

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
BC EGG MARKETING BOARD RECOMMENDATION – ADDITIONAL EXEMPTIONS
FROM BCFIRB QUOTA ASSESSMENT TOOLS DIRECTION

February 26, 2019

British Columbia Farm Industry Review Board
Egg Board Recommendation Exemptions BCFIRB QATE Directions
February 26, 2019

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INTRODUCTION

1. On August 3, 2018 the BC Egg Marketing Board (Egg Board) recommended the BC Farm Industry Review Board (BCFIRB) expand the types of quota transfers that would not trigger BCFIRB's February 2, 2018 Quota Assessment Tools Supervisory Review¹ directive 179(c).
2. In paragraph 179 of the Quota Assessment Tools Supervisory Review (Quota Review) BCFIRB had stated:
 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:
 - a) 10/10/0² is to be applied to the first transfer of all growth quota issued to date and going forward.
 - b) Quota holders have the option to refuse or accept growth quota.
 - 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.** [emphasis added]
 - d) Receipt of growth quota cannot be deferred. Offer and acceptance of growth quota is a one-time opportunity.
3. BCFIRB's intent with this direction was to help ensure its policy objective "quota is intended to be produced" would continue to be met when boards choose to remove LIFO (Last In-First Out) and modify the 10/10/10 quota transfer rules. For instance, it would not be sound marketing policy for a producer to be accepting growth quota if they are downsizing, planning to exit the industry, or planning to transfer quota received from the board at no cost for an immediate profit rather than producing said quota.

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

² BCFIRB clarified on May 11, 2018 that paragraph 179(a) should read as follows: 10/10 is to be applied to the first transfer of all growth quota issued to date and going forward.

4. BCFIRB also stated in the Quota Review decision, that commodity boards could continue to operate under BCFIRB's 2005 Specialty Review³ quota management directions until such time boards decide it is strategic and effective to adopt the Quota Review directions which replace some of the 2005 directions. BCFIRB included that it would consider changes to its Quota Review directions should commodity boards provide substantive, objective information with a supporting SAFETI⁴ analysis that included considerations such as industry competitiveness and public policy objectives.
5. Quota management is a powerful tool. BCFIRB's role is to ensure a principled, evidenced-based approach to quota management for transparent, accountable results -- sound marketing policy in the public interest.

ISSUE

6. Is the Egg Board's recommendation to expand the types of quota transfers that would not trigger the 12 month moratorium on receiving growth (Quota Review 179(c)) sound marketing policy?

LEGAL AUTHORITIES

7. Under s. 7.1 of the *Natural Products Marketing (BC) Act (NPMA)*, BCFIRB is an independent administrative tribunal responsible for the general supervision of all marketing boards and commissions in the province. 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. As the supervisory agency under the *NPMA*, BCFIRB is responsible for ensuring the provincial supply managed sector, which is part of the national supply management fabric, achieves its legislated objective – sound marketing policy.

SUPERVISORY REVIEW PROCESS

9. The Egg Board made its August 3, 2018 recommendation to BCFIRB following release of BCFIRB's Quota Review decision (February 2, 2018) and consultation with seven producers. These seven producers were reported to be potentially ineligible to receive growth under paragraph 179(c) should the Egg Board implement the Quota Review directions as of February 2018.

³ 2005 September 1. BCFIRB. [Specialty Market and New Entrant Submissions: Policy, Analysis, Principles and Direction](#).

⁴ Strategic Accountable Fair Effective Transparent Inclusive

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10. At the time, the Egg Board also asked BCFIRB to reconsider when 179(c) would apply. In summary, it asked that BCFIRB reconsider that the 12 month moratorium on receiving growth being applied to the months prior to February 2, 2018. When BCFIRB clarified in an August 27, 2018 letter that the Egg Board could implement the Quota Review directions on a timeline established by the Egg Board, the Egg Board withdrew its reconsideration request on September 11, 2018.
11. Following receipt of BCFIRB's request for further information,⁵ the Egg Board distributed BCFIRB's questions to all producers. It also met with the Egg Industry Advisory Committee (EIAC) and the Egg Producers Association (EPA).
12. Concurrently, BCFIRB sought input from the other four supply-managed boards.⁶ Specifically, it was interested in hearing what the benefits and risks to industry and sound marketing policy of expanding the types of quota transfers that would not trigger the 12 month moratorium on receiving growth. Only the BC Milk Marketing Board responded, with a statement of general support.
13. The Egg Board met the BC Egg Marketing Board Scheme requirement of consulting with the EIAC.⁷ BCFIRB finds that discussing its recommendation with the Egg Producers Association and drawing producers' awareness to its recommendation and BCFIRB's related questions was inclusive.
14. In BCFIRB's view, an effective and accountable process, given the potential industry wide implications of the recommendation, could have seen fuller industry engagement and EIAC consultation prior to the Egg Board making its August 3, 2018 recommendation to BCFIRB. Despite this gap, BCFIRB accepts the Egg Board process and does not require further work to be carried out before making a decision on the Egg Board recommendations.
15. In its Quota Review decision (paragraph 193), BCFIRB established the following condition on when it would consider changes to its directions:

