

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND  
ADMINISTRATIVE MONETARY PENALTIES (AMPs) REVISED APPROACH

May 16, 2024

## Introduction

1. On August 1<sup>st</sup>, 2023, the BC Farm Industry Review Board (BCFIRB) directed all BC agricultural commodity boards and commissions (commodity boards) to work with BCFIRB to report on, by December 1, 2023, the following components of their published compliance and enforcement (C&E) processes for inclusion in BCFIRB's 2022 Public Accountability and Reporting Project (PARP) summary report:
  - a) mandatory biosecurity programs for the commodity;
  - b) number of farms audited and type of audit(s) conducted (i.e., on-farm, paper, other);
  - c) auditor (i.e., commodity board, third party, or other);
  - d) number of Corrective Actions (CARs) issued;
  - e) enforcement actions taken, including any penalties issued; and,
  - f) average time to compliance when Warning Notice issued<sup>1</sup>.
2. Additionally, the supply-managed commodity boards and commissions (SM boards)<sup>2</sup> were each directed to work with BCFIRB to develop administrative monetary penalties (AMPs) policies and procedures (P&P) for their mandatory biosecurity programs to submit to BCFIRB by September 29, 2024.
3. In October and November 2023, BCFIRB developed a draft Implementation Guide to help SM boards develop their AMPs P&P. SM boards were consulted and provided BCFIRB with feedback on the draft Implementation Guide. The feedback highlighted challenges including biosecurity priorities such as avian influenza outbreaks, the time needed for industry consultation and overall development of AMPs P&P, and additional pressure on SM boards' staff resources.
4. On December 19, 2023, acknowledging the challenges SM boards faced, BCFIRB extended the September 29, 2024, deadline for submissions of AMPs P&P to January 31, 2025.
5. A condition of this extension was for each SM board to submit to BCFIRB by February 29, 2024, an AMPs P&P project timeline demonstrating how SM boards would meet the new, extended deadline.
6. All SM boards submitted their project timelines to BCFIRB. On February 23, 2024, the BC Egg Marketing Board sent a letter to BCFIRB raising a series of ongoing concerns related to the implementation of AMPs. On March 15, 2024, the BC Chicken Marketing Board also sent a letter to BCFIRB raising concerns and asking

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<sup>1</sup> 2023 August 1. BCFIRB. [Administrative Monetary Penalties Implementation Follow-Up and Reporting.](#)

<sup>2</sup> They are the BC Broiler Hatching Egg Commission, the BC Chicken Marketing Board, the BC Egg Marketing Board, the BC Milk Marketing Board and the BC Turkey Marketing Board.

a series of questions to BCFIRB regarding the implementation of AMPs. The input highlighted risks and inefficiencies to some SM boards' existing biosecurity program C&E processes if AMPs were to be implemented.

7. In February 2024, BCFIRB also received the required C&E process data from the commodity boards and commenced its review of this information.
8. After considering the ongoing concerns expressed by the SM boards and reviewing the received C&E process data, BCFIRB conducted a SAFETI-based analysis to reassess its August 2023 direction to SM boards.

### **Issues**

9. Does BCFIRB's August 2023 direction to SM boards to develop and include AMPs P&P as part of their C&E processes continue to fulfill sound marketing policy?
10. What, if any, further direction to SM boards is required to ensure sound marketing policy?
11. Does the C&E data required by BCFIRB from the commodity boards for PARP reporting meet BCFIRB's transparency and accountability expectations?

### **Legal Authorities**

12. Under the *Natural Products Marketing (BC) Act* (NPMA) section 7.1 BCFIRB has general supervisory authority over all marketing boards and commissions. It may exercise its powers under this section at any time, with or without a hearing, and in the manner it considers appropriate to the circumstances.
13. Sections 16.2 and 16.3 of the NPMA grant BC's commodity boards authority to issue administrative penalties to producers for non-compliance with mandatory biosecurity programs as defined in the NPMA.

### **Analysis**

14. The purpose of mandatory biosecurity programs (such as food safety, disease control, animal welfare, etc.) is to protect and promote the safety of a natural product. These programs are a key tool for commodity boards to manage industry risk and deliver a consistent supply of safe, quality food.
15. The purpose of adding AMPs to commodity boards' existing enforcement tools was to promote swift compliance without potentially onerous processes and expensive punishment for producers.
16. Beginning in 2016, BCFIRB worked with the commodity boards and the BC Ministry of Agriculture and Food to develop and finalize, in 2021, the

Administrative Penalty Framework for Commodity Boards (Framework)<sup>3</sup> to provide supervisory guidance to commodity boards and ensure AMPs P&P are developed in a manner that accords with the NPMA's legislative requirements as well as procedural fairness. The Framework sets out:

1. supervisory expectations for the establishment and enforcement of mandatory biosecurity programs; and,
2. eight prior approval requirements for AMPs P&P.

