



March 3, 2015

File: 44200-70 POULTRY INS

DELIVERED BY E-MAIL

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Chair
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Dear Chairs:

POULTRY DISEASE INSURANCE – SUPERVISORY DECISION FOLLOW-UP

Given recent questions from several poultry boards and other stakeholders on the above subject, the BC Farm Industry Review Board (BCFIRB) takes this opportunity to follow-up with all the poultry boards on its August 14, 2014 [Supervisory Decision – Sound Marketing Policy and Board Authority – Mandatory Poultry Disease Insurance](#). It is also further to the December 23, 2014 letter¹ in relation to use of contingency funds and avian influenza.

This letter reviews BCFIRB's August Order. It also looks ahead to what it may mean for poultry boards if potential amendments to the *Natural Products Marketing (BC) Act (NPMA)* go forward.

Background

A group of BC poultry producers seeks to establish a captive insurance company (to be owned and operated by the producer associations) which would provide insurance coverage to licensed producers against low and high pathogenic avian influenza outbreaks. The original proposal reviewed by BCFIRB was based on the poultry boards using an assumed authority under the *NPMA* to: (a) make

¹ BCFIRB. December 23, 2014. [Avian Influenza and Use of Contingency Funds](#).

avian influenza insurance mandatory for licensed producers; and, (b) collect levies for the purposes of producers' premiums as well as capitalizing and operating the captive insurance company.

Given the proposed approach to insurance involved exercise of poultry board authority under the *NPMA*, BCFIRB, as the Provincial supervisory agency, was responsible for initially determining the following:

- Whether mandatory insurance falls within the poultry boards' legal authority; and,
- Whether mandatory insurance accords with sound marketing policy.

BCFIRB's Order

Following a full review, BCFIRB's August 14, 2014 decision ordered:

...the boards are directed not to exercise their regulatory authority under their schemes at this time for the purpose of supporting the proposed captive insurance company.

Given BCFIRB's order, BCFIRB would expect no funds garnered under the regulatory authority of the poultry boards have or will be used directly or indirectly in establishing the captive insurance company at this time. As first instance regulators, poultry boards are responsible for funds collected and distributed under authority of the *NPMA*.²

Amendments to the *Natural Products Marketing (BC) Act*

In its August 2014 decision, BCFIRB stated:

Our own analysis still indicates that a significant degree of uncertainty exists as to whether any form of mandatory poultry insurance is currently authorized under the *NPMA*.

The issue of whether or to what extent the *NPMA* should be amended to authorize boards to make insurance mandatory is before government for consideration. The content and timetable for any such amendment is a matter within the exclusive purview of government.

Sound Marketing Policy

With respect to the captive insurance company, BCFIRB stated the following as a matter of sound marketing policy:

BCFIRB remains unconvinced that mandatory insurance (an extra level of regulation) *for the purposes of establishing and operating a captive insurance company* to provide coverage for avian influenza contributes effectively and strategically to orderly marketing beyond the authorities and tools already in place.

BCFIRB is not satisfied that the proposed captive insurance company, which would be established and operated with monies collected using poultry board authority under the *NPMA*, accords with sound marketing policy.

What this means for poultry boards looking forward

² BCFIRB's general financial accountability expectations are reflected in the December 18, 2013 [Rainbow Poultry Ltd. et al v. BC Chicken Marketing Board decision](#) and the March 14, 2014 follow-up letter to general managers (attached).

If the *NPMA* is amended in this area there will be several considerations for regulatory boards:

1. In general, all boards and commissions must ensure any exercise of that authority is undertaken in accordance with the following:
 - Use of an appropriate SAFETI³ process to determine what, if any, insurance may be required to help ensure orderly marketing.
 - Ensure the resulting decision(s) reflects legal and sound marketing policy considerations.
 - Decisions and rationale are made publicly available in a timely manner.⁴
2. BCFIRB's August 14, 2014 Order directed to the poultry boards would remain in effect until such time as BCFIRB has issued further direction following review of any future proposal and rationale by the poultry boards pursuant to any new statutory framework.

Specific decisions by any board regarding insurance matters that fall outside of the framework provided by BCFIRB supervisory direction would be appealable under s. 8 of the *NPMA*.

Concluding comments

BCFIRB continues to acknowledge insurance as an important risk management tool for producers and recognizes insurance can be part of sound marketing policy. Poultry sector efforts to address potential gaps in insurance coverage are a good example of proactive stakeholder action for the benefit of BC agriculture.

To reiterate – if the *NPMA* is amended BCFIRB's Order to the poultry boards remains in effect until such time it is amended. In relation to insurance generally, all boards and commissions are expected to use the SAFETI principles to assist in determining 'sound marketing policy' and their decisions be legally defensible in terms of process and outcome.

³ Strategic, Accountable, Fair, Effective, Transparent, Inclusive

⁴ BCFIRB Service Plan (2015/16) **Goal 2:** A principles-based, outcomes-oriented approach to regulation; Performance Measure 5: Marketing board and commission orders, decisions and determinations are published promptly after being made in order to preserve rights of appeal under the *Natural Products Marketing (BC) Act*.

Casey Langbroek
Robin Smith
Brad Bond
Ralph Payne
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If you have any questions, please contact BCFIRB.

Yours truly,

A handwritten signature in black ink, appearing to read "John Les". The signature is fluid and cursive, with a large loop at the beginning and a long tail that loops back under the main body of the signature.

John Les
Chair

Attachments

BCFIRB AI and Use of Contingency Funds – December 23, 2014
BCFIRB Financial Accountability – March 14, 2014

cc: James Mack, Assistant Deputy Minister
Agriculture Science and Policy
Ministry of Agriculture

Jack Brown, Chair
BC Cranberry Marketing Commission

Gary Rolston, Chair
BC Hog Marketing Commission

Jim Byrne, Chair
BC Milk Marketing Board

Alf Krause, Chair
BC Vegetable Marketing Commission

BCFIRB web site