If, in the future, commodity boards decide there is a sound marketing policy rationale for change to the following 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.

⁵ October 24, 2018, submission deadline November 9, 2018, extended to December 5, 2018 at the request of the Egg Board.

⁶ BC Broiler Hatching Egg Commission, BC Chicken Marketing Board, BC Milk Marketing Board, BC Turkey Marketing Board.

⁷ BC Egg Marketing Scheme s. 36(3) The board must consult with the committee [EIAC] and consider the committee's advice before the board makes any decision relating to pricing or production.

16. In its August 2018 submission, the Egg Board provided a SAFETI analysis of its recommendation. As part of its December 5, 2018 response to BCFIRB's request for further information it provided substantive information on how the industry structure is changing with changing markets, animal welfare requirements, and a limited land base in the Lower Mainland. Little substantive information was provided in relation to its succession planning rationale.
17. Overall BCFIRB determined its Quota Review condition was sufficiently met to allow it to consider the Egg Board recommendation.

EGG BOARD RECOMMENDATION AND RATIONALE

18. The Egg Board recommended the following types of quota transfers not make quota holders ineligible to receive growth quota for 12 months (be added to the exceptions for eligibility to receive growth quota):
 - 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 Producers⁸;
 - 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.
19. The list in paragraph 18, with one exception, includes the same type of quota transfers exempt from BCFIRB directed quota transfer assessments.^{9,10,11} The one exception is the permissible lease under "d".

⁸ "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.

⁹ 2005 September 1. BCFIRB. [Specialty Market and New Entrant Submissions: Policy, Analysis, Principles and Direction.](#)

¹⁰ 2005 September 2. BCFIRB. [Quota Transfer.](#)

¹¹ 2007 January 26. BCFIRB. [Review of Specialty Production and New Entrant Programs-Improving Access to the Supply Management System-Exempt of Siblings from Quota Transfer Assessments.](#)

20. The main rationale provided for this recommendation focused on family succession and changing industry structure/operating context.

Family succession

21. According to the Egg Board, family succession is important for a sustainable BC egg industry. It is concerned that if it implements BCFIRB's 12 month moratorium on growth direction there will be an undue negative impact on family succession planning. For example, it argues that it is important that "...all interested family members can participate fully in egg production to meet growing market demand without being penalized for the transfers". This argument appears to be grounded, at least to some degree, in the Egg Boards' understanding that a number of farm succession plans include the construction of multiple farms under different names to spread business risk and allow successors to operate separate farms, which in turn leads to stable business units and a more stable industry overall.
22. Several scenarios were provided, such as a son/daughter establishing an independent farm operation with quota transferred from the parents. Under BCFIRB's 12 month moratorium direction, the parents would be ineligible to receive any potential growth quota for the 12 months following the quota transfer to their child. The Egg Board also raised concerns that the 12 month moratorium would be an incentive for producers to form complex business structures as a work around.

Changing industry infrastructure and operating context

23. The Egg Board reports that with changing markets (e.g. from standard caged to aviary housing, enriched cage, free run, free range and organic production), animal welfare requirements, and a limited land base in the Lower Mainland,¹² producers are setting up separate farms and actively evaluating the future of their business structures and farm operations. The Egg Board is concerned that the 12 month moratorium will act as a disincentive for producers to actively invest in necessary product diversity and related infrastructure. For example, given how the Egg Board manages quota, if a free-run producer establishes a separate farm to supply the growing organic market, any transfer of quota to that farm, if it doesn't meet BCFIRB's exception, would result in the producer being ineligible for any potential growth quota for 12 months. Similarly, if a producer transfers some quota to their spouse to establish a separate farm with new infrastructure or different production type, this too could result in the producer being ineligible to accept any growth quota for 12 months if the transfer doesn't meet BCFIRB's exception. The numbers and information provided by the Egg Board clearly show the on-going changes to industry infrastructure and operating context.

