

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
INTERIM PRICING IN THE BC CHICKEN SECTOR

July 3, 2020

Introduction

1. The BC Chicken Marketing Board (Chicken Board) regulates the price paid to chicken growers. The BC Broiler Hatching Egg Commission (Commission) regulates the price paid to broiler hatching egg producers by hatcheries (saleable chick) and the price paid to hatcheries by chicken growers for chicks (placeable chick).
2. The mainstream chicken live price is currently set each production period using the following interim formula that has been in place since June 2018. There was one minor revision made starting period A-162 (March 2020).

The Ontario live price at their 2.45 – 2.65 weight category, Plus
The current BC catching cost of \$0.0365 per kilogram, Plus
75% of the difference in the cost of feed and chicks per kilogram.

3. A long-term live price formula, satisfactory to both growers and processors, has not been in place since approximately May 2017 when the Chicken Board concluded its review of the 2010 formula and issued its decision on a revised pricing formula.
4. The June 2018 interim formula was appealed by the Primary Poultry Processors Association of BC (PPPABC) and the BC Chicken Growers Association (BCCGA). In its May 16, 2019 decision¹, the BCFIRB appeal panel directed the Chicken Board to issue a decision on a long-term pricing formula by January 2020. As discussed below, this deadline was not met and was extended by the appeal panel. Subsequent to the BCFIRB appeal decision, the Chicken Board made a minor revision to the formula based on PPPABC and BCCGA recommendations – resulting in the formula being used today².
5. The Commission saleable chick price is set through a price linkage formula based on return on cost of production. For each production period, the chicken grower percent return on cost of production is calculated by a third-party consultant. In turn, the saleable chick price is set on the same percent cost of production return for hatching egg producers as calculated by the consultant. For example, if the return on chicken grower cost of production is 95%, the saleable chick price is set based on a 95% return on the hatching egg producer cost of production. The Commission's placeable chick price is set by adding a hatchery margin to the saleable chick price.
6. The chicken grower and hatching egg producer cost of production calculations are based on defined industry data agreed to between the Chicken Board and the

¹ 2019 May 16. BCFIRB. [In the Matter of the Natural Products Marketing \(BC\) Act and Two Appeals from a Decision Concerning Chicken Pricing](#)

² PPPABC and BCCGA recommended that the 6 period rolling average be removed from the chick and feed price differential calculation.

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Commission. The hatching egg cost of production includes spent fowl and salvage egg revenue, as well as broiler breeder flock kill age.

7. A price linkage agreement between the Chicken Board and the Commission was established in 1995 by the BC Farm Industry Review Board (BCFIRB) and has remained in place to this day.
8. For the purposes of this decision, “pricing structures” include the mainstream chicken live price formula, the price linkage formula used to set saleable chick price (“price linkage formula”) and the hatchery margin used to set the placeable chick price.
9. In December 2019, the BCCGA and the PPPABC appealed a Commission decision to remove spent fowl and salvage egg revenue from the price linkage formula used to set the price of chicks, and the Commission decision to reduce flock kill age from 58 to 56 weeks.
10. In January 2020, the Commission gave industry notice that it intends to exit the price linkage agreement with the Chicken Board because it is no longer resulting in a sustainable price for hatching egg producers. The Commission further stated that they no longer believe the agreement results in sound marketing policy for industry. Concurrently, the Commission requested that the two appeals be deferred until BCFIRB’s supervisory consideration of the Commission’s linkage exit submission. In February 2020, the BCFIRB appeal panel agreed to the deferral of the appeals.
11. On March 17, 2020, BCFIRB established a supervisory panel to address the Commission’s price linkage agreement exit notice and any related supervisory matters the panel may deem necessary.³
12. On April 29, 2020, the BCFIRB pricing appeal panel⁴ transferred the issue of the deadline by which the Chicken Board would adopt a new long-term chicken pricing formula to BCFIRB’s supervisory authority. This decision was made upon receipt of a second deadline extension request from the Chicken Board. The previous deadline extension request had been granted.⁵ Given the inter-connected nature of broiler hatching egg and chicken pricing, the supervisory panel determined it would include the outstanding chicken pricing formula as a related supervisory matter.

³2020 March 17. BCFIRB. Price Linkage Supervisory Review.

⁴2019 May 16. BCFIRB. [In the Matter of the *Natural Products Marketing \(BC\) Act* and Two Appeals from a Decision Concerning Chicken Pricing](#)

⁵2020 April 29. BCFIRB. RE: PPPABC and BCCGA v. BC Chicken Marketing Board – Long-Term Chicken Pricing Formula Order Transfer to Supervisory Authority.