17. Per the 2021 Framework, BCFIRB expected commodity boards to:

1. use a SAFETI<sup>4</sup> approach in determining which biosecurity programs should be mandatory, and the development and application of appropriate enforcement measures;
2. to include AMPs as part of their C&E processes;
3. to provide a sound justification to BCFIRB and their stakeholders if they decided not to use AMPs; and,
4. to regularly report to BCFIRB and the public on the effectiveness of their C&E processes.

18. During the several years NPMA legislative amendments were being developed and the Framework was being drafted<sup>5</sup>, commodity boards needed to have graduated C&E processes to enforce their mandatory biosecurity programs. They developed proportional C&E measures, including sector penalties, that enabled them to respond to a broad range of non-compliance issues without systematically resulting in suspension or cancellation of licence/quota, in addition to supporting the creation of the AMPs authority in the NPMA. In some cases, commodity boards created processes that would ultimately duplicate or replace the need for AMPs.

19. As a result, when AMPs were brought into force, the majority of commodity boards submitted to BCFIRB throughout 2021 and 2022 that AMPs were not considered necessary for their C&E processes. However, there was a lack of data from commodity boards to aid BCFIRB in confirming this stance and evaluating the efficacy of their current C&E measures. In August 2023, BCFIRB directed commodity boards to provide specific C&E data, aiming to address this gap and facilitate a comprehensive assessment of their C&E processes.

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<sup>3</sup> 2021 May 19. BCFIRB. [Administrative Penalty Framework for Commodity Board May 2021](#)

<sup>4</sup> Strategic, Accountable, Fair, Effective, Transparent, Inclusive. See BCFIRB Good Governance - SAFETI Requirements

<sup>5</sup> Commodity boards' authority to make biosecurity programs mandatory was introduced in 2015. However, it wasn't until 2019, further to the legislative amendments to the NPMA, that commodity boards were granted the authority to issue AMPs for producer non-compliance with these mandatory biosecurity programs.

20. In February 2024, following the receipt of the commodity boards' C&E data, and with consideration for the concerns expressed by some SM boards regarding the required development and implementation of AMPs P&P, BCFIRB undertook a review of each SM board's current C&E process. The objective of the review was to assess whether these processes align with the eight BCFIRB prior approval requirements for AMPs P&P, and to identify any related issues or potential gaps.
21. The eight prior approval requirements against which BCFIRB assessed alignment with the SM boards' existing C&E processes include:
  1. Legislative Requirements;
  2. Procedural Fairness;
  3. Graduated Enforcement;
  4. Progressive Enforcement;
  5. Contraventions and Proportionality;
  6. Consistency;
  7. Responsiveness; and,
  8. Transparency.
22. To support its assessment, BCFIRB reviewed the SM boards' past AMPs and C&E submissions to BCFIRB, discussions with and feedback from SM boards during the development of the Implementation Guide, and the C&E process data required by BCFIRB for PARP reporting. BCFIRB also reviewed each SM board's mandatory biosecurity programs and C&E processes.
23. Through its assessment, BCFIRB found that each SM board has at least one mandatory biosecurity program in place, some being developed at the national level, and others at the provincial level. The programs apply consistently to all producers of a regulated sector and, to be certified or validated under these programs, all producers are subjected to audits to demonstrate compliance with the biosecurity program.
24. Concerning producer non-compliance, BCFIRB's assessment found that each of the SM boards' C&E processes considers several factors before taking the appropriate enforcement measure. All of the processes, for example, include consideration of previous enforcement actions for contraventions of a similar nature by the producer, the gravity and magnitude of the contravention, the extent of the harm to others resulting from the contravention, whether the contravention was repeated or continuous, whether the contravention was deliberate, any economic benefit derived by the producer from the contravention, and the producer's efforts to correct the contravention. These penalty considerations help

ensure a fair and transparent decision process by SM boards. They each also have a review process in place that provides a producer with the opportunity to be heard when subjected to an enforcement action.

