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Dear Chairs:

USE OF REGULATORY AUTHORITY IN DISEASE INSURANCE – JURISDICTION AND SOUND MARKETING POLICY CONSIDERATIONS

I write to follow up previous correspondence and discussion on the subject. As advised in the June 5, 2013 letter from the BC Farm Industry Review Board (BCFIRB), members of this board met on June 11-12, 2013 to further review this matter. This letter represents the outcome of those deliberations. Some of the information below will duplicate that which was communicated previously but is repeated here for the record.

Overview

Firstly, as communicated initially in BCFIRB's letter of March 3, 2011, I confirm that this board "has no objection in principle to the industry establishing a poultry insurance program in some form as producer risk management does support the agri-food sector generally". BCFIRB also understands that this is consistent with the objectives for business risk management programs under Growing Forward 2.

I also confirm, however, that the issue outstanding for BCFIRB as the supervisory agency and the four poultry boards as first instance regulators remains as follows:

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...the proper legal and marketing policy authority of regulators where such a program is proposed to be mandatory under the *Natural Products Marketing (BC) Act (NPMA)*.

As noted in our June 5, 2013 letter, under s. 7.1 of the *NPMA*, BCFIRB has the statutory authority and responsibility to at any time exercise its supervisory powers in a manner it considers appropriate to the circumstances. The question for BCFIRB here, as it was in providing its supervisory approval for the poultry boards to implement mandatory biosecurity requirements, has been whether supervisory involvement is appropriate at this stage, and if so what form it should take.

BCFIRB's June 5 letter was explicit in stating that given "the importance, systemic scope, novelty and implications of this issue, it is assessed that decisions concerning legal authority and sound marketing policy should follow an appropriate supervisory decision-making process". If the levy and captive insurance proposal were to be implemented without a thorough prior assessment of its legality and compliance with sound marketing policy under s. 9 of the *NPMA*, a future challenge could be "highly disruptive, costly and detrimental to all concerned given the complexity of creating and implementing the proposed insurance scheme in the first place".

In BCFIRB's view, the prospect of a future challenge of mandatory poultry insurance in BC is significant whether by way of appeal to BCFIRB, as a result of a poultry board enforcing its orders in a court proceeding, or through some other means. Such a challenge, which might arise from any single commodity, regional interest or stakeholder, could potentially call into question the jurisdiction of all the boards to implement mandatory poultry insurance under the *NPMA*.

Given the foregoing, BCFIRB has determined that it is strategic, efficient and in the overall interests of the BC poultry sector to address the outstanding issue in its supervisory capacity.

Directions to the Poultry Boards Regarding the Regulatory Issues

BCFIRB will be addressing the outstanding issues in two phases. The first phase will require the four boards to provide a joint submission to BCFIRB that incorporates a risk management, principles/outcomes based approach using SAFETI (strategic, accountable, fair, effective, transparent, inclusive) principles while also assessing their legal authority under the *NPMA* to implement mandatory poultry insurance as a matter of sound marketing policy in accordance with s. 9 of the *NPMA*.

In posing the detailed questions below, BCFIRB is of course aware of the history and considerable work undertaken in regards to Avian Influenza (AI) issues as reflected in 'A *Strategic Plan for Risk Mitigation of Avian Influenza*' for example. We are anticipating that the boards, as part of their own due diligence to date with respect to poultry insurance, will have much of the information and answers required already available to include in their formal submission to BCFIRB's own decision-making process.

If BCFIRB subsequently finds that mandatory insurance is sound marketing policy and within the jurisdiction of the *NPMA*, the second phase will involve a similar joint submission from the four boards addressing certain specifics of the captive insurance proposal as currently structured.

The submissions received in both phases will be posted to BCFIRB's website and there will be an opportunity for other stakeholders to comment on these submissions, with a final opportunity for the boards to reply prior to BCFIRB making its supervisory findings.

First Phase Questions

The boards' joint submission is to include detailed and supported answers to the following:

Background

1. Describe the origins, nature, location and impact on the poultry industry of the AI outbreak in 2004-05, the losses that resulted and the impact on the production and marketing cycle in British Columbia.
2. Describe the measures that were taken within the poultry industry and by the poultry boards during and in the aftermath of the outbreak (for example, quota leasing) to minimize the interruption in the production and marketing cycle. Describe the extent to which those measures did and did not succeed in maintaining the provincial production and marketing cycle for each commodity, and any significant unintended benefits or adverse consequences that arose from the measures that were taken.

