



January 26, 2015

File: 44200-60 MILK QUOTA  
REVIEW

**DELIVERED BY E-MAIL**

Jim Byrne  
Chair  
BC Milk Marketing Board  
200 – 32160 South Fraser Way  
Abbotsford, BC V2T 1W5

Dear Mr. Byrne:

**SUPERVISORY REVIEW DECISION – BC MILK MARKETING BOARD REQUEST TO  
EXTEND QUOTA TRANSFER EXEMPTION LIST**

Quota management forms one of the three pillars of supply management<sup>1</sup> and is a core BC Milk Marketing Board (Milk Board) responsibility. The Milk Board undertook a full review of its quota policies and programs as part of a BC Farm Industry Review Board (BCFIRB) supervisory process starting in October 2012. The objective of the Milk Board’s review was to “...evaluate BC dairy quota policy through a transparent consultative process with the aim of developing an effective quota allocation and governance policy that will preserve, build and transition the BC dairy industry for future generations.”

The Milk Board’s process resulted in a final report (“BC Quota Policy & Governance Consultation” April 2014), to BCFIRB. The report included recommendations on the following items:

General quota allocation	Whole Farm Transfers
Graduated Entrant Program	Specialty production
Declining transfer assessment	Cottage Industry Program
Quota Exchange	Lifestyle milk and innovation policies

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<sup>1</sup> Production control, price control, import control

This decision, which addresses the Milk Board's recommended changes to quota transfer assessments, should be read in conjunction with BCFIRB's prior decisions of September 23, 2014<sup>2</sup> and December 2, 2014<sup>3</sup>, which dealt with the other seven Milk Board recommendations.

Under s. 7.1 of the *Natural Products Marketing (BC) Act (NPMA)*, BCFIRB is responsible for the general supervision of all marketing boards and commissions in the province, including the Milk 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*]".

BCFIRB reviewed the Milk Board report and related documents, correspondence and stakeholder input. BCFIRB also held an informational meeting with Milk Board representatives (May 15, 2014).<sup>4</sup>

## BCFIRB Findings

For the reasons set out in this letter:

1. BCFIRB is satisfied the Milk Board process met with BCFIRB's expectations.
2. BCFIRB accepts as sound marketing policy for the BC dairy industry the Milk Board's recommendation to expand the Milk Board transfer assessment exemption list to include the nieces, nephews and grandchildren of quota holders and the nieces, nephews and grandchildren of the spouses of quota holders based on the following conditions:
  - a. To address the practice of "double dipping", the Milk Board impose the following term restricting quota transfers to new recipients under the existing Graduated Entry Program (GEP) and any revised GEP:
    - i. GEP recipients are not entitled to receive benefits in the form of quota transfers exempt from transfer assessments in addition to GEP benefits for a period of ten years following receipt of GEP quota.<sup>5,6</sup>

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<sup>2</sup> BC Farm Industry Review Board. September 23, 2014. [Supervisory Review Decision – BC Milk Marketing Board Quota Governance Review](#).

<sup>3</sup> BC Farm Industry Review board. December 2, 2014. [Follow-up to BCFIRB September 23, 2014 Decision – Milk Marketing Board Quota Governance Review – GEP](#).

<sup>4</sup> BCFIRB members with Jim Byrne, BC Milk Marketing Board Chair, Garth Green, Member (Milk Industry Advisory Committee representative), Bob Ingratta, Chief Executive Officer.

<sup>5</sup> BC Farm Industry Review Board. December 2, 2014. [Follow-up to BCFIRB September 23, 2014 Decision – Milk Marketing Board Quota Governance Review – GEP](#).

<sup>6</sup> BC Farm Industry Review Board. September 23, 2014. [Supervisory Review Decision – BC Milk Marketing Board Quota Governance Review](#).

