

July 26, 2022

BC Farm Industry Review Board
PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5

Attn: Kirsten Pedersen

RE: Administrative Monetary Penalties

On May 19, 2021, BCFIRB provided the Marketing Boards and Commission with the final framework for Administrative Monetary Penalties (AMP) Programs. That directive included a deadline for the Boards/Commission to provide their final submissions to BCFIRB. Due to the atmospheric river and resulting floods in the fall of 2021, an extension was granted to September 1, 2022.

On July 28, 2021, the BCEMB notified BCFIRB that BCEMB would like to explore utilizing an AMP program for all of the on farm and mandatory programs including:

- BC Poultry Biosecurity Program
- Start Clean Stay Clean (Egg Farmers of Canada's (EFC) On Farm Food Safety Program)
- EFC Animal Care Program
- NFACC Codes of Practice for Pullets, Layers and Spent Fowl
- BC Egg Specialty Audit Program
- EFC National SE Protocol

BCEMB developed a draft AMP Program and commenced consultation with the BC Egg Producers Association, the Egg Industry Advisory Committee, and the Production Management Committee in November 2021. BCEMB further refined the draft program and conducted a broader egg industry stakeholder consultation in January and February 2022 on the [proposed AMP Program](#) through an on-line survey and virtual meetings. Based on the results of that consultation, BCEMB determined that an AMP Program is not required for the BCEMB at this time. BCEMB prepared a proposal outlining BCEMB's decision and rationale and conducted a second consultation with industry stakeholders via an on-line survey and virtual meetings. The results of the second consultation were overwhelmingly in support of BCEMB's decision to not implement an AMP Program. A detailed description of the consultation process and a summary of results are presented in Appendix A.

For those Boards that do not plan to utilize AMPs, BCFIRB has requested that a SAFETI-based rationale be provided that includes "a description of current enforcement-related authorities, tools and processes used for a graduated approach to enforcement of mandatory biosecurity programs."¹

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

This document describes the BCEMB Enforcement Mechanisms and concludes with the SAFETI analysis that supports the BCEMB's decision to decline implementing an AMP Program at this time.

Enforcement Mechanisms

The BCEMB has a number of effective enforcement mechanisms including BCEMB's Penalty Policy, Barn Fitness Audit Program, and Egg Farmers of Canada's Egg Quality Assurance (EQA) Program. These programs are outlined in the following sections:

Enforcement Mechanism – Penalty Policy

When a producer is found to be non-compliant, we apply our Penalty Policy which clearly outlines the steps to be taken to bring a producer into compliance. The BCEMB Penalty Policy was developed and implemented in 2016. This is a graduated enforcement action that starts with a warning, progresses to the Producer losing their Good Standing designation and ends with the revocation of Licence and Quota. The updated Penalty Policy can be [found here](#).

For full details on how the Penalty Policy is administered and its impacts on Producers, please see Appendix B. In most cases, the potential to apply the Penalty Policy and to have a producer be deemed Not in Good Standing results in compliance.

Over the last five years, the Penalty Policy was utilized successfully to obtain compliance in five separate instances, for five different producers. The degree of financial impact for each producer varied depending upon the length of time they were Not in Good Standing and whether there were any allocations or rebates issued in that period. Only one of these situations resulted in an appeal.

Enforcement Mechanism - EQA Program

An additional deterrent for failing to comply with the Start Clean Stay Clean or Animal Care Programs is Egg Farmers of Canada's EQA certification. In order to receive and maintain EQA certification, a Producer must maintain their Start Clean Stay Clean and Animal Care Program certification. All producers who ship to grading stations in Canada must be EQA certified. If the Producer fails to maintain their EQA certification, the Grading Station will refuse to pick up their eggs and, depending upon the severity of the failure, the processor may also not accept the product.

The producer will be paid the price received by the Board for the product and, if the product must be destroyed, the producer will be responsible for this cost. Once the producer regains their EQA certification, the Grading Station will again commence purchasing their product.

This enforcement mechanism commences with a corrective action request, followed by a warning and ends with the grading station refusing to purchase that product until the Producer is once again in compliance with the EQA Program.

