



May 6, 2014

File: 44200-70 POULTRY INS

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Dear Chairs:

JURISDICTION AND SOUND MARKETING POLICY CONSIDERATIONS FOR DISEASE INSURANCE – SUPERVISORY REVIEW PART I

Thank you for your Joint Poultry Industry Submission¹ (Submission) made in response to the June 2013 list of supervisory questions posed by the BC Farm Industry Review Board (BCFIRB).² The board met to discuss the Submission, along with initial stakeholder and public comment made in response, and has directed me to advise you of its deliberations to date.

In summary, BCFIRB is requesting further clarification and substantiation on specific points to support its decision making.

Supervisory Review Overview

The purpose of the Submission is to provide information to support BCFIRB in determining if mandatory insurance falls within the BC poultry boards' legal authority and if it is in accordance with sound marketing policy under the *Natural Products Marketing (BC) Act (NPMA)*.³

¹ January 17, 2014

² ["Use of Regulatory Authority in Disease Insurance – Jurisdiction and Sound Marketing Policy Considerations"](#) - June 19, 2013

³ Phase I of the [Poultry Insurance Supervisory Review](#)

In other words, can it be clearly demonstrated through substantiated policy and legal arguments that mandatory insurance (an extra level of regulation) contributes to the purposes of orderly marketing?

As previously communicated⁴ there are wide-reaching implications for the poultry sectors and the public interest resting on these BCFIRB decisions. In order to reach an accountable decision BCFIRB is using the principles-based regulation and SAFETI⁵ approach.

Should BCFIRB determine that there is a policy and authority basis for mandatory insurance, Phase II will be initiated to consider details such as the proposed industry funded and operated insurance company.

Request for Further Clarification and Substantiation

After reviewing the Submission, BCFIRB is requesting the poultry boards provide further clarification/substantiation on a few points through the following questions.

Sound Marketing Policy

1. The Submission states that the overall intended outcome of mandatory insurance is a timely return to marketing.

In light of the regulatory incentives and authority currently in place (e.g. guaranteed market and price; board authority to withdraw license, cancel quota, establish price/production pools) that help ensure quota is produced in a timely fashion - what is the potential effectiveness of mandatory insurance in comparison?

In addition to the cleaning and disinfecting argument in the Submission, are there other roles mandatory insurance would play in supporting orderly marketing?

2. The Submission notes that mandatory insurance is one component of a long-established integrated risk mitigation strategy and that the other components have been largely addressed.

Has the assessed risk for Avian Influenza (or other disease outbreak) changed from when the strategy was developed? And if so, to what degree, and does the change influence the need for mandatory insurance to help ensure orderly marketing?

3. The Submission raises the point of insurance transferring risk from the boards and reducing the need for contingency funds.

For what purposes can the poultry boards establish and support, legally and in accordance with sound marketing policy, contingency funds under their individual Scheme's and the NPMA?

4. The poultry boards are also invited to consider and comment on questions arising out of BCFIRB's initial sound marketing policy analysis set out in Appendix A - Sound Marketing Policy.

⁴ e.g. April 19, 2013 meeting, June 19, 2013 letter, BCFIRB web site

⁵ Strategic, Accountable, Fair, Effective, Transparent, Inclusive

Casey Langbroek
Robin Smith
Richard King
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May 6, 2014
Page 3

Legal Authority

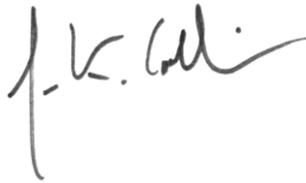
The three legal opinions⁶ accompanying the Submission appear to provide differing assessments as to whether the poultry boards can establish a proper link between mandatory insurance and the purpose of orderly marketing. However they do not provide substantive arguments addressing both sides of the legal question. As such, BCFIRB will take the following approach:

Rather than request further legal opinion at this time, BCFIRB believes the most resource efficient approach is to continue to examine initially whether mandatory insurance is consistent with sound marketing policy. It is at the poultry board's discretion if they wish to provide further legal opinion at this time, including with respect to BCFIRB's question #3 in regards to contingency funds.

Closing

Please contact BCFIRB staff if there are any questions about the additional information being sought at this time. Given the importance to the BC poultry industry of moving this issue forward and the substantive amount of work done to date by the poultry boards, as part of its upcoming process BCFIRB is prepared to hold a joint meeting with the boards in support of clarifying any information requirements and outstanding questions.

Yours truly,



Jim Collins
Executive Director

cc: David Coney, Ministry of Agriculture

Harvey Sasaki, Contractor

BCFIRB web site

⁶ Hrabinsky, Robert. March 11, 2011. General Advice – Use of Levy Proceeds to Pay Premiums or to Self-Insure.

Hunter, Claire E. February 14, 2013. Collection of grower levies by The British Columbia Chicken Marketing Board ("Board") for the purchase of avian flu insurance.

Wilson, David and Anna Turinov. August 29, 2013. Regulatory authority of BC marketing boards to impose mandatory producer insurance.

