

Administrative Penalty Framework for Commodity Boards

Table of Contents

BACKGROUND	1
ADMINISTRATIVE PENALTIES FRAMEWORK.....	2
<i>OVERVIEW.....</i>	<i>2</i>
<i>SUPERVISORY EXPECTATIONS FOR ESTABLISHMENT AND ENFORCEMENT OF MANDATORY BIOSECURITY PROGRAMS</i>	<i>2</i>
<i>PRIOR APPROVAL REQUIREMENTS FOR IMPLEMENTING ADMINISTRATIVE PENALTIES.....</i>	<i>3</i>
APPENDIX A: BIOSECURITY PROGRAM DEFINITION [NPMA]	6
APPENDIX B: LEGISLATIVE REQUIREMENTS [NPMA SS. 16.2 AND 16.23]	7

Background

In May 2015, Government amended the *Natural Products Marketing (BC) Act (NPMA)* to clarify commodity board authority to make biosecurity programs mandatory [s.14.1]. Biosecurity programs¹ in the regulated agriculture sector (e.g. food safety, disease control) are a key tool to manage industry risk and deliver on public demands for safe, quality food, consumer protection and available product. Program rules may prescribe, for example, the maintenance and management of farm access, rodent control, barn conditions, records, sanitation and animal housing.

Together, mandatory commodity board programs and compliance management activities, such as inspection and audit, allow industry to identify and correct infractions as they arise. While the majority of producers readily comply with program rules, a few may not. Producers must follow mandatory biosecurity program rules for biosecurity risks to be effectively managed. Even minor violations can put individual producers, industry performance and public health at risk.

In recognition of the importance of effective mandatory biosecurity programs, Cabinet included a provision to impose administrative penalties [ss.16.2 and 16.3] as an additional option for commodity boards to use when responding to industry non-compliance. An administrative penalty is a financial penalty that can be imposed on individuals who fail to comply with a particular rule – in this instance, a required program standard. They are intended to encourage swift compliance rather than be an onerous and expensive punishment.

This Administrative Penalties Framework has been established to ensure sound and procedurally fair application of administrative penalties by B.C.'s commodity boards, in accordance with the legislative requirements found in sections 16.2 and 16.3 of the *NPMA*, brought into force October 2019.

¹ See Appendix A for definition

Administrative Penalties Framework

Overview

The Administrative Penalties Framework (Framework) is intended to ensure BC's regulated agricultural boards and commissions (commodity boards) will develop and apply administrative penalty policies and procedures in a manner that accords with legislative requirements and procedural fairness.

BCFIRB developed the Framework in coordination with the commodity boards and Ministry of Agriculture. The Framework sets out BCFIRB's:

1. Supervisory Expectations for Establishment and Enforcement of Mandatory Biosecurity Programs; and,
2. Prior Approval Requirements for Administrative Penalty Policies and Procedures

The Framework incorporates:

- legislative requirements, including *NPMA* ss.16.2 and 16.3 (Appendix B);
- enforcement good practices;
- administrative penalty good practices; and,
- consideration of the application of administrative penalties in other statutes (B.C and commodity boards in other provinces).

This Framework was finalized by BCFIRB in consultation with the commodity boards in 2020/21 after Cabinet brought ss.16.2 and 16.3 of the *NPMA* into force in October 2019.

Supervisory Expectations for Establishment and Enforcement of Mandatory Biosecurity Programs

Under the *NPMA*, BCFIRB is responsible for general supervision of regulated agriculture commodity boards, including the delivery of sound marketing policy to ensure orderly marketing. The following sets out BCFIRB's supervisory expectations in relation to the establishment and general enforcement of mandatory biosecurity programs.

1. **Mandatory Biosecurity Programs:** That commodity board risk management strategies will reflect their overall strategic objectives. This includes identifying on an on-going basis: existing and potential biosecurity risks; where biosecurity-related programs are essential and appropriate to address these risks; and considering this information, which biosecurity programs should be made mandatory, in whole or in part.

