

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
ADMINISTRATIVE MONETARY PENALTIES (AMPs) IMPLEMENTATION
FOLLOW-UP AND REPORTING

August 1, 2023

Introduction

1. On May 19, 2021¹, the BC Farm Industry Review Board (BCFIRB) affirmed the following supervisory expectations of BC's agriculture commodity boards:
 - a. Commodity boards will apply, and demonstrate use of, SAFETI² in determining which biosecurity programs should be mandatory, and the development and application of appropriate enforcement measures;
 - b. That commodity boards will include Administrative Monetary Penalties (AMPS) as part of the board compliance and enforcement policies and procedures;
 - c. If a commodity board does not include AMPs as an enforcement tool, it must provide a justification to BCFIRB and its stakeholders; and,
 - d. All commodity board enforcement policies and procedures will continue to be accountable through regular evaluation and reporting.
2. Following submissions from those commodity boards not planning to utilize AMPs, BCFIRB issued several directions in December 2021³ (see Appendix A).
3. Since BCFIRB issued its December 2021 directions:
 - a. The BC Milk Marketing Board (Milk Board) confirmed its recommendation that AMPs were not an effective graduated enforcement tool after consulting with the BC Dairy Association (BCDA);
 - b. The BC Egg Marketing Board (Egg Board) reported it no longer recommended AMPs as a necessary graduated enforcement tool;
 - c. The BC Turkey Marketing Board (Turkey Board) continued to recommend that AMPs were not a necessary graduated enforcement tool and provided additional rationale; and,
 - d. The BC Vegetable Marketing Commission (Vegetable Commission) confirmed it intends to implement AMPs.

¹ 2021 May 19. BCFIRB. Administrative Monetary Penalties: Final Framework for Commodity Boards and Next Steps.

² Strategic Accountable Fair Effective Transparent Inclusive

³ 2021 December 21. BCFIRB. In the Matter of the *Natural Products Marketing (BC) Act* and Implementing Administrative Monetary Penalties (AMPs).

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4. Of the eight commodity boards, only the BC Broiler Hatching Egg Commission (Hatching Egg Commission) and the Vegetable Commission confirmed they now plan to implement AMPs.
5. In light of commodity board responses since December 2021, BCFIRB reviewed its May and December 2021 decisions regarding the five supply-managed commodity boards against sound marketing policy considerations and ongoing biosecurity risks faced by the regulated sectors.

Issues

6. Do BCFIRB's May and December 2021 decisions continue to fulfill sound marketing policy?
7. What, if any, further directions to commodity boards are required to ensure sound marketing policy?
8. What compliance and enforcement reporting by commodity boards is required to meet BCFIRB's transparency and accountability expectations?

Legal Authorities

9. Under the *Natural Products Marketing (BC) Act (NPMA)* s. 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.
10. *NPMA* ss. 16.2 and 16.3 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

11. Mandatory biosecurity programs in the regulated agriculture sector (e.g., food safety, disease prevention and management) are a key tool to manage industry risk and deliver on public demands for safe, quality food, consumer protection and product availability. Producers must follow mandatory biosecurity program rules for risks to be effectively managed. Even minor violations can put individual producers, industry performance, and public health at risk. Monitoring activities (e.g., inspections, audits) and enforcement using graduated compliance and enforcement tools (e.g., AMPs) are required to identify and resolve infractions as they arise. Regular evaluation of, and reporting on, mandatory programs and compliance and enforcement activities supports effective biosecurity risk management and public accountability.

Reporting and Evaluation

12. BCFIRB's Administrative Penalty Framework for Commodity Boards⁴ states on page 3:

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.

13. Accountable reporting requires a clear baseline against which to report. BCFIRB continues to expect all commodity boards to:

a. publicly publish graduated compliance and enforcement process(es) that includes the following steps: Warning Notice, Corrective Actions, Sector Penalties, Licence Suspension, and Licence Cancellation; and,

b. publicly publish graduated penalties.

14. BCFIRB received a request for clarity regarding its reporting expectations. Currently, reporting on compliance and enforcement activities and outcomes varies widely by commodity board. BCFIRB is prepared to set minimum reporting criteria to bring clarity and ensure a consistent approach to transparency and accountability across all commodity boards with mandatory biosecurity programs.