APPENDIX A

Sound Marketing Policy

The following sets out some of BCFIRB's questions arising from an initial analysis of mandatory insurance in light of sound marketing policy. This should be considered only as an initial overview of some of BCFIRB's considerations. The purpose of this document is to assist the boards in providing information in support of BCFIRB's decision-making.

The board has reaffirmed its view that insurance can play an important role as a producer risk management tool in support of the agri-food sector, and is consistent with the objectives for business risk management programs under the federal-provincial Growing Forward 2 agreement.⁷ While these are not the core issues for BCFIRB to decide, they do form part of BCFIRB's sound marketing policy considerations in relation to mandatory insurance.

Timely Return to Orderly Marketing

The Submission argues mandatory disease insurance would facilitate timely industry recovery, including a return to orderly marketing, by eliminating cleaning and disinfecting cost barriers for producers as seen in 2004. It states that the overall intended outcome of mandatory insurance is a timely return to marketing.

BCFIRB Questions Arising

The Submission notes only one farm out of forty two delayed cleaning and disinfecting in 2004. It is unclear in the Submission whether this was due to cost barriers. BCFIRB is also aware that there may have been other production units that were slow in cleaning and disinfecting at the time, perhaps in relation to cost recovery. However, it is not clear whether that was a cost barrier for those producers. BCFIRB also understands that the cleaning and disinfecting costs were covered by the poultry boards in 2004.

It appears from the Submission that the primary factors significantly influencing overall recovery time were natural production cycles; consumer demand; and, quota scheduling – not delays due to cleaning and disinfecting .

Given that producers are guaranteed a market and a price, is there not a strong motivation to return to production as soon as possible in order to recoup any business loss? In addition to this incentive, the Submission notes that return to production is "...established by boards in accordance with orderly marketing principles that ensure that the supply of BC poultry products matches BC demand." Producers are obligated to ensure quota is produced, and boards have the authority to ensure it is produced. Given these current regulatory incentives and authority there seems to be a question as to whether insurance would be required to facilitate prompt production recovery through covering cleaning and disinfecting costs.

It is possible that some producers may have difficulty managing the unexpected expense of an AI outbreak to the point of going out of business, thus delaying industry return to orderly marketing. It is our understanding that government payments (legislated compensation and additional funds) in the 2004 outbreak played a role in supporting producers.

⁷ As first communicated in BCFIRB's letter of March 3, 2011 and again in the June 19, 2013 supervisory review letter.

Another consideration is the impact of non-regulated poultry producers' on the time it takes to return to production. For instance, ducks, geese and other bird producers could not be required to hold insurance under the current proposal. Any delay in cleaning and disinfecting these farms could influence the time to return to marketing for the regulated producers.

Finally, given the nature of insurance, there is no guarantee compensation would be paid out to a producer in a timely manner or at all. It will be dependent on whether the producer has met the insurance conditions. Cleaning and disinfecting may still be delayed if a producer is dependent upon an insurance payment for which they may not be eligible. BCFIRB is aware that the plan under mandatory insurance would be to base insurance conditions on current mandatory biosecurity standards. However, taking the longer-term outlook, this seems subject to change given insurance policy conditions are controlled by the insurance companies and not the boards.

Standards and Surveillance – Disease Prevention and Management

The Submission argues that mandatory insurance would add discipline and rigor to manage production consistent with the mandatory biosecurity and animal health protocols – thus minimizing risk of a catastrophic outbreak. In particular, it also argues mandatory insurance would encourage early diagnosis through active surveillance systems and voluntary submissions for testing.

BCFIRB Questions Arising

First, BCFIRB observes that normally insurance companies do not act as monitors. They assess and evaluate compliance with their policy after a claim is made.

The implication that there is a gap in applying discipline and rigor to current mandatory standards and surveillance is concerning. There is the possibility that insurance (notorious for refusing coverage based on failure to meet policy requirements) may add another layer of prevention but it is not yet clear to BCFIRB how much would be gained from this extra 'step' in prevention.

Mandatory insurance would forestall issues with 'bad actors' – the risk that an uninsured producer could be enjoying greater disease protection thanks to the good actions of his neighbor, as well as increasing the risk to their neighbor that their neighbor would then have to cover (increasing premiums). But it does not address a neighbor who may not be producing a regulated poultry product – could they become a 'bad actor' outside of the control of mandatory insurance?

As to voluntary reporting, insurance may have the opposite result based on moral and morale hazard arguments. To BCFIRB's understanding, moral hazard is where a person may take more risks because the end costs will be borne, at least in part, by others. Morale hazard is similar, but rather than imply a propensity to take more risks, it implies the person will be less than fully diligent in avoiding risk.

Given there are already active surveillance systems in place, BCFIRB is unclear how mandatory insurance would enhance or complement the current surveillance system. Is the Submission implying the insurance industry may lend support to current surveillance efforts?

Given the above, BCFIRB at this time considers it is possible mandatory insurance may assist in disease prevention, but questions whether mandatory insurance would increase voluntary reporting.

