

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
BC Chicken Marketing Board Interim Pricing Formula Amendment Prior Approval
Starting Period A-177

June 28, 2022

Decision Summary

1. The Panel approves the following amendments to the existing interim formula for three production periods starting in A-177:
 - a. a provision to cover 50% of the formula costs exceeding the upper guardrail.
2. The Panel does not approve a change to the Ontario weight class used in the BC interim price formula to 2.15-2.45kg starting in A-177.
3. The Panel will issue a decision on the weight class recommendation prior to the start of period A-178.
4. The Chicken Board is not precluded from submitting further requests to BCFIRB for prior approval to amend the interim pricing formula for future production periods.

Introduction

5. In March 2020, BCFIRB established a Chicken Sector Pricing Supervisory Review Panel (the Panel) to address the Broiler Hatching Egg Commission's (Commission) notice to exit the price linkage agreement and any related supervisory matters the Panel deemed necessary.
6. In April 2020, given the Chicken Board's failure to issue a decision on a long-term pricing formula after it was granted two deadline extensions and the interconnected nature of broiler hatching egg and chicken pricing, the Panel decided to include the outstanding long-term chicken pricing formula¹ as a related supervisory matter.
7. A full chronology of events leading to the Chicken Sector Pricing Supervisory Review is detailed in the Panel's supervisory decision of July 3, 2020, entitled "Interim Pricing in the BC Chicken Sector" (Interim Decision). That chronology will not be repeated here.
8. In the Interim Decision, the Panel made the following interim order to support industry stability and orderly marketing while discussions for a long-term pricing formula continued (Interim Order):
 44. The Chicken Board and the Commission are directed not to change any aspect of the current pricing structures as defined in this decision, unless by

¹ The June 2018 Chicken Board interim formula was appealed by the Primary Poultry Processors Association of BC (PPPABC) and the BC Chicken Growers Association (BCCGA), which proceeded to hearing in late 2018. In its May 16, 2019 decision, the BCFIRB appeal panel directed the Chicken Board to issue a decision on a long-term pricing formula no later than January 2020.

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the way of BCFIRB prior approval or until such time as BCFIRB determines otherwise.

45. The Commission and the Chicken Board are directed not to exit the price linkage agreement without BCFIRB prior approval.
9. In the summer of 2021, the Panel reviewed the Interim Order and the state of industry stability at that time. After consultation with the Chicken Board, the Commission and stakeholders, the Panel decided on August 20, 2021, that it would not be amending or rescinding the Interim Order.
10. On January 20, 2022, the Chicken Board sought the Panel's prior approval to amend the interim pricing formula, commencing in production period A-174 (January 16, 2022 to March 12, 2022).
11. On January 27, 2022, the Panel decided not to approve the Chicken Board's proposed amendment based on insufficient data. However, the Panel did not preclude the Chicken Board from seeking approval to amend the interim price formula for future production periods.
12. On February 25, 2022, the Chicken Board sought the Panel's prior approval to amend the interim pricing formula, commencing in production period A-175 (March 13, 2022 to May 7, 2022). The Chicken Board recommended that the interim formula include a provision to cover 50% of the formula costs exceeding the upper guardrail. The purpose was to address the recent wheat/corn price differential² which had resulted in escalating feed price pressures on growers.
13. On March 4, 2022, further to the Chicken Sector Pricing Supervisory Review process, the Chicken Board submitted its Final Pricing Proposal to the Panel seeking prior approval of its cost-based formula development plan. The Broiler Hatching Egg Commission (Commission) also submitted its final long-term pricing recommendations.
14. On March 9, 2022, the Panel approved the Chicken Board's recommendation for two production periods (A-175 and A-176) with one change and on one condition. The provision to cover 50% of the current formula costs exceeding the upper guardrail was to be calculated after adjustment for the cumulative increase or decrease in Ontario grower margins arising from changes to the Ontario Cost of Production formula (COPF) starting in A-175. The Panel instructed the Chicken Board to provide a clear description of how the interim pricing formula would be applied for periods A-175 and A-176 to BCFIRB and supply chain members. The

² BC broiler rations are wheat-based; Ontario's are corn-based. Traditionally, the prices of wheat and corn have moved in tandem. During the summer of 2020, drought in the Prairies significantly reduced Canada's domestic wheat supply. The war in Ukraine has exacerbated global supply chain problems, creating a widening price gap between the prices of wheat and corn based broiler rations. Because BC's price is based on Ontario, BC growers have faced unusually high feed prices that are not fully reflected in the BC pricing formula.

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Panel did not preclude the Chicken Board from seeking approval to amend the interim price formula for future production periods.

15. On April 26, 2022, the Chicken Board sent an email to stakeholders stating it intended to seek removal of the Panel adjustment to the 50% top-up provision³.
16. On June 10, 2022, the Chicken Board sought the Panel's prior approval to amend the interim pricing formula. The Chicken Board recommended that the interim formula continue to include a provision to cover 50% of the formula costs exceeding the upper guardrail; that the Panel's adjustment to this top-up provision be removed; and that the weight category on which the BC liveweight price is based be changed to align with Ontario. The Chicken Board proposed implementing these changes beginning with allocation period A-177 (July 3, 2022) and that the amendments remain in place until such time the Chicken Board implements a "long-term BC Cost-Recovery model".

