



July 19, 2017

File: 44200-60

**DELIVERED BY E-MAIL**

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Dear Sirs/Mesdames:

**REGULATION OF ASIAN HATCHING EGG PRODUCTION SUPERVISORY REVIEW  
– NEXT STEPS**

On June 28, 2017, the BC Hatching Egg Commission’s (Commission) issued its Recommendations to the British Columbia Farm Industry Review Board (BCFIRB) regarding the Asian breeder sector. This document was posted to BCFIRB’s website and can be viewed here: [2017 Review of Asian Hatching Egg Production Regulation](#).

**Background**

These recommendations are the latest step in an ongoing supervisory review which was started following the release of BCFIRB’s appeal decision of March 29, 2016, in *Skye Hi Farms Ltd. et al v. British Columbia Broiler Hatching Egg Commission*. In this decision the Commission was directed to “decide if further regulation is needed to achieve sound marketing policy objectives including industry stability, innovation and diversification based on the application of the outcome based principles of a SAFETI decision” and if the Commission’s decision was to exempt the production of Silkie and Taiwanese chicks from all price and production controls, “the report must include draft changes to the existing regulatory scheme to support the exemption”.

Since that time, the Commission recommended that Asian hatching egg production be exempted. This decision was appealed by Skye Hi Farms Inc., Casey van Ginkel dba V3 Farms and Bill Friesen and Lillian Fehr dba W Friesen Enterprises and Unger’s Chick Sales (1974) Ltd. dba

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Coastline Chicks and Robert and Patricia Donaldson dba Bradner Farms (July 22, 2016). These appeals were dismissed as being premature (August 16, 2016).

On August 19, 2016, the Commission requested that BCFIRB prior approve its proposal to exclude exempt Asian hatching egg production from regulation, with the exception of biosecurity, food safety, and premise identification requirements. This decision was appealed by Skye Hi, V3 Farms and W Friesen Enterprises (August 29, 2016) as well as Bradner Farms and Coastline Chicks (September 9, 2016).

On September 16, 2016, the presiding member of the appeal panel determined that these appeals should be deferred pursuant to s. 8(8) of the *Natural Products Marketing (BC) Act* until the completion of the supervisory review process, stating in part:

In these circumstances, this Panel agrees with the Commission that until such time as the Commission's prior approval request has been addressed by the supervisory panel, further consideration of the issues raised in these appeals should be deferred. In the event that prior approval is granted by BCFIRB at the conclusion of the supervisory process, then it may be that the issues raised by the appellants in these appeals will have been addressed and reviewed as part of that process. In the event that prior approval is not granted, that will obviously inform the Commission of potential issues with its proposed regulation that may need to be further addressed. This also has the potential to affect the parties' positions on these appeals.

On October 19, 2016, a BCFIRB supervisory panel met with the Commission where it was agreed that the Commission would address outstanding process and information gaps through a BCFIRB-approved process before the supervisory panel would make a decision on BHEC's final recommendations. BCFIRB approved the Commission's Work Plan (and time table). The process was suspended following the resignation of the Commission's Chair.

On January 26, 2017, a new BHEC Chair was appointed and the Commission re-started its review process which ultimately led to the June 28, 2017 recommendations.

### **Recent Correspondence**

On June 30, 2017, BCFIRB received a letter from counsel for Skye Hi, V3 Farms and W Friesen Enterprises. The letter states as follows:

The appellants have seen a copy of a document entitled BCBHEC Recommendation to BCFIRB Regarding the Asian Breeder Sector, dated June 28, 2017. The recommendation in that document appears in substance to be the same as the recommendations made by the Commission on June 24, 2016 and again on August 19, 2016. Given the lengthy delays in the Commission's process, the Appeals remain in abeyance over a year after the first Recommendation Report with the appellants having had no opportunity to be heard by BCFIRB either within the appeal or supervisory review processes.

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The appellants continue to object to the substance of the recommendation made by the Commission seek an opportunity to be heard by BCFIRB in that regard whether in the context of the Appeals or the supervisory review.

On July 4, 2017, BCFIRB received a letter from counsel for Unger's Chick Sales (1974) Ltd. dba Coastline Chicks and Robert and Patricia Donaldson dba Bradner Farms who also have outstanding appeals before BCFIRB. Their letter requests a hearing before BCFIRB as in their view the reasons given for the Commission's June 28, 2017 Recommendations display "an utter lack of understanding of the dynamics and challenges of the industry" and represent a 180 degree turnaround from the Commission's previous position upon which their clients have relied.

### **Next Steps**

The BCFIRB supervisory panel has reviewed BHEC's recommendations and rationale, and determined it requires further information before it is prepared to issue a final supervisory decision regarding the regulation of Asian hatching egg production.

As such, the following process steps will be taken:

1. BCFIRB supervisory panel will provide questions to the Commission that identify areas requiring clarification or more detail. BCFIRB will post these to the BCFIRB web site and in due course it will post Commission response.
2. All stakeholders, including the appellants Skye Hi, V3 Farms, W Friesen Enterprises, Bradner Farms and Coastline Chicks, will then have the opportunity to make written submissions with respect to any legal, factual or policy issues arising out of the Commission's June 28, 2017 recommendations and the Commission's response to the Panel's questions noted above in paragraph 1. The Commission will be given final opportunity to respond to these submissions. BCFIRB will post all responses to its website, excluding any confidential business information that the parties identify.

The panel letter setting out questions to the Commission, when issued, will provide further procedural direction including timelines for submissions as well as arrangements for receiving confidential business information should that be required.

Once the supervisory panel receives the Commission's submissions and the submissions of stakeholders, we will determine what, if any, further steps are necessary before issuing a final supervisory decision.

Yours truly,



Daphne Stancil  
Presiding Member