

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

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

December 22, 2021

Introduction

1. In May 2015, Government amended the *Natural Products Marketing (BC) Act (NPMA)* to clarify commodity board authority to make biosecurity programs mandatory. Brought into force in October 2019, *NPMA* ss.16.2 and 16.3 grant BC's commodity boards authority to issue administrative monetary penalties (AMPs) for producer non-compliance with mandatory biosecurity programs. Penalties are paid to government general revenue.
2. Mandatory biosecurity programs (e.g. food safety, disease control, animal welfare) are a key tool for commodity boards to manage industry risk and deliver on public demands for a consistent supply of safe, quality food. AMPs are intended to encourage swift compliance rather than be an onerous and expensive punishment for producers.
3. On May 19, 2021 BCFIRB finalized its "Administrative Penalties Framework for Commodity Boards" (Framework)¹. The Framework is intended to ensure sound and procedurally fair application of AMPs in accordance with legislative requirements by commodity boards. The Framework was developed in coordination with the commodity boards and the Ministry of Agriculture, Food and Fisheries.
4. BCFIRB's Framework states "...commodity boards will include administrative penalty policies and procedures in their compliance and enforcement policies and procedures as appropriate". The Framework also states that "[a] commodity board that does not utilize administrative penalties for mandatory biosecurity programs should be prepared to provide sound justification for that decision to BCFIRB and its stakeholders."
5. In its May 19, 2021 decision, BCFIRB directed:
 2. Those boards that do not plan to utilize administrative penalties are to provide a SAFETI-based rationale to BCFIRB for that decision. The rationale must include a description of current enforcement-related authorities, tools and processes used for a graduated approach to enforcement of mandatory biosecurity programs. The rationale is due by June 30, 2021.
6. The BC Broiler Hatching Egg Commission and the BC Egg Marketing Board reported earlier that they will implement AMPs policies and procedures.
7. The BC Vegetable Marketing Commission (Vegetable Commission) was granted an extension to December 3, 2021 and then to the end of March 2022 to report on whether or not it will be implementing AMPs policies and procedures. Once

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

BCFIRB receives the Commission's submission it will assess what, if any, further directions, including timelines are required.

8. Submissions were received from the BC Chicken Marketing Board, the BC Turkey Marketing Board, the BC Milk Marketing Board, and the BC Hog Marketing Commission. The BC Cranberry Marketing Commission was granted an extension. Its submission was received by July 30, 2021.

Issue

9. Where commodity boards have decided not to implement administrative monetary penalties (AMPs) as part of their mandatory biosecurity program compliance and enforcement policies and procedures, are those decisions consistent with sound marketing policy?
 - a. BC Chicken Marketing Board
 - b. BC Cranberry Marketing Commission
 - c. BC Hog Marketing Commission
 - d. BC Milk Marketing Board
 - e. BC Turkey Marketing Board

Legal Authorities

10. Under *NPMA* s. 7.1. BCFIRB has general supervisory authority over all marketing boards and commissions (commodity boards). 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.
11. *NPMA* s. 16.2 and 16.3 grant BC's commodity boards authority to issue administrative penalties to producers for non-compliance with mandatory biosecurity programs.
12. The *NPMA* defines "Biosecurity program" as:
 - "...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;”

Board Submissions

13. BCFIRB determined that including AMPs policies and procedures in commodity board compliance and enforcement policies and procedures is sound marketing policy. 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.
14. BCFIRB considered the following in assessing commodity board rationales for not implementing AMPs:
- a. Has the commodity board made biosecurity program(s) mandatory?
 - b. What is the commodity boards’ biosecurity program compliance and enforcement process? Is it transparent?
 - c. What graduated penalties does the commodity board use?
15. BCFIRB also considered its Framework expectations and directions, including:
- 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.

Mandatory Biosecurity Program

16. Commodity boards can only use AMPs for the purposes of enforcing mandatory biosecurity programs. Of the five commodity boards, the BC Cranberry Marketing Commission (Cranberry Commission) is the only board that has not made biosecurity-related program(s) mandatory for its producers.
17. The Cranberry Commission argues mandatory biosecurity programs would duplicate and interfere with existing designated agency mandatory programs and audit and enforcement activities. The General Orders require agencies and those businesses applying for an agency licence to address food safety program and certification. A Food Safety Coordinator was hired to monitor food safety compliance and review pesticide records submitted by grower-vendors (growers licenced to sell directly into the fresh market).

Compliance and enforcement process

18. BCFIRB expects commodity boards to establish and use transparent compliance and enforcement processes. A transparent, graduated compliance and

enforcement process is critical for effectively and accountably managing producer, industry and public risks.