- b. The Milk Board demonstrates to BCFIRB and stakeholders in its annual reporting that quota continues to be available and is being used to fulfill the policy objectives as described in the 2005 Specialty Review.<sup>7</sup> Quota must be available through a process that demonstrates sound marketing policy by applying the SAFETI<sup>8</sup> principles.
3. The expansion of the transfer assessment exemption list applies from the date the Milk Board amends its Consolidated Orders to implement BCFIRB's December 2, 2014 condition regarding the GEP and exempt family transfers.
4. The expansion of the transfer assessment exemption list is not to be applied retroactively. BCFIRB expects the Milk Board will address any quota transfer compliance issues previous to this decision as appropriate in a transparent, fair and accountable manner.

## **BCFIRB Reasons**

BCFIRB conducted a thorough analysis to assess whether there were any outstanding issues requiring further supervisory review process. As part of this assessment, BCFIRB considered whether the Milk Board met SAFETI-based process and outcome expectations. These expectations are summarized as follows:

### *Process Expectations*

Has the Milk Board:

- Effectively and strategically engaged with its stakeholders;
- Evaluated whether current quota policies and programs are effective and strategic in meeting sound marketing policy objectives;
- Identified issues and gaps;
- Proposed solutions; and,
- Reported its findings, recommendations and rationale to its stakeholders and BCFIRB?

### *Outcome Expectations*

Do the Milk Board recommendations:

- Adhere to legislative requirements, including sound marketing policy;
- Reflect the intent of supply management;
- Consider provincial agricultural policy; and,
- Reflect a principles-based approach to regulation?

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<sup>7</sup> BC Farm Industry Review Board. September 2005. [Specialty Marketing and New Entrant Submissions Review. – Policy, Analysis, Principles and Direction](#). In summary, the policy objectives behind BCFIRB's transfer assessments were to ensure: boards would have quota available for new or established producers to meet changing markets; and, boards would have quota available for new producers in order to reduce barriers to entry.

<sup>8</sup> Strategic, Accountable, Fair, Effective, Transparent, Inclusive

## **1. Process Expectations**

The Milk Board used a multi-stage process to reach its final rationale and recommendations.

In Stage 1, producers were notified of the consultation process in spring 2013. This was followed by a set of questions delivered by the Council of Marketing Boards (COMB) to help establish the focus of the review. The Milk Board developed a final consultation plan, preliminary discussion document and public stakeholder list based on the survey results and stakeholder discussions. An external consultant was retained to develop the discussion document and facilitate regional meetings. Focus groups were used to test a consultation questionnaire. The Milk Board issued a notice with the final discussion paper and questionnaire to its public stakeholder list and requested feedback. Concurrently, facilitated regional meetings were held based on the discussion paper.

As part of Stage 2, the Milk Board published a summary of what the Milk Board heard in the consultations along with its analysis and preliminary policy and program recommendations. It engaged with key industry stakeholders and regional producer associations on the document and also sought input through a public written process. Following the public release of the final report, which included rationale for its recommendations, description of the review process and supporting documents, the Milk Board held an informational meeting with BCFIRB.

Throughout the review process the Milk Board made its schedule, consultation documents, supporting materials and interim and final reports clearly available to the public through the front page of its web site. It released regular notices and updates to its stakeholder list.

BCFIRB is satisfied the Milk Board process met BCFIRB's expectations.

## **2. Outcome**

### **Milk Board Recommendation – Extending Quota Transfer Assessment Exemptions**

The 2005 Specialty Review<sup>9</sup> established the following policy objectives as being in accord with sound marketing policy:

- Boards and commissions (boards) will have quota available for new or established producers to meet changing markets.
- Boards will have quota available for new producers in order to reduce barriers to entry.

Overall, these policies help to ensure there are opportunities available for the entry of new producers and that changing markets can be met.

At the time the 2005 policies were put in place, there were questions as to whether the boards had the governance capacity as first instance regulators to ensure they would be met. To address these concerns, BCFIRB directed a portion of any quota transferred between producers be returned to

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<sup>9</sup> BC Farm Industry Review Board. September 2005. [Specialty Marketing and New Entrant Submissions Review. – Policy, Analysis, Principles and Direction.](#)

the board in question. Immediate family members were exempted from this quota transfer assessment.<sup>10</sup>

As part of the Milk Board Quota Governance Review, dairy industry stakeholders requested changes to BCFIRB's quota transfer assessment directions that would "broaden the family tree" — allowing more distant related family members, or others, based on a farm's succession plan, to benefit from a transfer assessment exemption.

