



March 9, 2016

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 (DECEMBER 2015 SUBMISSION)

On November 18, 2015 Egg Farmers of Canada (EFC) passed a motion approving a submission to Farm Products Council of Canada (FPCC) requesting approval to increase the national egg allocation. On December 8, 2015, FPCC approved the submission and EFC subsequently ratified it on December 11, 2015.

The resulting B.C. allocation increase triggered the BC Egg Marketing Board's (Egg Board) December 23, 2015 request to the BC Farm Industry Review Board (BCFIRB) for prior approval of its updated quota distribution policy. That submission did not meet BCFIRB process and information expectations communicated previously. In its prior approval requests the Egg Board – as first instance regulator of the B.C. egg industry – must demonstrate to BCFIRB and all its stakeholders that it understands what is required in its operations and that its decision making accords with sound marketing policy. Prior approval of Egg Board quota allocations is a statutory decision and as such BCFIRB must ensure it has appropriate, adequate information to make an accountable decision.

After identifying the deficiencies in the request, BCFIRB directed the Egg Board answer a number of outstanding questions (notification January 19, 2016¹; questions February 2, 2016²). It was not until after a February 11, 2016 meeting of the two boards, at which the Egg Board

¹ 2016, January 19. BCFIRB. [Prior Approval Request – Quota Distribution Policy](#).

² 2016, February 2, 2016. [BCFIRB. Prior Approval Request – Follow Up Questions](#).

**British Columbia
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provided the required additional substantiation and background, that BCFIRB had the information necessary to support its own decision making.

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. The Egg Board reports there is a total of 82,983 layers of quota available for distribution in B.C. from the national 728,050 new layers approved by FPCC.

In its December 23, 2015 submission the Egg Board requested approval to:

- allocate the 82,983 layers pro-rata to all producers in good standing as per its quota allocation mode; and,
- pre-approval to issue an expected allocation in spring 2016 (estimated to be a 3% increase) upon approval from FPCC. The submission did not specify how the Egg Board proposed to distribute the expected spring 2016 growth.

At the February 11, 2016 meeting with BCFIRB, the Egg Board modified its proposal as follows:

- to allocate a portion of the 82,983 layers to the New Producer Program (portion not specified) with the remainder to be allocated pro-rata to all producers in good standing.

The Egg Board did not pursue its pre-approval request at the February 11, 2016 meeting.

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...”

Regardless of the prior approval requirement in the Egg Scheme, BCFIRB remains responsible for the general supervision of all marketing boards and commissions in the province, including the

Egg Board (s. 7.1 of the *NPMA*). 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 expects B.C.’s regulated boards and commissions (including the Egg Board) to use principles-based regulation³ to deliver “outcomes that matter” in the interest of sound marketing policy. The SAFETI principles (Strategic, Accountable, Fair, Effective, Transparent, Inclusive) provide a tool for using and demonstrating principles-based regulation. 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.

BCFIRB initially reviewed the Egg Board December 2015 submission, which included a progress report on previous BCFIRB directions, at its January 2016 board meeting. In addition, BCFIRB considered its expectations, as communicated to the Egg Board in an August 21, 2015 letter.⁴ BCFIRB determined that additional information was required before it could make an accountable prior approval decision.

BCFIRB provided the Egg Board with its outstanding questions on February 2, 2016. These questions were addressed at a meeting between BCFIRB and the Egg Board on February 11, 2016. Following the meeting BCFIRB was in a position to make a prior approval decision on the Egg Board proposed egg allocation distribution policy.

BCFIRB Decision

1. BCFIRB approves the Egg Board policy to distribute a portion of the 82,983 layers to the New Producer Program (portion not specified) with the remainder to be allocated pro-rata to all producers in good standing.
2. As per paragraph 7 of the March 1, 2016 BCFIRB decision⁵ prior approving changes to the Egg Board New Producer Program, BCFIRB continues to expect the Egg Board to keep the following front of mind:
 7. There has been significant growth in allocation since 2013. The Egg Board’s market response decisions have focused, in large measure, on pro rata distribution to existing quota holders. Given the opportunity this significant growth presents, BCFIRB directs the Egg Board to aggressively pursue other public policy objectives over the next year. This includes demonstrating that the Egg Board identified and considered such opportunities as: bringing in additional new entrants (including supporting early entry to production where feasible); regional and value added opportunities; and, other measures to use quota allocations to sustain the overall market demand for B.C. eggs.

³ [BCFIRB Governance](#)

⁴ 2015, August 21. BCFIRB. [Quota Distribution Approval – Expectations](#).

⁵ 2016, March 1. BCFIRB. [Prior Approval Review of the British Columbia Egg Marketing Board New Producer Program 2016](#).

In relation, future allocation recommendations from the Egg Board are to clearly demonstrate to BCFIRB and all stakeholders how the Egg Board has addressed other public policy objectives as well as substantiating any further *pro rata* allocation.

