

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
THE PRIOR APPROVAL OF THE BC EGG MARKETING BOARD BUSINESS UNIT
DEFINITION

January 30, 2020

DECISION SUMMARY

1. On November 4, 2019 the BC Egg Marketing Board (Egg Board) submitted its proposed definition of “business unit” to the BC Farm Industry Review Board (BCFIRB) for prior approval. BCFIRB had previously identified the definition as requiring prior approval before the Egg Board can implement BCFIRB’s Quota Assessment Tools Supervisory Review directions.
2. BCFIRB approves the Egg Board’s November 4, 2019 definition of “Business Unit” in principle.
3. The Egg Board is to provide BCFIRB with a clarified definition prior to February 28, 2020.

INTRODUCTION

4. On February 2, 2018, BCFIRB issued several quota management directions to all BC supply-managed boards, including the Egg Board, as part of the Quota Assessment Tools Supervisory Review (Quota Review).¹
5. In paragraph 179(c) of the Quota Review decision, BCFIRB made the following direction:
 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.
6. Given the differences that exist across supply managed sectors, BCFIRB left it to the supply-managed boards to define “Business Unit” in a manner best suited to represent the business structures of their sector.
7. Following the Quota Review Decision, on August 3, 2018, the Egg Board requested that BCFIRB expand the 12-month moratorium exemption to include transfers between family members. The Egg Board’s rationale focused on family succession planning and the changing structure/operating context of the egg industry.
8. In its February 26, 2019 decision, BCFIRB rejected the Egg Board’s recommendation to expand the list of exemptions from the 12-month moratorium,² and instead provided the

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

Egg Board a one-time amendment to paragraph 179 (c). The one-time amendment would replace the 12-month moratorium on receiving growth, with a 6-month moratorium.

9. On May 24, 2019, the Egg Board provided BCFIRB with its plans to make quota management-related changes to their Consolidated Order by June 2021 in order to implement BCFIRB's Quota Review directions. The Egg Board requested BCFIRB prior approval for these updates, including a revised definition of "Business Unit," under s. 37(c) of the British Columbia Egg Marketing Scheme.³
10. On August 29, 2019,⁴ BCFIRB determined that no changes to the Egg Board Consolidated Order required prior approval except for the proposed "Business Unit" definition. It directed the Egg Board reconsider the definition as it did not support BCFIRB's quota management policies. If approved, the proposed definition would have resulted in a similar outcome as if BCFIRB had approved expanding the 12-month moratorium to include family members in February 2019. The Egg Board was directed to submit an amended definition for approval before updating its Consolidated Orders.
11. On November 4, 2019, the Egg Board submitted an amended definition of "Business Unit" for BCFIRB approval.
12. One of BCFIRB's supervisory responsibilities is to ensure a principled, evidenced-based approach to quota management for transparent, accountable results, representing sound marketing policy in the public interest.

ISSUE

13. Does the Egg Board's proposed "Business Unit" definition accord with BCFIRB's quota management policies and directions?

LEGAL AUTHORITIES

14. In British Columbia, the production and marketing of eggs is regulated under the *Natural Products Marketing (BC) Act (NPMA)* and the British Columbia Egg Marketing Scheme, 1967 (Egg Scheme).

² 2019 February 26. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and BC Egg Marketing Board Recommendation – Additional Exemptions from BCFIRB Quota Assessment Tools Direction](#)

³ S. 37(c) ... such quotas to remain at all times the property of the board and, subject to prior approval of the Provincial board, to vary such quotas and prescribe the terms and conditions upon which they shall be issued or transferred...

⁴ 2019 August 29. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and the Prior Approval of the Quota-Related Revisions to the BC Egg Marketing Board Consolidated Orders](#)

15. Under s. 7.1 of the *NPMA*, BCFIRB is an independent administrative tribunal responsible for the general supervision of all marketing boards and commissions, including the Egg Board, 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”.
16. Section 37(c) of the Egg Scheme⁵ requires BCFIRB prior approval for the Egg Board to vary the terms and conditions upon which quota is issued or transferred.

EGG BOARD SUBMISSION

17. The Egg Board’s proposed definition is as follows:
 - “Business Unit” means:
 - a) two or more corporate Registered Producers, the direct or indirect interest in which is exclusively held by the same individual;
 - b) two or more corporate Registered Producers, the direct or indirect interest in which is exclusively held by the same group of individuals, in the same proportion, for each such corporate Registered Producer; or
 - c) an individual who is a Registered Producer, and one or more corporate Registered Producers, the direct or indirect interest in which is exclusively held by that individual.
18. As part of its submission, the Egg Board provided a SAFETI⁶ analysis along with examples of how the definition would be applied in various quota transfer scenarios.

