

**The BC Egg Marketing Board
Administrative Monetary Penalties Program**

Introduction

The BC Egg Marketing Board (BCEMB) has been given authority through the Natural Products Marketing Act (NPMA) and BC Egg Marketing Scheme to “provide for the effective promotion, control and regulation of the production, transportation, packing, storage and marketing of the regulated product within the Province, including the prohibition of such production, transportation, packing, storage and marketing in whole or in part.” In order to perform this duty, the Board has implemented the Consolidated Order, which is a consolidation of Orders made by the British Columbia Egg Marketing Board. The Consolidated Order outlines the rules and regulations to which all Persons who raise hens for the purpose of egg production must follow.

In May 2015, the Government amended the NPMA to clarify commodity board authority to make biosecurity programs mandatory [s.14.1]. 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. Sections 16.2 and 16.3 of the NPMA were brought into force in October 2019.

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;*

Scope

The BCEMB Administrative Monetary Penalty (AMP) Program applies to:

- All Persons who raise hens for the purpose of egg production, including:
 - Producers, defined in the Consolidated Order as “a person who owns, keeps or maintains Layers in the Province of British Columbia.”
 - Registered Producers, defined in the Consolidated Order as “a Producer who is registered under the Scheme holds Quota and a license”.
 - Unregistered Producers, defined in the Consolidated Order as “a Producer, other than a Registered Producer, who either holds a valid permit in accordance with Part II of the BCEMB Consolidated Order, or keeps or maintains less than one hundred hens”.
- Food safety and biosecurity programs, including:
 - Code of Practice For the Care and Handling of Pullets and Laying Hens
 - EFC Animal Care Program
 - EFC Start-Clean Stay-Clean On Farm Food Safety Program

- BC Egg Specialty Audit Program
- EFC Salmonella Testing Protocol
- BCEMB Barn Fitness Policy
- BC Poultry Biosecurity Program
- Biosecurity Guide for Non-Supply Managed Poultry
- Board orders that relate to public health and biosecurity, including:
 - For Registered Producers: Part II 2 (1) (a) Producer-vendors and Producer-graders must comply with all applicable provisions of the Shell Egg Grading Regulation (B.C. Reg. 105/78) and the Agricultural Produce Grading Act, R.S.B.C. 1996, c. 11
 - For all other Producers:
 - Part II 3 (3) (e) markets their ungraded eggs directly to the end consumer at the farm gate or farmers markets, or markets their eggs that have been graded by a Registered Shell Egg Station directly to the end consumer; and
 - Part II 3 (3) (f) is compliant with all applicable provisions of the [Egg Grading and Standards Regulation](#) where ungraded eggs are direct-marketed at the farm gate or farmers markets;

Policy

BCEMB is ultimately accountable to the public, industry and all stakeholders for ensuring the excellent welfare of the animals in every facility that houses commercial layers, as well as food safety and security for all BC consumers. The Consolidated Order outlines the requirements for all Producers as well as steps to be taken in a non-compliance situation. This enables the BCEMB to maintain public trust and orderly marketing.

Part XV – Failure to Comply of the Consolidated Order outlines the options available to the BCEMB for non-compliance situations. A non-compliance decision matrix has been created to guide the BCEMB staff to ensure consistency, fairness and transparency.

The framework and details of the AMP program are presented in the following sections:

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Section One: Inspections and Investigations

Inspections and investigations are two important functions used to support BCEMB's compliance requirements.

- The purpose of an **inspection** is to verify compliance with BCEMB's regulatory requirements.
- The purpose of an **investigation** is to gather evidence to support enforcement proceedings in cases of suspected non-compliance.

Inspections

Inspections can be characterized as any action(s) taken to verify compliance with regulatory requirements. BCEMB conducts annual audits/inspections on all of its food safety and biosecurity programs with some programs requiring additional audits by third parties.

All inspections and audits are to be conducted by a Board Director, BCEMB staff member, Barn Fitness Audit Committee Member or third party auditor approved by BCEMB.

Investigation

Investigations involve a process of collecting evidence and information relevant to a suspected non-compliance for the purposes of enforcement.

