

**Schedule 15**  
(Part 55)  
(Section 55.4)

**Board Decision or Determination**

Form B

*attach applicable Forms A, if available*

***Decision not to allow regrow beyond 10% as per Part 31 Disaster Flock of the August 26, 2011  
BCCMB General Orders***

**1. Date(s) of this decision: March 27, 2019**

**2. Members of Board present for decision:**

H. Sasaki, DA Janzen, A. Johnston, R. Nickel and G. Hahn

**3. What sources of information did the Board consider in coming to its decision?**

[ ] Form A - Application for Decision or Determination

[ X ] Board Staff's Briefing Note

- Sofina disaster flock request

[ X ] Applicant's oral submissions

- Meeting with BCCMB March 11, 2019

[ X ] Board's Orders (give reference numbers, if applicable):

- Part 20 – Force Majeure Event
- Part 26 – Undermarketing
- Part 29 – Production and Marketing Specifications
- Part 31 – Disaster Flocks

[ X ]

Other (explain):

- Search of correspondence from/to growers from 2002 to date on requests for consideration of relief from both over and under marketing penalties and levies for various reasons.
- Spread sheet providing a synopsis of above noted correspondence showing date of request, grower name, request, and board decision.
- Sofina Foods letter of March 10, 2019 entitled: Sofina Foods Inc. – application under Section 31 – Disaster Flock Policy”.
- Checklist for Disaster Flock – Part 31  
-- application by various growers in A-154

#### **4. What is the Board’s decision?**

The Board has made the decision to deny the request of a processor on behalf of several growers, to “regrow” lost production beyond the tolerance permitted in the General Orders under Part 31 – Disaster Flock. The processors requested the growers be permitted to regrow up to 100% of the lost production from cycle A-154 over 6 cycles due to disease issues.

#### **5. Why did the Board come to this decision?**

The Board reviewed previous decisions going back to 2002 respecting requests for relief of over or under marketing. Since 2002 and including the 2009 ILT epidemic in the Fraser Valley, the BCCMB has been consistent in not permitting regrow beyond the prescribed sleeves for reasons of disease or any circumstances that is or could be covered by insurance. The only exception was made during the 2004 Avian Influenza crisis, whereby the Board attempted to equalize financial opportunity for Lower Mainland growers in specific quota periods where half of the growers could place birds and the other half was unable to do so.

The disease event resulted in a lost opportunity for both the grower and the processor. The resultant lost sales cannot be recovered.

Accepting the processor's request would:

- Provide that processor with additional product from the affected growers for 6 periods after the disease event, but would not recoup lost sales in A-154 for the processor.
- Take production from all other growers through the allocation process. Growers without the disease challenge would grow less to allow the affected growers to grow more to make up for their loss.
- Notwithstanding the perceived insignificant percentage, by taking production from all other growers, other processors would be shorted for the suggested 6 periods.
- Relieve the processors, hatchery and upstream stakeholders of the responsibility for compensating affected growers and place it on the backs of all chicken growers and processors, with the exception of the affected growers and processor.
- Approval of this request could result in resubmission by growers or processors of past denials, or appeals to BCFIRB.
- Other processors that have dealt with similar issues internally with their growers may initiate requests for retroactive consideration by the Board.

The processors request does not meet the test for consideration of Part 20 – Force Majeure of the BCCMB General Orders. Part 20 requires that all three of the following conditions must be met in order to qualify for consideration under this Part.

- (a) The event must render performance by the grower or processor impossible, not just difficult; and
- (b) The event must not be reasonably foreseeable; and
- (c) The event must be beyond the grower or processor's control.

The disease rendered performance difficult; in the worst case, 70% of the flock was shipped to the processing plant. This number could have been higher but the processor failed to pick up all of the contracted birds citing sizing issues. The processor has now agreed to follow Board Orders requiring all contracted birds in accordance with the prescribed form to be shipped to the plant for slaughter.

The hatchery aligned with the processor knew or should have known that one of its breeder flocks had little or no parental protection from the REO virus, but continued to place chicks with their growers from the breeder flock in question, citing an inability to purchase additional chicks/hatching eggs and a requirement to purchase this flock's eggs/saleable chicks under BCBHEC regulations.