Issue

17. Does the Chicken Board's recommended amendments to its interim pricing formula accord with sound marketing policy?

Legal Authorities

18. Under s. 7.1 of the *Natural Products Marketing (BC) Act (NPMA)*, BCFIRB is responsible for the general supervision of all marketing boards and commissions in the province, including the Chicken Board. Section 7.1(2) of the *NPMA* provides for this supervisory authority to be exercised "at any time, with or without a hearing, and in the manner [BCFIRB] considers appropriate to the circumstances".
19. Under s. 9 of the *NPMA*, BCFIRB "has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined by [BCFIRB] under [the *NPMA*]".
20. The Chicken Board has the authority to regulate the price of regulated products under s. 4.01(g) of the BC Chicken Marketing Scheme.

Process Summary

21. Concurrent with its June 10, 2022 submission to the Panel, the Chicken Board submitted its recommendations to its Pricing and Production Advisory Committee (PPAC). PPAC had the option of providing its input to the Chicken Board in writing or via a meeting.

³ The provision to cover 50% of the current formula costs exceeding the upper guardrail to be calculated after adjustment for the cumulative increase or decrease in Ontario grower margins arising from changes to the Ontario Cost of Production formula (COPF) starting in A-175.

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22. The Chicken Board and BCFIRB subsequently received written submissions from the BC Chicken Growers Association (June 17, 2022) and the Primary Poultry Processors Association of BC (PPPABC, June 17, 2022). To the Panel's knowledge, the Chicken Board did not receive a PPAC submission.
23. Following on June 20, 2022 Chicken Board meeting, Chicken Board staff informed BCFIRB staff that the Chicken Board had reviewed the BCCGA and the PPPABC input and that the Chicken Board would not be modifying its June 10, 2022 recommendations. The Chicken Board's decision and rationale was also provided to PPAC on the same date.

Analysis

24. At the time of its 2020 Interim Decision, neither the Panel nor the Chicken Board nor supply chain stakeholders envisioned the challenging situation we are facing today with sky rocketing costs and a continuous series of natural disasters placing pressure on chicken production and processing. The Panel had also not anticipated the serious and on-going delays that seemingly prevented the Chicken Board from developing, finalizing and implementing a long-term pricing structure in conjunction with the Commission.
25. PPPABC observed that this is the third interim formula amendment requested over a total of four production periods. The Chicken Board, as the first instance regulator, must be responsive to market conditions and, in this instance, the dramatic spike in BC feed costs arising from the wheat-corn price disparity. However, these repeated amendment requests do add more uncertainty for the sector and remove focus and resources from developing a strategic, transparent and accountable long-term pricing formula.
26. The Chicken Board is seeking to balance grower and processor business interests in the face of a challenging operating environment while a long-term pricing formula is developed. Such a balance, if successfully struck, would enable the Chicken Board and sector members to focus energies and resources on building a transparent, accountable long-term price formula.
27. In its March 9, 2022 decision⁴, the Panel found that including a provision to cover 50% of the current formula costs exceeding the upper guardrail was sound marketing policy, but added an adjustment that first deducted the cumulative increase in the Ontario grower margin arising from changes to the Ontario COPF which had been passed on to BC growers through the Chicken Board's flow-through interim pricing formula. The purpose of this direction was to balance grower and processor business interests.

⁴ 2022 Mar 9. BCFIRB. In the Matter of the *Natural Products Marketing (BC) Act* and BC Chicken Marketing Board Interim Pricing Formula A-175 Approval.

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28. With its current request, the Chicken Board is asking for a provision to cover 50% of the current formula costs exceeding the upper guardrail and the removal of the Panel's adjustment. It seeks to balance processor business interests by recommending changing the Ontario weight class used in the BC interim price formula to 2.15-2.45kg. This would have the effect of dropping the minimum price paid to growers by approximately \$0.02 per kg.
29. The BCCGA supports the "top up" 50% provision, but argues that changing the weight class will put growers at further financial risk. The PPPABC does not support the proposed interim formula recommendations and states any benefits they may receive from a change in weight class are offset by numerous other factors. PPPABC argues the feed conversion ratio used in the interim price formula is unrealistically high and needs to be adjusted downwards. BCCGA argues growers face serious financial risk, but question the competitive risks faced by processors. PPPABC argues growers are making record returns while processors' competitive position has never been worse. The Chicken Board, BCCGA and PPPABC all claim there is lack of verifiable data provided for the various arguments made and positions taken.
30. Arguments about verifiable data (and the lack there-of) presented to the Panel to date only further reinforce the Panel's view that it is long past time for transparent, accountable cost-based pricing in the chicken sector that is informed by similarly transparent and accountable processor competitiveness measures. To reach this goal, the Chicken Board and supply chain members must focus their attention and resources on the long-term while finding a balanced solution for the short-term.
31. Since the Chicken Board, PPPABC and BCCGA have been unable to reach agreement on a balanced interim solution to the current high-cost environment, the Panel needs to listen to the concerns of the Chicken Board and the stakeholders to help the sector navigate a path forward that reflects sound marketing policy.
32. The Panel acknowledges the Chicken Board's strategic attempt, through its recommendations, to find a balanced interim solution. However, it is not evident that the Chicken Board has worked directly with the PPAC, and/or BCCGA and PPPABC on "livable options" prior to coming to the Panel. In turn, neither BCCGA nor PPPABC seem to have chosen to engage with each other and the Chicken Board to pursue a balanced, interim solution. This is both surprising and disappointing given how effectively the Chicken Board, BCCGA and PPPABC have worked together on non-price related issues to successfully manage the recent series of natural disasters faced by the sector.
33. The Panel is not prepared to approve the Chicken Board's request to allow the recommended interim pricing formula amendments to remain in place until the long-term BC Cost-Recovery model is implemented. The Chicken Board's price formula development plan timeline is approximately one year. As we have seen over the past 6 months, the operating environment could change dramatically over the next 12 months. For example, the current "top-up" provision to recover over-