BCFIRB will continue to follow up with the Egg Board after the release of this decision on its provincial initiatives. BCFIRB will also continue to work with the Egg Board on outstanding systemic national production management and pricing issues which are impacting on the regulated egg sector's ability to meet existing and emerging market demands.

BCFIRB Reasons

The following sets out BCFIRB's reasons for decision.

Process

BCFIRB is generally satisfied the Egg Board met process expectations; however improvement is required if future quota distribution policies are to be approved.

Given the recent series of rapid allocations it may not be effective or strategic for the Egg Board to provide a comprehensive submission of market conditions, current programs and broad stakeholder input for every prior approval request. That said, BCFIRB expects the Egg Board will clearly address the following condition set out in the August 2015 letter as part of the next quota distribution policy prior approval request:

The last comprehensive presentation of market conditions, program review and stakeholder input was provided to BCFIRB on May 6, 2014 as part of an Egg Board prior approval submission. Since that time, the Egg Board relied upon this work in two following prior approval submissions (November 3, 2014 and June 9, 2014).

Circumstances have changed significantly since early 2014, including the 2015 US avian influenza outbreak, the shortage of processing eggs, the addition of small lot permit holders, and a new entrant lottery. BCFIRB expects the next submission will take into account these changing circumstances and provide current information and stakeholder input.

Some of this information and related analysis was provided as part of the February 11, 2016 meeting, including confirmation that the Egg Board took into account the Egg Industry Advisory Committee (EIAC) position on quota distribution as required by the Egg Scheme.

The Egg Board has sufficient capacity to ensure it has current market data, to evaluate strategic options and to clearly communicate with all stakeholders beyond registered producers and graders.

Quota Distribution Policy

Quota management forms one of the three pillars of supply management⁶ and is a core Egg Board responsibility.

⁶ Production control, price control, import control

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.

BCFIRB policy, established in the 2005 Specialty Review⁷, is that growth is to be distributed based on market needs for each “quota class” (or type of production if quota is not differentiated by class). Allocation to each type of production is to be *pro rata* to quota holders [in good standing]. This policy stands in support of differential market segment growth (production targeted at market demand) alongside growth opportunities for all existing producers.

The Egg Board reports that all markets are short and that based on current demand *pro rata* distribution to all producers in good standing is an appropriate means of distributing growth. It presented several alternative scenarios at the February 11, 2016 meeting and provided further rationale for determining that it’s *pro rata* policy proposal was the most appropriate approach to meeting sound marketing policy.

BCFIRB is satisfied that based on the Egg Board submission and subsequent meeting, distributing a portion of the 82,983 layers to the New Producer Program (portion not specified) with the remainder to be allocated *pro-rata* to all producers in good standing, is appropriate for this allocation.

The Egg Board also noted that there is a lag in placing new quota and putting it into production, for the most part due to the recent flurry of allocations. The situation is compounded by production timelines, the time it takes to ensure barn space (i.e. construction), the uncertainty of housing standards going forward as the national poultry animal welfare Code of Practice is being revised, and some issues with the current Consolidated Orders. The Egg Board reports it is moving to address these challenges where it has authority to do so.

In relation, the recent surge in growth also provides opportunity for the Egg Board to aggressively pursue other public policy objectives over the next year. BCFIRB expects the Egg Board will demonstrate it identified and considered such opportunities as: bringing in additional new entrants (including supporting early entry to production where feasible); regional and value added opportunities; and, other measures to use quota allocations to sustain the overall market demand for B.C. eggs.

Future allocation recommendations from the Egg Board are to clearly demonstrate to BCFIRB and all stakeholders how the Egg Board has addressed other public policy objectives as well as substantiating any further *pro rata* allocation.

BCFIRB will continue to follow-up with the Egg Board on its reported activities, including but not limited to, its review of its Consolidated Orders, implementation of its Engagement Strategy and Transparency Initiatives as well as aggressive monitoring and enforcement of its quota uptake and production timelines.

⁷ 2005, September 1. BCFIRB. [Specialty Marketing and New Entrant Submissions: Policy, Analysis, Principles and Direction](#).

Finally, BCFIRB notes significant systemic national production management and market forecasting questions remain outstanding as reflected in its March 16, 2015⁸ and July 17, 2015⁹ prior approval decisions. These questions include why domestic table and processing markets are not being met alongside allocation distribution and pricing. BCFIRB looks forward to continuing to work with the Egg Board on these national challenges.

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.

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', written over a horizontal line.

John Les
Chair

cc: BCFIRB web site

⁸ March 16, 2015. BCFIRB. Prior Approval Review of the BC Egg Marketing Board Quota Distribution Policy.
⁹ 2015, July 17. BCFIRB. [Prior Approval Review of the BC Egg Marketing Board Quota Distribution Policy.](#)