

April 2014

British Columbia Milk Marketing Board Powers and Duties Review Discussion Paper

Introduction

The *British Columbia Milk Marketing Board Regulation (Regulation)*, under the *Natural Products Marketing (BC) Act (NPMA)* sets out:

- 9 (1) By November 30, 1999, and by the end of each 3 year period after that date, the board must conduct a review of the continued appropriateness and adequacy of the provisions of section 7 [Powers and duties of the board] and report its findings to the British Columbia Farm Industry Review Board.
- (2) A review under subsection (1) must be conducted by the Board in consultation with the Milk Industry Advisory Committee, the British Columbia Farm Industry Review Board and the minister's ministry.

The British Columbia Milk Marketing Board (Milk Board) and the British Columbia Farm Industry Review Board (FIRB) have agreed to the conduct of a review (Review) of the powers and duties as required by the *Regulation*. Previous reviews in accordance with the requirements of the *Regulation* were completed as part of the 1999 BC Marketing Board's review of the legislation governing all BC marketing boards and commissions; the 2001-02 government-wide, Core Review; and the 2003-06, Specialty Review. The Review represents the first standalone review as required by the *Regulation*.

The goals of the Review are to:

1. Review if the current powers and duties of the Board are still appropriate and adequate for regulating the BC Dairy sector in the best interests of the industry and public;
2. Review the appropriateness and governance accountability of any delegated powers; and
3. Review potential additional powers or duties that may be considered for sound governance in the best interest of the dairy industry.

The purpose of the Review will focus on the what and who, not the why or how. The Review will look at the powers and duties of the Board (the what) and who is responsible for carrying out those powers and duties. It is not intended to assess or evaluate the effectiveness of those responsible for carrying out the powers and duties (the how) nor will the Review evaluate the validity or appropriateness of the supply management system (the why).

This discussion document is intended to support the Board's engagement with stakeholders on the Review. The document provides an overview of the source of the powers and duties delegated to the Board and the powers and duties delegated to others. Through consultations with stakeholders, the Board will gather input that will be used to evaluate the current powers and duties and prepare a report to FIRB. The Review may or may not result in any proposed policy or regulatory changes for FIRB prior approval.

Source of Powers and Duties

The Board draws its powers and duties from various federal and provincial government legislation and regulation.

Federal Legislation and Regulation

The *British Columbia Milk Order* established under the *Agricultural Products Marketing Act*, grants authority to the Board to regulate the marketing in interprovincial and export trade of milk produced in British Columbia. In exercising that authority the Board can apply the same powers used to regulate the marketing of milk in British Columbia. The authority is however limited by any powers exercised by the Canadian Dairy Commission in relation to the marketing of milk in interprovincial trade. The Board is also authorized to “fix or impose levies or charges on milk or any component of milk and collect those levies or charges” and to “use the levies and charges for the purposes of the Board”.

The *Dairy Products Marketing Regulations* established under the *Canadian Dairy Commission Act* provides the Board the authority to allot federal quota and “to exercise all or any powers”; “apply all or any criteria”; and “administer all or any rules” “in relation to the entitlement to, and allotment, suspension or cancellation of provincial quota”.

Provincial Legislation and Regulation

The *British Columbia Milk Marketing Board Regulation* established under the *Natural Products Marketing (BC) Act* vests in the Board the power to “promote, regulate and control in any and all respects the production, transportation, packing, storage and marketing” of “milk, fluid milk or a manufactured milk product” within British Columbia. Further powers of the Board are provided in section 11(1) of the *NPMA*, including, but not limited to, setting prices; setting and collecting levies or charges and use those to carry out the purposes of the scheme; and to “delegate powers to the extent and in the manner the board considers necessary or advisable for the proper operation of the scheme”.

The *Dairy Industry Development Council Regulation (DIDC Regulation)* established under the *Farming and Fishing Industries Development Act (FFIDA)* requires “The board must collect levy on behalf of the council by deducting it from the proceeds otherwise due to a producer for milk delivered.” The Dairy Industry Development Council (Council) is governed by Section 4 and 10 of the *FFIDA*, which enables the Council to pay expenses “necessary for and incidental to the administration of this Act” or pay to a person, including a person representing the producers of a commodity, a sum to (i) benefit and promote the industry in British Columbia in respect of a commodity, or (ii) conduct or support research or educational programs in British Columbia in respect of the development and promotion of a commodity”.

