



NEW BRUNSWICK FOREST PRODUCTS COMMISSION

# Guidelines for Forest Products Marketing Boards & Their Directors

**February 2015**

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New Brunswick Forest Products Commission  
1350 Regent Street • Suite 215 Core Section  
Fredericton, NB E3B 5H1  
Phone 506.453.2196 • Fax 506.457.4966

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## Forest Products Marketing Boards – The Law

**F**orest Products Marketing Boards in New Brunswick are established by the *Natural Products Act*, S.N.B., c. N-1.2. The purpose and intent of the Act, pursuant to section 3 of the Act, is as follows:

*3 The purpose and intent of this Act is to provide:*

- (a) for the promotion, control and regulation within the Province in any or all respects of the marketing of farm products over which the legislative jurisdiction of the Legislature extends, including the prohibition of such marketing in whole or in part,*
- (b) for the promotion, control and regulation within the Province in any or all respects of the production of farm products over which the legislative jurisdiction of the Legislature extends, including the prohibition in whole or in part,*
- (c) for the promotion of farm products and for research relating to farm products over which the legislative jurisdiction of the Legislature extends,*
- (d) for the establishment of standards for farm products,*
- (e) for the establishment of standards for facilities used for the production, marketing or processing of farm products,*
- (f) for the establishment of commodity development councils to provide a forum for producers and industry to meet to discuss issues of mutual interest, and*
- (g) for the development, conservation and management of forestry resources on private woodlots in the Province.*

The *Natural Products Act* also establishes that with respect to farm products of the forest, it only applies to farm products that originate from private woodlots. Private woodlots are defined in the *Forest Products Act*, S.N.B., c. 105 as all forest land except (a) forest land owned by the Crown; (b) forest land owned by a person whose principal business is the operation of a wood processing facility, unless the main function of the processing facility is the production of wood chips and biomass at or on the harvest site; and (c) forest land consisting of an aggregate area of at least 100,000 hectares which is owned by the same person or persons.

The *N.P.A.* also establishes two Commissions, the New Brunswick Farm Products Commission and the New Brunswick Forest Products Commission. When the Act refers to the Commission with respect to farm products of the forest, it refers to the New Brunswick Forest Products Commission. This document will refer specifically to the New Brunswick Forest Products Commission (hereinafter '*Commission*').

## **New Brunswick Forest Products Commission**

The Commission is established as a corporate body in the *Natural Products Act*. The *Forest Products Act* establishes the structure and organization specific to the Forest Products Commission. In the *Forest Products Act*, the Commission is established through appointments by the Lieutenant-Governor in Council (Cabinet) of two members representing the producers, two members representing the forest industries of New Brunswick, two members representing the Department of Natural Resources, and an independent Chair. The act also gives the Minister the authority to appoint a Secretary to the Commission.

The objectives of the Commission are (a) to encourage and facilitate the achievement of expanding markets and equitable prices for both the producer and consumer of purchased primary forest products, and (b) to encourage and facilitate the optimum utilization of private woodlot resources.

Under the *Forest Products Act*, the Commission has the following duties:

- (a) to examine and consider data relevant to the production and sale of purchased primary forest products,
- (b) to facilitate meaningful dialogue between producers and consumers,
- (c) to administer the negotiation process between the Producers Associations and their agents,
- (d) to act as a conciliator when requested in disputes arising between a Producer Association and a consumer of primary forest products,
- (e) to conduct inquiries on the following matters with respect to primary forest products:
  - (i) the cost of production, distribution and transportation;
  - (ii) prices, markets and systems of classification; and
  - (iii) any other matter related to marketing,
- (f) to investigate complaints in relation to the marketing of primary forest products,
- (g) to be informed regarding developments in the harvesting and marketing of primary forest products, and
- (h) to recommend to the Minister the institution of those marketing controls that appear necessary or advisable.

Some of the authority granted to the Commission in the *Forest Products Act* is repetitive of similar authority and powers that are given to the Commission in the

*Natural Products Act.* The powers that are granted to the Commission in the *Natural Products Act* are as follows:

- (a) to investigate, arbitrate, adjudicate upon, adjust or otherwise settle any dispute involving producers, agencies, boards, processors, distributors or transporters of farm products;
- (b) to investigate the cost of producing, processing, distributing and transporting any farm product, prices, price spreads, trade practices, methods of financing, management, grading, policies and other matters relating to the marketing or the production and marketing of a farm product;
- (c) to require persons engaged in the marketing or the production and marketing of a farm product, in the promotion of the consumption and use of a farm product, or in research activities pertaining to a farm product to register with the Commission, agency, board, a Crown corporation or another body or person the following information:
  - (i) their names;
  - (ii) their addresses;
  - (iii) the parcel identifier number or numbers assigned by Service New Brunswick to land used for the marketing or the production and marketing of a farm product, for the promotion of the consumption and use of a farm product or for research activities pertaining to a farm product or to land used for the disposal of a farm product;
  - (iv) their occupations; and
  - (v) any other information prescribed by regulation;
- (d) to require persons engaged in the marketing, the production and marketing or the processing of a regulated product to furnish such information relating to the marketing, the production and marketing or the processing of the regulated product, including the completing and filing of reports or returns on a periodic basis or otherwise as the Commission or board determines;
- (e) to require persons engaged in the promotion of the consumption and use of a farm product or in research activities pertaining to a farm product to furnish such information relating to such promotion and activities, including the completing and filing of reports or returns on a periodic basis or otherwise as the Commission or agency determines;
- (f) to require the furnishing of security or proof of financial responsibility by any person engaged in the marketing of a regulated product and to provide for the administration and disposition of all money or securities so furnished;
- (g) to cooperate with a marketing board, local board, commodity board, marketing commission or marketing agency of Canada or of any province in Canada for the purpose of the marketing, the production and marketing or the processing of any regulated product;
- (h) to cooperate with a board, commission or agency of Canada or of any province in Canada for the purpose of promoting the consumption and use of any farm product or the purpose of research activities pertaining to any farm product; and

- (i) to do such acts and make such orders and issue such directions not inconsistent with a plan or the regulations as are necessary to enforce the due observance and carrying out of the provisions of this Act, the regulations or any plan.