¹² Approximately 81% of BC's laying hens are located in the Lower Mainland.

Quota is intended to be produced

24. In relation to BCFIRB's policy objective that "quota is intended to be produced", the Egg Board stated that the risk of quota being transferred for financial gain is real if considering "third party" transfers (not family transfers). The Egg Board also pointed to its current rule that producers cannot buy quota within two years of selling quota or sell quota within two years of buying quota.

ANALYSIS

25. BCFIRB must consider its policy objective of "quota is intended to be produced" and its 12 month moratorium tool in light of family succession and changing industry context, the sound marketing policy considerations raised by the Egg Board. To do so, BCFIRB must first review the overall current status of the egg industry, look at how the Egg Board manages quota, and consider potential connections to the sound marketing arguments provided by the Egg Board.
26. The egg industry has seen relatively rapid growth over the last five years, due to seven national production increases from Egg Farmers of Canada in response to increased consumer demand for eggs. The Egg Board reports that over the last eight years production increased by 27%, with 75% of this growth occurring over the last four years. Previously production volumes were stable for many years, with no national increases or decreases. Strong growth in production volume is a benefit to both BC egg producers and the province as a whole.
27. Each time there is an increase in national production volumes, the Egg Board issues BC's share of this new production as "growth quota" to its producers at no cost. The Egg Board anticipates at least one if not more national production increases over the next year or so. The impacts of recent international trade agreements on future domestic production volumes are not known at this time and continue to be assessed.
28. Should the Egg Board implement BCFIRB's Quota Review directions during this period of rapid growth, some producers may not be eligible to receive growth quota if they transfer quota for succession or business planning reasons 12 months prior to a growth quota issuance.
29. Quota is very valuable to producers, both in terms of predictable income from production and its value in the private marketplace between producers. Hence there is a strong incentive for producers to maximize the amount of growth quota received from the Egg Board at no cost.
30. If there was no growth (or a decline) in production volumes, concerns about eligibility to receive growth quota and the subsequent impacts would likely not be seen as an issue by producers.

31. Before considering the Egg Board’s rationale for seeking the exemptions it has, and BCFIRB’s policy objective, it is important to clarify that BCFIRB’s Quota Review direction only applies to quota transfers. BCFIRB does not consider “permissible” leasing to be a “transfer” for purposes of paragraph 179(c) of its decision and therefore it need not consider the Egg Board’s recommendation to exempt “permissible leases”.
32. It is also important to note that BCFIRB continues to support two statements made in the Quota Review decision:

117. ...From a principles-based regulatory and sound marketing policy basis, quota management policies and rules should endeavor to be effective, strategic and accountable under all market conditions (barring exceptional circumstances).

And

154. Any [quota management] mechanism should be applied in such a manner that it does not unduly advantage or disadvantage a particular producer or specific groups of producers.

Family succession considerations

33. From a family succession point of view, since 2005, quota moving between “exempt persons”¹³ in the egg industry did not encounter any BCFIRB-related “hindrance”. When quota is transferred to an exempt person, no BCFIRB directed transfer assessments are applied.¹⁴ If the Quota Review directions are implemented by the Egg Board, quota transfers to “exempt persons” would remain free from BCFIRB directed transfer assessments. The significant change is that the persons transferring quota to an exempt person become ineligible to receive growth quota for 12 months following a quota transfer. The Egg Board argues that the potential loss of growth quota for a family member will negatively impact family succession plans.
34. BCFIRB did not find the Egg Board’s family succession rationale convincing. There was little substantive information as to scale of the concern and any related long-term industry impacts. BCFIRB was not convinced that current family succession plans would be impacted to such a degree that individuals would be unduly impacted and the sustainable future of the egg industry would be at risk. From BCFIRB’s perspective, if a parent is transferring quota to their child or children as part of a succession plan, the parent would be considered as planning to exit the industry – even if that eventuality is a few years down the road. At this point growth quota, although being produced, could be seen as primarily being sought to maximize the benefit to a select group of people, that is, only

¹³ Exempt persons per BCFIRB direction 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).

¹⁴ A transfer assessment is where a portion of the quota transferred is returned to the Egg Board

those family members implementing family succession plans. This would be in conflict with BCFIRB's position that mechanisms should not unduly advantage a specific group of producers. Exemptions from transfer assessments will continue to support family succession plans after the Egg Board decides to adopt the Quota Review directions. Families remain primarily responsible for succession planning in a changing business environment, which includes BCFIRB directions, commodity board rules, government tax law changes and other considerations.