The final Milk Board recommendation was to extend the transfer exemption list to include the nieces, nephews and grandchildren of quota holders and the nieces, nephews and grandchildren of the spouses of quota holders.

The Milk Board based its recommendation on its strategic assessment that the core future of the dairy industry currently depends on building from within — employing and leveraging the experience and human capital embodied in existing dairy families. Milk production is a physically demanding and complex job that requires significant daily on-farm attention. This context in and of itself forms a barrier to entry, along with capital costs. While there will likely always be new people interested in starting milk production — for which other measures need to be in place (see below) — the Milk Board's assessment is that supporting family succession will help ensure the overall future of BC's dairy industry. The Milk Board reported that five of the six regions supported the extension of the exempt persons list and provided the assessment that extending the list will not significantly decrease the availability of quota on the Quota Exchange.

While the recommended change may help build the future of the dairy industry from within — which the Milk Board has identified as strategically important — this change may have an impact on the Milk Board meeting the 2005 Specialty Review policies and related sound marketing policy questions. These questions include:

*Is change required?*

The 2005 Specialty Review was an extensive, in-depth process involving all supply-managed boards and commissions. BCFIRB's resulting directions with respect to sound marketing policy were formed after extensive input and analysis.

*Will the recommended change impact the Milk Board's ability to meet policy objectives?*

Unless alternative approaches are used to make quota available to the Milk Board, extending the transfer exemption list will reduce the quota available to the Milk Board for meeting the 2005 policy objectives.

*Will the recommended change remove opportunities for others?*

Opportunities for those not part of a dairy family to enter and be successful as dairy producers must be retained. At the May 15, 2014 meeting with BCFIRB, the Milk Board acknowledged the importance of bringing new people and innovation to the industry

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<sup>10</sup> Quota transferred to a spouse, son, or daughter is exempt from transfer assessment (2005). Quota transferred to a sibling is exempt where the quota being transferred remains attached to the farm in question (2007). Any transfer to a sibling that results in quota being moved off the farm requires a transfer assessment be applied (2007).

alongside supporting what the Milk Board views as the core of current and future dairy production.

### Discussion

There are several general options for BCFIRB to consider when deciding whether the Milk Board recommendation accords with sound marketing policy. BCFIRB could:

- a) make an order confirming, reversing or varying the recommendation;
- b) refer the matter back to the Milk Board with further direction; or
- c) make another order BCFIRB considers appropriate to ensure the result is in accord with sound marketing policy.

Based on the Milk Board process and final report, BCFIRB is satisfied that the Milk Board recommendation represents a considered assessment that the recommended change is in the interest of a sustainable industry, reflects the general industry position and is in overall accord with sound marketing policy for the BC dairy industry.

BCFIRB is prepared to accept the Milk Board recommendation, with conditions, to extend the transfer exemption list. However, the Milk Board has an ongoing obligation to demonstrate that sound marketing policy is met once its recommendations are implemented. As noted earlier, the transfer assessment tool was put in place to ensure the 2005 policies were achieved. Changing the transfer assessment exemptions may impact on the Milk Board ability to continue meeting these policies.

### *Accountability*

Under the principles-based regulation initiative<sup>11</sup>, BCFIRB is working with the boards to minimize the need for BCFIRB to issue prescriptive decisions. In this circumstance, BCFIRB confirms that the Milk Board must continue to be responsible for meeting the 2005 Specialty Review policies, including supporting entry of new producers, as a matter of sound marketing policy. The Milk Board is responsible for ensuring it meets these policies in a matter appropriate to its regulated sector.

Principles-based regulation requires BCFIRB and the boards to have in place public reporting requirements to demonstrate that sound marketing policy is being met. In this case, public reporting and ongoing assessment addresses, in part, BCFIRB's concern about changes to transfer assessments potentially removing opportunities for those not part of dairy families to enter and innovate as producers.

