



July 17, 2015

File: 44200-60 EMB QUOTA

DELIVERED BY E-MAIL

Brad Bond
Chair
BC Egg Marketing Board
250 – 32160 South Fraser Way
Abbotsford, BC V2T 1W5

Dear Mr. Bond:

PRIOR APPROVAL REVIEW OF THE BC EGG MARKETING BOARD QUOTA DISTRIBUTION POLICY

On April 20, 2015, Farm Products Council of Canada (FPCC) approved an increase to the national egg allocation requested by Egg Farmers of Canada (EFC). EFC subsequently issued BC’s share of the national allocation to the BC Egg Marketing Board (Egg Board). The new BC allocation increase triggered the Egg Board’s June 9, 2015 request to the BC Farm Industry Review Board (BCFIRB) for prior approval of its updated quota distribution policy.

BCFIRB recognizes this allocation is a mid-term strategy to meet domestic markets and to recapture production lost to imports. This letter sets out BCFIRB’s prior approval decision concerning the Egg Board quota distribution policy.

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Egg Board Quota Policy Proposal Summary

Egg sales continue to increase across Canada. Total egg sales in Canada grew 19% over the last eight years. At the present time the egg industry is communicating concern about upcoming seasonal shortages of table eggs and a current confirmed shortage of eggs available for processing despite three increases in national egg allocation since 2013. To compound potential and current shortages, the United States avian influenza outbreak also impacts the price and availability of eggs to Canada.

The Egg Board reports there is a total of 88,501 layers of quota available for distribution from:

83,243 new layers approved by FPCC (April 20, 2015)
5,258 layers from quota transfer assessments

The Egg Board proposes to distribute the quota as follows:

70,501 pro-rata to all producers in good standing
18,000 to the New Producer Program for 6 new entrants

New Producer Program

In addition to bringing in new producers, the Egg Board committed to a full review of its New Producer Program "...some time in 2017".

Special Eggs for Processing Program

To address immediate processor needs, the Egg Board has entered into an agreement with EFC for a temporary supply of additional Eggs for Processing (EFP) production made available by other provinces.

Temporary Market Growth (TMG) Program

The TMG program is a strategy to increase quota utilization¹. The TMG program would enable BC producers in good standing to place an additional 3% of layers.

Prior Approval Requirement

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 sets out that the Egg Board requires the prior approval of BCFIRB to vary quotas the Egg Board has issued to producers and "...the terms and conditions upon which they [quota] shall be issued or transferred..."

¹ Quota utilization is the percentage of available quota that is produced. Actual utilization varies across the provinces. Current Egg Board policy allows producers to produce to 97% utilization, although currently BC is operating at approximately 90-91% utilization.

Under s. 7.1 of the *NPMA*, BCFIRB is responsible for the general supervision of all marketing boards and commissions in the province, including the Egg Board. 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*]”.

Decision Process

BCFIRB worked in cooperation with BC’s regulated boards and commissions (including the Egg Board) to develop and put into practice an approach to principles-based regulation using founding principles – Strategic, Accountable, Fair, Effective, Transparent, Inclusive (SAFETI) – as a tool. In making this decision, BCFIRB took into account its statutory responsibility in ensuring a principled approach to quota management outcomes in the interest of sound marketing policy.

FPCC approved the new allocation on April 20, 2015. BCFIRB received the Egg Board “Quota Distribution Approval Request, June 2015” submission on June 9, 2015. BCFIRB reviewed the submission, which included a progress report on BCFIRB’s July 28, 2014 and March 16, 2015 directions. It considered additional information provided by Egg Board staff following the submission. BCFIRB also reviewed submissions from the Egg Industry Advisory Committee (June 12, 2015) and BC Egg Producers Association (June 16, 2015).

BCFIRB Decision

Based on the market urgency indicated by the Egg Board, and reiterated by the BC Egg Industry Advisory Committee (EIAC) and the BC Egg Producers Association (BCEPA), BCFIRB is responding by providing high level approvals to the proposed quota distribution policy recognizing that all subsequent administrative decisions by the Egg Board in delivery of the quota distribution policy (for example, the structure of the temporary Special EFP program and TMG program) remain subject to appeal. Sound decision making processes based on the SAFETI principles will be needed by the Egg Board to help reduce the potential for appeals.

