



BC Farm Industry Review Board

May 19, 2021

File: 0120-0140\AMPS

DELIVERED BY EMAIL

Jim Collins
Chair
BC Broiler Hatching Egg Commission

Harvey Sasaki
Chair
BC Chicken Marketing Board

Kalpna Solanki
Chair
BC Cranberry Marketing Commission

Gunta Vitins
Chair
BC Egg Marketing Board

Derek Sturko
Chair
BC Hog Marketing Commission

Benjamin Janzen
Chair
BC Milk Marketing Board

Kevin Klippenstein
Chair
BC Turkey Marketing Board

Debbie Etsell
Chair
BC Vegetable Marketing Commission

To Commodity Board Chairs:

ADMINISTRATIVE MONETARY PENALTIES: FINAL FRAMEWORK FOR COMMODITY BOARDS AND NEXT STEPS

Brought into force in October 2019, sections 16.2 and 16.3 of the *Natural Products Marketing (BC) Act (NPMA)* grant BC's commodity boards and commissions (commodity boards) authority to issue administrative penalties to producers for non-compliance with mandatory biosecurity programs.

1. The BC Farm Industry Review Board's (BCFIRB) mandatory biosecurity program supervisory expectations and prior approval requirements for administrative penalty policies and procedures are attached in the Administrative Penalty Framework for Commodity Boards.
2. Those boards that do not plan to utilize administrative penalties are to provide a SAFETI-based¹ rationale to BCFIRB for that decision. The rationale must include a description of current enforcement-related authorities, tools and processes

¹ Strategic, Accountable, Fair, Effective, Transparent, Inclusive

Web:

Email: firb@gov.bc.ca

Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

Phone:

Info: 250 356-8945

Fax: 250 356-5131

Mail:

PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5

Office:

2975 Jutland Rd
Victoria, BC V8T 5J9

used for a graduated approach to enforcement of mandatory biosecurity programs. The rationale is due by **June 30, 2021**.

3. BCFIRB, in consultation with all boards, will review and assess mandatory biosecurity program outcomes reporting expectations in light of public accountability and the information needed to evaluate if enforcement outcomes are being met, and if those outcomes are being met effectively and strategically. BCFIRB staff will contact commodity boards on next steps.
4. For consistency, BCFIRB will work with boards to ensure any questions and answers are shared as commodity boards develop their sector-specific administrative penalty policy and procedures. Boards are expected to have their policy and procedures submitted to BCFIRB for prior approval by April 1, 2022.

Overview

Mandatory biosecurity programs are key to proactively managing public health risks, and mitigating supply risks related to the protection and promotion of agricultural products. Proactive management reduces potential direct industry and government costs, and supports meeting public demands for safe, quality food. Even minor biosecurity breaches can result in significant risks to food safety, public health and the viability of the agriculture supply chain, alongside the increased potential for costly emergency response and remediation measures by industry and government.

An administrative penalty is a financial penalty imposed on individuals who fail to comply with a particular rule. Administrative penalties are a situation appropriate, consistent, progressive and timely enforcement tool. Penalties are intended to encourage swift compliance rather than be an onerous and expensive punishment.

Administrative Penalty Framework (Framework) for Commodity Boards

In 2016, the BC Farm Industry Review Board (BCFIRB) developed a draft Framework to ensure sound and procedurally fair application of administrative penalties in accordance with legislative requirements by BC's commodity boards once *NPMA* sections 16.2 and 16.3 were brought into force. The draft Framework was developed in coordination with the commodity boards and the BC Ministry of Agriculture, Food and Fisheries.

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.

After *NPMA* sections 16.2 and 16.3 were brought into force by government in 2019, BCFIRB asked all commodity boards for final input and the Framework was finalized in April 2021.

Board input

Of the eight boards, 6 boards² had no comments on the draft Framework and one board³ did not respond. One board⁴ asked about BCFIRB's Transparency and Accountability supervisory expectations related to the type of reporting BCFIRB requires on board biosecurity enforcement outcomes. Concern was expressed that reporting beyond the number of biosecurity infractions in a year could create "negative awareness" with industry partners and the public.

BCFIRB's Transparency and Accountability expectation states:

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 they 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.

The *NPMA* does not include specific mandatory biosecurity program enforcement reporting requirements. After discussion, BCFIRB concluded the Framework can be finalized and the reporting question be addressed as part of the next steps.

Utilization

The BCFIRB Framework recognizes that administrative penalties may not be a suitable enforcement tool for all mandatory biosecurity programs and/or particular offences. The Framework also notes that if a commodity board determines it will not utilize administrative penalties it should be prepared to provide a sound justification for its decision.

As of April 2021, only the BC Broiler Hatching Egg Commission and the BC Egg Marketing Board reported plans to utilize administrative penalties. The BC Cranberry Marketing Commission will consider utilization as part of its 2021 General Orders Review.

In BCFIRB's view, administrative penalties offer a sound addition to commodity board enforcement regimes:

- Use can support food safety and disease management (and thus, public health and safety); and bolster industry/agri-food sector competitiveness.
- Not all violations are similar in nature and the circumstances under which they occur vary widely. It is therefore important that commodity boards are able to respond proportionately to a full range of violations.

² BC Broiler Hatching Egg Commission, BC Chicken Marketing Board, BC Cranberry Marketing Commission, BC Egg Marketing Board; BC Hog Marketing Commission; BC Turkey Marketing Board.

³ BC Vegetable Marketing Commission

⁴ BC Milk Marketing Board

- Commodity boards require a proportional, smaller-scale enforcement tool that does not affect supply of a regulated product and that can swiftly be employed before a minor to middle-ground biosecurity program infraction generates significant risk to orderly marketing.

Consistency

The 2016 Working Group agreed that high-level consistency was required across boards at both the “principles” and the “program design” levels to ensure procedural fairness across boards.

As commodity boards start developing sector-specific administrative penalty policies and procedures BCFIRB expects questions will arise (e.g. how to submit administrative penalties to government; how to ensure procedural fairness). To support consistency, BCFIRB will help ensure questions and answers are tracked and shared across all boards.

Closing

The 2016 Working Group provided the critical structure and information needed for Cabinet to bring sections 16.2 and 16.3 of the *NPMA* in to force. This work also enabled the commodity boards and BCFIRB to move forward in a timely way on a sound foundation for developing and approving administrative penalty policies and procedures which will ultimately benefit the regulated marketing sectors and the public interest.

BCFIRB looks forward to working with your boards as you develop your administrative penalties policies and procedures and, as BCFIRB clarifies its mandatory biosecurity program outcomes reporting expectations.

Regards,

A handwritten signature in black ink, appearing to read 'Peter Donkers', written in a cursive style.

Peter Donkers
Chair

Attachment: Administrative Penalty Framework for Commodity Boards

cc: BCFIRB web site