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guardrail costs was created to provide relief from the current wheat/corn feed cost disparity; it is unclear how long these feed markets will take to “normalize”. Facing such uncertainty, the Panel cannot in confidence approve a new interim pricing formula that will remain in place for an unclear period of time.

34. Once the Panel issues any directions on the Chicken Board’s March 2022 plan, following its meetings with the Chicken Board, BCCGA, and PPPABC, it may be prepared to approve any interim formula amendments for a longer duration, although this will depend on market volatility and operating environment at the time. The Panel anticipates making this decision in fall 2022.
35. The Panel is prepared to approve the provision to cover 50% of the current formula costs exceeding the upper guardrail and remove the Panel’s adjustment (which first deducted from over-guardrail losses by any Ontario margin increase passed through to BC growers in the pricing formula) for 3 periods. The Panel continues to agree with the Chicken Board that the 50% provision recognizes the extraordinary negative impact of the wheat over corn differential on grower costs and takes into consideration processor competitiveness.
36. In light of the fact that the Commission will soon be implementing its cost of production pricing formula and the feed forecasts remain extremely uncertain the Panel is not prepared to approve the provision for beyond three periods.
37. The Panel strongly agrees with the Chicken Board and the PPPABC that an interim price balance needs to be found between the business interests of growers and processors in these exceptional circumstances. To accomplish this, the Chicken Board proposes changing the weight class used in the interim formula, which would reduce the grower liveweight price by two cents per kg to support processor competitiveness.
38. This reflects an agreement between PPPABC and BCCGA earlier in this Chicken Sector Pricing Supervisory Review process to change the weight class to more accurately reflect actual BC production as part of a long-term pricing solution. However, this agreement was reached prior to the current operating environment. It is apparent from the PPPABC and BCCGA submissions that there are now outstanding concerns whether a weight class change at this time properly balances business interests.
39. Given the concerns expressed by BCCGA and PPPABC, it is unclear to the Panel how it is possible find a balanced solution to interim pricing tensions by, as the Chicken Board requests, decreasing minimum liveweight price \$0.02/kg through dropping the weight class basis while, at the same time, including a provision to increase minimum liveweight price by returning to growers over-guardrail losses due to a wheat/corn price disparity that may or may not continue in the future. The recommendation itself is not accompanied by meaningful analysis by the Chicken Board, nor accountable arguments from PPPABC and BCCGA for or against such a recommendation.

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40. Further delay in reaching a balanced interim solution is a serious concern to the Panel as relationships continue to be challenged over pricing, and orderly marketing is at risk. The difficult business situation growers and processors find themselves in with extraordinary and escalating costs, and supports the need for a well-considered decision.
41. In light of the above, the Panel is not prepared to approve the change in weight class starting in A-177. The Panel requires additional time for consultation and consideration of the recommendation - and potentially other options - to support processor competitiveness and lend balance to the over guard rail provision which provides some relief to growers. The Panel will contact the Chicken Board and supply chain members shortly and will issue a decision prior to the start of A-178.

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Decision

42. The Panel approves the following amendments to the existing interim formula for three production periods starting in A-177:
 - a. a provision to cover 50% of the formula costs exceeding the upper guardrail.
43. The Panel does not approve a change to the Ontario weight class used in the BC interim price formula to 2.15-2.45kg starting in A-177.
44. The Panel will issue a decision on the weight class recommendation prior to the start of period A-178.
45. The Chicken Board is not precluded from submitting further requests to BCFIRB for prior approval to amend the interim pricing formula for future production periods.

In accordance with s. 57 of the *Administrative Tribunals Act*, “an application for judicial review of a final decision of (BCFIRB) must be commenced within 60 days of the date the decision is issued.”

Dated at Victoria, British Columbia, this 28th day of June, 2022.



Peter Donkers
Chair, Chicken Sector Pricing Review Panel



Al Sakalauskas
Member, Chicken Sector Pricing Review Panel