

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Prior Approval Review of the
British Columbia Egg Marketing Board
2010 New Producer Program Lottery Recommendations

DECISION

November 30, 2010

INTRODUCTION

1. 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). Section 37(c) of the Egg Scheme requires that the British Columbia Farm Industry Review Board (BCFIRB) prior approve any new allocation of quota to producers, and any terms and conditions established by the British Columbia Egg Marketing Board (Egg Board) for the allocation of quota.
2. This document sets out the second of two decisions arising from concurrent review processes affecting the allocation of egg quota in British Columbia. The first decision, issued November 5, 2010, was made with respect to BCFIRB's prior approval review of the Egg Board's 2010 Quota Distribution Policy (Policy 10-03). This second decision is made with respect to BCFIRB's prior approval review of Egg Board recommendations for its New Producer Program lottery.
3. On March 1, 2010, the Egg Board completed its first lottery under the New Producer Program, in accordance with rules prior approved by BCFIRB in November 2009¹. The lottery and draw were administered by L.A. Larson and Associates, a certified general accounting firm, and supervised by Jack Wessel, secretary of the Council of Marketing Boards and acting independent observer. The New Producer Program lottery drew four names from 123 applicants, and the successful applicants were announced on the Egg Board website².
4. On April 8, 2010, BCFIRB received a report from L.A. Larson and Associates (dated March 5, 2010), documenting the process by which the lottery was completed, and the final results. This report was made available on the BCFIRB website³.
5. On April 21, 2010, BCFIRB announced its joint review with the Egg Board of the New Producer Program lottery process, stating that BCFIRB and the Egg Board would be seeking public input. The objective of the review was to explore whether improvements could be made to the lottery, which could then be applied in selecting the next round of entrants to the New Producer Program. As the first step in the review, the Egg Board was asked to prepare a detailed report outlining the lottery and review process; the current status of the four lottery candidates; and any recommendations of the Egg Board with respect to the New Producer Program rules or the lottery and review process resulting from its experiences with the first draw.

¹ The first lottery to distribute the 2009 New Producer Program quota was held in March 2010 due to delays in finalizing the New Producer Program. The next lottery, to distribute the 2010 New Producer program quota, is to be held by March 2011.

² <http://bcegg.com>

³ All background information and relevant documents to this review can be found on the BCFIRB website at http://www.firb.gov.bc.ca/bcemb_npp_lottery.htm.

6. On June 22, 2010, the Egg Board submitted its report to BCFIRB, recommending changes to the application requirements to the New Producer Program lottery. Specifically, the Egg Board recommended that, in addition to the application form and fee, a business plan and net worth statement be required from applicants for entry into the lottery.
7. Between June 25 and July 12, 2010, BCFIRB invited industry stakeholders and interested persons to submit written comments on the New Producer Program lottery. BCFIRB received 13 submissions from 12 individuals during this period. On September 22, 2010, BCFIRB held in-person meetings with stakeholders to receive oral submissions on the New Producer Program lottery⁴. Egg Board representatives were also in attendance to answer questions raised in the meetings. On September 27, 2010, BCFIRB sent a letter to the Egg Board with follow-up questions and comments.
8. On October 5, 2010, the Egg Board provided written responses to each of the stakeholder submissions received during the comment period, and on October 7, 2010, submitted its final recommendations with respect to the New Producer Program lottery. In its October 7 report, the Egg Board again put forward its recommendation that applicants be required to submit a business plan, and added a further recommendation that all graders be provided with the names of the lottery winners and their contact information following a lottery draw.

DECISION PROCESS

9. The panel considered expectations previously communicated to the Egg Board, including those in the 2000 Egg Quota Allocation Review, the July 2004 Ministry Regulated Economic Policy, the 2005 Specialty Review, the 2009 Prior Approval Review of the Egg Board Quota Distribution Policy and New Producer Program Rules, and BCFIRB's December 17, 2009 letter to the Egg Board highlighting lessons learned from the 2009 review.
10. The panel carefully reviewed all of the submissions from the Egg Board and from those persons who contributed comments during the written and oral submission processes. When making its decision, the panel considered only those matters that touch directly on the the Egg Board's New Producer Program lottery. Accordingly, the panel will not refer to all of the points raised in these submissions in its decisions.
11. Similarly, the panel does not intend to reiterate the substantial background on the 2009 and 2010 prior approval reviews in this document. This information remains available for interested readers on the BCFIRB website⁵.