25. BCFIRB's assessment also found that all SM boards' C&E processes are transparent by way of inclusion in their published Consolidated Orders or General Orders. Producers have access to the C&E processes that apply to them, are informed, and can expect the consequences of non-compliance with mandatory biosecurity programs.
26. With respect to enforcement, BCFIRB expects SM board C&E processes to include graduated enforcement measures such as:
  - a) informal education/communication process;
  - b) written warnings;
  - c) CARs (Corrective Actions);
  - d) sector penalties;
  - e) license/quota suspension; and,
  - f) license/quota cancellation.
27. While all SM boards indicated to BCFIRB in 2022, that they had graduated enforcement measures within their C&E processes<sup>6</sup> it was only upon receipt of the SM boards' C&E data that BCFIRB was able to validate that these measures were in place and assess the measures with respect to the mandatory biosecurity programs.
28. BCFIRB's assessment found that all C&E processes include steps that SM boards follow when a non-compliance issue arises, and CARs are needed. Their graduated enforcement approaches allow the SM boards to respond to a full range of violations without directly affecting the supply of a regulated product or creating serious economic hardship for a producer. For example, according to the 2022 C&E data required of the commodity boards, all SM boards were able to achieve producer compliance by using either warnings, CARs or sector penalties. Additionally, SM boards reported no instances of non-compliance leading to the suspension or cancellation of a producer's license or quota.
29. BCFIRB also expects SM boards to be able to respond proportionately to the severity of non-compliance or the industry risk it poses. SM boards reported to BCFIRB through their C&E data that, depending on the situation, they may choose to act more quickly to encourage more rapid compliance. In other words, they do

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<sup>6</sup> The BC Broiler Hatching Egg Commission initially reported that it would implement AMPs P&P, and therefore did not submit this C&E process data to BCFIRB, but later confirmed this by way of its C&E data provided to BCFIRB for 2022 PARP reporting.

not necessarily follow each of their C&E process steps in succession when they need to expedite the resolution of non-compliance. For example, most SM boards reported that they may shorten the compliance timeframe when addressing animal care non-compliance to facilitate a prompt resolution. This strategic approach enables SM boards to assess risks and respond proportionately and effectively in different situations.

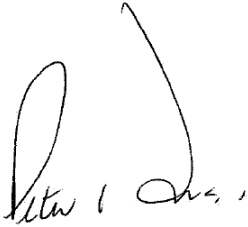
30. Concerning C&E process adjustments over time, BCFIRB expects commodity boards to regularly review C&E processes and take into account factors such as an increase in the incidence of non-compliance for a particular standard, emerging threats, technological advances, or new trends in biosecurity and/or production principles and practices and consider whether updates to C&E processes are required. BCFIRB expects the results of these reviews to be reported to stakeholders and BCFIRB.
31. BCFIRB's assessment confirmed that all SM boards review their C&E processes during reviews of their General Orders or Consolidated Orders, or whenever a concern or issue has been raised. Standards set out in national biosecurity programs are reviewed at the national level and are followed by SM boards.
32. BCFIRB's assessment of its AMPs P&P prior approval requirements against each SM board's C&E processes relied heavily on the data they were required to submit for BCFIRB's PARP report. Going forward, BCFIRB will continue requiring this data from commodity boards.
33. While BCFIRB acknowledges the value and potential effectiveness of AMPs as a biosecurity program enforcement measure, BCFIRB also recognizes that the current C&E processes of all five SM boards align with BCFIRB's eight prior approval requirements for AMPs to be effective and suitable for addressing biosecurity risks. Continuing to require the SM boards to develop and implement AMPs as part of their C&E processes, per BCFIRB's August 2023 direction to the SM boards, is not necessary to ensure sound marketing policy for mandatory biosecurity program compliance and enforcement.

## **Decision**

34. BCFIRB's August 2023 direction that all SM boards must develop and implement AMPs P&P is changed from a mandatory requirement to a voluntary choice where SM boards continue to use their C&E processes, including new, revised and/or improved C&E processes, provided their C&E processes continue to align with BCFIRB's eight prior approval requirements for AMPs.
35. Those SM boards and other commodity boards wishing to develop and implement AMPs will continue working with BCFIRB staff to develop their AMPs P&P and ensure alignment of their P&P with the eight prior approval requirements for AMPs. The AMPs P&P must then be submitted to BCFIRB for prior approval.

36. Commodity boards will continue to provide any and all required C&E data to BCFIRB for inclusion in BCFIRB's PARP summary reports including the results of the regular reviews by commodity boards of their C&E processes.

Dated at Victoria, British Columbia, this 16 day of May 2024.



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Peter Donkers  
**Chair**



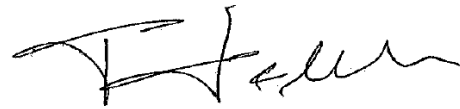
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Gunta Vitins  
**Vice Chair**



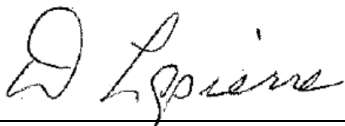
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Wendy Holm  
**Member**



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Pawan Joshi  
**Member**



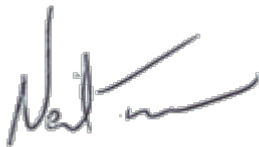
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Dennis Lapierre  
**Member**



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Jane Pritchard  
**Member**



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Neil Turner  
**Member**



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David Zirnhelt  
**Member**