

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
Period A-180

December 13, 2022

Decision Summary

1. For period A-180 the BC Chicken Marketing Board (Chicken Board) interim formula is amended to include the following floating upper guardrail:

A provision to cover 50% of the current formula costs exceeding the upper guardrail after adjustment for the cumulative increase in Ontario grower margins arising from changes to the Ontario Cost of Production formula (COPF) starting in A-180. If the resulting number is negative, no adjustment will be made to live weight price.

2. 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

3. 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.
4. 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 inter-connected 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.
5. 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.
6. 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 the way of BCFIRB prior approval or until such time as BCFIRB determines otherwise.

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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45. The Commission and the Chicken Board are directed not to exit the price linkage agreement without BCFIRB prior approval.
7. 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.
8. 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).
9. On January 27, 2022, the Panel decided not to approve the Chicken Board's proposed amendment concluding insufficient data had been provided. However, the Panel did not preclude the Chicken Board from seeking approval to amend the interim price formula for future production periods.
10. 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.
11. 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 Commission also submitted its final long-term pricing recommendations.
12. 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 Panel did not preclude the Chicken Board from seeking approval to amend the interim price formula for future production periods.

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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13. 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.
14. 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 was 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".
15. On June 28, 2022, the Panel approved the Chicken Board's recommendation that the interim formula continue to include a provision to cover 50% of formula costs exceeding the upper guardrail for three production periods, starting in A-177 (July 3, 2022) and ending in A-179 (ends December 17, 2022). On August 24, 2022, the Panel approved the Chicken Board's recommendation that the weight category on which the BC liveweight price was based be changed to align with Ontario starting in period A-178 until BCFIRB approves the Chicken Board's long-term formula or directs otherwise.
16. As of November 18, 2022, the Chicken Board recommends that the provision to cover 50% of interim formula costs exceeding the upper guardrail be extended from A-180 (starting December 18, 2022) until the Chicken Board's long-term pricing formula is in place or until otherwise directed by BCFIRB.

Issue

17. Does the Chicken Board's recommended amendment 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*]".

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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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. The Chicken Board sent its interim formula recommendation to its Pricing and Production Advisory Committee (PPAC) on October 13, 2022, copying BCFIRB. The Chicken Board asked for PPAC's feedback and offered to set up a meeting.
22. The BC Chicken Growers Association (BCCGA) responded to the Chicken Board Executive Director in writing on October 14, 2022, supporting the recommendation. The Primary Poultry Processors Association of BC (PPPABC) responded to the PPAC Chair in writing on November 1, 2022. Both submissions were copied to BCFIRB. To the Panel's knowledge, a PPAC meeting was not held, nor did the Chicken Board receive a PPAC recommendation in addition to the separate member submissions.

Analysis

23. Based on recent Order In Council (OIC) appointments, the Chicken Board leadership will transition on December 21, 2022. The term of the current Chair, Mr. Sasaki, will end and he will be replaced by Mr. Klippenstein. Mr. Collins, the current Broiler Hatching Commission Chair, will be joining the Chicken Board as an OIC appointed member. In turn, Mr. Vanderspek, currently an OIC appointed Chicken Board member, will become Chair of the Commission.
24. Given the leadership transition, it is strategic to limit this decision to one pricing period. A one period approval allows the new leadership to consider if a revised approach to interim pricing is needed given the deterioration of relationships and that the PPAC appears to be no longer fulfilling its regulatory intent.
25. Given the resources invested by the Chicken Board and stakeholders in regular interim pricing amendment recommendations, the Panel understands the rationale for recommending approval of the floating upper guardrail provision until a final pricing formula is in place.
26. However, setting aside the leadership transition, a key concern with this recommendation is that the Chicken Board's data and analysis falls short of establishing what a "normal" wheat/corn price differential is. An extraordinary wheat/corn differential was the original basis for recommending the floating upper guardrail in A-174. BCFIRB approved the floating guardrail starting in period A-175 and has subsequently approved the floating guardrail for 5 consecutive allocation periods. But what constitutes an "extraordinary" feed price gap as opposed to a "normal" feed price gap remains undefined.

