



September 9, 2015

File: 44200-60/POUL INS

DELIVERED BY EMAIL

Harvey Sasaki
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Dear Harvey:

**MANDATORY DISEASE INSURANCE REVIEW AND ASSESSMENT – DRAFT
WORK PLAN**

Thank you for the opportunity to comment on the draft *Mandatory Disease Insurance Review and Assessment Work Plan*.

Given that some of the general observations and questions that arose in reviewing the Work Plan are more directed at the poultry boards and commission (poultry boards), I am copying this letter to them. This is to ensure that the comments, most of which reiterate previous communications, are provided directly to the first instance regulators.

The BC Farm Industry Review Board (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, such as in the Work Plan, to address potential gaps in insurance coverage are a good example of proactive stakeholder action for the benefit of BC agriculture.

BCFIRB understands that the intent of the Work Plan is to conduct a thorough, balanced review of whether mandatory¹ Notifiable Avian Influenza (NAI) insurance should be implemented in BC by the poultry boards. If the answer is yes, the Work Plan then sets out a potential path to establish how mandatory NAI could be implemented. Our board considers it essential that the poultry boards will determine in the first instance whether the Work Plan will deliver – through a

¹ A non-mandatory outcome would not require the poultry boards or BCFIRB to exercise their authority.

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demonstrated SAFETI²-based approach – the information they require to make decisions that are in compliance with their schemes and in accord with sound marketing policy.

BCFIRB appreciates the suggestion that it be part of the project steering committee. However, given BCFIRB's responsibility under the *Natural Products Marketing (BC) Act (NPMA)* to make an independent decision(s) with respect to a potential mandatory NAI insurance proposal, and the history of this file to date, the invitation is respectfully declined. Staff is available to discuss, as appropriate, BCFIRB-related questions that may come up as part of the project and will continue to provide as much input as possible without fettering this board's decision-making.

The following comments are based on BCFIRB's Order and Findings in its August 14, 2014 supervisory decision³ as well as other correspondence.

Project funding

In its August 2014 decision, BCFIRB issued the following order to the poultry boards:

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

Should one or more of the board propose proceeding with a more limited regulatory solution, that solution is to be submitted to BCFIRB, with rationale, for prior supervisory approval.

Given the Work Plan proposes the poultry boards would partially fund delivery of the project (\$68,310), and assuming the poultry boards use levies collected under the authority of the *NPMA* as the source of funding:

The Work Plan must very clearly reflect, in both its purpose and content, that it is considering the need for and viability of mandatory NAI insurance vs. aimed at establishing the proposed captive insurance entity.

As it is currently drafted there could be reasonable questions asked as to whether the Work Plan is fully considering all regulatory and insurance combinations and options for how to effectively and efficiently return the industry to orderly marketing in the event of an avian influenza outbreak. For example, it is unclear if, as part of the Work Plan, that consideration will be given to premium structures, policy wording and actuarial assessment in relation to currently available insurance options alongside the option of forming an insurance entity.

The Work Plan should clearly reflect that it is considering both the need for and viability of mandatory NAI insurance in general and is not just acting as a proxy for building the case for the proposed captive insurance entity. If such an approach is not taken, BCFIRB prior approval should be sought before the poultry boards provide funding as per the August 2014 Order.

² Strategic Accountable Fair Effective Transparent Inclusive

³ [Supervisory Decision – Sound Marketing Policy and Board Authority – Mandatory Poultry Disease Insurance](#). August 14, 2014.

Mandatory insurance and poultry board authority

In its August 2014 decision BCFIRB concluded that the:

...high level of legal uncertainty and prospect of challenge is such that proceeding to implement mandatory poultry insurance in the absence of clear legal authority under the *NPMA* is not in the best interest of the BC regulated poultry sector.

Subsequently, the *NPMA* was amended to allow for marketing boards and commissions to require licensed producers hold insurance as specified (effective May 14, 2015).