The *Natural Products Act* also gives the Commission specific powers of investigation, including the powers conferred upon commissioners under the *Inquiries Act*. The act also gives the Commission the authority to make regulations specific to the constitution and governance of Forest Products Marketing Boards. It also gives the Commission authority to make orders for a variety of functions including the filing of information with the Commission by Boards, the furnishing and/or publication of annual reports of operations and financial statements of the Boards, authorizing Boards to appoint agents, the carrying out of any or all of the powers of a Board by the Commission or by a trustee, or the dissolving of an agency or Board. The Commission may also make orders relating to investigations or related to negotiations, conciliation or arbitration.

As it relates to Forest Products Marketing Boards, one of the most important authorities that is given to the Commission in the *Natural Products Act* is that the Commission has general supervision over all agencies and boards constituted under the Act and shall perform such other duties and functions and exercise such authority prescribed by regulation in order to carry out the purpose and intent of the Act. The Commission may delegate its powers to an agency or board if it considers it necessary and set terms and conditions to the delegation and terminate a delegation at any time. The Commission also has the authority to amend or revoke any order, decision, direction, rule, by-law, resolution or determination of an agency or board and replace it with its own order, decision, direction, rule, by-law, resolution or determination.

The Commission also serves as an appeal body, whereby any person who is aggrieved or dissatisfied with an order, decision, direction or determination of an agency or board can appeal the order, decision, direction or determination to the Commission by process. The Commission will appoint a panel to hear the appeal and make a decision. Decisions of the Commission are appealable to the New Brunswick Court of Appeal.

## **Forest Products Marketing Boards**

The Forest Products Marketing Boards are established under the *Natural Products Act*. The process by which a board is established must begin with a request by a group of producers who market a farm product in the Province, or within a specific area of the Province. The Commission shall investigate to determine if the group is fairly representative of the producers who market in the Province or in that specific area. This investigation is typically done through a plebiscite of the producers in the Province or in that specific area. If the investigation shows that the group that has requested is fairly representative of the producers, the Commission may make a

recommendation to the Minister that a board be established for the purpose of promotion, control and regulation within the Province or a specific area within the Province of the marketing, production and marketing, promotion of the consumption and use, or research activities of the farm product. In the case of farm products of the forest, the purpose can also include the development, conservation and management of forestry resources on private woodlots in the Province or in that specific area.

The establishment of a board is done by Lieutenant Governor in Council (Cabinet) under the *Natural Products Act* through a plan regulation. The plan regulation includes the following:

- (a) the farm product that is the subject of the plan;
- (b) where a board is established, the purpose or purposes for which the board is established;
- (c) where an agency is established, the purpose or purposes for which the agency is established;
- (d) whether the plan applies to all of the Province or to an area in the Province;
- (e) the powers conferred on, delegated to or vested in the Board under the Act or regulations; and
- (f) the methods by which the operation of the plan is to be financed.

Before 2014, there was a plan established for each of the seven Forest Products Marketing Boards in New Brunswick. In 2014, the seven plan regulations were consolidated into one plan regulation. The regulation is called the *New Brunswick Forest Products Marketing Plan Regulation – Natural Products Act*. In the consolidated plan regulation, the seven Forest Products Marketing Boards are established and each of their regulated areas is defined. The regulated product is defined as primary forest products produced on private woodlots within the Boards' regulated areas.

The plan regulation establishes the powers that are vested in the Forest Products Marketing Boards. The powers vested in the Forest Products Marketing Boards in New Brunswick are:

- (a) to market the regulated product;
- (b) to prohibit the marketing or the production and marketing, in whole or in part, of the regulated product;
- (c) to regulate the time and place at which, and to designate the body by or through which, the regulated product shall be marketed or produced and marketed;
- (d) to require any and all persons before commencing or continuing in the marketing or the production and marketing of the regulated product to register with and obtain licences from the Board;
- (e) to fix and collect periodic licence fees or charges for services rendered by the Board from any and all persons marketing or producing and marketing the regulated product, and for this purpose to classify those persons into groups, and fix the licence fees and charges or either of them payable by the members



- of the different groups in different amounts, and to recover any licence fees and charges or either of them in any court of competent jurisdiction;
- (f) to suspend or cancel a licence for violation of any provision of the Act, the Plan, the regulation or any order of the Board and to reinstate a licence that has been suspended or cancelled;
  - (g) to require any person who produces the regulated product to offer to sell and to sell the regulated product to or through the Board;
  - (h) to prohibit any person from processing, packing or packaging any of the regulated product that has not been sold to, by or through the Board;
  - (i) to use, in carrying out the purposes of the Plan and paying the expenses of the Board, any money received by the Board;
  - (j) to require any person who receives the regulated product to deduct from the money payable for the regulated product any licence fee or charge referred to in paragraph (e) that is payable to the Board by the person marketing or producing and marketing the regulated product received and to forward that licence fee or charge to the Board or its agent designated for that purpose;
  - (k) to implement and administer forest management programs on private woodlots;
  - (l) to undertake and assist in the promotion of the consumption and use of the regulated product, the improvement of the quality and variety of the regulated product and the publication of information in relation to the regulated product;
  - (m) to undertake or engage other persons to advertise and promote the regulated product;
  - (n) to cooperate with any Canadian Board or Provincial Board to regulate the marketing of the regulated product and to act conjointly with the Canadian Board or Provincial Board for those purposes;
  - (o) to make the orders that are considered by the Board necessary or advisable to regulate effectively the marketing or the production and marketing of the regulated product or to exercise any power vested in the Board; and
  - (p) the powers of a corporation under the Business Corporations Act and, subject to the Act, in the exercise of those powers the members of the Board shall be deemed to be its shareholders and directors.

The Madawaska Forest Products Marketing Board has two additional powers vested in only that board as follows:

- (a) to regulate the manner in which the regulated product may be marketed or produced and marketed; and
- (b) to fix the price or prices, maximum price or prices, or both maximum and minimum prices at which the regulated product, or any grade or class of it, may be bought or sold in the regulated area, and to fix different prices for different parts or areas of the regulated area.