The need for an investigation may arise as a result of:

- non-compliance detected through program audits
- information gathered from industry members
- public reports of suspected offences

Investigative activities include, but are not limited to:

- conducting a Barn Fitness Audit
- unannounced animal welfare inspection
- conducting surveillance

All investigations are to be conducted by a Board Director, BCEMB staff member, Barn Fitness Audit Committee Member or third party auditor approved by BCEMB.

Section Two: Compliance Outline

All Producers are committed to the well-being of their hens and are held to high Canadian operational and animal welfare standards. The programs put in place require Producers to meet established standards, be certified according to the program, implement specified procedures and keep specified records to protect and promote the safety of the egg industry.

Registered Producers

As outlined in Subsection 2 (1), Part II – Licensing/Permitting of the Consolidated Order, “It is a condition of issuance and maintenance of every license that the applicant or holder complies with the Orders of the Board from time to time in force and all applicable legislation and regulations”.

The Operational Standards required to be met by all Registered Producers are outlined in Subsection 6 (1), Part IX – Production Requirements and Limitations of the Consolidated Order.

(1) On Farm Programs

- (a) every Producer shall carry on operations such that they maintain a minimum score of 95% for the Start Clean Stay Clean food safety program by Egg Farmers of Canada.
- (b) every Producer shall carry on operations such that they maintain a minimum score of 90% for the Animal Care program by Egg Farmers of Canada.
- (c) every Producer shall carry on operations in accordance with the Codes of Practice for the Care and Handling of Pullets, Layers, and Spent Fowl by the National Farm Animal Care Counsel.
- (d) every Producer shall comply with the BC Poultry Biosecurity Program.
- (e) every Producer shall comply with the EFC National Microbiological Sampling Protocol for Leg Horn Egg Layer Barns and Leg Horn Pullet Barns as well as the EFC Post-Positive Protocol for Leg Horn Egg Layer Barns and Leg Horn Pullet Barns.
- (f) every Producer producing a specialty egg class must be certified by the Board Approved Program for that egg class.
- (g) every Producer shall comply with the BCEMB Barn Fitness Policy.

Unregistered Producers

All Unregistered Producers fall in to two categories outlined in the Consolidated Order. The first category is referred to as a Backyard Flock Producer and is defined in Subsection 3 (1), Part II – Licensing/Permitting of the Consolidated Order as:

A Producer who keeps or maintains not more than ninety-nine (99) Layers in aggregate, whether in a single facility, or in concert with another Person or Persons, or in facilities that are contiguous to, or a part of, each other do not require a permit or license. These producers are encouraged to register with the Board to receive food safety, biosecurity and animal care updates as well as with the BC Ministry of Agriculture Premises ID program.

The second category is referred to as a Small Lot Producer and is defined in Subsection 3 (3), Part II – Licensing/Permitting of the Consolidated Order as:

A Producer who keeps or maintains not more than three-hundred and ninety-nine (399) and not less than one-hundred (100) Layers in aggregate, whether in a single facility, or in concert with another Person or Persons, or in facilities that are contiguous to, or a part of, each other, and who:

- (a) *is at least nineteen years of age;*

- (b) is not a holder of Layer Quota and whose Spouse is not a holder of Layer Quota;*
- (c) has applied annually for, and been issued, a written, non-transferrable “Unregistered Small Lot Producer Permit” expiring on the death of the Producer or on the cessation of the production of eggs for a period exceeding 36 weeks;*
- (d) produces organic eggs, heritage breed eggs, free range eggs or free run eggs, in accordance with the applicable requirements of a certification program established under the Agri-Food Choice and Quality Act or other provincially, nationally or internationally recognized standards accepted by the Board as a qualifying certification program;*
- (e) markets their ungraded eggs directly to the end consumer at the farm gate or farmers markets, or markets their eggs that have been graded by a Registered Shell Egg Station directly to the end consumer; and*
- (f) is compliant with all applicable provisions of the Egg Grading and Standards Regulation where ungraded eggs are direct-marketed at the farm gate or farmers markets;*

By registering for these categories, the BCEMB ensures Unregistered Producers receive crucial information regarding standards expected to be maintained on farm and when selling eggs to consumers. To ensure the BCEMB’s high operational and animal welfare standards are met, Unregistered Producers are required to meet the following biosecurity and operational standards for on farm programs:

- Operate in accordance with the Codes of Practice for the Care and Handling of Pullets, Layers, and Spent Fowl
- Operate in accordance with the Biosecurity for Non-Supply Managed Poultry Program
- Operate in accordance with the Shell Egg Grading Regulation

From time to time, a Producer may meet the requirements of an Unregistered Producer but they have not applied for a permit. These Producers are in contravention of the Consolidated Order and pose a risk to the orderly marketing of eggs as their biosecurity, food safety and animal care protocols are unknown. It is important to note that all Producers, whether Registered, Unregistered or Exempt follow basic biosecurity, food safety and animal care standards.

Section Three: Tools for Addressing Non-Compliance

There are a range of compliance tools available to BCEMB through Part XV – Failure to Comply of the Consolidated Order when addressing non-compliance. To select the most appropriate response for individual incidents of non-compliance, it is important to understand the purpose of and authority for each of these tools as well as the program requirements.

Available enforcement tools:

- Corrective Action Request
- Warning
- Order
- Administrative Monetary Penalty (AMP)
- Administrative Sanction

Corrective Action Request (CAR)

A CAR should be used in instances where a minor non-compliance has been perceived. It will often be handled at the auditor level and is meant for Producers who have a high likelihood of compliance with very few previous instances of non-compliance. The BCEMB will work with the Producer to determine a reasonable timeframe to correct the non-compliance and the information will be recorded in the audit document.

Examples of instances resulting in a CAR include:

- An audit was conducted and corrective actions were noted, requiring further steps by the Producer.

CARs are recommended through inspections or investigations by the Board of Directors, BCEMB management or auditor, BCEMB committee, or third party auditor approved by BCEMB.

CARs are issued by the BCEMB Board of Directors, BCEMB management or auditor or third party auditor approved by BCEMB.

Warning

A warning should be used in instances where a CAR timeline was not followed, a concerning non-compliance or public/animal welfare concern has been perceived or there is concern of a moderate likelihood of compliance. The warning will include a timeline provided to the Producer from the BCEMB. A letter will be sent via email to the Producer outlining the non-compliance, action required, deadline, and resulting action if the timeline is not followed. The resulting action may include an AMP or revocation of a Producer's license or permit.

Examples of instances resulting in a warning include:

- An audit or investigation resulting in concerns for animal welfare. In this instance, a 24 hour timeline should be given to correct the deficiency.
- A CAR timeline to complete an audit corrective action was not adhered to. In this instance, a 30 day timeline should be given to correct the deficiency.
- A Producer with 99-399 hens who does not have a permit.

- A Producer not following the Shell Egg Grading Regulation and is selling ungraded eggs to a customer that is not the end user through farm gate sales or farmers markets. This includes Producers who are selling eggs at retail.
- An animal welfare concern was raised during a Barn Fitness Audit.

Warnings are recommended through inspections or investigations by the BCEMB Board of Directors, BCEMB management or auditor or a BCEMB committee.

Warnings are issued by the BCEMB Board of Directors or BCEMB management.

Order

An order should be used in instances where previous advisory or warning timelines have not been adhered to or a major non-compliance or public/animal welfare concern has been investigated by the BCEMB or there is concern of a low likelihood of compliance. The order will be approved by the BCEMB Board of Directors and will state that the Producer is not in good standing with the Consolidated Order, action(s) required, deadline, and resulting action if the timeline is not followed. Notice will be sent by BCEMB to the Producer via email.

Examples of instances resulting in an order include:

- Two advisory or warning, or combination of, timelines have not been adhered to.
- A major animal concern has been investigated and confirmed.

Orders are recommended through inspections or investigations by the Board of Directors, BCEMB management or BCEMB committee.

Orders can only be issued by the BCEMB Board of Directors.

Administrative Monetary Penalty (AMP)

An AMP is a financial penalty that should be issued to any Producer failing to comply with the Consolidated Order, resulting in a biosecurity or health risks to human or animal safety. The AMP will be approved by the BCEMB Board of Directors, including the penalty amount, timeline to complete the non-compliance and next steps if the non-compliance is not fixed. The Producer will also be deemed as not in good standing with the Consolidated Order. Notice will be sent by BCEMB to the Producer via registered mail.