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27. A formula-based trigger establishing a threshold between a “normal” and “extraordinary” wheat/corn price differential would allow for the floating guardrail to be applied, as and when needed, without continued requests from the Chicken Board to BCFIRB for prior pricing approval. While the Panel supported a floating guardrail when the gap between wheat and corn-based chicken feed demonstrably moved into “exceptional” territory, the gap now appears to be returning to historic levels and accountable metrics are needed to balance processor competitiveness with a fair return for efficient chicken growers.
28. The Panel considered the separate BCCGA and PPPABC PPAC submissions in addition to the Chicken Board’s final submission.
29. In BCCGA’s view, the floating guardrail should continue as it would be “unreasonable” not to provide some counterbalance to the “arbitrary” BCFIRB approved weight class change starting in period A-178. No data or analysis was provided as to why continuation of the floating upper guardrail is needed to ensure a fair return for efficient producers.
30. The PPPABC PPAC submission identified five areas of concern with the Chicken Board’s recommendation:
 - a. Inaccurate Chicken Board analysis based on an outdated feed conversion ratio;
 - b. Correction of the wheat/corn price differential and a return to historical differentials;
 - c. Inflation of the BC live price due to changes to the Chicken Farmers of Ontario Cost of Production Formula, rendering the guardrails irrelevant;
 - d. No consideration of increasing grower returns, which have reached record levels; and,
 - e. No consideration of processor competitiveness.
31. While there is some repetition of previously unsuccessful arguments, and data gaps remain, PPPABC’s points and the Chicken Board’s response were considered by the Panel.
32. In response to the feed conversion issue, the Chicken Board states it will include updated feed conversion data in its long-term formula. The PPPABC offered to share its feed conversion data with the Chicken Board confidentially. The Panel hopes the Chicken Board will seriously consider PPPABC’s offer in light of interim and long-term pricing work and, in turn, that the BCCGA may also offer to provide its own data confidentially or otherwise. The Panel agrees with the Chicken Board that, until there is verified data, the Chicken Board is limited on how much weight it can give to feed conversion in its decision-making.

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33. The Chicken Board agrees with PPPABC that the wheat/corn price differential is decreasing and both provided data to demonstrate the convergence. The Chicken Board wants to see the gap “closed” before considering rescinding the floating upper guardrail provision. The Panel is not satisfied there is sufficient evidence that it is necessary for the floating upper guardrail provision to remain until the gap is closed. Based on the data provided, a feed price gap has existed historically in some form and the current formula with its upper and lower price guardrails was designed in part to recognize that gap.
34. The PPPABC takes the position that as and when markets return to a “historical differential”, there would no longer be any rationale for continuing with the floating upper guardrail provision.
35. The Panel has insufficient information to resolve these differing positions in any defensible manner. This is a matter for the Chicken Board, PPPABC and BCCGA to resolve before any future recommendation to amend the interim pricing formula to include a floating upper guardrail.
36. The Chicken Board refutes PPPABC’s position that the current guardrails are obsolete and rightly points out that any increase in the Chicken Farmers of Ontario price results in a price rise across Canada. The PPPABC position is that the widening of the gap between Ontario and BC feed costs created by Ontario’s adjustment to the feed conversion ratio in A-169 has resulted in BC formula price consistently hitting the upper guardrail.
37. The debate over grower returns has spanned decades, negotiations, appeals, and supervisory reviews. It will not be resolved in this interim pricing decision. Strategic and accountable resolution is possible with the establishment of a long-term and transparent cost-based/cost of production formula.
38. The debate on processor competitiveness has also spanned decades, negotiations, appeals and supervisory reviews. It will not be resolved in this interim pricing decision either. Strategic and accountable resolution is possible with a definition and metrics for processor competitiveness applied as part of a cost-based/cost of production formula.
39. Solving the returns versus competitiveness debate requires full, respectful and responsive engagement between the Chicken Board, PPPABC, BCCGA. All parties to this pricing review bear responsibility for the current dysfunctional situation that is resulting in delays and unproductive tensions and arguments. This full, respectful and responsive engagement must also include the Commission and hatching egg sector on transparent, strategic, and accountable supply chain pricing.

