



Amplifying AMPs — Part I

Extending AMPs to the Meat Inspection Act is a major development

On July 16, 2014 the federal government finalized a regulatory amendment extending the system of Administrative Monetary Penalties (AMPs) to the *Meat Inspection Act and Regulations* (MIA). With this little-noticed, mid-summer announcement the Canadian Food Inspection Agency (CFIA) acquired another significant tool to manage non-compliance, this time for its largest food program. This extension of the CFIA's enforcement powers will have significant implications for the meat industry and for the food industry more generally.

An agricultural administrative monetary penalties system (essentially a ticketing regime) was phased into operation after the passage of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* in 1997, the same year the CFIA was created. So far the system only applies to the *Health of Animals Act* and the *Plant Protection Act*, though we always intended that it would eventually extend to all of the Acts enforced by the CFIA. The system gives the CFIA the power to issue notices of violation and provides that an affected party can have the decision reviewed by a Tribunal, now called the Canadian Agricultural Review Tribunal (CART).

An AMP can be either a notice of violation with a warning, or a notice of violation with a penalty. The amount

of the penalty for an offence that is committed in the course of business, or in order to obtain a financial benefit (a Commercial AMP), can be between \$1,300 and \$15,000 depending on the nature and gravity of the offence and the history of the offender.

Even though only two of its Acts are under AMPs, the CFIA has made extensive use of the regime. During the latest fiscal reporting period (April 2013 to March 2014), the CFIA issued 490 notices of violation that resulted in a total of \$1,940,440 in fines levied. In the previous year, there were 723 notices resulting in

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fines of \$3,229,600. The extension of AMPs to the much more detailed and important food safety meat inspection legislation is a major expansion of the system. There are, for example, no less than 84 specific provisions in the highly prescriptive MIA that will be subject to AMPs, including many important food safety and trade requirements and non-food safety requirements such as labelling and other consumer protection provisions.

CFIA inspectors already have very wide powers to enforce the MIA. They have full authority to enter any place or stop and enter any vehicle and may open any package that contains a meat

product that the inspector believes does not comply with the statute or its regulations. The inspector may take samples and require full production of all administrative material. It is a criminal offence to obstruct inspectors in their work, including making false statements. Inspectors may seize and detain any product they believe on reasonable grounds may contravene any regulation. In addition, the agency can and does suspend or cancel a meat plant's registration, effectively putting it out of business. The CFIA prosecutes offenders in the criminal courts, resulting in large fines and criminal records. High-handedness and disproportionate use of these enforcement tools is not unknown.

So it is not surprising that the meat industry is somewhat apprehensive. The CFIA's rationale for introducing AMPs for only meat and before the *Safe Food for Canadians Act* is in force is not clear and certainly not consistent with all the “modernization” talk about common approaches across all commodities. The industry doesn't see the need to arm overzealous inspectors with yet another enforcement tool. But, if used sensitively for cases in which corrective action requests and warnings are not enough, and if it avoids the overuse of criminal prosecution, product seizure and license suspension or revocation, then this may prove to be a positive development for the meat industry. Implementation and the CART process for administrative review will be key factors, two matters to which we will return next month. ●

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