



October 24, 2018

File: 44200-60 QATE

DELIVERED BY E-MAIL

Katie Lowe, Executive Director
BC Egg Marketing Board

Dear Ms. Lowe:

QUESTIONS -- EGG BOARD REQUEST TO EXPAND LIST OF THOSE EXEMPT FROM BCFIRB'S 12 MONTH MORTROIUM DIRECTIVE

In an August 3, 2018 letter, the BC Egg Marketing Board (Egg Board) requested that the BC Farm Industry Review Board (BCFIRB) change its February 2, 2018 Quota Assessment Tools Supervisory Review (Quota Review) directions. The Egg Board requested that the persons listed in Part V of the Egg Board's Consolidated Orders be added to those exempt from the twelve month moratorium on receiving growth.

On August 27, 2018, BCFIRB confirmed this matter is new and will be considered by the full board.

The requested change is substantive with significant implications for the egg industry and potentially other supply managed sectors.

BCFIRB is seeking additional information from the Egg Board. Should the Egg Board wish BCFIRB to consider next steps associated with its request at BCFIRB's November 14, 2018 meeting, a response is needed by November 7, 2018.

**British Columbia
Farm Industry Review Board**

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Background

BCFIRB's February 2018 Quota Review decision¹ affirmed the policy objective that quota is intended to be produced (not received at no cost from the board, then quickly sold). To ensure this objective is met if Last-In-First-Out (LIFO) and 10/10/10 are removed, some other mechanism is required to prevent "flipping".

Several different mechanisms were proposed by the Egg, Milk, and Chicken boards as part of the Quota Review process. In paragraphs 155 to 160 of the Quota Review decision, BCFIRB reviewed the merits of the proposed mechanisms and determined that the "...individual proposals are not sufficient to help ensure quota holders do not receive direct immediate financial benefit by transferring quota received at no cost from the board – rather than producing the quota in the first instance – if both LIFO and 10/10/10 are removed at this time" (para 160).

In paragraph 162, BCFIRB stated it was prepared to remove its former direction regarding LIFO (on all quota), and 10/10/10 on growth quota, on the basis of several conditions, including the following:

179. (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.

Egg Board request

On August 3, 2018, the Egg Board requested, with supporting reasons, that s. 179(c)(i) be expanded to include the persons set out in Part V(3)(5)(a-g) of its Consolidated Orders dated November 1, 2017:

- a) Layer Quota is Transferred, or deemed to have been Transferred, to the Transferor's spouse, child, or child and the child's spouse;
- b) Layer Quota is Transferred among Related Corporate Producers²;
- c) all Layer Quota is Transferred from one Sibling Related Corporate Producer to another, together with the associated Independent Production Unit;
- d) Layer Quota is Transferred by way of a Permissible Lease;
- e) one or more Producers Transfer Layer 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;
- f) 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 that Producer's name;
- g) the amount of Layer Quota deemed to have been Issued to a Producer having an interest in a partnership remains registered in that Producer's name upon dissolution of the partnership.

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

² Related Corporate Producers" mean corporate producers, the direct or indirect interest in which is exclusively held by the same Person, or by Persons who are related as spouse, child, child and the child's spouse, or sibling.

At the October 3, 2018 Chair to Chair meeting, the Egg Board informed BCFIRB that it would like an answer on its request prior to the Egg Board transitioning from the 2005 Specialty Review directions to the 2018 Quota Review directions. The Egg Board is concerned that operating under the 12 month moratorium directive without further exemptions could have a negative impact on current producer business planning and structures.