Poultry boards now have explicit authority to implement mandatory insurance that meets sound marketing policy considerations. However, any options related to mandatory insurance which propose additional uses of board authority (e.g., insurance company access to biosecurity compliance data, applying levies to pay for insurance premiums) may raise new legal questions that would have been addressed.

Mandatory NAI insurance and sound marketing policy

As reflected in the June 9 Joint Submission from the poultry boards and quoted in BCFIRB's August 2014 decision the core sound marketing policy question is:

How to effectively and efficiently return the poultry industry to a system of orderly marketing?

BCFIRB concluded that:

[s]ubject to the boards clearly establishing where regulatory gaps could be filled by mandatory insurance, BCFIRB does agree in principle that a limited authority to require mandatory insurance (i.e., as a condition of producer license) could accord with sound marketing policy. Such measures could also allow for boards and individual producers to assess and establish insurance requirements based on the needs of their industry, their region and other risk management measures over time. BCFIRB does not agree, in the face of significant outstanding policy and legal questions at many levels, that poultry boards participating in the proposed formation and operation of a captive insurance company accords with sound marketing policy.

[emphasis added]

This means that any submission from the boards will need to address the outstanding sound marketing policy questions in BCFIRB's August 2014 decision, along with other questions that may arise (such as those referenced in my May 12, 2015 letter).

Prior Approval

Normally the changes to the *NPMA* would provide the poultry boards with the discretion to implement mandatory insurance without BCFIRB prior approval. Any decision made by a poultry board would then be subject to appeal in terms of whether the decision was compliant with the governing scheme and in accord with sound marketing policy.

In this case, however, and despite the amendments to the *NPMA*, BCFIRB remains of the view that “the prospect of a future challenge of mandatory [NAI] poultry insurance” is still “significant” and for the reasons reiterated below, will continue addressing this matter in its supervisory capacity as per its August 14, 2014 Order. The poultry boards must conduct themselves accordingly.

Decision-making

Finally, I think it is important to reiterate what BCFIRB has already stated with regard to the importance of decision making – by both itself and the boards – in these circumstances. First, from a June 19, 2013 letter:

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...

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.

The importance of decision making was shared again in the May 12, 2015 letter:

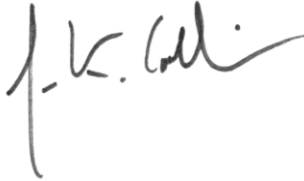
Therefore boards in the first instance and, as the supervisory board, BCFIRB in the second instance are governed by the *NPMA* and the principles of natural justice must be taken into account in making decisions to implement such programs in future.

This includes, as required in s. 9 of the *NPMA*, ensuring that any decisions are in compliance with a scheme enacted under the *NPMA* and “accord with sound marketing policy”. Also under s. 8 of the *NPMA*, persons aggrieved by or dissatisfied with such decisions have the right of appeal to BCFIRB. Should BCFIRB determine that it is in the best interest of the industry and public to address a matter in its supervisory capacity, and therefore remove the right of appeal from affected persons, it remains incumbent upon BCFIRB to meet the statutory obligations of the *NPMA* and to ensure that its processes are appropriate to the decision being made.

I hope these comments will assist in finalizing a Work Plan that includes a thorough, balanced review that will support the poultry boards in their decision-making should mandatory insurance be proposed. I cannot overemphasize the expectations that BCFIRB has of the poultry boards as first instance regulators in that regard.

Thank you again for the opportunity to comment. BCFIRB staff remains available to offer assistance when and where appropriate.

Yours truly,

A handwritten signature in black ink, appearing to read "J. K. Collins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jim Collins
Executive Director

cc: Casey Langbroek, Chair
BC Broiler Hatching Egg Commission

Brad Bond, Chair
BC Egg Marketing Board

Robin Smith, Chair
BC Chicken Marketing Board

Ralph Payne
BC Turkey Marketing Board

BCFIRB web site