Enforcement Mechanism - BCEMB Barn Fitness Audit Program

The Barn Fitness Audit Program was developed in 2019 to assess facilities for the presence of risk factors that could negatively impact animal welfare and which are not captured by the current auditing tools. The program effectively prevents birds from being placed in an environment that is not fit for maintaining our animal welfare expectations. The Barn Fitness Program Manual can be [found here](#).

Any facility with equipment that is at least 20 years old, or that is being leased, is subject to regular barn fitness audits. Over the last three years, Barn Fitness Audits have been conducted on 31 facilities. In most cases, only minor corrective actions have been found. However in two instances, the Board determined that the barns exceeded their useful life and were decommissioned.

A producer who does not complete the corrective actions in their facility will be deemed Not in Good Standing and risk the decommissioning of their facility.

This enforcement mechanism commences with a corrective action request, followed by a warning, progresses to the Producer losing their Good Standing designation and ends with the decommissioning of their facility.

SAFETI Analysis

Strategic

The BCEMB's decision to not implement an AMP Program is strategic in that it supports the continued effective use of current BCEMB enforcement mechanisms/programs to ensure producer compliance without the need for an additional program that is deemed by the majority of stakeholders to be unnecessarily heavy-handed and redundant. The Penalty Policy provides the BCEMB with a stepwise approach to ensure that all Registered Producers meet the requirements set out in the Consolidated Order. It is an approach that has continued to be effective in ensuring compliance. In addition, BCEMB'S Barn Fitness Audit Program strategically and effectively ensures that producers with older barns and equipment fully meet all animal welfare expectations. Also EFC's EQA Program, which strategically involves graders and processors, ensures that producers supply British Columbians with eggs that meet the high Canadian standards that consumers expect.

Accountable

The BCEMB is fully accountable to the BC egg sector and consumers without the use of an AMP Program. 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 BCEMB effectively applies the Penalty Policy to successfully address non-compliance and ensures all Registered Producers are meeting requirements. The implementation of the Barn Fitness Audit Program further ensures that all Registered Producers with older barns and equipment meet all animal welfare expectations.

Fair

The BCEMB conducted multiple consultations with the industry and BCEMB committees to ensure that all parties involved had an equal opportunity to provide feedback on the draft AMP Program. When consensus on BCEMB's first proposal to implement an AMP Program was not reached, the BCEMB deliberated at length and presented this second proposal for further consultation with stakeholders. In addition, BCEMB fairly applies the Penalty Policy, Barn Fitness Audit Program, and EFC's EQA Program requirements to all Registered Producers ensuring that they are all following the same standards, according to production type.

Effective

The BCEMB developed and implemented the Penalty Policy in 2016, and updated the policy in 2020 to ensure relevancy. Over the last five years, the Penalty Policy was utilized effectively to obtain compliance in five separate instances, for five different producers. This Policy has proven its effectiveness and, coupled with the Barn Fitness Audit Program and EFC's EQA Program, further programming is not necessary to ensure compliance.

Transparent

The BCEMB is transparent in its process, having conducted multiple consultations with the industry and BCEMB committees to ensure all parties were informed of the discussion on whether or not BC Egg should implement an AMP Program. BC Egg first developed an AMP Policy in November/December 2021 and further refined it in January 2022 in consultation with industry stakeholders so stakeholders knew what such a policy might look like for BC Egg and how an AMP Program would be implemented. This consultation process provided stakeholders with the opportunity to make informed comments on the possible program.

BCEMB's Penalty Policy, Barn Fitness Audit Program and EFC's EQA Program are fully transparent and are all posted to our producer website.

Inclusive

The BCEMB's consultation process was inclusive in that it included all impacted stakeholders.

BCEMB's Penalty Policy is inclusive as it applies to all Producers, as outlined in the Consolidated Order. BCEMB's Barn Fitness Program, while focused on aging barns with older equipment, applies to all Producers as well, as does EFC's EQA Program.

Conclusion

The BC Egg Marketing Board has thoroughly considered the potential implementation of Administrative Monetary Penalties. Based on the results of the January 2022 consultation, the subsequent review of the effectiveness of the current programs, and second consultation, the BCEMB will not be submitting a request to BC FIRB to implement an AMP Program at this time.

Please do not hesitate to contact me should you have any questions.

Sincerely,



Katie Lowe P.Ag.