BCFIRB will follow up with the Egg Board after the release of this decision on outstanding national systemic production management questions related to meeting market demand.

1. BCFIRB approves the Egg Board policy to distribute 70,501 layers of BC’s share of the April 20, 2015 national production increase (83,243 layers) pro-rata to all licensed producers in good standing based on the following condition:
 - a. On the understanding that the Egg Board will complete a review and any revisions to the Quota Exchange before January 31, 2016. BCFIRB expects the Egg Board will consider growth opportunities for all producers – including small producers, new entrants, regional and specialty – as part of its review.
2. BCFIRB approves the Egg Board policy to distribute 12,742 layers of BC’s share of the April 20, 2015 national production increase (83,243 layers) to new entrant producers. This

will be added to the 5,258 layers available from quota transfer assessments for a total of 18,000 layers to the New Producer Program.

3. BCFIRB continues to hold the Egg Board to the New Producer Program conditions set out in BCFIRB's July 28, 2014 prior approval² decision:
 16. BCFIRB expects that the Egg Board will now adhere to its commitment of starting a minimum of two new producers every year. [The Egg Board was directed in 2010 to meet its commitment of starting a minimum of two new entrants a year, starting in 2012]. Providing the Egg Board demonstrates that it is responsive to market needs, the requirement to bring new producers into the industry and fulfill other public policy objectives, the Egg Board can exercise its discretion to determine how this direction is met. The Egg Board is to publicly explain its implementation rationale to stakeholders and BCFIRB. (sic)
 17. Unless substantive reasons are provided to BCFIRB, the New Producer Program should continue to adhere to BCFIRB's 2010 direction to give priority for at least one new entrant allocation to Small Lot Authorization permit holders and to give priority for at least one new entrant allocation to applicants proposing to produce eggs in a region other than the Lower Mainland.
4. BCFIRB supports the Egg Board proposal to carry out a comprehensive review of its New Producer Program. BCFIRB does not support the Egg Board's proposed timeframe of "...sometime in 2017". BCFIRB expects the Egg Board to have a comprehensive review of its New Producer Program completed by June 30, 2016.
5. BCFIRB supports the temporary Special EFP program subject to the following conditions:
 - a. Producers in the Special EFP program must be in good standing with all applicable legislation and Egg Board orders. This includes adhering to provincial and national programs related to food safety and animal health and well-being, such as: Start Clean Stay Clean, the Animal Care Program, the BC Biosecurity Program, Salmonella testing and other programs as appropriate.
 - b. The Egg Board must publish Special EFP program rules so they are available to producers and the public.
 - c. If production under the Special EFP program is converted into permanent national EFP quota by EFC with approval of FPCC, BCFIRB must prior approve any Egg Board proposal for the distribution of that quota.
6. BCFIRB supports the TMG program subject to the following conditions:
 - a. Producers in the TMG program must be in good standing with all applicable legislation and Egg Board orders as per paragraph 5(a).
 - b. The Egg Board must publish TMG program rules so they are available to producers and the public.

² July 28, 2014. BCFIRB. [The Prior Approval of the British Columbia Egg Marketing Board 2013 Quota Distribution Policy and Egg Core Review Part I.](#)

- c. The TMG program is a program authorizing the temporary utilization of quota already held by producers. Any amendment of this quota policy will require BCFIRB prior approval.

BCFIRB Reasons

The following sets out BCFIRB's reasons for decision.

Process

BCFIRB is generally satisfied the Egg Board met process expectations in the circumstances here, given the *ad hoc* nature of this national allocation (made in addition to the regularly scheduled Quota Allocation Committee formula process) due to market urgency. The Egg Board provided an update on the processor market situation, reported out on the status of the majority of previous BCFIRB directions and consulted with the EIAC as required by the Egg Scheme.

BCFIRB notes that it does not appear the Egg Board posted its submission to its website; an important component of transparency. The Egg Board has sufficient capacity to ensure clear communication with all stakeholders beyond registered producers and graders. Greater transparency in relation to Egg Board submissions is required for future prior approvals.