Strategic Vision

To determine the appropriateness and adequacy of the current powers and duties of the Board they must be assessed against the strategic vision and direction of the BC milk industry, including primary roles or duties of the Board. The Board has published its 2012-2015 Strategic Plan:

Purpose

Manage the supply of milk to ensure sufficient milk production to meet consumer demand.

Vision

A dynamic, responsive, sustainable and consumer focussed dairy industry in BC.

Mission

To enhance the vitality of the whole BC dairy industry through a culture of sound governance.

Pillars

The plan has four pillars or primary duties:

- Milk Supply – Ensure milk production/supply meets consumer needs.
- Growth through Innovation and Renewal – Enable growth of the dairy industry through innovation; ensure integrity of the dairy industry and quality products and renewal with new producers.
- Sound Fiscal Administration and Management – Maintain sound financial and administrative management; effective strategic direction and human resource administration.
- Effective Communication and industry relations – Outcome of an informed and engaged producer community.

SAFETI Principles

The Review will assess the powers and duties of the Board in keeping with the SAFETI (Strategic, Accountable, Fair, Effective, Transparent, Inclusive) principles. Questions include, but are not limited to the following:

Strategic

The Strategic Plan and the pillars provide a broad reflection of the powers and duties carried out by the Board.

- Do the current pillars in the strategic plan meet the needs of the industry?
- Are there additional duties that the Milk Board should consider?
- Are their duties that the Milk Board should stop doing?

Accountable

The annual report, website and regional meetings provide a measure of accountability.

- Do the annual report, website and regional meetings provide sufficient information needed to understand the Milk Board's operation in the best interests of the industry?
- Are there other measures that the Milk Board should consider to improve accountability?

Fair

The Milk Board is mandated to regulate and control the milk industry in British Columbia. In carrying out these duties,

- Does the Milk Board provide opportunities for individuals to be heard and express their views on decisions made or contemplated?
- Does the Milk Board provide sufficient rationale for decisions made?

Effective

The Milk Board is expected to conduct its operations in an effective manner as demonstrated by having clearly defined outcomes.

- Do the strategic plan outcomes reflect the current needs of the industry?
- Are there additional outcomes that the Milk Board needs to consider for the future growth and development of the milk industry in British Columbia?

Transparent

The Milk Board is required to conduct its affairs in a manner in which those affected by its decisions have information available to them and understand the process and procedures.

- Is the existing information available from the Milk Board sufficient?
- Is the information easily accessible?

Inclusive

The Milk Board must demonstrate it has provided sufficient opportunity for all affected interests to have an opportunity to provide input and to be heard. The Milk Board must take into consideration the full breadth of producer, industry and public interests in the conduct of its operations.

- Do the various committees established by the Milk Board provide sufficient opportunity for the various stakeholder interests to be heard?
- Are there other ways the Milk Board should consider when it consults with the producers, processors and other interested parties?

Delegation of Powers and Duties

In addition to its program governance role, the Board also has a financial governance role that it must fulfil. This role is highlighted by the recent *Rainbow Poultry Ltd. et al v. BC Chicken Marketing Board*, December 18, 2013 decision which focussed on the financial accountability between the first instance regulator and producer associations.

The powers and duties related to promotion of the dairy industry in British Columbia have evolved considerably over time. The *Milk Industry Act* provided for the establishment of “a fund to be used for promoting dairy products in accordance with regulations that may be made by the Lieutenant Governor in Council”. The producers and processors have collaborated over the years in funding promotional and educational activities to benefit the collective interests of the British Columbia milk and dairy industry.

The Milk Board’s role has primarily been to facilitate the collection of levies. The first instance was for the creation of the Dairy Products Promotional Fund. In 2003, the authority for promotional levies shifted from the *Milk Industry Act* to the *DIDC Regulation* under the *FFIDA*. The Milk Board now remits promotional levies to the Council.

The Review will address the powers and duties “delegated” with respect to promotion and marketing. Key questions to be addressed, include, but are not limited to the following:

- Is it appropriate to delegate powers and duties for promotion and marketing?
- Are there additional duties related to promotion and marketing that should be considered?
- Are there promotional and marketing duties that should not be continued?
- Are the current reporting measures on promotion and marketing sufficient?

Your Thoughts and Ideas are Important

Your views and input are important to the Review. Please see the Milk Board’s website for details on how to participate and respond to the questions in the Discussion Paper.