⁴ These meetings also provided an opportunity for stakeholders to comment on the Egg Board's 2010 Quota Distribution Policy.

⁵ http://www.firb.gov.bc.ca/bcemb_npp_lottery.htm

CHANGES TO THE NEW PRODUCER PROGRAM LOTTERY

a) General Information Requirements for Application to the Lottery

12. In its June 22, 2010 report, the Egg Board observed that of the 123 lottery applications received, approximately 90% were rejected upon initial review. Upon reviewing the reasons for rejection, the Egg Board noted that many applicants were not clear on the type of identification and attachments that would be considered acceptable for an application to be considered complete. The Egg Board thus recommended changing the New Producer Program Lottery Application form to specifically identify what is required:

- i. Notarized Canadian Passport, Canadian Citizenship Card or Permanent Resident Card;
- ii. Notarized BC Driver's License or BC ID Card;
- iii. Notarized Statutory Declaration identified in Rule 1(4)(e) of the New Producer Program Rules⁶; and
- iv. Cheque in the amount of \$250 made payable to the British Columbia Egg Marketing Board.

13. The panel agrees that increasing the clarity around application requirements could improve the rate of successful entry into the lottery, and encourages the Egg Board to make the recommended changes to the New Producer Program Lottery Application form.

b) Business Plan and Proof of Financial Capacity

14. In its November 30, 2009 prior approval decision of the Egg Board's New Producer Program rules, BCFIRB emphasized the importance of a rigorous selection process for protecting the integrity of the New Producer Program. The New Producer Program rules at section 1(7)(a) state that a person seeking to participate in the lottery must have, among other qualifications, "a genuine intention to be actively engaged in egg production from an Independent Production Unit conforming to all applicable requirements under the Consolidated Order that is owned by the applicant, or will be owned by the applicant prior to the commencement of egg production". This requirement for ownership is also included in the statutory declaration identified at section 1(4)(e).

15. In its June 22, 2010 report, the Egg Board noted that the majority of applicants appeared to not have read the New Producer Program rules, despite attesting to having done so on their application forms. The Egg Board observed that, because evidence of financial capacity was not required to apply for entry to the lottery, several applicants may have entered the lottery without giving due consideration to the financial requirements associated with obtaining an egg production unit. The Egg Board argues that, due to a lack of financial capacity, many applicants

⁶ See Schedule 1 of the Egg Board Consolidated Order.

would not have been able to qualify to receive quota under the New Producer Program had their names been chosen. The Egg Board suggests that the lack of a pre-screening process to ensure financial capacity in effect dilutes the chances of those applicants who not only have a genuine intention to produce, but also have the financial capacity to do so.

16. To improve the pre-screening process, the Egg Board recommended that all applicants be required to submit financial information along with their application, consisting of a business plan and net worth statement. The Egg Board further recommended that in addition to the lottery administrator, a second independent party be named to assist in reviewing the applicants' business plans and net worth statements. In the public comment period, several stakeholders were in support of strengthening the pre-screening process by requiring a business plan upon application to the lottery.
17. The panel notes that the requirement for a viable business plan is already in place at a later stage of the New Producer Program selection process. However, requiring applicants to submit their plans earlier on – as a condition of entry into the lottery – would likely discourage those who are not committed to seeing the process through, from entering the lottery. This would increase the chances of success for those who have fully considered the implications of, and are prepared to commit to becoming, registered egg producers⁷.
18. The panel thus accepts the Egg Board's recommendation to require a business plan for application to the lottery. Applicants' business plans should be accompanied by proof of financial capacity, for example, a net worth statement or a letter of undertaking from a financial institution. The panel also supports the Egg Board recommendation to appoint a second independent party, in addition to the lottery administrator, to assist in reviewing the applicants' business plans and proof of financial capacity.
19. The panel reminds the Egg Board that it must take careful measures to protect the confidentiality of applicants' information, and to communicate these measures clearly to applicants.

c) Priority to Small-Lot Authorization Permit Holders

20. BCFIRB's September 1, 2005 Specialty Review directions required that marketing boards develop and introduce small lot permit programs to provide for product and market innovation, regional small lot agriculture, heritage breeds and farmer-direct marketing initiatives.