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13. There is an extensive, multi-year history behind the Commission's price linkage agreement exit notice and the Chicken Board's unresolved long-term mainstream chicken pricing formula that will not be reiterated here.
14. The supervisory panel met with the Chicken Board and the Commission on April 30, 2020 via video conference. The purpose of the meeting was to receive a technical briefing on the current pricing structures and an update on the long-term mainstream chicken live price formula and the price linkage agreement exit work being done by the two boards.
15. The supervisory panel subsequently met with the following stakeholders by video conference to gain a better understanding of chicken sector pricing challenges: the BCCGA on May 28, 2020; the PPPABC on June 3, 2020; and the BC Egg Hatchery Association (BCEHA) on June 17, 2020. The BC Broiler Hatching Egg Producers Association (BCBHEPA) provided a letter in lieu of a meeting.
16. On June 8, 2020, the panel requested written submissions from the BCCGA, PPPABC, BCEHA and the BCBHEPA on industry stability and interim pricing questions while longer-term solutions are sought. The Commission and Chicken Board had the opportunity to respond with closing written submissions. Submissions were received from the BCCGA and the PPPABC on June 19, 2020, with the Commission and the Chicken Board providing both joint and separate submissions on June 26, 2020. An updated version of the joint Chicken Board-Commission submission was received on June 29, 2020.

Issues

17. The issues before the supervisory panel:
 - a. Are the pricing outcomes from the current pricing structures, as defined in paragraph 8 above, resulting in industry instability?
 - b. If so, what, if any, interim changes are needed to current pricing structures to ensure orderly marketing and sound marketing policy until longer-term solutions on the Chicken Board's development of a mainstream live price chicken formula and the Commission's price linkage agreement exit notice are reached?

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 Commission and 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 Commission has the authority to regulate price of regulated product⁶ under s. 8(1)(a.1) of the BC Broiler Hatching Egg Marketing Scheme. The Chicken Board has authority to regulate price of regulated product⁷ under s. 4.01(g) of the BC Chicken Marketing Scheme.

Analysis

21. Despite the on-going pricing disputes and challenges in the BC chicken sector, sound marketing policy dictates that "business must go on". Given the outstanding Commission price linkage agreement exit notice and the absence of an undisputed Chicken Board long-term mainstream chicken pricing formula since May 2017, the panel determined it needs to ensure sound marketing policy and orderly marketing while longer-term pricing solutions are being developed. This is also important given there remains significant uncertainty around the length of time it may take to achieve resolution on these longer-term pricing matters.
22. All the submissions provided information on both interim and long-term pricing issues, challenges and recommendations. For the purposes of this decision, the panel is only looking at whether the current pricing structures are resulting in industry instability, and if so, what, if any, interim changes are needed by the panel.
23. The BCCGA and PPPABC argue that the current pricing structures are resulting in industry instability and that interim changes are needed.
24. BCCGA is of the view that the industry is unstable for the following reasons:
 - a. The current live chicken price is too far below grower cost of production;
 - b. The current formula is not transparent or predictable; and,
 - c. The 75% differential on feed and chick costs in the current formula is too low.
25. According to the BCCGA, because of this situation, chicken growers find it challenging to re-invest in their farms and the industry. BCCGA also states the Commission's removal of spent fowl and salvage egg revenue from the price linkage formula and the reduction in kill age of broiler breeder hens has resulted in

⁶ "regulated product" means a broiler hatching egg, a saleable chick or a broiler breeder

⁷ "regulated product" means any class of chicken under 6 months of age not raised or used for egg production and any article of food or drink wholly or partly manufactured or derived from the regulated product

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more instability. The BCCGA further states that on-going processor acquisition of chicken quota and their financial success demonstrates that the chicken industry is stable and profitable for vertically integrated businesses but is unsustainable for non-vertically integrated farms.

26. BCCGA recommends BCFIRB puts in place the following interim measures to ensure industry stability:
 - a. Rescind the Commission's removal of spent fowl and salvage revenue from the price linkage formula and not allow changes to the broiler breeder kill age unless they are long-term changes;
 - b. Keep the Commission/Chicken Board linkage agreement in place for the interim; and,
 - c. Revise the current chicken formula from 75% recovery on feed and chick costs to 100%.

27. PPPABC is of the view that the industry is unstable for the following reasons:
 - a. The current chicken price formula results in a live price that is unpredictable and uncompetitive as costs and margins can be passed on to processors;
 - b. The Commission decision on spent fowl, salvage eggs and kill age has added complexity to industry pricing, has not provided a viable solution for hatchery margins and perpetuated a mindset that costs can be passed on to processors. The PPPABC reports that the Commission decision has increased the price paid for chicken by 1.31 cents per kg, with these additional costs being borne by the growers and the processors; and,
 - c. The lack of effective coordination between the Chicken Board, Commission and stakeholders is resulting in an increasingly unstable pricing environment.