Need for establishing AMPs policies and procedures

15. While the majority of commodity boards recommend that AMPs are not necessary and/ or are not an effective, graduated enforcement tool for their sectors, this conflicts with BCFIRB's finding that including AMPs as part of commodity boards' compliance and enforcement processes is sound marketing policy.
16. While the majority of producers readily comply with mandatory biosecurity programs, a few may not. Producers must follow program rules for biosecurity risks to be effectively managed. Even minor violations can put individual producers, industry performance and public health at risk.
17. In recognition of the importance of effective mandatory biosecurity programs, Cabinet included a provision to impose administrative penalties (*NPMA* 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

⁴ 2021 May 19. BCFIRB. [Administrative Penalty Framework for Commodity Boards](#).

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.

18. Prior to AMPs being brought into force, commodity boards used existing authorities to enforce mandatory biosecurity programs for many years. In 2016, BCFIRB worked with the commodity boards and the Ministry of Agriculture and Food⁵ to develop the draft Administrative Penalty Framework for Commodity Boards (Framework) to support Cabinet in bringing AMPs authorities into force and to provide supervisory guidance to commodity boards.⁶ Most commodity boards expressed support for AMPs as a graduated enforcement tool at the time.
19. With the passage of time, the majority of boards now conclude that existing authorities are sufficient and AMPs are not necessary for effective and accountable graduated enforcement processes.
20. BC's poultry sector continues to face pressure from avian influenza. Avian influenza is a federally reportable, highly transmittable disease. In 2004, it was responsible for the destruction of the majority of BC's commercial poultry flocks. An infected farm impacts the operations of neighbouring poultry farms and related operations such as chick placement, processing and waste disposal. In 2022, multiple outbreaks resulted in the following production losses: 34% turkey; 19% hatching eggs; 2% eggs; and 1% chicken. Rapid resolution of biosecurity infractions is critical for minimizing avian influenza losses. Provincially, nationally and globally, avian influenza and other disease risks are expected to intensify. In this context, it is strategic and accountable for poultry boards to have a full suite of mandatory biosecurity program enforcement tools.
21. As the poultry sectors share similar biosecurity-related programs, particularly programs for disease risk management, BCFIRB reaffirms its 2021 directions that the Chicken Board, the Egg Board, the Hatching Egg Commission and the Turkey Board work jointly on the development of AMPs policies and procedures to support process and enforcement alignment.
22. Following consultation with the BCDA, the Milk Board reported that AMPs would be insufficient to incentivize dairy producer compliance given the legislated \$10,000 maximum penalty. BCFIRB considered the Milk Board's rationale and one-step interim penalty enforcement process. BCFIRB finds that including AMPs would strengthen the Milk Board's graduated compliance and enforcement process.

⁵ Ministry of Agriculture Food and Fisheries at the time.

⁶ BCFIRB finalized the Framework in May 2021 after Cabinet brought the AMPs authority into force and requesting any final input from the commodity boards.

23. After reviewing and discussing all decisions and submissions to date, BCFIRB continues to find that establishing AMPs policies and procedures as an enforcement tool option is sound marketing policy, particularly for the supply-managed commodity boards. While the Administrative Penalty Framework for Commodity Boards recognizes that AMPs may not be a suitable enforcement tool for all mandatory biosecurity programs, BCFIRB is not satisfied with the rationale provided by the majority of supply-managed commodity boards to not establish AMPs policies and procedures.

SAFETI

24. BCFIRB's SAFETI principles were developed in conjunction with the commodity boards to support fair decision-making that accords with sound marketing policy.
25. **Strategic:** Strategic speaks to key opportunities, systemic challenges and managing risk. BCFIRB's short-term considerations included commodity board resourcing to develop AMPs policies and procedures and current enforcement processes. BCFIRB also considered long-term management of serious risks to producers, sectors and the public.
26. **Accountable:** Accountability focuses on maintaining legitimacy and integrity through understanding and acting on responsibilities and reporting performance. This decision is based on the authorities granted by the *NPMA* to BCFIRB and the commodity boards. BCFIRB is acting on its supervisory responsibility to ensure sound marketing policy in the public interest and will be reporting on outcomes through its annual PARP Summary Report.
27. **Fair:** Fairness refers to the process followed. All boards had the opportunity to make submissions to BCFIRB, which were duly considered. In light of the commodity board's ongoing concerns, BCFIRB revisited its May and December 2021 decisions.
28. **Effective:** Effective is having a clearly defined outcome with appropriate processes and measures. BCFIRB's defined outcome is enhanced risk management through the inclusion of AMPs in commodity board graduated compliance and enforcement processes as appropriate. Regular evaluation and reporting provide an assessment of whether the defined outcome is being met through fair, effective and accountable processes.
29. **Transparent:** Transparent ensures processes, practices, procedures and reporting on exercise of mandate are open, accessible and informed. BCFIRB's letters and decisions were posted on its website. Those with a direct interest were included in all letters, requests for information and decisions.
30. **Inclusive:** Inclusive is an obligation to consider those potentially impacted by a decision, including the public interest. BCFIRB worked with the commodity boards