19. The Framework reflects a best-practices, graduated approach to enforcement. Steps include initial informal/educational followed, if necessary, by official written Warning(s) and Notice of Penalties. Commodity boards retain the option to move immediately to a Notice of Penalty or more severe sanctions (e.g., licence suspension or removal) if the orderly marketing risk from the violation so warrants.
20. The BC Hog Marketing Commission (Hog Commission) General Orders require BC hog producers to comply with the Canadian Pork Excellence Program.² There are a very small number of hog producers (13 registered producers in 2020) and the Hog Commission has very limited resources. The Hog Commission relies heavily on ensuring all producers receive training on biosecurity-related standards. The reported enforcement process is based on the issuance of Corrective Actions. If the Corrective Actions are not met, BC's two main processors will not take that farms' hogs. The short enforcement process reflects the high degree of disease risk to individual producers, BC and national production. However, the Hog Commission's compliance and enforcement process is not published.
21. The BC Turkey Marketing Board (Turkey Board) General Orders require BC turkey producers to comply with the national On-Farm Food Safety Program (OFFSP) and the Turkey Farmers of Canada Flock Care Program. Producers are also required to comply with the BC Poultry Producers Association Poultry Biosecurity Program (BC Biosecurity Program) for disease risk management.
22. The Turkey Board reports it has never had to take enforcement action beyond issuing Corrective Actions since the BC Biosecurity Program became mandatory 14 years ago. It did not provide information on enforcement activities related to national programs. If it was required to act, it reported it would follow the enforcements steps set out in BC Biosecurity Program (Warning Notice, Corrective Actions, Sector Penalties, Licence Suspension, Licence Cancellation). The Turkey Board has not published this process.

Graduated penalties

23. BCFIRB expects commodity boards to include graduated penalties as part of a compliance and enforcement process. Graduated penalties are intended to encourage swift compliance rather than impose an onerous and expensive punishment.
24. 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. Commodity boards require a

² Canadian Pork Excellence components: Pig SAFE (food safety); PigCARE (animal care); PigTRACE (traceability).

proportional, smaller-scale enforcement tool that does not affect the 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.

25. While the Turkey Board relies on the BC Biosecurity Program compliance and enforcement framework, the framework does not include sector-specific graduated penalties.
26. The BC Chicken Marketing Board (Chicken Board) General Orders require BC chicken producers to comply with the national OFFSP and the Chicken Farmers of Canada's Raised by a Canadian Farmer Animal Care Program. Producers are also required to comply with the BC Biosecurity Program³.
27. The Chicken Board has a published compliance and enforcement process with sector-specific graduated penalties. The process includes: Warning Notice, Corrective Actions, Sector Penalties, Licence Suspension, and Licence Cancellation. It reports the process has proven effective for encouraging producers to come into compliance without expensive punishment. The graduated penalties are production-based. With short production cycles, (8 weeks) producers faced with small, but escalating production losses generally comply quickly with minimal business impact. Overall provincial production is not impacted as the production opportunity is directed elsewhere.
28. The BC Milk Marketing Board (Milk Board) General Orders require BC dairy producers to comply with the national Dairy Farmers of Canada ProAction Program⁴. The Milk Board delegated administration of its biosecurity-related programs to the BC Dairy Association (BCDA). Should the BCDA identify required enforcement action, the BCDA requests the Milk Board to exercise its regulatory authorities. The compliance and enforcement process, including steps, timelines and the graduated penalty are published.
29. The Milk Board uses a one-step graduated penalty. Rather than escalating penalties, the Milk Board applies one or more of the following penalties based on the situation and the farm: suspend participation in the quality bonus program; suspend participation in credit transfers; suspend buying or selling quota; suspend access to quota incentive days and suspend quota allocation receipt. It reports that the one-step penalty process has proven effective in prompting timely compliance without undue business impacts. The compliance and enforcement process and one-step penalties have not been reviewed with the BCDA since 2015, when they were first put in place. The Milk Board has not received BCDA feedback that the one-step penalty is ineffective or inappropriate.

³ In January 2022 the Chicken Board is transitioning to an equivalent Chicken Farmers of Canada biosecurity program to manage disease risk.

⁴ ProAction includes food safety, traceability, animal care and biosecurity modules.