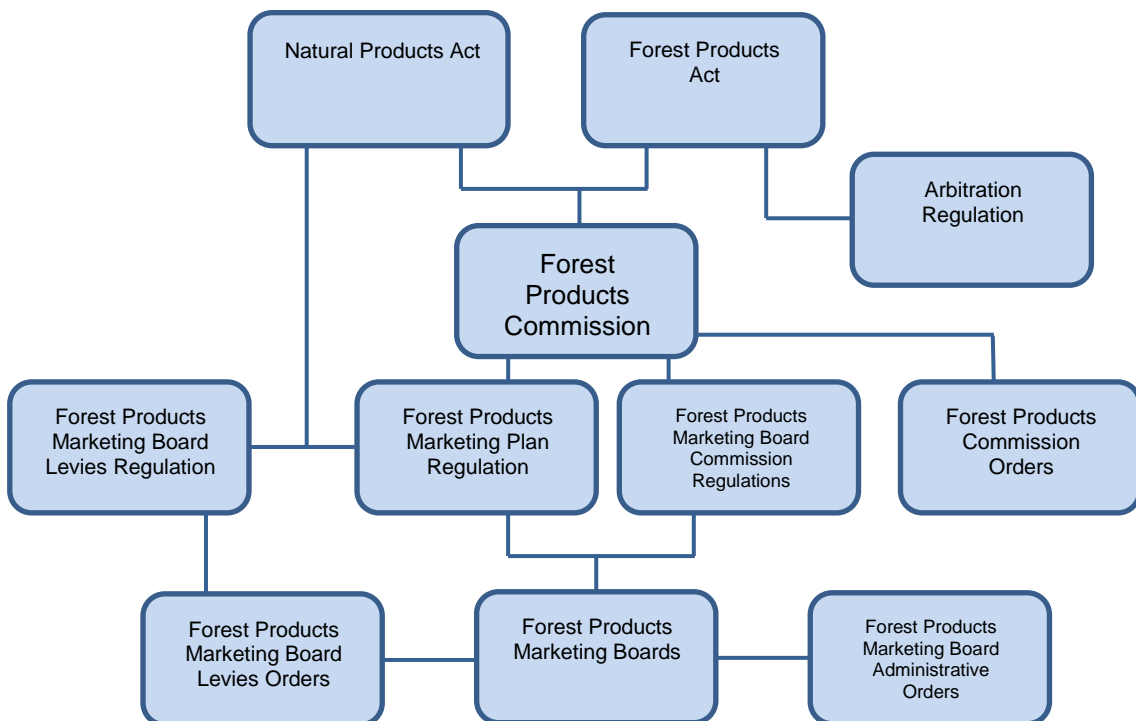
To exercise any of the powers that are vested in a Board, the Board must make orders that describe how the Board is going to exercise the powers. For example, the Forest Products Marketing Boards have Orders in force that specifies the type,

amount and method of collection for levies that are applied to all regulated product that is marketed. For Boards that have levies collected for the purpose of forest management (Forest Management Levies), the Boards also have a separate Order in force that specifies the activities that the Forest Management Levies can be used for. Each Board's Administration Levy Order also specifies what the levies can be used for in terms of the cost of operations of the Board.

The Commission makes regulations for each Board to define the makeup of the Board and its governance model. There is a regulation established by the Commission for each Forest Products Marketing Board. The Boards in New Brunswick have Districts defined in their regulations. Each District is assigned specific numbers of members (directors) as representatives on the Board. The Board regulations specify the qualifications and the term of office of directors, as well as the election process that is to be used by the Boards to elect their directors. The regulation also specifies the requirements for annual meetings of the Boards and the governance bylaws of the Boards.

To summarize, Boards are regulatory bodies by legislation. The purpose and intent of the Forest Products Marketing Boards is to promote, control and regulate the production, marketing and consumption of primary forest products as well as the development, conservation and management of forestry resources on private woodlots within their regulated areas. The following diagram illustrates the framework that is created through the legislation.

Figure 1 - Illustration of the Forest Products Marketing Board framework created through the legislation.





## The Role of the Board of Directors

**B**oards of directors are groups of representatives brought together to fulfill a social, economic and development role. However, the main function of a Board of Directors is to manage the affairs of the organization. In the case of Forest Products Marketing Boards, the members are elected by a democratic process that is established within the Board regulation.

One of the most important functions of Board members is to select the operating head of the organization. The operating head of the organization is generally given a title of Chief Executive Officer (CEO) or General Manager (GM). A Board should rely on its CEO or GM of the organization to bring advice and reports so that the Board can go into action as an independent body, exercising full and prompt control. Board members should never enter directly into the management role and duties. The Board can judge programs or plans, but should never get directly involved into their formulation. The Board can make recommendations on all phases of the organization's activities and because the members of most Boards have diverse backgrounds, these recommendations can be of great value. It is important that there is a good understanding between the Board and management so that the rejection of certain recommendations does not bring on any form of embarrassment on the part of any individual concerned.

A key point in effective Board / management relations is that the Board should judge, but not manage. Management should be called upon to give justification to the Board for important plans or key decisions. The Board's judgment needs to be competent, sympathetic and rigorous. This type of effective interaction between a Board and management should put any manager at a decided advantage to those who do not use their Board effectively.

It should always be clear between Board and management that nothing goes before the Board except the recommendations, plans and reports of management, whether it is initiated by management or in response to the initiation of the Board. The manager is responsible to the Board for the actions of his or her staff. The Board should never enter into direct relations with the non-management staff.

The Board does not have any authority between Board meetings unless through a committee that has been established by the Board, and then only when a committee has been provided with a clear terms of reference. Committees that have been commissioned to look at specific aspects of the business of the organization can be

helpful between meetings of the Board to assist management in formulation of plans and establishing policies to be adopted by the Board.

The key to an effective Board is to get them interested in the operations of the organization and its people. This can be a difficult task, but is best accomplished when there are genuine and specific objectives to be attained. The most effective Board will guide its Chairman / President and management in such a manner as to ensure that, as much as possible, the organization can succeed and address challenges from within or without.