In future, the Milk Board must clearly demonstrate to BCFIRB and dairy industry stakeholders on an annual basis that quota is available and being used to meet the 2005 policies. If the Milk Board fails in this objective, BCFIRB may rescind the expansion of the transfer exemption list and make alternate directions as required to ensure quota is available and being used in accord with sound marketing policy.

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<sup>11</sup> [Principles-based regulation initiative](#)

### *Alternate Succession Strategies*

A situation may arise where a farm's succession plan is based on quota transfer to a person not covered by the transfer exemption list. The Milk Board addressed this question in its final report to BCFIRB. The Milk Board concluded there was no policy rationale for providing non-family transfer exemptions. BCFIRB accepts the Milk Board submission at this time. However, the Milk Board as part of its ongoing monitoring and assessment of its quota exemption policies should include analysis of non-family entry and succession from the perspective of the long-term sustainability of the industry.

### *Quota Availability*

Quota availability on the Quota Exchange is also associated with retaining on-going opportunities for others. The Milk Board reached the conclusion that extending the transfer exemption list is unlikely to decrease the amount of quota made available on the Quota Exchange by a significant amount. Once the transfer exemption list is in place, the Milk Board will need to monitor the impacts on the Quota Exchange. Significant change in quota available on the Exchange would negatively impact other producers.

### *Graduated Entry Program (GEP)*

As noted in the September 23, 2014 BCFIRB decision, the GEP, as it is currently structured, allows the unprincipled practice of "double dipping". In BCFIRB's view, "double dipping" does not accord with the sound marketing policy objectives underlying the 2005 Specialty Review in general, and new entrant programs in particular. It also can impact public confidence in new entrant programs. These views were expressed to the Milk Board through correspondence, meetings and other communications. If this practice is not resolved, extending the transfer exemption list would only exacerbate concerns regarding the legitimacy of the GEP.

In its September 2014 decision, BCFIRB approved the Milk Board recommendations to restructure the GEP. The Milk Board restructuring recommendations would result in "double dipping" being mitigated under the revised GEP. BCFIRB also instructed the Milk Board to ensure "double dipping" be mitigated when the current wait list is cleared prior to the restructuring of the GEP.

Subsequently, the Milk Board made a recommendation to BCFIRB (November 17, 2014). The Milk Board recommended that if a GEP recipient receives a family transfer of quota (i.e. one that is exempt from quota transfer assessment) within ten years of having received GEP quota, the Milk Board will retract all GEP benefits<sup>12</sup> from the GEP recipient. The recommendation would apply to GEP recipients started over the next five years as a result of the Milk Board clearing the wait list prior to revising the GEP.

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<sup>12</sup> Initial GEP quota allocation, allocation from the initial GEP quota, and matching quota plus allocations from matching quota.

BCFIRB gave conditional approval on December 2, 2014 on the understanding that:

...any amendment to the Milk Board's Consolidated Order will clearly reflect the requirement that GEP recipients cannot receive benefits in the form of quota transfers exempt from transfer assessments in addition to GEP benefits for a period of ten years following receipt of GEP quota.

As noted above, if "double dipping" is not resolved, extending the transfer exemption list would only exacerbate concerns regarding the legitimacy of the GEP. On this basis, the expansion of the transfer assessment exemption list applies from the date the Milk Board amends its Consolidated Orders to address BCFIRB's December 2, 2014 condition regarding "double dipping". The expansion of the transfer assessment exemption list cannot be applied retroactively. BCFIRB expects the Milk Board will address any quota transfer compliance issues previous to this decision as appropriate in a transparent, fair and accountable manner.

### **Closing**

BCFIRB recognizes the efforts of the Milk Board in conducting a thorough and principled approach to reviewing its quota management policies and programs for the BC dairy industry. BCFIRB views the Milk Board process as a positive model for other boards and commissions to consider if undertaking similar policy and program reviews.

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 Milk Board in the implementation or application of its recommendations — as approved by BCFIRB — are appealable under s. 8 of the *NPMA* within 30 days of a Milk Board decision.

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

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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Andreas Dolberg  
Vice Chair

cc: BCFIRB web site