Examples of instances resulting in an AMP include:

- A Producer who did not adhere to a warning and has continued to not follow the Shell Egg Grading Regulation, resulting in a human health risk.
- A Producer who knowingly submitted false information to the BCEMB resulting in an incorrect payment from the BCEMB and non-compliance of BCEMB programs.
- A Producer who was issued a CAR or warning, or combination of, where timelines have not been adhered to and the non-compliance does not result in perceived immediate personal or animal welfare concerns.

AMPs are recommended through inspections or investigations by the Board of Directors, BCEMB management or BCEMB committee.

AMPs can only be issued by the BCEMB Board of Directors.

Administrative Sanction

An administrative sanction should be used in instances where a warning or a CAR and a warning have been issued regarding the non-compliance and the timelines have not been adhered to or a severe animal welfare or food safety concern has been investigated by the BCEMB. The order will be approved by the BCEMB Board of Directors and will include the revoking of the Producer's license or permit and intention for the potential depopulation of the flock(s) or redirection of eggs. Notice will be sent by BCEMB to the Producer via registered mail.

Examples of instances resulting in an order include:

- A CAR or warning, or combination of, timelines have not been adhered to and the non-compliance is perceived to result in immediate personal or animal welfare concerns.
- A severe animal welfare concern has been investigated and confirmed.

Administrative Sanctions are recommended through inspections or investigations by the Board of Directors, BCEMB management or BCEMB committee.

Administrative Sanctions can only be issued by the BCEMB Board of Directors.

Section Four: Non-Compliance Decision Matrix

The Non-Compliance Decision Matrix is a guidance tool that helps to ensure a consistent and principled approach to assessing and responding to non-compliance instances. It is to be used with discretion by the BCEMB when considering the context and specifics of individual cases of non-compliance. The BCEMB should also consider how similar situations have been addressed in the past while recognizing that each case of non-compliance will have unique circumstances, which may suggest a different response.

Using the Matrix

The Non-Compliance Decision Matrix considers both the impact of the non-compliance and the likelihood of achieving compliance, which define the two axes of the matrix. It assists in determining what enforcement tool is appropriate to use. The BCEMB will evaluate the non-compliance to determine the appropriate category on each matrix axis and then consider the use of the applicable compliance tool listed.

With the exception of assigning routine CARs through auditing programs, BCEMB management or a BCEMB committee will complete an analysis of the Non-Compliance Decision Matrix based on the inspections and/or investigations conducted. As the level of impact increases, the BCEMB must engage with the Board of Directors to discuss potential enforcement actions to ensure consistency and create awareness of serious non-compliances that have been identified.

Impact of the Non-Compliance

Consider the impact of the non-compliance to public and animal safety and welfare (i.e. the level of actual or potential harm). How significant is the actual or potential harm that the non-compliance has produced?

Minor: A minor non-compliance does not, or is unlikely to, result in adverse impacts to animals, persons or property. The actual or potential impacts of the non-compliance are minimal, temporary, localized, and fully-reversible in the short-term.

Examples may include:

- Requiring a corrective action on a program audit

Moderate: A moderate non-compliance results in potential or actual impacts to animals, persons or property. Impacts are typically localized, short term and substantially to fully reversible within a reasonable period of time.

Examples may include:

- Failing to complete corrective actions on a program audit within the timeline provided
- Not applying for a Small Lot Permit as the Producer was not aware of the program

Immediate/Major: A major non-compliance that results in immediate potential risk (or actual major impacts) to animals, persons or property. Impacts can be localized or broad, variable in term, and substantially reversible over a moderate to long-term.

Examples may include:

- A Producer failing to sell eggs in accordance with the Shell Egg Grading Regulation
- Not applying for a Small Lot Permit when the Producer was aware of the program and given a warning.
- Person/animal welfare concern noted through an inspection or audit.

Certain and Severe: A certain and severe non-compliance is one that has resulted in severe impact to animals, persons or property. Impacts are permanent, or only partially reversible over the long-term.

