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DELIVERED BY EMAIL

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Dear Colleagues:

AMENDMENTS TO THE NATURAL PRODUCTS MARKETING (BC) ACT

Bill 23 Miscellaneous Statutes Amendment Act, 2015 – which contained the amendments to the *Natural Products Marketing (BC) Act (NPMA)* – received royal assent on May 14, 2015. In response to a number of queries, this letter briefly reviews the NPMA amendments, including the clarification of, and changes to, board and commission (board) authorities. Please note that this is not a legal interpretation of the amendments.

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The letter concludes with an outline of the general expectations of boards by the BC Farm Industry Review Board (BCFIRB) in relation to the amendments.

With one exception, the *NPMA* amendments were brought into force immediately on receiving royal assent. The administrative penalty system (new *NPMA* sections 16.2 & 16.3) will be brought into force by Cabinet regulation at some future date.

Amendments

Amendments to the *NPMA* fall into two categories. First, there are some housekeeping amendments (e.g., ensuring consistent terminology, cross reference clarity between sections). This letter does not address these amendments, although I note that “packing” and “storing” have been included in the definition of “marketing” and this has resulted in streamlined wording related to “marketing” elsewhere in the *NPMA*.

Second are amendments that clarify or increase the scope of board authorities. Each of the following amendments is in addition to authorities granted under s. 11 of the *NPMA* for a particular scheme. These authorities apply to all boards established under a scheme and no scheme amendment or other Cabinet regulation is needed for a board to exercise these new authorities.

1. Biosecurity – Clarification of Authority

Following the 2004 avian influenza outbreak, BCFIRB was satisfied that there was scope within the *NPMA* for boards to address appropriate mandatory biosecurity standards as a matter of sound marketing policy. However, BCFIRB also pointed out to government and the boards (June 27, 2006) that as risk management work proceeded further legislative or regulatory support may be required. More recently questions arose as to board authority in regards to animal welfare. BCFIRB confirmed it was satisfied there was scope within the *NPMA* for boards to address animal welfare standards (August 1, 2014). Again, however, BCFIRB communicated with government that there may be a need for further legislative or regulatory clarity.

“Biosecurity program” is now broadly defined in the *NPMA*. It encompasses any program resulting in “...protecting and providing for the safety of a natural product”. This could potentially include animal welfare, food safety, disease control, biosecurity, and traceability programs.

The addition of s. 14(1)(a.1) further clarifies board authority to establish or designate a biosecurity program and to require producers to implement or comply with the biosecurity program. In relation, several authorities may issue directives with respect to biosecurity programs: the chief veterinarian under the *Animal Health Act*; the provincial health officer under the *Public Health Act*; and, BCFIRB under the *NPMA* (s. 14(1)(3)).

Prior Approval

Under this amendment BCFIRB prior approval is not required unless BCFIRB specifies otherwise under its general supervisory authority. Under s. 7.1 of the *NPMA*, BCFIRB is responsible for the general supervision of all marketing boards in the province. 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”.

Right of Appeal

Administrative decisions made by the boards in the implementation or application of this authority are appealable under s. 8 of the *NPMA* within 30 days of a board decision.

2. Insurance – Granting of Authority

BCFIRB continues to acknowledge insurance as an important risk management tool for producers and recognizes insurance can be part of sound marketing policy.

The addition of s. 14(1)(a.2) grants boards authority to require producers to maintain insurance, as specified by the board against losses resulting from the interruption or termination of production, for any reason, or a notifiable or reportable disease within the meaning of the *Animal Health Act*.

The authority to require insurance provides another tool in the board toolbox to support orderly marketing.

Prior Approval

Under this amendment BCFIRB prior approval is not required unless BCFIRB specifies otherwise under its general supervisory authority (as BCFIRB did in its August 14, 2014 Order outlined below).