The Egg Board's rationale for change is summarized below:

- BCFIRB directions providing for transfer assessment exemptions³ when quota is transferred between immediate family members were successful as demonstrated by the existence of 3rd generation family farms.
- Excluding producers involved in succession planning or business restructuring from growth allocations would stifle succession planning and expansion as the business units involved would receive less growth as a whole than they would have otherwise. Producers should not be punished for establishing separate business units for expansion or risk reduction.
 - E.g. Succession planning may include purchasing additional properties and setting up multiple business units to accommodate more than one successor. The parent could lose growth quota under the 12 month moratorium direction.
- The risk of quota holders transferring quota for financial gain (rather than producing it) is real with non-family third party transfers. The Egg Board's recommendation would be strategic in reducing this risk.
- Implementing the requested change will maintain the family farm without encouraging producers to form large corporate structures – that are not seen to be in the public interest by the Egg Board – along with discouraging quota transfers for the purposes of financial gain.
- Current direction is not fair as producers with succession plans in place may be impacted unless the 12 month moratorium exemption list is expanded.

Clarification and additional information requested

BCFIRB is seeking the following clarification and additional information from the Egg Board. Once received, BCFIRB will consider what, if any next steps are required, including the option of an in-person board to board meeting.

1. While a SAFETI analysis was provided in the August 3 submission, there are policy rationale and information gaps.

Please provide analysis and rationale related to the change request and the present and future industry structures, and the Egg Board strategic plan, in light of sound marketing policy. Some questions to consider include:

- a. How do the structures of businesses within the egg industry relate to the Egg Board's strategic plan and vision of a sustainable provincial egg industry?

³ Exempt persons currently include: spouses, sons, daughters, and siblings where the quota being transferred remains attached to the farm in question (2005 & 2007). Other exempt transfers include those for business reorganization purposes where ownership percentages do not change (2005). In 2015 BCFIRB expanded the Milk Board list of exempt persons to include nieces, nephews, and grandchildren.

- b. Why does the Egg Board believe retaining multiple separate business unit operations, under different business names is more strategic and effective for the industry and better serves the public interest as opposed to development of large corporate structures?
 - c. What is the Egg Board's policy rationale for its concern that some business units may receive less growth than they would have⁴ if the exemption list is not expanded? What is the nature and magnitude (e.g. number of farms) of the consequences to the industry and the Egg Board's strategic plan and vision?
 - d. Why is it better sound marketing policy to provide additional exemptions to the 12 month moratorium as opposed to fully supporting the policy objective (discouraging use of quota for purposes other than production) behind the 12 month moratorium?
2. The request appears to be focused on family succession. Are there other policy objectives or considerations that BCFIRB should be aware of? For example,
 - a. Are there general industry succession considerations?
 - b. Are there general industry potential consequences in the event BCFIRB does not approve the Egg Board's requested change?
 - c. Are there any non-succession related considerations?
3. What steps could the Egg Board take to demonstrate to BCFIRB and the public that abuses would not occur should the exemption list be expanded?
4. While BCFIRB understands there would be personal business costs to restructuring some family succession plans, what are the possible overall costs and benefits to industry and influence on the Egg Board's policy objectives? How are these costs and influences different from the restructuring that occurs due to tax and other business rule changes?
5. Why is leasing being included as a requested exemption? How will this exemption support the Egg Board's policy objectives? Do the requested exemptions a through g have the same meaning as the current BCFIRB transfer assessment exemptions (footnote 3)?
6. Please provide an outline of the Egg Board process used in reaching and communicating the requested change.

For example, were stakeholders and/or other supply-managed commodity boards consulted? What were their views (summarized)? What other information was considered, and was the final requested change communicated to stakeholders?
7. In its Quota Review decision (para 184), BCFIRB stated that boards could implement the quota management changes after an implementation plan was developed and publically communicated. Please provide a copy of the Egg Board's implementation plan for context. BCFIRB appreciates the plan may be still in draft form.

Concurrent with this letter, BCFIRB will be seeking input from the other supply-managed boards on the Egg Board requested change.

⁴ e.g. a parent does not receive growth because they transferred quota to a child in the 12 months prior to a growth allocation.

Katie Lowe
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In order for BCFIRB to consider next steps at its November 14, 2018 meeting, please provide your response to Wanda Gorsuch at Wanda.Gorsuch@gov.bc.ca by November 7, 2018.

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

Rob Delage, General Manager
BC Milk Marketing Board

Michel Benoit, General Manager
BC Turkey Marketing Board