Examples may include:

- Serious injury to animals, persons or property
- Significant infrastructure failure

Likelihood of Achieving Compliance

Consider the likelihood of achieving compliance. What is the likelihood that the individual or company will respond appropriately to the enforcement action?

High: There may be a high likelihood of ongoing and/or future compliance if:

- The non-compliance can be easily remedied or has been fully remedied at the time of inspection;
- The Producer has a good compliance history;
- The Producer voluntarily disclosed the non-compliance and/or did not deliberately cause the non-compliance and was not willfully negligent; or
- The Producer demonstrates awareness of regulatory requirements and the willingness and capacity to comply.

Uncertain: There may be an uncertain likelihood of achieving ongoing and/or future compliance if:

- The non-compliance has occurred at a new farm or under a new operator; The Producer has little or no compliance history;
- The Producer has an unknown level of awareness of regulatory requirements, and the willingness and capacity to comply is also unknown; or
- The Producer did not deliberately cause the non-compliance and was not willfully negligent.

Moderate: There may be a moderate likelihood of achieving ongoing and/or future compliance if:

- The non-compliance will be technically challenging or expensive to remedy;
- The Producer has had previous contraventions;
- The Producer may not have the willingness and/or capacity to comply with regulatory requirements; or
- The Producer was aware of the requirements but deliberately did not complete the required action (or took contrary action).

Low: There may be a low likelihood of achieving ongoing and/or future compliance if:

- The non-compliance cannot be remedied, or will be very technically challenging or expensive to remedy;
- The Producer has had multiple previous contraventions;
- The Producer displays a poor attitude regarding compliance oversight; or
- The Producer gives the BCEMB reason to believe that the non-compliance was deliberate or the result of willful negligence.

Very low: There may indications of obstruction and ongoing or future non-compliance if:

- The Producer gives BCEMB reason to believe that the non-compliance was deliberate or the result of willful negligence;
- The Producer has had multiple previous contraventions;
- The Producer displays a poor attitude regarding compliance oversight; or
- The Producer hinders or obstructs BCEMB and/or refuses to provide information and/or provides false or misleading information.

		Level of Impact			
		Minor	Moderate	Immediate/Major	Certain and Severe
Likelihood of Compliance	High	CAR	CAR or Warning	Warning or AMP	AMP or Administrative Sanction
	Uncertain	CAR or Warning	Warning or AMP	AMP or Administrative Sanction	AMP or Administrative Sanction
	Moderate	Warning	AMP	AMP or Administrative Sanction	AMP or Administrative Sanction
	Low	Warning or AMP	Warning, AMP or Administrative Sanction	AMP or Administrative Sanction	AMP or Administrative Sanction
	Very Low	Warning, AMP or Administrative Sanction	AMP or Administrative Sanction	AMP or Administrative Sanction	AMP or Administrative Sanction

If the tool determined through the Non-Compliance Decision Matrix for addressing the non-compliance did not result in compliance, the decision matrix should be used to reassess the situation.

Issuing an AMP

An AMP can be issued to a Producer who is found to be failing to comply with the Consolidated Order, resulting in a biosecurity or health risk to human or animal safety. The maximum payment penalty allowed through the NPMA is \$10,000 and the BCEMB has set the minimum amount as \$1,000.

As outlined in the NPMA [\[16.2 \(3\)\]](#), the following factors must be considered before imposing an AMP:

- previous enforcement actions against the person under this Act;*
- the gravity and magnitude of the contravention;*
- the extent of the harm to persons or property resulting from the contravention;*
- whether the contravention was repeated or continuous;*
- whether the contravention was deliberate;*
- any economic benefit derived by the person from the contravention;*
- the person's efforts to correct the contravention.*

Determining an AMP Amount

The AMP amount is based on the Producer type, the level of impact and compliance history. BCEMB management or a BCEMB committee will present a thorough analysis and AMP amount recommendation to the BCEMB Board of Directors. AMPs can only be issued by the BCEMB Board of Directors.

Producer Type

Depending on the severity of the non-compliance, the producer type should be considered to assist in determining a fair and appropriate amount is issued. A penalty amount issued to a Backyard Flock Producer may have a different financial impact than the same amount issued to a Large Registered Producer.