Quota Distribution Policy

Quota management forms one of the three pillars of supply management³ and is a core Egg Board responsibility.

The quota distribution policy is an opportunity for the Egg Board to clearly demonstrate to its stakeholders, the public and BCFIRB how its quota management is effective, strategic and accountable in terms of sound marketing policy that balances the business needs of the industry and the public interest through fair, inclusive and transparent processes.

Based on the market urgency indicated by the Egg Board, the EIAC and the BCEPA, BCFIRB is responding by providing high level approvals to the proposed quota distribution policy recognizing that all subsequent administrative decisions by the Egg Board in delivery of the quota distribution policy (for example, the structure of the temporary Special EFP program and TMG program) remain subject to appeal. Sound decision making processes based on the SAFETI principles will be needed by the Egg Board to help reduce the potential for appeals.

BCFIRB is satisfied that:

- Based on the Egg Board submission, pro-rata distribution of 70,501 layers to all licensed producers in good standing is appropriate for this allocation; and,

³ Production control, price control, import control

- Based on the Egg Board submission, distribution of 12,742 layers to the New Producer Program, (which will be added to the 5,258 layers available from quota transfer assessments for a total of 18,000 layers) is appropriate for this allocation.

In relation to meeting overall market demands, it is also sound marketing policy to have in place a fair process that supports quota already held by producers to move strategically (e.g. support growth of all producers including new entrants; support regional and specialty markets). BCFIRB is aware of long-standing issues with the Egg Board Quota Exchange (e.g. BCFIRB's April 29, 2010 letter to the Egg Board), including lack of growth opportunities for small and new entrant producers.

The Egg Board reports it temporarily suspended its Quota Exchange on July 15, 2015 given the resignation of its Quota Administrator. It announced it plans to use this period of suspension to develop and implement necessary changes to the Quota Exchange. BCFIRB directs that the Egg Board completes a review and any potential revisions to the Quota Exchange before January 31, 2016.

BCFIRB notes significant systemic national production management and market forecasting questions remain outstanding. It will follow up on with the Egg Board on these questions following the release of this decision.

New Producer Program

As the Egg Board is aware, supporting entry of new producers is a key public policy objective. BCFIRB notes the Egg Board's actions on meeting this objective and supports the Egg Board using a share of the new allocation to supplement quota available through transfer assessments for the New Producer Program. BCFIRB's July 28, 2014 directions⁴ summarize BCFIRB's continued expectations of the Egg Board:

16. BCFIRB expects that the Egg Board will now adhere to its commitment of starting a minimum of two new producers every year. [The Egg Board was directed in 2010 to meet its commitment of starting a minimum of two new entrants a year, starting in 2012] .Providing the Egg Board demonstrates that it is responsive to market needs, the requirement to bring new producers into the industry and fulfill other public policy objectives, the Egg Board can exercise its discretion to determine how this direction is met . The Egg Board is to publicly explain its implementation rationale to stakeholders and BCFIRB.
17. Unless substantive reasons are provided to BCFIRB, the New Producer Program should continue to adhere to BCFIRB's 2010 direction to give priority for at least one new entrant allocation to Small Lot Authorization permit holders and to give priority for at least one new entrant allocation to applicants proposing to produce eggs in a region other than the Lower Mainland.

Regular review provides accountability and is a good practice to ensure that programs are effective and strategic. Given that the Egg Board had intended to carry out a comprehensive review of its New Producer Program in 2014, BCFIRB does not support the Egg Board new

⁴ July 28, 2014. BCFIRB. [The Prior Approval of the British Columbia Egg Marketing Board 2013 Quota Distribution Policy and Egg Core Review Part I.](#)

timeframe of a review “...sometime in 2017”. BCFIRB expects the Egg Board to have a comprehensive review of its New Producer Program completed by June 30, 2016.

Special EFP and Temporary Market Growth programs

With a growing market for eggs and an outbreak of avian influenza in the United States the Egg Board reports concerns about the likelihood of egg shortages around Thanksgiving/Christmas along with a current shortage of eggs for processors. EFC, provincial egg boards, processors and graders are working together on options for meeting market demands.