Analysis

30. BCFIRB expects commodity boards to regularly assess industry risks and determine what, if any, biosecurity program(s) should be mandatory. BCFIRB also expects commodity boards to implement AMPs as a mandatory biosecurity program enforcement tool where appropriate. Exceptions are considered if a board can demonstrate it has a SAFETI-based graduated compliance and enforcement process.
31. A SAFETI-based graduated compliance and enforcement process includes:
 - a. Publishing a public graduated compliance and enforcement process that includes the following steps: Warning Notice, Corrective Actions, Sector Penalties, Licence Suspension, and Licence Cancellation; and,
 - b. Sector-specific graduated penalties, within the board's authority, that incentivize timely compliance without being an undue or onerous punishment.
32. BCFIRB assumed commodity boards making submissions had transparent SAFETI-based graduated compliance and enforcement process with sector-specific penalties in place. These expectations are not new. They were initially discussed with all commodity boards starting in 2016. Nor are commodity board experiences with compliance and enforcement of mandatory biosecurity programs new. BCFIRB assumed the only outstanding question for it in this instance would be whether AMPs would be an effective and strategic addition to established processes and enforcement tools.
33. Based on the submissions received, these assumptions were incorrect and as such, BCFIRB must take a step back in its considerations. Out of the five commodity boards, only the Chicken Board demonstrated it has a transparent SAFETI-based compliance and enforcement process with graduated sector-specific penalties.
34. BCFIRB accepts the Cranberry Commission's rationale for not making biosecurity-related programs mandatory and, in turn, not establishing AMPs policies and procedures. As per the Framework, BCFIRB expects the Cranberry Commission to regularly review biosecurity risks to the sector and assess if biosecurity programs should be mandatory in whole or in part.
35. While the Cranberry Commission does not have mandatory biosecurity program(s), enforcement action may be required should the Food Safety Coordinator identify a grower vendor food safety or pesticide violation. A transparent compliance and enforcement process would aid the Cranberry Commission in ensuring any enforcement actions follow a fair process and are effective and accountable.

British Columbia Farm Industry Review Board
Administrative Monetary Penalties (AMPs)
December 22, 2021

36. BCFIRB does not accept the absence of published compliance and enforcement processes for the Turkey Board and the Hog Commission mandatory biosecurity programs.
37. BCFIRB recognizes the Hog Commission operates in a high-risk but very restricted resource environment. It agrees with the Hog Commission's current education-first approach, reinforced by an enforcement process based on processors refusing hogs if a producer fails to complete Corrective Actions. However, as other commodity boards develop AMPs policies and procedures, the Hog Commission is expected to review and adopt appropriate AMPs policies and procedures as it determines appropriate, and particularly in relation to lower industry risk program violations.
38. The Turkey Board's reliance on producer good behaviour, while speaking to the character of the sector, is not transparent, effective, or accountable for managing turkey and poultry sector orderly marketing risk. For instance, if a turkey producer chooses not to act on a Corrective Action it could have orderly marketing impacts across all of BC's poultry sectors should it result in an avian influenza outbreak, a food safety event or an animal welfare issue. What, if any, sector-specific graduated penalties the Turkey Board would apply, in the absence of AMPs, is unclear in its submission.
39. BCFIRB's Framework contemplates consistent AMPs policies and procedures across sectors to help ensure uniform enforcement processes and penalties where feasible and appropriate. The poultry sectors share similar biosecurity-related programs, particularly programs for disease risk management.
40. It is strategic and effective for the Turkey Board to work with the BC Egg Marketing Board (Egg Board) and the BC Hatching Egg Marketing Commission (Hatching Egg Commission) to ensure uniform application of processes and AMPs penalties where feasible and appropriate.
41. As noted above, the Chicken Board has a SAFETI-based compliance and enforcement process with graduated sector penalties. Participating in AMPs policies and procedures development by the Egg Board, the Hatching Egg Commission and the Turkey Board would inform a Chicken Board reassessment of AMPs to support process and enforcement alignment across the poultry sectors.
42. BCFIRB recognizes the Egg Board and Hatching Egg Commission may have moved forward with developing AMPs policies and procedures. This does not preclude the Turkey and Chicken Boards from some engagement before the final policies and procedures are submitted to BCFIRB for prior approval.
43. The Milk Board did not review its enforcement process and use of AMPs with the BCDA, who is administering the Milk Board's mandatory biosecurity programs. A

one-step interim penalty before a licence is suspended or cancelled does not fulfil BCFIRB's expectations of a graduated enforcement process.

44. On December 22, 2021 BCFIRB granted an extension from April 1, 2022 to September 1, 2022, for commodity boards to submit draft AMPs policies and procedures for prior approval. The extension was granted to allow boards time to manage farm and production impacts due to November 2021 extreme weather events. This extension should also allow time for those commodity boards directed below to develop AMPs policies and procedures to do so.

Decision

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.

British Columbia Farm Industry Review Board
Administrative Monetary Penalties (AMPs)
December 22, 2021

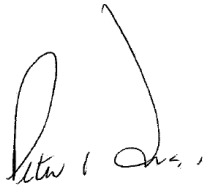
49. The Chicken Board is to:

- 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.

50. BCFIRB will monitor and assess commodity board progress in 2022.

In accordance with s. 57 of the *Administrative Tribunals Act*, "an application for judicial review of a final decision of BCFIRB must be commenced within 60 days of the date the decision is issued."

Dated at Victoria, British Columbia, this 22 day of December 2021.



Peter Donkers
Chair



Al Sakalauskas
Vice Chair



Tamara Leigh
Member

British Columbia Farm Industry Review Board
Administrative Monetary Penalties (AMPs)
December 22, 2021



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