Unregistered Producer Types	
Backyard Flock Producer	0-99 Hens
Small Lot Producer	99-399 Hens
Registered Producer Types	
Small Producer	Less than 6,627 quota units
Medium Producer	Between 6,628 and 28,726 quota units
Large Producer	More than 28,727 quota units

Level of Impact

The greater the impact of the non-compliance to public and animal safety and welfare, the higher the financial impact should be on the Producer.

Compliance History

This takes into account the likelihood that the individual or company will respond appropriately to the compliance requirements. This includes a review of any past compliance concerns and the timeliness of their completion. For Producers with a higher number of non-compliance or a history of not meeting timelines, a higher AMP amount should be reviewed.

Below are examples of AMP amounts for a Backyard Flock Producer.

		Level of Impact			
		Minor	Moderate	Immediate/Major	Certain and Severe
Likelihood of Compliance	High	-	-	-	\$4,000
	Uncertain	-	\$1,000	\$2,500	\$4,000
	Moderate	-	\$1,500	\$3,000	\$5,000
	Low	-	\$2,000	\$3,500	\$5,500
	Very Low	\$1,000	\$2,500	\$4,000	\$6,000

If a timeline has been reached and the Producer is still non-compliant, the AMP amount will be reviewed and will be increased incrementally by \$1,000 minimum. . If the Level of Impact was determined to be

Certain and Severe and a Producer has not met their AMP timeline, an Administrative Sanction should be recommended to the Board of Directors.

Section Five: AMP Notice and Payment

Notice

A letter stating the non-compliance, actions required, timeline and the AMP payment amount approved by the BCEMB Board of Directors will be sent in a letter to the Producer via registered mail.

Payments

AMP payments are due to the BCEMB within 30 days as of the date of the letter. BCEMB collects, but does not retain, administrative penalties. The payments are collected and sent to the Government's General Revenue. If production is held by a corporation, the corporation pays the penalty but both the corporation and the responsible agent of the corporation are liable. If the person wishes to appeal the penalty, the payment is still required to be paid and an appeal filed with BCFIRB within 30 days of receiving the notice.

The NPMA provides the BCEMB will the ability to suspend or withhold any license or permit issued by the BCEMB until the penalty is paid. A Notice served by the BCEMB also has the same force and effect as a judgement of the Supreme Court of BC. If the Producer fails to pay the penalty within 30 days, the BCEMB can file a certified copy with the Supreme Court and the Province may recover it as a "debt due to the government".

Section Six: SAFETI Analysis

Strategic

The AMP program provides the BCEMB with a strategic step approach to ensure all Persons engaged in egg production meet the requirements set out in the Consolidated Order. It provides the BCEMB with the ability to encourage compliance for all Persons who maintain laying hens within the province, not just those holding licenses or permits with the BCEMB.

Accountable

Through the Natural Products Marketing Act (NPMA) and BC Egg Marketing Scheme, the BCEMB is held accountable to both producers and consumers to “provide for the effective promotion, control and regulation of the production, transportation, packing, storage and marketing of the regulated product within the Province, including the prohibition of such production, transportation, packing, storage and marketing in whole or in part.” The AMP program outlines the tools in place to ensure all Persons maintaining laying hens are meeting these expectations.

Fair

The BCEMB conducted multiple consultations with the industry and internal committees to ensure that all parties involved had an equal opportunity to provide feedback on the program. The program has also been created to affect all Persons equally, as outlined in the Consolidated Order. (Note: The broad consultation process is currently underway and all comments will be considered)

Effective

As this is a new program, the BCEMB will not know its true effectiveness until it has been implemented. The BCEMB will review the program annually to ensure it is meeting the desired goals.

Transparent

The BCEMB has been fully transparent through multiple consultations with the industry and Board committees in the development and refinement of the AMP program.. Once fully approved, the program will be communicated electronically to all industry members and will be posted to our producer and public websites. (Note: The broad consultation process is currently underway and all comments will be considered)

Inclusive

The AMP is inclusive as it applies to all Persons, as outlined in the Consolidated Order, who raise hens for the purpose of egg production.