Changing industry infrastructure and operating context considerations

35. The Egg Board argued producers will hesitate to diversify their types of production or expand their operations via separate farms and/or invest in new barn infrastructure if there is the prospect of losing out on a potential opportunity for growth quota. In turn this change will have a negative impact on the ability of the BC egg industry to adapt to changing markets, animal welfare requirements and a limited land base. The Egg Board position is that if additional types of quota transfers are excluded from triggering the 12 month moratorium on receiving growth, the potential disincentive for producers to expand/operate in a flexible way would be adequately mitigated.
36. BCFIRB did find the changing industry infrastructure and operating context rationale generally compelling. The Egg Board clearly laid out the challenges facing producers in this period of rapid growth with changing housing requirements for laying hens and shifting market demands. While some producers have decided to exit the industry, it appears that since 2014 others are investing in multiple farm operations for space and/or flexible production reasons.
37. BCFIRB agrees there is a sound marketing policy argument that quota management mechanisms should not unduly interfere with producers adapting to the current markets and operating context. These and other considerations informed the spirit and intent of the exception to allow quota transfers where there is no overall change in total quota holdings within a business unit. BCFIRB also agrees, based on the Egg Board rationale, that its Quota Review directions may have a negative impact on the ability of producers to be flexible in the face of changing industry context and infrastructure.
38. It is also sound marketing policy for the Egg Board to ensure that policies and tools do not create undue barriers to producers pursuing new and/or differentiated markets. This view is reflected in BCFIRB's 2005 Specialty Review and the Ministry of Agriculture's Regulated Marketing Economic Policy (2004).
39. The next question for BCFIRB is whether the Egg Board's recommendation is the most effective solution to help ensure the Quota Review directions do not create an undue disincentive to industry responsiveness/flexibility.
40. A key challenge for BCFIRB was the outstanding question as to if, or how fully, the Egg Board explored all of its options before making its recommendation to BCFIRB – that the

most effective solution to the sound marketing policy issues it raised would be to expand the types of transfers (the majority being family related) that would not trigger the 12 month moratorium on receiving growth.

41. BCFIRB wonders if sufficient advance notice of a rule change, along with appropriate application of 179(c)(i) of the Quota Review decision, would be a possible option to help mitigate the main sound marketing policy issues the Egg Board raises in relation to changing industry infrastructure and operating context. BCFIRB issued its Quota Review decision over a year ago.
42. Further, paragraph 179(c)(i) of the Quota Review decision states that quota transfers that do not result in an overall change in total quota holdings within a business unit will not trigger the 12 month moratorium on receiving growth. Commodity boards were left free to define “business unit” in a manner that is effective and strategic for their industries. It is unclear whether the Egg Board explored how this exception could be used to mitigate the issues it has identified.
43. It is the Egg Board’s responsibility in the first instance to satisfy itself (and demonstrate it was satisfied) that quota transfers meet quota management legislation requirements, policy objectives, commodity board rules and BCFIRB directions. This includes ensuring quota, received at no cost from the board, is not being transferred for the purposes of immediate financial gain rather than being produced.

“Quota is intended to be produced” considerations

44. BCFIRB was not satisfied with the Egg Board’s view that there is little risk to the policy objective “quota is intended to be produced” by expanding the types of quota transfers that would not trigger the 12 month moratorium.
45. While Egg Board rules may not allow producers to sell quota for two years after purchasing quota, the rule does not address quota received from the board at no cost. Another Egg Board rule – that producers do not receive quota until the birds are placed – is likely a more effective tool to minimize quota flipping. BCFIRB stated in its Quota Review decision that this rule alone was not sufficient to help ensure “quota is produced” with the removal of LIFO and 10/10/10 (Quota Review decision paragraph 160).
46. BCFIRB also does not agree with basing the outcome of its policy objective on the argument that family members are less likely to transfer quota received at no cost from the board for immediate financial gain than “third parties”.

Retention of LFIO and 10/10/10

47. According to the Egg Board’s December submission it will consider the retention of LIFO and 10/10/10 depending on the outcome of this decision. BCFIRB will only observe that during the Quota Review process the Egg Board argued for the removal of LIFO and 10//10/10. For example:

98. ...LIFO and 10/10/10 results in a disincentive to some producers to exit the industry ('tying up' quota) and creates a serious loss of on-farm efficiency when there is a whole farm transfer. It also states that quota transfers are required to finance changes to layer housing (driven by consumer pressures). ...