Executive Director

Appendix A

AMP Consultation Process, Survey Summary & EPA Feedback

Consultation Process

An Administrative Monetary Penalties (AMP) Program consultation package and survey were sent to all producers on January 10, 2022 with a response deadline of February 3, 2022. Based on the results received from the survey, from Zoom meetings held with producers, and further feedback received from the Egg Producers Association, it appeared the industry did not want an AMP Program to be implemented at this time.

There was strong response from industry indicating that there were enough controls in place to ensure that Registered Quota Holders remain compliant with the Consolidated Order. One of the strategic intentions of the AMP Program was for it to be used on all Persons who raise hens for the purpose of egg production in BC, including unregistered producers. However, there was no consensus from industry on the proposed usage of AMPs for unregistered producers.

While some industry members felt that the use of an AMP Program could be a good tool to ensure that all Producers are following the same set of standards, others felt that this may be seen as draconian and could negatively impact the relationship we have with Producers. It may also be looked upon negatively by the general public and cause BC Egg to lose some of the public trust points that we have worked hard to gain over the last few years. In addition, the BC Ministry of Health (BCMh) and the Canadian Food Inspection Agency (CFIA) have the regulatory authority for eggs sold at retail, including ungraded eggs – not the BCEMB. There would be a cost for the BCEMB to administer an AMP program which, if dealing with the sale of ungraded eggs at retail, should not be passed on to Registered Producers through their levy payments since the BCMh and CFIA should be dealing with the issue.

On May 2, 2022, a second consultation package and survey were sent to all producers asking if they support the BCEMB position that an AMP Program is not required for the BC Egg industry at this time. The survey closed on May 16, 2022 and 93.8% of respondents agreed that an AMP Program is not required at this time.

Summary of First Survey Results

The first survey seeking feedback from industry stakeholders on BCEMB's proposed AMP Program commenced on January 10, 2022 and closed on February 3. During this period, BCEMB held two virtual meetings to explain the proposed AMP Program to producers and to answer any questions. The on-line survey was distributed to 381 industry stakeholders² including BC's 149 registered producers, allied trades, graders and small lot permit holders. Fifty-five respondents completed the on-line survey, representing a total survey response rate of 14%. However, 43 respondents were registered producers and thus represented a survey response rate of 29% for all 149 registered producers. Analysis of the responses from all 55 survey respondents indicate that 27 respondents (50.9%) supported the proposed AMP program, while 26 (49.1%) did not. From the comments received, it appears that most producers feel that there are enough tools in place to ensure that registered producers in BC are following the Consolidated Order. While having a mechanism to encourage compliance for unregistered producers

² Many businesses/farms had more than one email recipient for the on-line survey (e.g. owners, managers etc)

may be beneficial, the cost (both financially and optically) may not be worthwhile. There is significant concern amongst survey respondents that AMP Programs do not have an effective and fair appeal process, and producers that are fined are assumed guilty and would have to prove innocence in order to get their money back. This is a very costly process both for the Board and the producer. This concern could be mitigated by establishing a producer committee to hear the complaint prior to filing a BCFIRB appeal. However, if an unregulated producer is fined under the AMP Program, this could be an optically poor solution.

A more detailed summary of the survey comments plus the full survey results can be [found here](#).

On February 2, 2022, the Egg Producers Association provided further written feedback on the proposed AMP Program:

The BCEPA also did a more comprehensive review of the proposed AMP policy. After consulting with producers and reviewing the current enforcement mechanisms available to the BCEMB, we no longer support this proposal and recommend that a comprehensive review is done of the current compliance tools available to the BC egg industry.

The BCEPA discussed the EQA program, Barn Fitness audit, good standing vs bad standing, and quota license suspension/bird removal. It is our opinion that through the effective use of these tools the BCEMB is currently able to ensure the BC egg farms meet and/or exceed all standards.

We also do not accept that this is the best tool for managing the unregulated portion of our industry. The new entrant program is a great tool for reaching out to the unregulated market and we have yet to see its full impact. Ungraded product at retail should be managed by CFIA and the regional health authorities. In our opinion, our resources would be better spent educating these bodies and encouraging them to enforce the regulations, rather than attempting to become the enforcer.

Summary of Second Survey Results

Based on the results of January 10, 2022 survey and additional EPA feedback, the BCEMB determined that implementing an AMP Program at this time was not required. Due to the change in direction, a second round of consultations was conducted.

