

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND
BC Chicken Marketing Board Interim Pricing Formula A-174 Prior Approval

February 4, 2022

Decision Summary

1. The BC Farm Industry Review Board (BCFIRB) does not approve the BC Chicken Marketing Board's (Chicken Board) recommendation to amend the current interim chicken pricing formula (the interim pricing formula) for production period A-174.
2. The Chicken Board is not precluded from submitting 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 may have 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 Pricing decision"). That chronology will not be repeated here.
6. In the Interim Pricing decision, the Panel made the following interim order to support industry stability and orderly marketing while discussions for a long-term pricing formula remained ongoing (the 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.
 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.

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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8. On January 20, 2022, the Chicken Board sought BCFIRB's prior approval to amend the interim pricing formula, commencing in production period A-174 (January 16, 2022 to March 12, 2022).
9. The Panel expects the Chicken Board and the Commission to submit their final long-term pricing recommendations in February 2022. Based on the draft recommendations sent to stakeholders for their final consultation, the Panel is aware that the Commission will recommend a Cost of Production formula, and the Chicken Board will recommend that it continue using the interim pricing formula until a "grower cost-based approach" is completed in approximately one to two years.

Issue

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

Legal Authorities

11. 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".
12. 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*]".
13. 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

14. For production period A-173, the BC Chicken Growers Association (BCCGA) applied for a variation based on exceptional circumstances under the Chicken Board's General Orders Schedule 2, requesting that the live price be set above the interim pricing formula's upper guardrail. The Chicken Board found, however, that the BCCGA did not provide it with sufficient and substantive new information to support varying its pricing decision for period A-173.
15. On November 25, 2021, the Chicken Board sent a letter to the Panel and its Pricing and Production Advisory Committee (PPAC) advising that it planned to propose an amendment to the interim pricing formula for production period A-174 for the Panel's prior approval, "...after consultation with stakeholders." The Chicken Board acknowledged that the upper guardrail, which constrains live prices to an agreed-on limit, had been "...significantly exceeded..." for three production

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periods, (and that "...the current conditions [increasing grower costs] will continue for some time into the future".

16. On the evening of Friday, January 14, 2022, two days before the start of production period A-174, the Chicken Board requested that the PPAC, the Primary Poultry Processors' Association of BC (PPPABC) and the BCCGA provide it with written submissions by January 18, 2022, on its proposal to amend the interim pricing formula for mainstream chicken in production period A-174. The Chicken Board proposed adding to the interim pricing formula, "A provision to cover 50% of the current formula costs exceeding the upper guardrail to address the continued escalation of feed ingredient costs facing BC growers."
17. In the same letter, the Chicken Board also stated that this proposed amendment would increase the live price of mainstream chicken by \$0.0616/kg in period A-174.
18. The Chicken Board further noted that it intended to send its submissions supporting its request to amend the interim pricing formula to the Panel by Wednesday, January 19, 2022, after it had received and duly considered the PPAC's feedback. The PPAC did not support the Chicken Board's proposed amendment. Therefore, the Chicken Board decided to proceed on its own and provide submissions to the Panel.
19. Given the tight timelines, the Panel notified the stakeholders, including the BCCGA, the PPPABC, the Commission, the BC Hatching Egg Producers' Association and the BC Egg Hatcheries' Association on January 18, 2022 of the Chicken Board's intention to seek its prior approval to amend the interim pricing formula and requested brief (1-3 page) submissions from them by January 20, 2022.
20. The Chicken Board notified the Panel that its submission would be delayed. The Panel then notified the stakeholders of this delay and that their deadline for their brief submissions would be extended accordingly.
21. At end of day on January 20, 2022, the Panel received the Chicken Board's request, for its prior approval, to amend the interim pricing formula in period A-174, resulting in a live price increase of \$0.072/kg for mainstream broiler chicken. The Chicken Board provided the Panel with the submissions it had received from the PPPABC and the BCCGA. The Chicken Board asked the Panel for a decision by January 21, 2022.
22. On January 21, 2022, the Panel notified the stakeholders that their submissions would now be required by noon on January 25, 2022.
23. On January 24, 2022, the PPPABC contacted BCFIRB's Executive Director asking if Dion Wiebe from Rosstown Farms and Natural Foods (Rosstown) could be included in BCFIRB's submission process. Rosstown is not a PPPABC member.

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BCFIRB's Executive Director directly advised Mr. Wiebe that he could provide the Panel with submissions addressing how the Chicken Board's proposed amendment would impact his operation, as distinct from PPPABC's position. Mr. Wiebe did not provide any submissions.