⁷ At Stage 1 of the New Producer Program selection process, names are drawn by lottery. Stage 2 requires the lottery winners to prepare business plans for approval by a review committee consisting of representatives from the agriculture, finance and accounting sectors. During Phase 3, the successful applicants proceed with obtaining or constructing egg production facilities.

21. The Egg Board Small Lot Authorization Program allows individuals to keep up to 399 layers, provided the layers are certified as organic, free run, free range or heritage breed. Persons authorized under the Small Lot Authorization Program are exempted from the requirement of being licensed by the Egg Board or registered as a Registered Producer, and paying levies, provided that they do not market their eggs through a federally registered grading station. All producers wishing to produce under the program must apply annually to the Egg Board to receive authorization to do so; this ensures that the Egg Board is able to identify small lot producers in the case of a biosecurity or food safety incident.
22. It was recommended by stakeholders that a Small Lot Authorization permit be required for entry into the New Producer Program lottery. Stakeholders suggested that this would demonstrate a serious commitment of the applicant to producing eggs and would ensure that the applicant has experience and knowledge of egg production with a desire to expand. Since the applicant is already in operation, he or she would also be able to respond to market demand more quickly than applicants who are not authorized under the program.
23. In its November 5, 2010 prior approval decision on the Egg Board 2010 Quota Distribution Policy, the panel directed the Egg Board, starting in 2011, to give priority for at least one new entrant allocation per year to Small Lot Authorization permit holders:
 51. ... the panel accepts that prioritizing new entrant quota for Small Lot Authorization Permit holders might help to improve short-term market responsiveness and efficiency of the New Producer Program, while still facilitating the entry of new producers into the regulated marketing system. It would be beneficial to use existing standing capacity to produce specialty eggs where capacity already exists. Also, this approach may help to prevent a backlog in New Producer Program allocations by removing some of the time lag associated with establishing production facilities and obtaining certification.
 52. The panel directs the Egg Board, starting in 2011, to give priority for at least one new entrant allocation to Small Lot Authorization permit holders.
24. The panel expects the Egg Board to exercise its discretion in determining how it will conduct the New Producer Program lottery as to ensure the above direction is met.
25. It is important to note that providing reasons is a cornerstone of fair decision-making. The panel thus reminds the Egg Board that it must be prepared to provide reasons – to its stakeholders and to BCFIRB – that support its chosen approach to achieving the objective of giving priority to Small Lot Authorization permit holders under the New Producer Program.
26. The panel also suggests that the Egg Board clearly indicate on the revised New Producer Program Lottery Application form any additional information that might be required of Small Lot Authorization permit holders to qualify for prioritization under the New Producer Program. .

27. In its November 5, 2010 decision, the panel encouraged the Egg Board to consider the appropriateness of the 10,000 layer limit set for its Small-Lot Authorization Program. It has since been brought to the attention of the panel that this limit was reached when the Egg Board issued the last of its available 25 permits on August 5, 2010. Noting that there is existing unmet demand for the program, and that the identification of egg producers in British Columbia is significant for purposes of biosecurity and food safety outreach and education, the panel suggests that the Egg Board reconsider this limit.

d) Priority to Regional Applicants

28. The Ministry of Agriculture's 2004 Regulated Market Economic Policy expects that regulated marketing boards in British Columbia will ensure that their policies and decisions do not inhibit the economic viability of regional industries; that they consider the need for appropriate mechanisms to sustain regional industries; and that they strive to accommodate producers and processors who pursue innovative or specialized market opportunities, which are available in a region because of the region's location or natural characteristics.