Any decision to retain LIFO and 10/10/10 would likely need to very clearly address the Egg Board's original arguments for removal of LIFO and 10/10/10 and why its views changed.

Conclusions

48. BCFIRB acknowledges how growth is managed and how farm businesses are structured in the egg industry are different from other supply-managed industries. This difference becomes particularly significant in relation to quota management and the Quota Review directions when the egg industry is facing rapid growth, shifting markets and changing housing infrastructure standards for laying hens.
49. BCFIRB agrees this point in time situation calls for some form of remedy to avoid new rules causing undue hindrance to producers who are seeking to diversify and be flexible. BCFIRB was not convinced that the Egg Board fully explored its Quota Review implementation options in light of this sound marketing policy challenge before bringing its recommendation to BCFIRB. BCFIRB was also not convinced that the risk to its policy objective – “quota is intended to be produced” – was evaluated and addressed.
50. In BCFIRB's view, a solution should not unduly advantage or disadvantage a particular group of producers and it should be effective under various market conditions. Other commodity boards have used notice of impending rule changes to assist producers in managing their business affairs.
51. While the Egg Board has not yet indicated to producers it will adopt the Quota Review directions, BCFIRB made its decision over a year ago. The decision has been available to the industry since that time, and the Egg Board has provided producers with some information about it.
52. If the Egg Board determines it will adopt the Quota Review directions, BCFIRB is willing to shorten the 12 month moratorium on receiving growth to six months on a one time basis.
53. BCFIRB's intent is to allow all producers time to adjust their business plans to accommodate any forthcoming rule changes given the expectation there will be at least one issuance of growth quota over the next year. A shortened one time moratorium of six months for each producer would avoid the complexity that would result from adopting several categories of exemptions, allow all producers to make the adjustments they foresee as being necessary for operational and succession planning and avoid the results of favouritism of some producers over others.

54. This approach will only be successful if the Egg Board gives sufficient notice to producers of any rule changes and forecasts the date of issuance of growth quota. BCFIRB is aware that the forecasted date must be estimated, given BCFIRB's prior approval role in the distribution of growth quota.
55. BCFIRB encourages the Egg Board to fully explore all its options regarding rules pertaining to quota transfers in order to continue to meet legislation requirements, policy objectives, commodity board rules and BCFIRB directions.

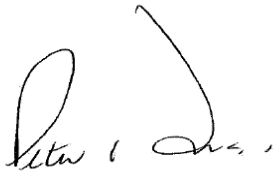
DECISION

56. BCFIRB has determined it will not accept the Egg Board's recommendation to adopt rules that would exempt certain categories of producers from BCFIRB's 12 month moratorium direction if it ceases to use LIFO (on all quota held by a producer) and 10/10/10 (on growth quota). BCFIRB reached this determination for the reasons set out above and given BCFIRB's Quota Review process and deliberations were extensive and in-depth with clearly stated policy objectives and rationale.
57. The Egg Board is to provide producers sufficient advance notice of:
 - a) any amendments to its Consolidated Orders in response to BCFIRB's Quota Review and the effective dates for those changes; and
 - b) the forecasted timing of the next growth quota allocation.to allow producers time to make any necessary adjustments to their business plans.
58. BCFIRB makes the following one-time amendment to the first period of time referred to in paragraph 179 (c), following the Egg Board's adoption of rules to implement the Quota Review directions:
 - a) Quota holders are not eligible to receive growth for 6 months following a transfer of any quota.
59. The temporary amendment in paragraph 58 only applies:
 - a) to the Egg Board and its registered producers,
 - b) on the date the Egg Board amends its Consolidated Orders adopting the Quota Review directions.
60. If, after implementing the Quota Review directions, the Egg Board determines there is a sound marketing policy rationale for further change to the directions, BCFIRB remains

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willing to consider Egg Board recommendations. The Egg Board may seek further change after conducting a transparent and inclusive consultative process and providing substantive, objective information, along with a supporting SAFETI analysis that includes considerations of the change in the context of sound marketing policy, including industry competitiveness.

Dated at Victoria, British Columbia, this 26th day of February 2019.



Peter Donkers
Chair



Al Sakalauskas
Vice Chair



Daphne Stancil
Member



Tamara Leigh
Member



Mary O'Callaghan
Member