



May 15, 2018

File: 44200-60 QATE

DELIVERED BY E-MAIL

Katie Lowe
Executive Director
BC Egg Marketing Board
#250 – 32160 South Fraser Way
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Dear Ms. Lowe:

**BC EGG MARKETING BOARD QUESTIONS – QUOTA ASSESSMENT TOOLS
SUPERVISORY REVIEW**

Thank you for your April 12, 2018 letter setting out the BC Egg Marketing Board (Egg Board) questions regarding the February 2, 2018 BC Farm Industry Review Board (BCFIRB) Quota Assessment Tools Supervisory Review decision (Quota Review).

The majority panel asked me to respond to the Egg Board's questions on their behalf.

First, the majority panel determined that the Egg Board questions are seeking clarification of the majority decision. As such the questions are properly addressed only by the majority of the panel.

Second, the majority panel thanks the Egg Board for providing quota transfer scenarios with its questions. The examples did help the panel better understand the Egg Board questions. While the Egg Board requested BCFIRB to approve or confirm the quota transfer scenarios, the majority panel declines to confirm or approve specific scenarios or examples as the responses below should provide adequate clarification of the majority panel's decision.

Question 1: The Egg Board would like confirmation that the removal of Last-In-First-Out (LIFO) is not replaced with First-In-First Out (FIFO) or any other mechanism that dictates what quota must be assessed first on transfer.

**British Columbia
Farm Industry Review Board**

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The majority made a considered decision when it rescinded LIFO on all quota held by a producer. With LIFO rescinded, producers that meet the conditions prescribed by the commodity board can choose which quota to transfer first unless a commodity board decides otherwise.

Question 2: The Egg Board would like confirmation that after any quota transfer, exempt or non-exempt, that quota received by the transferee is classified as base quota.

The majority made a considered decision when it stated that BCFIRB directed transfer assessments would only apply to the first time quota is issued by a board (e.g. new entrant, incentive or growth quota). BCFIRB directed transfer assessments do not apply after the first time quota issued by a board is transferred, regardless of whether the transfer is to an exempt or non-exempt person. Commodity boards remain free to apply transfer assessments to subsequent transfers of quota as they deem appropriate.

Question 3: The Egg Board would like to confirm it can apply paragraph 179(c) on transfers that occur after BCFIRB's Quota Review directions are incorporated in to its consolidated orders.

179. If boards cease to use LIFO (on all quota held by a producer) and 10/10/10 (on growth quota), these quota management rules are to be replaced with the following:

...

- c) Quota holders are not eligible to receive growth quota 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 within that business unit remain eligible to receive growth.

As set out in the majority panel's April 27, 2018 response to the Chicken Board¹, the majority made a considered decision concerning the eligibility of producers to receive growth quota allocations. The start date for the direction set out in paragraph 179(c) is February 2, 2018 (the date of the Quota Review decision). A producer who transferred quota in the 12 month period prior to the issuance of growth quota is ineligible to receive growth quota. For example, if there was an issuance of growth quota in May 2018, those growers who transferred quota within the previous 12 months would not be eligible to receive a share of that growth quota.

If the Egg Board decides to advance a case to change this start date it will need to provide a substantive sound marketing policy rationale as per paragraph 164.

164. If commodity boards decide there is a sound marketing policy rationale for change to these quota management directions, BCFIRB will require substantive, objective information with a supporting SAFETI analysis that includes considerations such as industry competitiveness and public policy objectives.

¹ 2018 April 27. BCFIRB. [BC Chicken Marketing Board Questions – Quota Assessment Tools Supervisory Review](#).

Question 4: Does BCFIRB include a partnership in the definition of “business unit”

The majority decision’s use of “business unit” as opposed to use of “corporation” or “partnership” specifically is intended to reflect the broader configuration of structures under which producers operate in regulated industries (of which a corporation is but one example) and which would include partnerships. The intent of this direction was to balance the disincentive for quota flipping while still recognizing the importance of not unduly restricting business restructuring. Each board is responsible for defining “business unit” based on how they regulate.

Question 5: The Egg Board would like to confirm its understanding of paragraph 179(c)(i) that there would not be a) an assessment on any of the quota held, and b) that a corporation would remain eligible for growth quota in certain circumstances as per the following scenarios:

Producer A is a Corporation with two shareholders named Owner 1 and Owner 2. Owner 1 and Owner 2 are unrelated business partners who jointly own and operate the corporation. Owner 1 and Owner 2’s total quota holdings is 15,557 layer quota. Total shares in the corporation their 100 shares, divided equally amongst the two shareholders.

- *Owner 1 sells his 50 shares in Producer A Corporation to Owner 2.*
- *Owner 1 transfers his 50 shares in Producer A Corporation to his daughter.*
- *Owner 1 and Owner 2 sell their 100 shares in Producer A Corporation to a third party buyer that purchases the farm as a going concern.*

As stated at the start of this letter, the majority panel is not approving or confirming scenarios or examples. However it can provide clarification on its quota management directions.

First, the majority decision’s use of “total quota holdings within a business unit” means what it says. It is not a reference to corporate shares.

As per paragraphs 175, 176 and 179(a) of the Quota Review decision, when quota issued by a board is transferred for the first time BCFIRB directed transfer assessments apply up to the end of year 10.² These assessments must be applied, even if the quota is part of a “going concern sale” unless the quota is being transferred to a person on the exempt person list.

As per the majority panel April 27, 2018 response to the Chicken Board, the intent of the direction in paragraph 179(c) is that if a quota transfer does not result in an overall change in total quota holdings within a business unit (e.g. within a corporation or partnership), quota holders within that business unit

² See also [2018 May 11. BCFIRB. Quota Assessment Tools Supervisory Review – Clarification on 10/10/X and 10/10/0.](#)

remain eligible to receive growth. For example, shareholders or partners within a business unit can change, percentages of ownership can change, so long as the total quota holdings within the business unit do not change.

If quota is transferred out of a business unit to a person on the exempt person list, the direction in paragraph 179(c) regarding eligibility to receive growth still applies. For example, if a partner in a business unit transfers quota to their daughter outside of that business unit, that partner is not eligible to receive growth for 12 months.

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

Regards,



Kirsten Pedersen,
Executive Director

cc: Stephanie Nelson, Executive Director
BC Broiler Hatching Egg Commission

Bill Vanderspek, Executive Director
BC Chicken Marketing Board

Robert Delage, General Manager
BC Milk Marketing Board

Michel Benoit, General Manager
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BCFIRB website