BCFIRB's August 14, 2014 Order¹ prohibits the poultry boards from exercising authority to support the establishment and operation of the proposed captive poultry insurance company. The Order remains in place until such time as BCFIRB amends or rescinds it. Details are set out in correspondence dated March 3, 2015² and May 12, 2015³.

Right of Appeal

Administrative decisions made by the boards in the implementation or application of this authority are appealable under s. 8 of the *NPMA* within 30 days of a board decision.

3. Administrative Penalties – Granting of Authority

The authority to apply administrative penalties for the failure to comply with a requirement of a biosecurity program provides another tool for the boards in supporting orderly marketing. A Cabinet regulation will be required before the *NPMA* amendments related to administrative penalties come into force.

The addition of s. 6.2 and s. 6.3 will enable boards to impose an administrative penalty and provide an avenue for recovery of administrative penalties should a person fail to pay. It will also support increased consistency in terms of enforcement and penalty administration by boards with similar programs (e.g., poultry biosecurity).

¹ August 14, 2014. BCFIRB. [Supervisory decision – Sound marketing policy and board authority – mandatory poultry disease insurance.](#)

² March 3, 2015. [Poultry disease insurance – supervisory decision follow-up.](#)

³ May 12, 2015. BCFIRB. [Amendments to the Natural Products Marketing \(BC\) Act, Poultry Insurance and August 14, 2014 supervisory review decision.](#)

Prior Approval

Processes used to administer administrative penalties (serving notice, policies and procedures) will require BCFIRB prior approval (s. 16.2(2)). As noted in my May 12, 2015 letter, it is anticipated that there will be “considerable discussion between the boards, BCFIRB and the ministry on the implementation of administrative penalties” before a Cabinet regulation brings ss. 6.2 and 6.3 into force.

Right of Appeal

Administrative decisions made by the boards in the implementation or application of this authority are appealable under s. 8 of the *NPMA* within 30 days of a board decision.

BCFIRB Expectations

BCFIRB continues to expect boards to follow a principles-based regulation approach when using legislated authority. BCFIRB’s supervisory expectations are reflected and communicated in several places on BCFIRB’s web site, including:

- the Accountability Framework and SAFETI⁴ principles developed in cooperation with the boards;
- regular correspondence;⁵
- BCFIRB decisions;⁶ and,
- BCFIRB’s Strategic Plan, Service Plan and associated public reporting.

Specifically, BCFIRB continues to expect boards, which are exercising new and continuing authorities, to clearly demonstrate use of the SAFETI principles in their processes, decisions and accompanying reasons. For example, processes, decisions and reasons are provided in writing, available to all relevant stakeholders and clearly describe how SAFETI is met.

In general, these expectations merely reflect good practices for any regulatory body.

In relation to insurance, BCFIRB’s August 14, 2014 Order to the poultry boards remains in place until such time as BCFIRB amends or rescinds it. Should BCFIRB be requested by the poultry boards to change the Order, its expectations are set out in the March 3, 2015 and May 12, 2015 letters referenced earlier.

BCFIRB looks forward to continuing to work with the boards on meeting the policy intent of these recent changes to regulated marketing legislation.

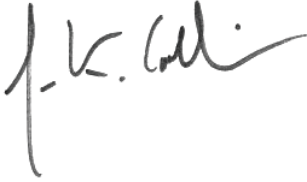
⁴ Strategic, Accountable, Fair, Effective, Transparent, Inclusive

⁵ E.g. [Regulated Marketing and Animal Welfare](#) (August 1, 2014); [Election Rules and Procedures – Reminder of Review Schedule and Approval Process](#) (March 24, 2015).

⁶ E.g. [Supervisory Review Decision – BC Milk Marketing Board Quota Governance Review](#)

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

Yours truly,

A handwritten signature in black ink, appearing to read "J. K. Collins". The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Jim Collins
Executive Director

cc: Alana Standish, Director
Corporate Governance, Policy and Legislation Branch
Ministry of Agriculture

BCFIRB website