## Responsibilities of the Board

The legal right and responsibility to manage the affairs of a Forest Products Marketing Board belongs to the Board of Directors. Members, or in the case of the Forest Products Marketing Board, woodlot owners and/or producers do not have the right or responsibility to manage. As previously mentioned, the Directors of a Board are democratically elected to represent the interests of the woodlot owners and/or producers within their area. The Board delegates the management responsibilities to the hired manager and assumes the role of representing the woodlot owners and/or producers and directing the affairs of the organization. However, the responsibility of the Board can be further stated as five main responsibilities as follows:

- (a) Appointment of CEO / GM – The Board is responsible to appoint the CEO / GM of the organization. The Board should develop a clear description of the qualifications and duties of the CEO / GM.
- (b) Trusteeship – The most important responsibility of a Board is trusteeship. The directors are responsible for the organization's programs, image, and assets. They have a duty to manage the organization honestly, in good faith, and in the best interest of the organization while using the care and due diligence of reasonably prudent people.
- (c) Financial Management – The directors are responsible to approve spending money on programs that represent the priorities of need, goals and purpose of the organization. They are the trustees responsible for funds which the organization raises, accepts and disperses. Simply put, the Board directors are obligated to exercise judgment that a reasonably prudent individual would exercise in regard to his or her own funds. Adequate financial controls which protect the assets and limit the liabilities of the organization are required.
- (d) Program Planning, Implementation and Evaluation – The directors of the Board must ensure that the Board sets measurable goals, defines obligations, and develops plans to reach these goals. The goals should reflect the needs of the organization and its community and be translated into the budget or utilization of the resources that are available to the organization. Any activities that are carried out on behalf of the organization must be consistent with its established goals and purpose. Methods of evaluating the effectiveness of programs are necessary for accountability purposes.
- (e) Communication – No organization can exist with the Board acting alone. Communication within the organization, both written and verbal, enables the

membership to understand and support the Board's actions. However, it is a two-way street since the Board must "keep in touch" with its members, especially when establishing goals and planning programs. Interaction with individuals and groups outside of the organization's membership, including community leaders, other organizations, and various business and government bodies, is very important. The spirit of this interaction can be largely affected by the image that is projected by the organization. The organization's image is developed through effective communication of the organization's actions, concerns and vision, not just to the membership, but also to the community at large.

### **Board Member Qualifications & Procedures**

Each Forest Products Marketing Board regulation prescribes the qualifications for members (directors) of the Board and the procedures to be followed for elections. While they are all similar, the regulations for the seven Boards do differ somewhat from Board to Board. Therefore, it is important to refer to the specific Board regulation that one may be interested in to determine the exact qualifications and procedures to be followed. The length of the term for members, depending on the Board, is one, two or three years and in all cases, a members term does not begin until the first meeting of the Board following the Board's Annual Meeting.

Boards are required to hold annual District or Zone meetings. Some of the regulations require that a meeting be held in each district each year and some allow for the combining of districts for an Annual District meeting or into zones for an Annual Zone meeting. The main function at an Annual District or Zone meeting is to elect members to the Board, if required. Most Board regulations require that they have a delegate system for voting at their Annual Meeting. In those cases, the Annual District or Zone meeting is also where delegates are either elected or registered for the Annual Meeting of the Board. Minutes must be recorded for Annual District or Zone meetings and filed with the Commission.

The Annual District or Zone meetings are also used by most Boards to communicate information to the woodlot owners and producers. Because the meetings have lower attendance than the Annual Meeting of the Board and provide a venue with more informal discussions, they can be a great way to gauge issues and concerns of the woodlot owners and producers that can assist the Board and management in planning the direction of the organization.



## Financial Policies and Procedures

**T**he responsibility for managing and protecting the assets of any non-profit organization rests on the shoulders of the Board of Directors. As with many other non-profit organizations, the directors of Forest Products Marketing Boards are for the most part “volunteers”. Despite this, the board needs to approach their financial affairs from a very business-like perspective. Because Forest Products Marketing Boards are established by legislation, there are some legislated policies and procedures that need to be followed, but there are also some “best practices” that Boards should follow to better protect the organization’s assets.

The implementation of strict financial procedures should not be seen as an insult to the integrity and honesty of management or staff who handle the direct management of the funds of the Board. In reality, procedures of this type are as much for the protection of these individuals as they are for the protection of the organization. Proper financial procedures will assist in removing the entire burden off the shoulders of the Treasurer and eliminate temptations for anyone involved in managing the assets of the Board. Boards have a fiduciary obligation to manage the funds on behalf of the woodlot owners and producers that they represent.

### Signing Authority

Signing authority is established in the by-laws of Board regulations. The regulations for all Forest Products Marketing Boards require that all cheques, drafts, orders for the payment of money and promissory notes, acceptances and bills of exchange be signed by two (2) employees designated by the Board or by two (2) people from among an employee designated by the Board and the chair, vice-chair, secretary and treasurer of the Board.

The regulation further requires that any contracts, documents or written instruments, with the exception of commercial documents prepared in the normal course of business, that require the signature of the Board shall be signed by two (2) members from among the chair, vice-chair, secretary and treasurer of the Board. Examples of the types of documents that are contemplated by this requirement are legal documents, banking and loan agreements, lease agreements, or audited financial statements. Because of the nature of the Boards’ businesses, things like wood supply contracts or agreements should be considered as normal course of business and the authority to sign those types of documents could be delegated to management.

## Borrowing, Gifts or Grants

The borrowing of money, or the giving of gifts or grants by a Board are regulated by the legislation in the *Natural Products Act* and the Board regulations. Before borrowing money or guaranteeing the repayment of a loan, a Board shall obtain the authorization in writing of the Commission, and such authorization shall be subject to such terms and conditions as the Commission may specify (*Section 26(1) – Natural Products Act*). Before a Board enters into an agreement with a lending institution to borrow money (such as a loan, mortgage, or operating facility), the Board must first request in writing the authorization of the Commission to do so. The Commission will review the request and if authority is granted, an Order authorizing the Board to borrow will be enacted. Authorizations typically expire after one year and require renewal. In some circumstances, the Commission may establish other terms and conditions that a Board must meet or maintain in order to keep their borrowing authorization.

Boards are also restricted in the giving of grants, gifts or other similar payments of money. No board shall make grants, gifts or other similar payments of money in excess of one thousand dollars to any person, association or body of persons without approval of the Commission (*Section 26(2) – Natural Products Act*). If a Board is considering this type of transaction, the process is similar to a borrowing authorization. The Board would be required to make a request in writing to the Commission with details of the grant, gift or payment. Upon consideration, the Commission would decide whether or not to issue an Order giving the authority to the Board.

## Financial Reporting

It is extremely important that Boards specify a regular schedule of financial reporting and the level of detail that they require in those reports from management. At a minimum, interim or scheduled financial reports should include the organization's current cash position, income and expenses for the reporting period and any outstanding expenses (payables) or receipts (receivables). Copies must be given to all directors of the Board. It is the duty of the directors to ensure that they review and understand the financial reports that are provided. The financial records of a Board are the property of the organization, not just the treasurer. As such, those records should be open to examination at any reasonable time by directors of the Board.