2. **Good Governance:** That commodity boards will apply, and demonstrate use of SAFETI (Strategic, Accountable, Fair, Effective, Transparent, Inclusive)², in determining which biosecurity programs should be mandatory (in whole or in part), and the development and application of appropriate enforcement measures, including administrative penalty policies and procedures. This includes engaging industry stakeholders as part of a SAFETI-based process.
3. **Application of Administrative Penalties:** Administrative penalties may be part of a commodity board's enforcement regime for mandatory biosecurity programs:
 - a. As administrative penalties increase the effectiveness of enforcement regimes, BCFIRB expects that commodity boards will include administrative penalty policies and procedures in their compliance and enforcement policies and procedures, as appropriate.
 - b. BCFIRB recognizes that administrative penalties may not be a suitable enforcement tool for all mandatory biosecurity programs and/or particular offences. A commodity board that decides not to utilize administrative penalties for mandatory biosecurity programs should be prepared to provide sound justification for that decision to BCFIRB and its stakeholders.
4. **Transparency and Accountability:** All commodity board enforcement policies and procedures will continue to be accountable through regular evaluation and reporting to determine whether the intended outcomes are being achieved, and if so, if they are being achieved effectively and strategically. Commodity boards are to communicate these outcomes to BCFIRB and the regulated community at large. BCFIRB, as the provincial supervisory board, will use this information to determine if there are concerns with the delivery of enforcement over time; and whether a joint review, or other actions, are warranted.

Prior Approval Requirements for Implementing Administrative Penalties

BCFIRB is responsible for prior approving each commodity board's administrative penalty policy and procedures and the manner in which notice will be served [s.16.2 (2)]. Once implemented, BCFIRB will hear appeals of commodity board decisions related to issuance of administrative penalties [s.16.2(4)].

Commodity boards will need to design their specific administrative policies and procedures based on the following requirements. If commodity board administrative penalty policies and procedures do not reflect the following requirements (outside of the legislative requirement),

² [BCFIRB Good Governance - SAFETI Requirements](#)

commodity boards must be prepared to provide sound justification to BCFIRB and its stakeholders or they will not be able to utilize administrative penalties.

1. **Legislative Requirements:** A commodity board's method of serving notice and policies and procedures must meet the intent and provisions of applicable legislation and regulations. In particular, sections 16.2 and 16.3 of the *NPMA* (Appendix B).
2. **Procedural Fairness:** Each commodity board's policy and procedures, including the manner in serving notice, must be clear and transparent in terms of what they are and how they apply. This negates the risk of arbitrary, or inequitable, decision-making. It also affirms the commodity board's duty to use their policy to uphold mandatory biosecurity programs -- that, in turn, protect orderly marketing. Failure to clearly set out these elements could lead to uncertainty, unfairness, loss of efficiency and the inconsistent treatment of producers within and across sectors.
3. **Graduated Enforcement:** Administrative penalties will be part of a graduated enforcement system that focuses first on an informal education / communication process, and, if required, more formally on official written Warnings and then Notices of Penalties. The option to move immediately to Notice of Penalty or more severe sanctions exists if the commodity board determines that the risk from the violation so warrants.
4. **Progressive Enforcement:** Administrative penalties will apply on an escalating scale to account for continued and/or repetitive non-compliance.
5. **Contraventions and Proportionality:** Boards will also define the contraventions and proportional penalty amounts for each mandatory biosecurity program and include it in their policies and procedures. Administrative penalties are not meant to put a producer out of business. The penalty imposed through the policy should³:
 - a. reflect the risk managed by the program and its effects on maintaining industry viability;
 - b. be proportionate to the program intent, the industry and the matter being regulated; and,
 - c. reflect consideration of the seriousness of the contravention – severity, harm, potential economic benefit derived from contravention [*NPMA* s.16.2(3)].

³ Note: A penalty should be designed to be a fair deterrent – set the rate to deter persons from undertaking non-compliant behavior in the first place but a rate appropriate that it won't be perceived as unfair within the specific industry (i.e. set the penalty appropriately so that it is not something that offenders are simply willing to pay as a cost of doing business but nor is it so high as to cause undue economic hardship to the producer) but still recognizing the potential impacts of non-compliance on the industry as a whole.

Administrative Penalty Framework for Commodity Boards
May 2021

6. **Consistency:** Where feasible and appropriate, commodity board should develop their policies and procedures, including the manner in serving notice, in coordination to help ensure uniform enforcement processes and penalty administration. This approach helps support a fair and equitable treatment of similar offenses across industries.
7. **Responsiveness:** Commodity boards are to review policies and procedures regularly and take into account factors, such as an increase in the incidence of non-compliance for a particular standard, emerging threats, technological advances, or new trends in biosecurity and/or production principles and practices and consider whether updates to policies and procedures are required. The results of these reviews are to be reported to stakeholders and BCFIRB.
8. **Transparency:** Commodity boards are to incorporate administrative penalty policies and procedures into existing enforcement policies and procedures. Policies and procedures will be posted on their respective websites as a transparent means for producers to see how a program is administered.