Government Programs

3. Describe the terms, conditions and operation of any government (federal and provincial) programs that currently exist for producers respecting a future AI outbreak related to (a) cleaning and disinfecting costs; and (b) business losses. Your description should include reference to any compensation program, loan program or taxation program available in the event of losses due to AI.
4. Describe the length of time it took producers in the various industries to return to production following the last AI outbreak.
5. How effective were the government programs that existed in 2004-05 in assisting producers to return to production?
6. How did the time it took for individual producers to return to production compare with the time it took each poultry sector to return to overall provincial production in view of the interim measures (e.g. leasing) put in place in the wake of the outbreak?
7. How if at all have these government programs changed since the AI outbreak of 2004-05?
8. Do the current programs provide for compensation funds paid prior to any insurance claims? If so, how would that impact a producer's return to production?

Private insurance

9. What private insurance products are currently available for producers relating to a future AI outbreak, what do they cover (e.g., cleaning and disinfecting costs alone, business losses alone, or both?) and what do they cost?
10. If a producer purchases private insurance, how would such purchase affect a producer's return to production?

Rationale for regulatory action

11. Why do the boards consider that, despite existing government and private insurance products, and despite the measures put in place to restore the provincial marketing cycle in 2004-05, the boards' regulatory action is necessary to satisfy the purposes of s. 2(1) of the *NPMA*:

2(1) The purpose and intent of this Act is to provide for the promotion, control and regulation of the production, transportation, packing, storage and marketing of natural products in British Columbia, including prohibition of all or part of that production, transportation, packing, storage and marketing.

12. How, if at all, has this issue been addressed from a regulatory perspective by provincial commodity boards in other provinces and what is the current status of those regulatory measures in those provinces? Which provinces require mandatory insurance? Which use cleaning and disinfecting standards? What other regulatory approaches are used?
13. Apart from the current proposal to impose levies for the purposes of capitalizing and funding a captive insurance company, what other regulatory options did the boards consider, how did they differ from the current proposal, and why were they rejected?
14. Without limiting the other options the boards may have considered, what is the boards' assessment of the following regulatory options in terms of their ability to satisfy the purposes of s. 2(1) of the *NPMA* with reference to a potential AI outbreak?
 - (a) More rigorous and enforced cleaning and disinfecting standards.
 - (b) A requirement that producers obtain private insurance for cleaning and disinfecting and/or business losses, without requiring them use a specific provider.
 - (c) The use of contingency funds to assist individual producers where the board is satisfied during an outbreak that "gap" funds are necessary to restore the production and marketing cycle.
15. What is the boards' assessment of the view that, if levies are imposed to capitalize and fund a captive insurance company, the burden of those levies should fall most heavily on the lower mainland producers on the basis that that is the area of greatest risk?

Consultation

16. Describe the details of industry stakeholder consultation and any producer plebiscites the boards have conducted in relation to this proposal to date.
17. Describe the feedback and competing views the boards have received, including any regional differences in feedback and the nature of those differences. If plebiscites were conducted, provide the date of each plebiscite, the specific questions asked, the response rate, and the breakdown of responses according to region.

Legal Issues

18. Do the *NPMA* and the *Schemes* authorize the poultry boards to: (a) require producers to obtain insurance, (b) pay producers from contingency funds for AI related losses or (c) impose levies to fund the proposed captive insurance company?
19. Please ensure your analysis includes a discussion of whether or how the exercise of such regulatory authority would promote the purposes of s. 2(1) of the *NPMA*. With regard to questions 18(b) and (c) in particular, please address separately the following components: (a) funds for cleaning and disinfecting costs, and (b) funds for business interruption.

These questions are not intended to limit the boards in providing BCFIRB with all information they consider relevant to BCFIRB's consideration of this matter. The boards are encouraged to provide all appropriate context, documents or reports that will assist in providing the background for their answers to the questions and areas posed above. BCFIRB reserves the right to follow up with the boards on specific issues arising from its submission before inviting stakeholder comment, or at any other time during the supervisory review.

Questions for the Potential Second Phase

The phase one questions, along with others specific to the proposal, will carry over should the review proceed to the second phase which would consist of a detailed examination of the captive insurance proposal as currently structured. In order to facilitate a timely transition to phase two should it be necessary, BCFIRB will continue its development of questions specific to that phase in consultation with the boards and their representatives.

Timing

It will be incumbent upon the boards to provide the submissions necessary for BCFIRB to make an informed decision. BCFIRB will work with the boards to establish a timely process that allows an opportunity for stakeholder input on the submissions received.

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June 19, 2013
Page 6

Outcome

The potential outcomes of the review include enabling the poultry boards and commission to proceed with implementation of mandatory poultry insurance or making public recommendations to government addressing legal concerns arising from the review with respect to jurisdiction under the *NPMA*.

If there are any questions, please have them directed to the BCFIRB office.

Yours truly,



Ron Kilmury
Chair

cc: Derek Sturko, Deputy Minister
Ministry of Agriculture

BCFIRB web site