29. In its November 5, 2010 decision, the panel directed the Egg Board, starting in 2011, to give priority for at least one new entrant allocation per year to applicants proposing to produce eggs in a region other than the Lower Mainland:

54. The New Producer Program rules allow for the Egg Board to restrict lotteries by region (or group of regions) as well as by egg type (or group of egg types). Thus far, the Egg Board has not restricted the New Producer Program by region, nor does it propose to in the upcoming lotteries. The 2009 New Producer Program lottery, which was unrestricted by region, selected four applicants all of whom are located in the Lower Mainland.

55. To ensure that the New Producer Program contributes to regional development, the panel directs the Egg Board, starting in 2011, to give priority for at least one new entrant allocation to applicants proposing to produce eggs in a region other than the Lower Mainland. To ensure that the eggs produced under this New Producer Program quota will be graded locally, the panel suggests that the Egg Board establish additional application criteria so as to not present unreasonable financial costs (or other risks) to the industry generally.

30. The panel expects the Egg Board to exercise its discretion in determining how it will conduct the New Producer Program lottery as to ensure this direction is met, and to be prepared to explain its approach to stakeholders and to BCFIRB.

31. As noted at paragraph 55 of the November 5, 2010 decision above, the panel suggests that the Egg Board establish additional application criteria so as to not present unreasonable financial costs (or other risks) to the industry generally.

32. The panel also encourages the Egg Board to clearly indicate on the revised New Producer Program Lottery Application form, any additional information that

might be required of regional applicants to qualify for prioritization under the New Producer Program.

33. With respect to giving priority to Small-Lot Authorization permit holders and regional applicants under the New Producer Program, the panel notes that the Egg Board will likely be faced with pressure to meet additional competing demands for the program. The panel would like to remind the Egg Board that it is not restricted in the number of new entrants it can start annually or in any given year. The Egg Board is required to meet its minimum commitment of starting four new entrants no later than March 2011 and a minimum of two new entrants per year starting in 2012. However, the total number of new entrants started under the program, as noted in BCFIRB's 2009 prior approval decision on the New Producer Program rules (at paragraph 28), "is to be assessed annually by the Egg Board based on market needs and demand for the program."

e) Fairness and Transparency

34. A number of comments and recommendations were provided with respect to improving fairness and transparency of the lottery process.
35. Firstly, in its June 22, 2010 report, the Egg Board noted that applicants that were able to hand deliver their applications received more personal instruction from the lottery administrator with respect to correct application requirements than did those that mailed in their applications. The majority of the applications that were rejected upon first review were received by mail, and very few of these were re-submitted. To ensure that this first stage of the lottery is fair to all applicants, the Egg Board recommended that a requirement be added that all applications must be mailed, regardless of where the applicant resides. The panel accepts this recommendation.
36. Secondly, stakeholders expressed concern that the first lottery process was not sufficiently transparent and neutral. It was suggested that production information be reported out on each of the successful lottery candidates, to give graders a clear picture as to what specialty egg type is entering the market and when, and that all graders are advised at the same time of lottery outcomes. The Egg Board addressed these concerns in its October 7, 2010 report, recommending that all graders be directly contacted by the lottery administrator with the names of the lottery winners and their contact information, and that all graders, producers and lottery winners be notified simultaneously in future lotteries. The panel accepts this recommendation.
37. Thirdly, stakeholders suggested that the lottery should be open to the public, and that the selection process should be open to observation by neutral parties. The panel has considered these suggestions, however, is satisfied that the administration of the lottery by an independent accounting firm, with oversight provided by an independent observer, together ensure a sufficiently fair lottery

process. Following the lottery, a New Producer Program Committee made up of representatives from the agriculture, finance and accounting sectors meets with the lottery winners to review their business plans. According to the Egg Board's June 22, 2010 report, the committee members for the first New Producer Program lottery were: Bob Mitchell, manager, agriculture, Bank of Montreal; Reg Ens, chief operating officer, BC Agricultural Research and Development Corporation (ARDCorp); Mike Gillanders, director of operations, Egg Board; and Laurie Larson, New Producer Program Lottery administrator. The panel is satisfied that this type of selection committee provides for a sufficient balance of industry knowledge and neutrality.