BCFIRB acknowledges the Egg Board’s work on finding interim solutions through the Special EFP and TMG programs to help meet market needs.

Temporarily borrowing national EFP quota not produced in other provinces and putting it into production through longer layer cycles is a strategic solution for meeting current processor market needs.

Quota utilization is the percentage of available quota that is actually produced. Historically quota utilization was put in place nationally to help manage natural layer cycles of over production. Egg Board policy authorizes 97% utilization; however, currently BC is at approximately 90-91% utilization. TMG is utilization of allocation previously issued to BC and already distributed to producers as quota. Given the growing demand for eggs based on market data, BCFIRB accepts the Egg Board’s proposed policy to increase BC quota utilization by 3% per producer at this time.

Producers in the Special EFP program and TMG program must be in good standing with all applicable legislation and Egg Board orders. This includes adhering to provincial and national programs related to food safety and animal health and well-being, such as: Start Clean Stay Clean, the Animal Care Program, the BC Biosecurity Program, Salmonella testing and other programs as appropriate. BCFIRB is prepared to generally support these temporary programs at this time on this basis.

BCFIRB expects the program rules will be available to all stakeholders and the public (transparency). BCFIRB is not prior approving the administration of these programs and as such, the specific operations of these programs remain open to appeal.

BCFIRB expects the Egg Board will continue to work with EFC on developing long-term approaches to identify market requirements and develop sustainable allocation policies that will ensure a continuous supply of eggs for all markets.

Systemic Questions

Egg sales continue to increase across Canada. Total egg sales in Canada grew 19% over the last eight years. However, the existing allocation processes of EFC do not appear to be ensuring Canadian supply is keeping up with demand.

The systemic question remains: Why are the domestic table and processing markets not being met? BCFIRB suggests EFC needs to take a serious look at its Quota Allocation Committee (QAC) formula and the programs used to supply the table and processing markets. For instance, the QAC formula is structured based on past table egg market demand rather than future demand and does not include direct calculation of processor market needs.

BCFIRB raised this question earlier in its March 16, 2015 prior approval decision⁵.

In its November 2014 submission, the Egg Board stated that the market requirements for both table and processor eggs are being supplemented by imports from the United States (approx. 2.8 million dozen eggs). Sound marketing policy indicates that not only are timely provincial prior approvals important (including ensuring the 'right eggs at the right place, at the right time'), but serious consideration also needs to be given to the overall national production of domestic eggs for the table and industrial markets.

BCFIRB will be working with the Egg Board on this and related questions.

Future Allocations

BCFIRB regularly communicates its expectations to the Egg Board well ahead of time through public letters and other information so the Egg Board is empowered to take proactive action should a future prior approval be required. Proactive, substantiated work by the Egg Board supports timely approvals by BCFIRB. BCFIRB will be following up with the Egg Board shortly regarding expectations for future allocations, including greater transparency.

BCFIRB agrees with the Egg Board and other stakeholders that it would be effective to find a new approach to prior approvals that would result in more expedited approvals. Any approach should see the Egg Board taking a proactive role in supporting EFC in improving national forecasting and market identification to enable timely, market responsive decision-making with respect to national allocations. In turn, proactive Egg Board actions in BC would support timely, informed submissions to BCFIRB which would enable BCFIRB to provide expedited approvals. Any proposed approach, however, must adhere to SAFETI principles and result in sound marketing policy.

In accordance with s. 57 of the *Administrative Tribunals Act*, “an application for judicial review of a final decision of (BCFIRB) must be commenced within 60 days of the date the decision is issued.”

Administrative decisions made by the Egg Board in the implementation or application of its quota distribution policy – as approved by BCFIRB – are appealable under s. 8 of the *NPMA* within 30 days of an Egg Board decision.

⁵ March 16, 2015. BCFIRB. [Prior Approval Review of the BC Egg Marketing Board Quota Distribution Policy](#).

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If you have any questions, please feel free to contact BCFIRB.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per

A handwritten signature in black ink, appearing to read "John Les". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail that extends downwards and to the left.

John Les
Chair

cc: BCFIRB web site