Contingency Funds

The Submission argues mandatory insurance could reduce the amount held in board contingency funds through the transfer of risk. It also argues that since contingency funds are authorized under the purpose and intent of the *NPMA*, by extension, so is transferring risk to an insurance company. Finally the Submission alludes to coverage for business loss and a connection with board marketing and production cycles that would lessen the disruption to orderly marketing.

BCFIRB Questions Arising

No comparison was provided between the purpose of an insurance policy and the purpose of board contingency funds. Upon a BCFIRB staff request for current contingency fund policies, BCFIRB learned that the BHEC does not have a contingency fund for disease loss; the CMB has a fund for unforeseen circumstances (used in 2004 to provide compensation for profit margin); EMB did collect levies post 2004 to cover the EMB's AI outbreak related expenses but the contingency fund is reported to be no longer in place; and the TMB has a reserve fund to be used in contagious disease events.

BCFIRB understands the importance of managing risk, including the opportunity to transfer risk. Currently, two of the four boards have some sort of contingency fund in place as one means of general risk management. Producer-held insurance would likely help to transfer some risk from not only the boards (regardless if they have a contingency fund), but also from the government. It is however unclear if a transfer of this risk would reduce the need for other risk management tools or funding for these tools. That would likely depend on what other risks (and the associated level compared to AI) exist in the industry both now and in the future (e.g. a disaster such as a flood or an earthquake).

As the intent and potential use of board contingency funds may not fully align with mandatory insurance, is it logical to infer that a transfer of 'this risk' to an insurance company would be authorized under the *NPMA*?

Given the information above, at this time BCFIRB acknowledges mandatory insurance would transfer risk from the boards (assuming the risks covered by insurance are similar risks that could be covered by the boards). To what degree that risk would be transferred, what the impact would be on contingency funds (where they exist) and other factors remain as outstanding questions.

Government Agriculture Policy

The Submission argues mandatory insurance is in line with federal and provincial government policy, received support from the Ministry of Agriculture and will contribute to government savings.

BCFIRB Questions Arising

Government policy is an important consideration for BCFIRB and the boards. If an insurance policy covers some or all of the same items as government catastrophe compensation, mandatory insurance would likely contribute to government savings. Mandatory insurance would likely not contribute to government savings if the policies provided coverage in addition to, or 'topped up' government funding. BCFIRB notes there is also some question as to what level of support government would provide industry in the face of a catastrophic event in the future.

Industry Support

The Submission argues there is extensive producer engagement and support.

BCFIRB Questions Arising

Given the approach taken by the plebiscites, it is impossible to separate out producer support for insurance, mandatory insurance, development of a BC producer association-owned insurance company, the relationship of producer associations with this company, the proposed insurance policies and the use of board funds to establish and operate the insurance company.

At this time, BCFIRB observes that generally there seems to be a less than conclusive level of participation demonstrated across the poultry sectors in the plebiscites. It is not possible to conclude from the information provided if there is general support for mandatory insurance.

Options to Mandatory Insurance

The Submission proposed, and argued against, three options to mandatory insurance: contingency funds; more rigorous and enforced cleaning and disinfecting standards; and producer bonds.

BCFIRB Questions Arising

The use of contingency funds is discussed under “Contingency Funds” above.

Arguments comparing enhanced cleaning and disinfecting standards versus mandatory insurance do not appear substantive. It seems fairly clear boards have the option of setting standards as part of the mandatory biosecurity standards – a process which appears to be already going ahead. If time is an issue, and in the face of the reported importance of cleaning and disinfecting to ensure timely industry recovery, should cleaning and disinfecting standards not have been considered earlier?

It is difficult to assess the effectiveness of producer bonds as the only information provided was if they would be another cost to the system. However, so too would be mandatory insurance or any other risk management measure.

Mandatory insurance may address broader risk, and hence compensation coverage than the proposed options. However, would management of those broader risks fall within sound marketing policy and the authority of the boards?

Predictable Compensation

The Submission argues one of the purposes of mandatory insurance would be to provide predictable and timely compensation in the event of a loss.

BCFIRB Questions Arising:

BCFIRB observes that it can take time to pay out legislated government compensation (and potentially additional support funds depending on current government risk programs and other measures). It is possible insurance may result in more timely compensation. This may, in turn, influence whether a producer goes out of business or not, impacting a timely return to orderly marketing.

Generally insurance companies apply rigorous standards before paying out – there is no guarantee a producer will have their claim satisfied. As to a predictable amount, the amount paid out may also be based on how many claims are filed. On the other hand, although some government compensation is currently set out in legislation, it is also not guaranteed to be available in the future.

Consumer Impact

The Submission transmittal letter argues mandatory insurance does not impact consumers directly, although there were no discussions of the impact of premiums on the cost of production.

BCFIRB Questions Arising

BCFIRB is reserving judgment at this time as to whether insurance premiums should or should not be included in the cost of production. Another more fundamental question is whether mandatory insurance would support the purposes of orderly marketing by providing BC product to processors and ultimately ensuring a supply to the stores for consumers (timely return to marketing)?