38. Fourthly, one stakeholder suggested that children of quota holders should be ineligible for entry into the lottery. This raises legal issues that lie outside the scope of this review, however, BCFIRB's current view on this issue is communicated in its May 3, 2007 letter to supply managed boards and commissions outlining its supervisory directions with respect to new entrant program eligibility criteria:

...it is our view that family members of persons who presently hold quota should not be categorically excluded from applying for new entrant quota where they genuinely wish to develop a farm operation independent from that of the quota holder. For this reason, BCFIRB is excluding only spouses of quota holders from eligibility on the basis that they are fairly presumed to be in a relationship of economic codependency with the quota holder. The policy goals of the new entrant program as it relates to other family members are more properly addressed through the other requirements related to transparency of process and operation of independent farm operations. Those latter requirements are intended to address the concern that new entrant quota is not granted to persons that may use it to augment an existing farm operation.

39. Finally, one stakeholder expressed concern that having the lottery administered by an independent accounting firm would effectively remove the right of an individual to appeal the results to BCFIRB, in a sense making the process less fair than if it were administered by the Egg Board. The panel wishes to clarify that, under the *Natural Products Marketing (BC) Act*, BCFIRB is empowered to hear appeals from any person who is aggrieved by or dissatisfied with an order, decision or determination of a commodity board in British Columbia. The engagement of an independent firm to administer the lottery process does not remove the right to appeal Egg Board decisions with respect to how the New Producer Program is managed. It is important to note, however, that any direction issued by BCFIRB in this decision, which allows no discretion on the part of the Egg Board, is subject only to judicial review within 60 days of that direction being issued.

CONCLUSION

40. In order to improve the New Producer Program lottery, the panel directs the Egg Board to:

- a. Change the New Producer Program Lottery Application form to specifically identify the following requirements:
 - i. Notarized Canadian Passport, Canadian Citizenship Card or Permanent Resident Card;
 - ii. Notarized BC Driver's License or BC ID Card;
 - iii. Notarized Statutory Declaration identified in Rule 1(4)(e) of the New Producer Program Rules⁸; and
 - iv. Cheque in the amount of \$250 made payable to the British Columbia Egg Marketing Board.
 - b. Add the requirement of a business plan and accompanying proof of financial capacity to the lottery application;
 - c. Add a requirement that all applications must be mailed, regardless of where the applicant resides; and
 - d. Ensure that the lottery administrator contacts all graders as to the names of the lottery winners and their contact information, and that all graders, producers and lottery winners are notified of this information simultaneously in future lotteries.
41. The panel further directs the Egg Board to exercise its discretion in determining how it will conduct the New Producer Program lottery in a way that will achieve BCFIRB's November 5, 2010 direction to give priority to Small Lot Authorization permit holders and regional applicants under the New Producer Program going forward.
42. The panel also requires the Egg Board:
- a. To take careful measures to protect the confidentiality of any sensitive information provided by lottery applicants;
 - b. To clearly indicate on the revised New Producer Program Lottery Application form any additional information that might be required of Small-Lot Authorization permit holders or regional applicants to qualify for prioritization under the New Producer Program; and
 - c. To reconsider the 10,000 layer limit currently imposed on the Small-Lot Authorization Program.
43. The panel notes that the next lottery, to be held no later than March 2011, is to give preference to certified organic production. While the panel makes no direction at this time with respect to restricting future lotteries by type of egg production, we expect the Egg Board to continue to monitor demand and to ensure specialty market demands are met in a timely and appropriate fashion.
44. Finally, as directed in its November 5, 2010 decision, the panel reminds the Egg Board that it is expected to report annually on its progress in implementing the New Producer Program, both to BCFIRB and to its stakeholders, by way of its website and annual report. BCFIRB will continue to monitor developments as changes to the New

⁸ See Schedule 1 of the Egg Board Consolidated Order.

Producer Program lottery are implemented, and reserves the right to issue further supervisory directions to the Egg Board with respect to the New Producer Program.

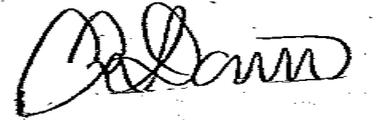
Dated at Victoria, British Columbia, this 30th day of November 2010.



Ron Kilmury
Chair



Ron Bertrand
Member



Cheryl Davie
Member