On May 2, 2022, a second consultation package and on-line survey were sent to the 381 industry stakeholders asking if they support the BCEMB position that an AMP Program is not required for the BC egg industry at this time. The survey closed on May 16, 2022. Sixty-four respondents completed the on-line survey, representing a total survey response rate of 17%. However, 52 respondents were registered producers and thus represented a survey response rate of 35% for all 149 registered producers. Analysis of the responses from the 64 survey respondents indicate that an overwhelming 93.8% of respondents (60 industry stakeholders) agreed that an AMP Program is not required at this time. The full survey results can be [found here](#).

Appendix B Current Penalty Policy

A number of factors have changed over the last six years that make this policy much more effective than it had been in the past.

If a non-compliance is noted, the producer is given an opportunity to correct the situation. The length of time provided to correct the situation depends upon the nature of the non-compliance. If hen welfare is compromised, the producer has 24 hours to achieve compliance. If the situation does not compromise hen welfare, the producer has 30 days to become compliant. If the producer is required to make major changes to their production system additional time may be given, but this would not be extended past their next flock placement. This includes Corrective Action Requests (CARs) for the on-farm programs. The audit report is considered the first notice of non-compliance. Other options for notice of non-compliance include letters from the Board.

If the problem has not been resolved by the first deadline, the producer is given a second notice of non-compliance with another deadline. At this time, the producer is notified that if they do not correct the problem by the second deadline they will be deemed Not in Good Standing. If a producer is deemed Not in Good Standing, they lose the ability to access a number of Board programs including the Temporary Allotment Pools, earning Quota Credits, Allocations and Producer Rebates. The inability to take part in these programs will have a financial impact on a Producer and is generally sufficient to encourage compliance. The Producer impact from the loss of each of these programs is outlined below.

If the Producer still fails to come into Good Standing by the second deadline, the Board may cancel the Producer's Licence and revoke their quota.

1) Temporary Allotment Pools

If a Producer is currently utilizing one of the TAP Programs, they will be removed from the pool immediately upon being deemed Not in Good Standing.

- a. TAP A is offered to each new entrant as a one-time offer. They are provided with the opportunity to lease 1,000 quota units from the Board for up to five years. If they reduce their TAP A requirements at any point during those five years, they are unable to increase it again. If a new entrant utilizing TAP A is deemed Not in Good Standing, they will lose the ability to utilize that lease in its entirety.
- b. TAP B is offered each July. The Board will determine how much of the quota reserve can be leased to producers, depending upon how much is being held for new entrants and how much remains unallocated due to producer placement timing. The TAP B lease provides a producer with the ability to utilize the leased quota for one year. If the producer is deemed Not in Good Standing, they would no longer be eligible for the lease and lose that production for the remainder of the year.

If a producer is unable to access the TAP programs, they will be required to utilize their quota credits for any additional production. If a producer does not have quota credits, they can either purchase them from another producer or downsize their flock to their current quota amount.

2) Quota Credits

Producers who are in Good Standing are able to earn quota credits during their down time (when the barn is empty between flocks). In BC, our average down time is 14 days for conventional/enriched flocks and 21 days for free-run, free-range and organic flocks. Each producer is encouraged to have their barn empty of hens for a minimum of seven days between flocks for biosecurity reasons. The additional down time is due to length of time to clean the barn and, in the case of free-run flocks, some additional time to acclimatize the hens to the barn prior to start of lay.

Producers pay levy on their total quota value regardless of whether or not there are birds in the barn. In order to ensure that appropriate down time is not an economic detriment to producers, one quota credit is given for each quota unit for every week that quota unit/hen is not producing eggs. The producer can then place a few extra birds the following cycle and use the quota credits to ensure they are not over-quota.

A producer who is Not in Good Standing is still able to utilize quota credits however they are unable to earn them. They will still be required to pay levy during their down-time.

3) Quota Allocations

If a Producer is deemed Not in Good Standing, they will not be included in an Allocation if one were to occur while they are Not in Good Standing. If this is the case, the Allocation is not held for that producer and is lost entirely.

4) Producer Rebates

If the Board is in a surplus cash position at the end of the fiscal year, the surplus cash policy comes in effect and the Board may issue a rebate to producers in Good Standing. If a Producer is Not in Good Standing at the time of the issuance, they will not obtain the rebate nor will it be held for them.