orders with paragraph 179(d)

So long as the Egg Board notification of a quota increase as per Part II(2)(2) of its Consolidated Orders dated November 1, 2017 is made to all eligible producers concurrently, the majority panel agrees this approach meets the intent of paragraph 179(d).

The August 3 letter also refers to "[a] producer has a maximum of three years from the date of the first notification was provided to place hens". BCFIRB staff subsequently confirmed with Egg Board staff that following a quota increase notification, the Egg Board follows up with

reminders during the 30 day period in which eligible producers have to accept any growth quota. Producers must accept the growth quota in the first 30 days that notice is provided. Three years refers to the time in which producers must place the additional birds in their barns. The majority panel agrees this approach meets the intent of paragraph 179(d).

Please let me know if you have any questions.

Yours truly,



Kirsten Pedersen
Executive Director

cc: Gunta Vitins, Chair, BC Egg Marketing Board

Stephanie Nelson, Executive Director
BC Broiler Hatching Egg Commission

Rob Delage, General Manager
BC Milk Marketing Board

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BCFIRB web site