One of the requirements of the New Brunswick Forest Products Commission is that Boards have an audit completed annually of their finances. The audit consists of an independent, objective and qualified person examining the financial records of the organization at the fiscal year end. A financial audit completed by a professional in the field will provide the organization with a credible opinion about the accuracy of the financial statements, how fairly the statements reflect the true financial situation of the organization and the degree to which the organization has complied with generally

accepted accounting principles. Each year, at the Board's annual meeting, a Board is required to appoint the accounting firm that will be conducting the financial audit for the upcoming fiscal year. The Board is also required to present the audited financial statements from the fiscal year that was just completed. The presentation of the financial statements should be done in a way that provides the general membership a clear understanding of the organization's financial position. Audited financial statements for any agent conducting work on behalf of the Board are also required. For example, if a Board has a related "Association" or "Co-op" that is conducting some of the Board's work or services, they too require a professional audit that must be filed with the Commission. Filing of audited financial statements with the Commission must be done within ninety (90) days of the fiscal year end.

### **Written Financial Policies**

Because of the nature of Forest Products Marketing Boards, at times there can be regular turnover of directors and/or officers. A written "Policies and Procedures" document that has been developed and adopted by the Board can be a useful guide for both new and experienced directors. It will be especially helpful in times where there is a large percentage of the Board that is new. The same document can also be used to clearly communicate with the general membership if there are ever questions about how the Board is dealing with the financial affairs of the organization.

The development of financial procedures can seem like a lot of work to prevent something that may never happen, but should be viewed as a form of insurance for the Board. Directors should remember that "It's too late to close the barn door after the horse has ran away" or after some of the Board's assets have disappeared. Missing or lost funds can be just the tip of the iceberg, in terms of the costs to the Board, when compared to the time spent by directors and management, the emotional wear and tear on people most closely involved and the potential loss of credibility in the eyes of the community.





## Record Keeping

**B**oard members of voluntary, non-profit organizations like the Forest Products Marketing Boards must perform their legal duties with care. One of the most effective ways that a Board can minimize risk to themselves and the organization is to ensure permanent official records exist of the Board's activities. Good record keeping helps an organization function efficiently, effectively and ensures accountability to its members and the public. The obligations of record keeping include maintaining:

- (a) minutes of meetings of directors, committees, members (both annual and district),
- (b) proper financial and accounting records,
- (c) legal documents such as incorporation certificates, letters patent or articles of incorporation and official seals (where applicable), and
- (d) official registers of members and directors.

## Record Keeping & Retention

Boards should have legal records of the organization stored and organized in a way that they are easy to retain and access. One way is to organize records in binders. A Board could create one binder that holds legal records such as incorporation records, insurance, leases, mortgages, banking agreements, etc. Another binder may hold records of the official listing of directors, including names and contact information, and details regarding each director including their date of election, term reappointments and resignations. This binder may also hold the minutes of all meetings, categorized according to annual and district meetings, board meetings and committee meetings with copies of reports and additional information that was filed or discussed at the meetings. Pages should be stored in chronological order and numbered consecutively to ensure that the records are kept complete. Some boards may number their meetings, especially when they do not meet on a regular basis. This allows for the reader to know that meetings are in consecutive order and that records are not missing. The information in the binders is part of the organization's official legal records. They are the historical record of the Board, and must be kept and not destroyed. It is a good practice to keep older records in a safe, offsite location to ensure their safety. It may also be useful to scan and record older documents electronically as a backup measure. It is important that these records be retained in perpetuity because of their historical value and significance.

## Meeting Minutes

Minutes of meetings are a very important part of a Board's records. Good meeting minutes will:

- (a) document actions that determine the fulfillment of legal duties and responsibilities,
- (b) record the proceedings of a meeting,
- (c) record how decisions are made, the resulting actions and the persons responsible,
- (d) clarify what actually happened at a meeting,
- (e) help orient new members of the Board (especially beneficial for Boards experiencing a high turnover), and
- (f) be useful in evaluating and validating the work of the Board.

It is the Secretary, either appointed or elected by the Board of Directors, who takes the minutes of meetings. The Board also determines the degree of detail that the Board will follow in taking of their meeting minutes. Developing a meeting minute 'template' may help to maintain consistency in the detail of the minutes.

During a meeting, the Secretary needs to be able to see and hear all members in order to keep an accurate record. They must keep a record of the attendance and absences at the meeting. Agenda items should be numbered, so that numbering in the minutes corresponds with agenda items. The agenda of the meeting can then be attached to the minutes and filed together. The detail required in the minutes of meetings can be cause for great debate. Some minutes are very detailed (almost verbatim account) of what happened during the meeting and some are just highlights of the motions discussed. What is important is that the Board records enough detail in minutes necessary to reflect that they have exercised due diligence in their decisions. Inclusion of discussion points or the pros and cons of discussions is helpful for members who may have missed the meeting. It also will provide background information for future members explaining the reasoning behind decisions. Any discussion that is recorded should be an objective summary, not editorializing or personal opinions.

The recording of names of people who moved and seconded motions should be recorded in a Board's minutes. It is important to note that neither the mover or the seconder "owns" any motion, it belongs to the group. Motions should be stated clearly. On substantial or potentially controversial motions, the motion should be clarified and read back to the members by the Secretary to avoid confusion.

The recording of names of who voted "for" or "against" a motion is not necessary, but for obvious reasons, one may want their name recorded in the instance of an abstention to vote. For example, a Board member who finds themselves in a conflict of interest may choose to abstain from a discussion and/or a vote on a particular issue. It is a good practice for them to request that their name be listed as an abstention from that discussion and/or vote so as to limit future liability.

## RECORD KEEPING

All written reports by management, committees or otherwise, that are presented to the Board during a meeting should be attached to the minutes for that meeting. These also form part of the official record of that meeting. The minutes should also reflect that any unfinished business be added to the next meeting's agenda. They should also record the time of adjournment. It is a good practice to have the Chairperson review the draft minutes shortly after they are completed so as to ensure accuracy.

Minutes are presented at the next meeting of the Board for approval. This gives the Board members an opportunity to confirm decisions reached at the previous meeting. Only corrections to the minutes are made. There should be no debate on the content. They are either approved or approved as corrected, which would be reflected in the next meeting's minutes. It is the corrected and approved version of the minutes that should be filed as the official record of the meeting. Because most minutes are completed and saved on a computer, it is a good practice for the Secretary and the Chairperson to sign the corrected and approved version of the minutes of the meetings that will go on record so as to ensure authenticity.