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and the Ministry of Agriculture and Food to develop the Administrative Penalty Framework for Commodity Boards and provided multiple submission opportunities. BCFIRB's decision reflects the broader public interest in safe, quality food, consumer protection and product availability.

Directions

Compliance and Enforcement Reporting

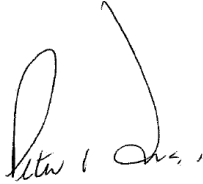
31. Commodity boards are to report on the following minimum criteria against their publicly published compliance and enforcement policies and procedures:
 - a. mandatory biosecurity programs for the commodity;
 - b. number of farms audited and type of audit(s) conducted (i.e., on-farm, paper or other);
 - c. auditor (i.e., commodity board, third party, or other);
 - d. number of Corrective Actions (CARs) issued;
 - e. top 3 infractions for CARs issued;
 - f. enforcement actions taken, including any penalties issued; and,
 - g. average time to compliance from when Warning Notice issued.
32. All commodity boards with mandatory biosecurity programs will work with BCFIRB to finalize a Public Accountability and Reporting (PARP) template for reporting on the minimum criteria by October 31, 2023.
33. All commodity boards with mandatory biosecurity programs will report on 2022 data using the PARP template by December 1, 2023.

AMPs Policies and Procedures

34. Starting in January 2024, the Chicken Board, the Hatching Egg Commission, the Turkey Board and the Egg Board will work with BCFIRB staff to develop consistent AMPs policies and procedures for submission to BCFIRB by September 29, 2024.
35. Starting in January 2024, the Milk Board will work with BCFIRB staff to develop AMPs policies and procedures for submission to BCFIRB by September 29, 2024.

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Dated at Victoria, British Columbia, this 1st day of August 2023.



Peter Donkers
Chair



Al Sakalauskas
Vice Chair



Neil Turner
Member



Dennis Lapierre
Member

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Pawan Joshi
Member



David Zirnhelt
Member



Wendy Holm
Member

Appendix A

BCFIRB's December 2021 directions were made⁷ after asking those boards who did not intend to implement AMPs to provide a SAFETI-based⁸ rationale. Submissions were received from the BC Hog Marketing Commission (Hog Commission), BC Cranberry Marketing Commission (Cranberry Commission), BC Milk Marketing Board (Milk Board), BC Chicken Marketing Board (Chicken Board), and BC Turkey Marketing Board (Turkey Board). The BC Broiler Hatching Egg Commission (Hatching Egg Commission) and BC Egg Marketing Board (Egg Board) had previously reported they planned to implement AMPs.

BCFIRB directed:

45. The Cranberry Commission is to:
 - a. Regularly review biosecurity-related risks to orderly marketing; and,
 - b. Establish and publish a basic compliance and enforcement process.
46. The Turkey Board is to:
 - a. Publish its current graduated compliance and enforcement process; and,
 - b. Work with the Egg Board, the Hatching Egg Commission and the Chicken Board to develop consistent AMPs policies and procedures to help ensure uniform enforcement processes and penalties where feasible and appropriate.
47. The Hog Commission is to:
 - a. Publish its current compliance and enforcement process; and,
 - b. Assess AMP's policies and procedures as they are developed by other commodity boards for potential adaptation and adoption.
48. The Milk Board is to:
 - a. Consult with the BCDA on the potential effectiveness of AMPs as part of an escalating penalty scale; and,
 - b. Submit an updated SAFETI-based rationale to BCFIRB by April 2022 on whether there is a sound marketing policy rationale to support the implementation of AMPs.
49. The Chicken Board is to:
 - a. Participate in AMP's policies and procedures development by the Egg Board, the Hatching Egg Commission and the Turkey Board; and
 - b. Subsequently, reassess whether there is a sound marketing policy rationale to support the implementation of AMPs.

⁷ 2021 December 21. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and Implementing Administrative Monetary Penalties \(AMPs\)](#).

⁸ Strategic, Accountable, Fair, Effective, Transparent, Inclusive.