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40. The PPPABC proposes a complete change to the interim pricing formula, moving to a fixed differential with the Chicken Farmers of Ontario price. The Chicken Board is clear it is not prepared to consider a wholesale change to its interim pricing formula. The Panel finds that resources are better invested in completing the long-term formula.
41. However, the Panel notes that PPPABC appears willing to discuss interim pricing matters with the Chicken Board and the BCCGA as it has offered to provide data confidentially and has placed an interim pricing option on the table. The Panel sees this as a potential opportunity for the Chicken Board, PPPABC and BCCGA to hold a facilitated session(s) with the BCFIRB Liaison to discuss a stable resolution to interim pricing, including the development of a “trigger” point for the floating upper guardrail. The Panel observes that until the recent extraordinary increase to the wheat/corn price differential, the interim formula was not resulting in industry instability (BCFIRB July 3, 2020 and August 20, 2021 decisions). The Panel is also aware that implementation of the Commission’s cost of production pricing formula in A-179 may also inform future interim formula considerations.
42. As per the Panel’s previous interim pricing decisions (February 4, 2022, March 9, 2022, June 28, 2022, August 24, 2022) it yet again finds itself faced with a critical interim pricing decision and the absence of fulsome data. That said, a decision is still required in the interests of industry stability while the long-term formula work continues.
43. Starting in A-169 (April-May 2021) changes to the Chicken Farmers of Ontario Cost of Production Formula (ON COPF) included adoption of a more efficient feed conversion ratio. As a result, Ontario feed costs decreased and widened the difference in formula feed costs between BC and Ontario chicken growers. Subsequently BCFIRB reviewed its July 3, 2020 interim orders given the passage of time, delay in reaching a long-term pricing outcome, the changes to the ON COPF and the PPPABC concern about pricing stability. After consulting, the Panel determined it “...was not given any measurable or substantiated objective evidence or data of industry instability during this process, so as a result, it will not be amending or rescinding its Interim Orders” (August 20, 2021).
44. Since A-169 the interim formula upper guardrail has been repeatedly triggered – capping the minimum grower price and protecting a processor differential with the Ontario price. However, when the wheat/corn price differential reached an “extraordinary” level in spring 2022 due to factors outside of the Chicken Board’s control (e.g. drought, war in the Ukraine), the Panel approved a floating upper guardrail provision starting in A-175 (March 2022). The floating upper guardrail has returned half the amount that would have been lost to growers had the upper guardrail remained fixed.
45. In its PPAC submission, PPPABC reports the floating upper guardrail provision is increasing the price differential with Ontario and hence is negatively impacting processor competitiveness.

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46. The continuously shifting pricing environment and its variable, but generally unsubstantiated, impacts on grower returns and processor competitiveness reinforces the Panel's view that the Chicken Board should explore with PPPABC and BCCGA how to determine a verifiable "normal" versus "extraordinary" feed price differential.
47. In its March 9, 2022 decision, the Panel approved the floating upper guardrail provision (A-175 to A-176) with an adjustment that first deducted any cumulative increase in the Ontario grower margin starting in A-175. The adjustment was intended to balance grower and processor interests. The Panel removed this adjustment in its June 28, 2022 decision based on a Chicken Board recommendation (A-177 to A-179).
48. Given the narrowing wheat/corn price differential but still uncertain feed forecast, the increasing differential with the Ontario chicken price for processors, and the outstanding question as to whether the Ontario COPF may change, the Panel finds some rebalancing between processor and grower interests is required.

Decision

49. For period A-180 the Chicken Board interim formula is amended to include the following floating upper guardrail:

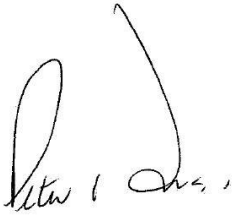
A provision to cover 50% of the current formula costs exceeding the upper guardrail after adjustment for the cumulative increase in Ontario grower margins arising from changes to the Ontario Cost of Production formula (COPF) starting in A-180.⁴ If the resulting number is negative, no adjustment will be made to live weight price.

⁴ For example, if in period A-180 the BC formula price (Ontario adjusted plus 75% of the BC-ON differential in feed and chick costs) exceeded the upper guardrail by – hypothetically - 6¢/kg, a floating guardrail would add half this amount (3¢/kg) back to the BC liveweight price (in effect increasing the guardrail by 3¢). With the BCFIRB amendment in place, if in the same pricing period the Ontario grower margin increased by – for example –2¢/kg, then this amount would be deducted from the over-guardrail amount before adding 50% of that number to the liveweight price. In the above example, the reintroduction of the BCFIRB amendment to the floating guardrail calculation would have the effect of increasing the guardrail by 2¢/kg (not 3¢/kg), adding 2¢/kg (not 3¢/kg) to the BC liveweight price (6¢/kg – 2¢/kg = 4¢/kg * 50% = 2¢/kg).

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50. 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.

Dated at Victoria, British Columbia, this 13th day of December, 2022.



Peter Donkers
Chair, Chicken Sector Pricing Review Panel



Al Sakalauskas
Member, Chicken Sector Pricing Review Panel