The Forest Products Commission requires that Boards file all minutes of all meetings within 20 days from the date that they are made, passed or approved by the Board. All decisions of a Board are appealable to the Commission and therefore it is important to keep the filing of minutes up to date.

### **The Importance of Good Records**

The importance of a Board keeping good records cannot be overstated. It is the historical record of the organization. In times where a Board may be challenged on a decision that was made or a direction that was followed, the Board's records may be what stands between a perception of wrong-doing and the reality of due diligence. Board members should be comfortable that what they read in their minutes of previous meetings truly reflected the decisions and rationale that they remember. The completeness and accuracy of all of the records kept by a Board, or lack thereof, can "make or break" a Board in challenging situations.



## Best Practices

**M**ost not-for-profit boards are comprised of people who have a particular interest or passion for the organization’s mission. In the case of Forest Products Marketing Boards, it is legislated that Board members meet qualifications of either a woodlot owner or a producer within the Board’s regulated area. In this way, Forest Products Marketing Board members have a “vested” interest in their local Board. Board members are elected from among their peers, with the expectation to carry out the organization’s goals and ensure adherence to its principles. Board membership carries with it the obligation to be informed, enlightened and to behave in a competent manner. Equally important, board members have not only moral but legal obligations to carry out the mission of the Board as well. Boards that utilize “best practices” and develop written policies and procedures to guide them will enjoy a higher degree of success and satisfaction in their governance.

### Board – Staff Relationships

It is important for the Board to have a good working relationship with the management and staff. The Board will set the mission, vision and tone for the organization and approve an annual plan, but it is the management and staff that will implement the Board’s programs and make it possible for the Board to achieve its goals.

Directors of Boards should be reminded that they should not be involved in the day-to-day management of the organization, as this is the CEO / GM’s domain. A good rule-of-thumb for directors to remember is that CEO / GM work for the Board and staff works for the CEO / GM. However, they also need to be cautious that they do not abdicate too much of their authority to the CEO / GM. At the end of the day, the Board retains total accountability for the organization and total authority over it. The Board needs to be able to walk a fine line, empowering management and staff by giving them room for creativity, flexibility and innovation, without giving up control of the Board’s purpose or of their responsibilities as directors. Good written policies and procedures developed by the Board and management regarding staffing will help both the Board and management maintain their respective roles.

### Duty of Care

The “duty of care” requires a director to make themselves familiar with the organization’s finances and activities and participate regularly in the Board’s

governance. In carrying out this duty, directors must act in “good faith” using a reasonable degree of diligence, care and skill that prudent people would use in a similar position and under similar circumstances. In the exercise of the duty of care, board members should, among other things, do the following:

- (a) Attend all Board and committee meetings possible and actively participate in discussions and decision making. Read and understand material prepared for meetings and raise questions when needed. Allow time to meet as a Board without senior management personnel present.
- (b) Read minutes of prior meetings and reports provided, including financial statements and management reports. Make sure votes for or against are accurately and completely recorded. Do not hesitate to suggest corrections, clarifications or additions to minutes or other formal documents.
- (c) Make sure to get copies of minutes and reports from any missed Board or committee meetings.
- (d) Make sure there is a clear process for the approval of major obligations such as expenditures or program funding budgets, contractual agreements.
- (e) Make sure that monthly financial reports prepared for and/or by management are available to the Board or committees, and that they are clear and communicate proper information. Make sure there is an ongoing actual to budget comparison with discrepancies explained.
- (f) Participate in risk assessment and strategic planning discussions for the future of the Board.
- (g) Ensure that the Board has addressed the sufficiency of internal financial controls and written policies that safeguard, promote and protect the Board’s assets and that they are updated regularly. A Director’s Liability Insurance Policy should be obtained to protect producers and owners from any potential liabilities caused by actions of the Board of Directors. Bonding insurance coverage will protect the Board from embezzlement. Have policies regarding disclosure and identification of fraud, records retention and whistleblower protection.
- (h) Be involved in the selection and periodic review of the performance of the Board’s CEO / GM.

## **Duty of Loyalty**

The Board should have a written “conflict of interest” policy so that all members are aware of the type of transactions that may prohibit them from joining or participating in discussions and/or decisions of the Board. Some such policies prohibit members from engaging in any transaction that may result in even the appearance of a conflict of interest. When appropriate, members should provide a written disclosure of anticipated or actual conflicts.

Directors are charged with the duty to act in the best interest of the Board. This duty of loyalty requires that any conflict of interest, real or perceived, always be disclosed in advance of joining a board or when they arise. Board members should avoid transactions in which they or their family members directly benefit personally. If such

transactions are unavoidable, they need to be disclosed fully and completely to the Board. In order to exercise this duty of loyalty, directors must be careful to examine transactions that may involve Board members. The Board must not approve any transaction that is not fair or reasonable, and a conflicted member must not participate in the Board vote on a transaction. There should be an established code of ethics in place that is reviewed and updated annually.

Any Board business involving conflicts should be fully documented in the Board's minutes, and when required, conflicts policies and disclosure statements should be discussed with the organization's auditors and legal counsel.

### **Duty of Obedience**

Boards have a duty of obedience to ensure that the organization complies with applicable laws and regulations and its internal governance documents and policies, including:

- (a) Dedicating the Board's resources to its mission.
- (b) Ensuring that the Board carries out its purposes and does not engage in unauthorized activities.
- (c) Compliance with all applicable laws.

### **Periodic Policy Review**

The purposes for which Forest Products Marketing Boards are established are defined by regulation. Periodically, Boards should undertake a full review of their internal policies and procedures to ensure that they correctly align with the purposes of the organization. The Board directors, senior management personnel and employees of the Board all need to be aware of the organization's internal policies and procedures that impact their area of responsibility. At the time of adoption of revisions of internal policies and procedures, all directors, officers, and employees should be made aware of the revisions. They should all be given a copy of the revised policy and procedures manual, and trained to understand what is expected of them in carrying out their duties. New employees and Board directors should receive training on all internal policies and procedures before they assume their responsibilities. Records of training and orientation activities should be kept to ensure that policies and procedures have been communicated properly.

Periodic review of the Board's structure, procedures and programs will assist Board directors in determining what is working well and what practices the Board might want to change in order to be more efficient, effective or responsible.