ANALYSIS

19. The November 2019 submission is silent on whether the Egg Board consulted with stakeholders on the proposed business unit definition. In follow-up with Egg Board staff, BCFIRB understands that the Egg Board did consult with producers after making its submission to BCFIRB. This included speaking with producers at Interior and Lower Mainland producer meetings as well as review and discussion with the Egg Industry Advisory Committee. As reported, the primary focus of stakeholder comments was on a continued interest in finding means whereby quota transfers between family members would not trigger BCFIRB’s 12-month moratorium direction. Normally consultation would occur prior to making a submission to BCFIRB. This would enable the Egg Board to make any content or clarity adjustments it deemed appropriate based on feedback.
20. In the regulated BC egg sector, an individual who holds quota may be registered under multiple Producer numbers (multiple farms). The Egg Board expects this trend to continue

⁵ S. 37(c) ... such quotas to remain at all times the property of the board and, subject to prior approval of the Provincial board, to vary such quotas and prescribe the terms and conditions upon which they shall be issued or transferred...

⁶ Strategic, Accountable, Fair, Effective, Transparent, Inclusive

as individuals diversify production types and expand production to multiple properties to address changing animal care standards and consumer demands. BCFIRB agrees that unless “business unit” is carefully defined, there is risk an individual moving quota between their farm operations to manage production types and business efficiencies could become ineligible to receive growth quota for 12 months.

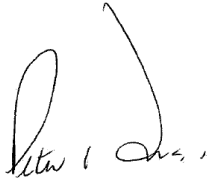
21. BCFIRB’s Quota Review direction arose from its position that some degree of check and balance to manage the financial gain incentive was still needed with the removal of Last In / First Out (LIFO). It was not intended to hinder individuals making certain farm management decisions such as managing production between farms. BCFIRB supports the Egg Board in developing a business unit definition that reflects the egg sectors structure.
22. While BCFIRB is presently satisfied based on the explanation the Egg Board provides in its November 14, 2019 submission, that the intent of the proposed definition accords with its quota management policies, it is very concerned how difficult the definition is to understand and whether it actually conveys the Egg Board’s intention. Normally BCFIRB does not step in and delay significant rule changes on a matter of wording. However, in this instance the extreme difficulty in understanding and resulting confusion over the definition puts transparency, fair process and accountability at serious risk.
23. For example, the definition speaks to “corporate Registered Producers”. Corporate Registered Producers are not defined in the Consolidated Orders and as such, it is unclear what a “corporate Registered Producer” is, and how it is different from a “Registered Producer” which is defined. Similarly, “person” is a defined term and includes any sole proprietor, partnership, firm or corporation. Individual is not a defined term so it is not clear how an individual is different from a “person” or whether the definition accommodates partnerships and firms. Overall, based on this definition, would producers have a clear understanding of which quota transfers would trigger the twelve-month moratorium on receiving growth? On an initial reading BCFIRB took the definition to mean that most, if not all, quota transfers would be exempt from the twelve-month moratorium. Which from the explanation provided, does not appear to be the Egg Board’s intent.
24. In summary, unclear rules unduly hinder producer business decisions and board enforcement which is not procedurally fair, effective or accountable. Clear definitions are an important component of effective, fair and accountable regulation.

DECISION

25. The Egg Board’s stated intentions and objectives align with BCFIRB’s quota management policies. BCFIRB approves the Egg Board’s November 4, 2019 definition of “Business Unit” in principle.
26. In order to ensure the definition of "Business Unit" accurately reflects the Egg Board's intention, the Egg Board is to provide BCFIRB with alternate wording that is accurate and clear prior to February 28, 2020.

British Columbia Farm Industry Review Board
Egg Board business unit definition prior approval
January 30, 2020

Dated at Victoria, British Columbia, this 30th day of January, 2020.




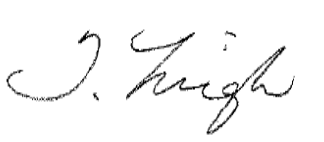
Peter Donkers
Chair



Al Sakalauskas
Vice Chair



Daphne Stancil
Member



Tamara Leigh
Member

Dennis Lapierre
Member



Pawan Joshi
Member



Harveen Thauli
Member



David Zirnhelt
Member