## **RATIONALE FOR DECISION BASED ON OUTCOME BASED PRINCIPLES**

### **Strategic & Effective:**

The Board has the authority to make orders considered by the marketing Board it considers necessary or advisable to promote, control and regulate effectively the marketing of the regulated product, and to amend or revoke them, under 11(q) of the Natural Products Marketing (BC) Act.

The BC Chicken Marketing Scheme (1961) grants the Board the power under 4.01(l) to make such orders, rules and regulations as are deemed by the board necessary or advisable to promote, control and regulate the production, transportation, packing, storage or marketing of the regulated product and to amend or revoke the same.

The Chicken Board was created to regulate chicken in the public interest, and in the best interests of all the stakeholders in the industry. It was not given its powers under the Scheme to support any one interest over another. Board members are appointed/elected to take a broad view and to make decision benefiting the industry as a whole.

Over time the Board has amended the Under and Over marketing rules and tolerances. In 2000 and until 2004, the Undermarketing sleeve was set at 10%, while the Overmarketing sleeve was set at 5%. Both sleeves were reset to 6% in 2004 following extensive consultation. At that time, the 6% sleeves were among the most liberal of any province in Canada and still are. The CFC national overmarketing sleeve is 2% based on an average of 2 consecutive quota periods (even/odd numbered).

In 2018, the Board revised the Disaster Flock section of the BCCMB General Orders to provide an extension from 6% to 10% undermarketing sleeve under special circumstances which are now enshrined in the Part 31 *Disaster Flock*. A number of growers have applied and qualified for 10% under this policy. These requests are dealt with directly by BCCMB Field Staff who complete a check list that a grower must be fully compliant with in order to qualify. The process is fact based, not subjective and does not require board decision or intervention.

The affected growers have applied and been granted the extension to 10% pursuant to BCCMB General Orders.

The overmarketing and undermarketing penalties in supply management are economic policy measures fundamental to ensuring that supply management, which benefits the entire industry is effective.

The Board's decision is consistent with sound marketing policy as it promotes orderly marketing, as the burden of a grower's under or over production should not have to be borne by the balance of growers who also did their best and were duly diligent, unless the growers collectively express a desire for pooling of provincial penalties, either under or over.

The Board has not seen evidence to support a collective risk mitigation strategy for over or under marketing beyond what is found in the General Orders, so it must fall to each grower – as part of the privilege of holding quota and being part of a supply managed system – to be aware of the factors that can lead to over and under production and to manage his or her allotment within the set tolerances.

### Accountable

The Board is accountable for its decisions to the entire industry and must consider the impact of its decisions on other parties.

Any other decision would negatively impact other processors and all of the remaining growers and would not recover the lost opportunity of the affected processor in the impacted period.

Any person that feels aggrieved by any decision of the Board may appeal to BCFIRB to have a decision of the Board amended or overturned.

### Fair

The terms and conditions that relate to consideration of undermarketing are clearly laid out in Part 20 *Force Majeure* and Part 31 *Disaster Flocks* of the General Orders.

The Board has been consistent in treating all growers and processors in the same fashion.

Placing the burden of compensation on the rest of the chicken growers and processors does not address the root of the problem that began with upstream stakeholders.

The view of the Board is that allotments to growers provide an opportunity to produce a known quantity of the regulated product, but provides no guarantee that the known quantity will be marketed.

### Transparent

The General Orders were updated in 2011 after extensive consultation with industry. The parts of the General Orders dealing with over and under marketing are well known to industry and applied equally to all growers.

### Inclusive

The rules, regulations and restrictions have and continue to be applied consistently to industry.

If industry believes there is a more effective means of ensuring the over and under marketing penalty policies that are fair and appropriate either by sharing lost opportunity amongst all growers in the province, the chicken industry has the ability to debate the point at the Value Chain Committee, PPAC, or SMAC and provide input to the Board for its consideration.

The Board would consider any modified policy that has wide support among growers after fulsome and transparent consultation and is in keeping with sound marketing policy.