## Commission Requirements

**T**he New Brunswick Forest Products Commission has by virtue of the *Natural Products Act* the responsibility for general supervision of the seven Forest Products Marketing Boards in New Brunswick. In order for the Commission to fulfill its responsibility, a number of requirements are placed upon the Boards to file information with the Commission. The Commission may also establish the frequency and the format of much of the information to maintain consistency.

### Requirements from Natural Products Act

Some of the requirements for Boards to meet are established directly from the legislation. They include the following:

- (a) Bonding – Boards shall provide bonding for such of its officers, employees and agents as the Commission requires (*section 22(1) – Natural Products Act*). The Commission requires proof of bonding insurance from each Board annually upon renewal.
- (b) Indemnification Funds – A Board may establish and maintain a fund which may be used to indemnify or protect producers against financial loss suffered by them or on their behalf in respect of marketing a regulated product (*section 23(1) – Natural Products Act*). The Commission must approve the establishment of such a fund and the approval may be subject to terms and conditions determined by the Commission.
- (c) Borrowing or Guaranteeing Repayment of a Loan – Before borrowing money or guaranteeing the repayment of a loan, a board shall obtain the authorization in writing of the Commission, and such authorization shall be subject to such terms and conditions as the Commission may specify (*section 26(1) – Natural Products Act*). This authorization typically needs to be renewed with the Commission annually and usually coincides with renewals of bank or loan agreements.
- (d) Grants, gifts or other similar payments of money – No board shall make grants, gifts or other similar payments of money in excess of one thousand dollars to any person, association or body of persons without the approval of the Commission. The request for approval for these types of payments must be in writing.
- (e) Board Orders – Any time that a Board makes a new Order, the Board must provide the Commission with a copy of the Order, as soon as possible after it is made. Orders regarding the fixing and collecting of levies automatically require publishing in *The Royal Gazette*. For all other Orders, upon

submission of a draft of the order, the Commission will determine if the Order is within the authority vested in the Board. The Commission will not provide an opinion on the validity or enforceability of the Board's Order. The Commission will assess whether it has general application or not. Orders that in the opinion of the Commission have general application will be required to be published in *The Royal Gazette*.

- (f) Reports to Commission – Every person who in the opinion of the Commission is directly or indirectly engaged in or connected with the production, marketing or processing of a regulated product shall make, in such form and manner and within or for such time as the Commission determines, any report considered necessary by the Commission for the purposes of this Act or the regulations, orders or plans. (*Section 96 – Natural Products Act*)
- (g) Filing of Agreements – Every agreement made by a negotiating agency established by orders of the Commission or award by an arbitrator shall be filed with the Commission immediately after it is made. The Commission may, notwithstanding any defect in the establishment of the negotiating agency, by order declare the agreement to come into force on the day it is filed or such later date as is named in the agreement.

## Requirements from Commission Regulations

Under sections 19 and 28 of the *Natural Products Act*, the Commission may make regulations to prescribe the number of members (directors) of a Board and how they are elected or appointed and by-laws for the conduct of the government of a Board, provide for the establishment of advisory committees, empowering a Board to make by-laws not inconsistent with the Act, regulations or plan, and vesting of certain powers in a Board, including appointing officers and employees. The Board regulations that the Commission has made are similar, however, there are some differences. One should refer to specific Board regulations to determine the exact requirements. The requirements of the Board regulations of the Commission are generalized as follows:

- (a) District or zone meetings – The time within which the Board is required to hold district or zone meetings is prescribed. It is generally within 10 to 12 weeks of the date of the Annual meeting of the Board, or in the case of one Board is prescribed to within the months of February or March of each year. Strict guidelines are also prescribed around the public notice of such district or zone meetings. If a Board has a delegate system for voting at their annual meeting, the delegates are generally elected or registered at the district or zone meetings. The other main purpose of the district or zone meetings is to elect members (directors) and if applicable, alternates, to the Board when terms of those members are expiring.
- (b) Annual meetings of delegates or owners – The time within which the Board is required to hold their annual meeting is prescribed. It is generally within the months of April, May or June. The regulation also establishes strict guidelines with respect to public notice of the annual meeting of the Board. It also establishes the requirement of the Board to present a report of activities and



## COMMISSION REQUIREMENTS

- the financial statements at their annual meeting and who shall preside over the annual meeting.
- (c) Powers vested by the Commission – The regulations prescribe certain powers that the Commission has been given authority to vest in the Boards.
  - (d) Advisory Committees – The Commission empowers the Boards to establish advisory committees. Most are done at the Board’s leisure; however one Board requires that advisory committees are established at an annual meeting where the owners vote on the advisory committees and the membership of those committees established.
  - (e) Election of Officers – The by-laws of the regulations prescribe the time and manner in which the officers of the Board will be elected.
  - (f) Voting and Quorum – Standards on voting and quorum for meetings are prescribed in the by-laws of the regulations.
  - (g) Resignation, reprimand, and removal of members – The by-laws of the Board regulations prescribe procedures regarding the resignation, reprimand and removal from office of members. The procedure for replacement of members is also prescribed.
  - (h) Audits – The Board regulation by-laws prescribe that the books of account of the Boards be audited annually, by auditors who are appointed at the annual meetings of the Boards and approved by the Commission. It is reiterated that the audit report along with the report of operations of the Board be presented at the annual meeting of the Board and that the audit report, signed by two members of the Board (one of whom is the Chair) is forwarded to the Commission without delay. It is also prescribed that financial audits be conducted in conformity with the policy and requirements of the Commission.
  - (i) Signature on Documents – The regulation by-laws prescribe who is authorized to sign certain documents, whether employees or officers of the Board.
  - (j) Minutes, Orders and Decisions – The regulation by-law prescribes that all minutes, orders and decisions made by a Board are to be forwarded to the Commission.

### Filing Requirements by Order of Commission

Pursuant to various parts of the *Natural Products Act*, the Commission has the authority to make orders regarding the requirements of Boards to file certain information with the Commission. There are three main Orders that require Boards to file information with the Commission as follows:

- (a) Order 2005-189 Negotiating Agencies Order – This order prescribes that Boards establish negotiating agencies with the forest industry companies that they negotiate with. The Order requires that the Boards file the names and addresses of the persons (identifying spokespersons of each party) appointed to a negotiating agency no later than five business days after they have been made. It is also required that a joint report of the negotiating agency be filed with the Commission within fifteen days following the first meeting, but if a joint report cannot be agreed upon, a report from each spokesperson is to be filed within the same time period. If a negotiating agency cannot arrive at an

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agreement on any matters, the Commission shall be notified in writing. The Commission may in its discretion appoint a conciliator and submit the matters that cannot be agreed upon to a conciliator.