Appendix A: Biosecurity Program Definition [NPMA]

"biosecurity program" means a program that, for the purpose of protecting and promoting the safety of a natural product, does one or more of the following:

- (a) establishes standards or certification programs;
- (b) requires persons engaged in the production of the natural product to
 - (i) meet established standards,
 - (ii) be certified according to an established program,
 - (iii) take specified measures,
 - (iv) implement specified procedures or procedures for specified purposes, or
 - (v) keep specified records;
- (c) imposes conditions, restrictions or prohibitions on persons engaged in the production of natural products;

Appendix B: Legislative Requirements [NPMA ss. 16.2 and 16.23]

	Rule or Intent
Application	Administrative Penalties (AMPs) can only be applied to failure to comply with a requirement of a biosecurity program [s. 16.2(1)].
Application	AMPs complement existing enforcement mechanisms [s. 16.2(6)]. It is one component of a biosecurity risk management strategy.
Authority	Boards enforce the AMP policy although they may delegate authority for administering the biosecurity program [s.16.2(1)].
Who is liable?	Administrative penalties apply to those subject to a “biosecurity program”. Biosecurity program is defined as applying to “persons engaged in the production of the natural product”. Thus, administrative penalties only apply to producers and no other industry licensees [s.16.2(1)]. If production held by corporation, the corporation pays the penalty but both the corporation and the responsible agent of the corporation are liable [s.16.2(5)].
Penalty Considerations:	<i>Any policy needs to consider the conduct of the person involved, describe how the incidence and extent of past contraventions will be considered and dealt with Penalty amounts will reflect:</i>
<i>Precedence</i>	(a) previous enforcement actions against the person under this Act [s. 16.2(3)];
<i>Severity</i>	(b) the gravity and magnitude of the contravention [s. 16.2(3)];
<i>Harm</i>	(c) the extent of the harm to persons or property resulting from the contravention [s. 16.2(3)];
<i>Temporal</i>	(d) whether the contravention was repeated or continuous [s. 16.2(3)];
<i>Purposeful</i>	(e) whether the contravention was deliberate [s. 16.2(3)];
<i>Economic Gain</i>	(f) any economic benefit derived by the person from the contravention [s. 16.2(3)];
<i>Remedial Actions</i>	(g) the person’s efforts to correct the contravention [s. 16.2(3)];
Penalty Amts.	The maximum penalty a regulated board can impose is \$10,000 [s.16.2(1)(a)]; No minimum penalty prescribed.
Balance of Probabilities	If satisfied on a balance of probabilities that a person who is subject to a biosecurity program has failed to comply with a requirement of the program, a regulated board or commission may impose an administrative penalty [s. 16.2(1)]. This means that the commodity board, acting impartially, is satisfied that the greater weight of the evidence (51%) supports one side of the issue rather than the other. The regulated board does not need to be satisfied to the criminal standard of beyond a reasonable doubt.
Notice	Regulated boards must serve notice of the administrative penalty in accordance with its General Orders, as prior approved by BCFIRB (manner, policies and procedures) [s. 16.2(2)].
Payment	A person subject to an administrative penalty must pay the regulated board within 30 days [s. 16.2(4)(a)]. Regulated boards collect, but do not retain, administrative penalties. Penalties collected go to Government’s General Revenue [s. 16.2(4)].
Compelling Payment	Regulated boards can suspend or withhold any license or certificate issued by the board until the penalty is paid [s.16.2(1)(b)]. A Notice served by a regulated board has the same force and effect as a judgement of the Supreme Court of BC [s.16.3(3)]. If the producer fails to pay the penalty within 30 days, the regulated board can file a certified copy with the Supreme Court [s.16.3(2)] and the Province may recover it as a “debt due to the government” [s.16.3(1)].
Appeal of amt. or contravention	The contravention and/or the amount of the penalty can be appealed to BCFIRB. The person subject to the penalty is required to pay the penalty to the regulated board and file the appeal within 30 days of receiving the notice [s. 16.2(4)(b)].