28. PPPABC recommends BCFIRB puts in place the following interim measures to ensure industry stability:
 - a. Rescind the Commission's removal of spent fowl and salvage revenue from the price linkage formula, and the decision to reduce kill age from 58 weeks to 56 weeks;
 - b. Disallow changes to the chicken mainstream price formula and the price linkage formula until the supervisory review concludes;

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- c. Order that any changes to the Ontario chicken price formula resulting in increases to the BC chicken price flow directly to the processors and hatcheries; and,
 - d. Place a moratorium on grower movement between processors pending the supervisory review.
29. On the other hand, the Chicken Board and Commission report that while there are outstanding pricing issues that need to be resolved, the current pricing structures are not resulting in industry instability. Rather, the sector needs to focus on finding collaborative longer-term solutions in a timely way.
30. It is clear from the submissions and meetings to date that all key sector stakeholders, the Commission and the Chicken Board agree that the current pricing structures must change. However, need for change does not necessarily equate to industry instability in the short-term.
31. The panel must keep in mind that any directions as to interim pricing measures, if made without full information, could have unintended negative consequences to the chicken sector in the short and long-term. In a complex system, with multiple business and regulatory interests at stake, the threshold for BCFIRB to impose directions is necessarily high.
32. PPPABC and BCCGA provided minimal or no substantive evidence (e.g. data illustrating market disruption) to support their arguments that current pricing structures are resulting in industry instability. There are clearly concerns about returns and how costs and benefits are shared throughout the sector which will need to be addressed as part of the future longer-term solutions. In turn, the Commission and Chicken Board did not provide all that much more in terms of substantive evidence that there is no industry instability.
33. The panel particularly looked at the question of whether to reverse the Commission's spent fowl, salvage egg revenue and broiler breeder kill age decisions. The BCCGA and PPPABC provided little to no relevant and/or substantive evidence of immediate, specific business harm outside of general statements and limited use of data (some which was not relevant to the production periods under question).
34. The matter of the Commission's decisions on spent fowl, salvage egg revenue and broiler breeder kill age relates to issues associated with processor loyalty bonuses (premiums) paid to chicken growers. Recently, processors announced they were stopping premium payments to chicken growers due to COVID-19 related expenses.
35. The BCCGA is asking BCFIRB to rescind the Commission salvage egg and spent fowl revenue and kill age changes to the price linkage formula given premium

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payments have stopped. The BCCGA argues that the Commission changes were made because of the premiums being paid to chicken growers. The PPPABC reflected a similar position in other correspondence.

36. The PPPABC is also asking BCFIRB to put in place an order preventing chicken growers from changing processors. The processors are concerned that with premiums no longer being paid, growers will start moving between processors, creating instability.
37. The panel observes that a processor business decision to cease premium payments does not necessarily require a regulatory decision in response.
38. The panel also observes that premiums were not part of the price linkage formula on the insistence of the BCCGA, although notes that BCCGA now recommends the Commission's decision be reversed due to the removal of the loyalty premiums. From what the panel understands, processors cancelled the premiums because of COVID-related expenses, and that they could be reinstated at any time. The panel agrees that the cancellation of the premiums does likely lower the returns for some or all chicken growers, and that grower returns need to be a key consideration of any future longer-term pricing solution, as will processor competitiveness in relation to chick and chicken price.
39. PPPABC reports an increase in chick price but does not demonstrate how this increase has generated instability for the processing sector over the last three production periods and into the future.
40. Concurrently, the panel is aware that the Commission changes may become a moot point depending on the longer-term pricing solutions reached. The panel is aware of the BCCGA and PPPABC concerns and will keep them in mind should a long-term pricing solution not be reached in a reasonable time.
41. Should cancellation of the premiums result in grower movement that threatens orderly marketing, the Chicken Board has production management authority under the BC Chicken Marketing Scheme to address the issue in the first instance.
42. Overall, the panel received insufficient substantive evidence demonstrating that the current pricing structures are resulting in industry instability. The panel is prepared to rely on the position of the Commission and the Chicken Board, as first instance regulators, that the industry is currently stable. As such, no interim directions are necessary.
43. The panel agrees with the BCCGA and PPPABC that an interim moratorium is needed on any further pricing formula changes by the Commission and/or the Chicken Board to support industry stability and orderly marketing while longer-term pricing solution discussions are underway. This is particularly important given the

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uncertainty around the length of time it will take to achieve resolution on these longer-term pricing matters.

Decision

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.
45. The Commission and the Chicken Board are directed not to exit the price linkage agreement without BCFIRB prior approval.

Dated at Victoria, British Columbia, this 3rd day of July, 2020.



Peter Donkers, Panel Chair



Al Sakalauskas, Member



Harveen Thauli, Member