- (b) Order 2008-101 Reporting Requirements Order – This order prescribes that the following items shall be filed with the Commission:
- (i) minutes of all meetings of the Board;
  - (ii) all by-laws of the Board;
  - (iii) all orders, decisions or determinations of the Board;
  - (iv) all annual reports of operations of the Board;
  - (v) the letter of engagement of an auditor;
  - (vi) all audited financial statements of the Board;
  - (vii) all policy statements of the Board, including ticket or market slip policies; and
  - (viii) monthly reports of all wood sold by or through the Board.

The Order also prescribes the times within which the above items are required to be filed with the Commission. It also prescribes that if an agent is carrying out work on behalf of a Board, that the following items are also filed with the Commission within the time prescribed in the Order:

- (ix) letter of engagement of the auditor;
- (x) audited financial report of the agent;
- (xi) all policy statements of the agent;
- (xii) monthly reports of wood sold by or through the agent; and
- (xiii) reports of operations of the agent, on a monthly basis.

The Order also requires that copies of all written communications sent by an auditor to a Board or its agent be filed with the Commission within twenty (20) days and that this requirement is reflected as a condition in the letter of engagement of the auditor.

- (c) Order 2008-102 Reporting Requirements Forest Management Funds – This order prescribes specific reporting for Boards to be filed with the Commission by no later than June 30<sup>th</sup> of each year. The reporting is designed to provide detailed accounting of Boards' revenues and expenditures related to the Provincial Private Land Silviculture program and other forest management activities.

## Transportation Certificate Reporting

Regulation 2002-37 *General Regulation – Transportation of Primary Forest Products Act* requires that Boards file with the Commission a monthly report of deliveries of primary forest products, including the name of the receiver, the type, species, volume and unit of measure of any primary forest products. This reporting is due to the Commission no later than the last day of the month following the month of delivery. This regulation also requires that an annual report be filed with the Commission detailing the number of transportation certificates and who they were issued to, along with how many were not used, not returned, voided, lost or used as a transfer.



## Glossary of Terms

- Agent - means any person, association or group of persons who act for another whether for any type of remuneration or not.
- Audit - means an examination of the books of account and supporting evidence to determine the reliability of the information recorded.
- Auditor - means a person who is a member in good standing of any corporation, association or institute of professional accountants, and includes a firm every partner of which is such a person, that reviews and verifies accounts.
- Biomass - includes residual treetops, branches, foliage, non-merchantable woody stems, flail chipping residue and any other residue products of the forest that are above the ground.
- Bonding - means an agreement (such as a fidelity bond) under which a bonding or insurance company guarantees payment of a specified sum as damages, in the event one or more of the employees covered in the bond cause financial loss to the insured (employer).
- Conflict of interest - means personal interest sufficiently connected with a person's professional duties that there is a reasonable apprehension that the personal interest may influence the actual exercise of the professional responsibilities.
- Consumer - means the individual or firm that acquires primary forest products for manufacture or sale.
- District - means a district as described in the Commission regulations for the Forest Products Marketing Boards, typically coinciding with Parish boundaries.

## GLOSSARY OF TERMS

Duty of care -	means the responsibility or the legal obligation of a person or organization to avoid acts or omissions (which can be reasonably foreseen) to be likely to cause harm to others.
Duty of loyalty -	means a corporate law term used to describe a corporate fiduciary's fidelity to the company's interests.
Farm product -	includes animals, meats, eggs, poultry, wool, milk, dairy products, fruit and fruit products, vegetables and vegetable products, maple products, honey, tobacco and such other natural products of agriculture and of the forest, including wood chips and biomass produced at or on the harvest site, and any article of food or drink wholly or partly manufactured or derived from any such product that may be designated by regulation.
Fiduciary -	means a person, group of persons or association who has an obligation to act for the benefit of another, and that obligation carries with it a discretionary power.
Fiduciary obligation -	means a relationship in which the fiduciary has a discretion or power to exercise, the fiduciary can unilaterally exercise this discretion or power, and the beneficiary is vulnerable to or at the mercy of the fiduciary.
Forest industries -	means all persons or corporations engaged in the manufacturing or processing of primary forest products.
Gift -	means a voluntary transfer of funds or property without consideration.
Grant -	means the giving of a benefit, including money, from a fund.
Indemnification -	means the making good of a loss which someone suffered through another's act or default.
Levy -	means the execution of legislative power which charges on a person or property the obligation of or liability for a tax.
Marketing -	means buying, selling or offering for sale, and includes advertising, financing, assembling, storing, packing, shipping and transporting in any manner by any person.
Minister -	means with respect to farm products of the forest, the Minister of Natural Resources, and includes a person designated by that Minister to act on that Minister's behalf.

## GLOSSARY OF TERMS

- Order - means an order made under the *Natural Products Act* or the regulations or continued under the *Natural Products Act*.
- Plan - means a plan referred to in section 18 or a plan in a regulation referred to in paragraph 112(1)(a) of the *Natural Products Act*.
- Plebiscite - means the referral of an issue to the population to decide by vote.
- Primary forest products - means (a) any unmanufactured product of forest trees of hardwood or softwood species, and (b) wood chips and biomass produced at or on the harvest site, but does not include (c) coniferous trees cut for sale as Christmas trees, and (d) products from the sap of maple trees.
- Private woodlot - means all forest land except: (a) forest land owned by the Crown; (b) forest land owned by a person whose principal business is the operation of a wood processing facility, unless the main function of the wood processing facility is the production of wood chips and biomass at or on the harvest site; and (c) forest land consisting of an aggregate area of at least 100 000 ha which is owned by the same person or persons.
- Processor - means any person who utilizes primary forest products in a manufacturing process or changes the form of primary forest products by mechanical means and markets the forest products so utilized.
- Producer - means a person who produces primary forest products for sale from a private woodlot.
- Producer association - includes marketing boards, cooperatives and other associations established for the marketing of primary forest products.
- Regulated area - means the area of jurisdiction established for a specific Board in the *Forest Products Marketing Board Plan Regulation – Natural Products Act*.
- Regulated product - means a farm product for which a plan in respect of the purpose or purposes referred to in subsection 18(1) is in force, or for which a plan in a regulation referred to in paragraph 112(1)(a) of the *Natural Products Act* is in force.