24. The Panel received submissions from the BCCGA, the PPPABC and the Commission on the Chicken Board's recommendation to amend the interim pricing formula. The Panel reviewed all of the submissions and issued a decision (operative part only) not to give prior approval to the Chicken Board's request on January 27, 2022 with reasons to follow. These are the Panel's reasons.

Submission Summaries

BC Chicken Marketing Board

25. For period A-174, the pricing formula, without the upper guardrail, results in a live price of \$2.074/kg for mainstream broiler chicken. This price is \$0.1232/kg over the upper guardrail which - adjusted to reflect the increased catching costs – allows for a maximum price gap over Ontario's price of \$0.1284/kg. Consequently, in its pricing order of January 14, 2022, the Chicken Board set the live price for mainstream broiler chicken at \$1.951 (\$2.074 minus \$0.1232, the amount in excess of the upper guardrail).
26. In its correspondence of January 20, 2022, the Chicken Board requested that the Panel prior approve an increase of \$0.072/kg in the live price of broiler chicken for period A-174, noting that this would result in a live price of \$2.0129/kg for period A-174.²
27. In setting the live price of chicken, the Chicken Board relies on an Ontario-based formula that includes an adjustment for differences in feed and chick prices between the two provinces, as these make up the main costs for chicken growers. Changes in the Ontario price and differences in wheat (BC feed) and corn (Ontario feed) costs impact BC grower price either positively or negatively in each production period. The Chicken Board notes several periods where grower price increased and decreased.
28. The Chicken Board provided a SAFETI³ rationale. It states it has not been presented with any objective data to demonstrate the proposed amendment will result in market instability. It argues that the amendment is consistent with pricing in the three prairie provinces. It considered both grower and processor interests – the proposed amendment is short of providing growers with full cost recovery to balance the need to consider processor competitiveness in Canadian markets.

² The difference between the A-174 price of \$1.951 and the proposed price of \$2.0129 is \$.0619 and not \$0.072. The Chicken Board confirmed the stated increase was incorrect and should have read \$.0619 (half of the amount above the guardrail of \$0.1232 plus the linkage adjustment of .003 cents), not \$.072/kg.

³ Strategic Accountable Fair Effective Transparent Inclusive.

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29. While growers received an increase in margin after feed, chick and catching due to changes in the Ontario formula that came into effect on April 11, 2021 (quota period A-169), the Chicken Board notes BC grower margins are in decline as opposed to remaining stable. To accept a margin increase less than that realized by growers in other provinces suggests BC should strive to be low-cost chicken producers, which is unrealistic.
30. Overall, continuing to apply the upper guardrail while extraordinary high feed prices continue means that growers would not have recovered the higher feed costs for a year, "...exemplifying the verifiable harm to growers."
31. The Chicken Board reports that:

The impact of the continued escalation of feed costs in BC increased the combined 75% feed and chick cost differential to \$0.1463/kg (A-170); \$0.1418 (A-171); \$0.1735/kg (A-172); \$0.1912/kg (A-173); and \$0.2116/kg (A-174). This is despite efforts by BC feed companies to introduce lower cost corn into feed rations to mitigate feed price increases that would have resulted if rations remained dependent on wheat. As well, BC feed prices continue to escalate due to market conditions despite provincial government intervention with feed companies during the November 2021 Atmospheric River Event to not increase feed prices for a two week period."
32. For five periods (A-169 to A-173), BC growers received prices below the Serecon price linkage 2018 Cost of Production (Serecon COP, updated) due to the application of the upper guardrail. The amendment would result in a cost recovery of 95.33%.
33. Growth in national wholesale prices raise questions of harm to processors; no substantive information was provided on industry instability; and the higher live prices paid in the prairies seems inconsistent with BC processor competitiveness concerns.

BC Chicken Growers' Association

34. The BCCGA applied to the Chicken Board for a variation in live price under the Chicken Board's Schedule 2 for exceptional circumstances for production periods A-173 and A-174. Over the last three periods, ingredient costs have escalated, and the upper guardrail was exceeded for periods A-169, A-170, A-172, A-173 and A-174. The proposed price increases sought were the result of the increase in feed costs over Ontario, mainly due to a wheat/corn price imbalance. The BC live prices were significantly below actual cost of production for eight of the past ten allocation periods. There was no way for BC growers to make up the actual feed cost differential unless the upper guardrail was changed. The upper guardrail was preventing growers from covering their rising costs.
35. Historically, BC has the highest live price in Western Canada. The BC price is also now lower relative to the other Western Provinces. As of mid-week (week of

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January 21, 2022), there were no pricing appeals filed in Alberta, Saskatchewan, or Manitoba for period A-174 (higher live prices than BC).

36. The upper guardrail price constraint will cost growers \$4.9 million in revenue. The harm to chicken growers represents a loss of millions of dollars each cycle. The harm that cannot be gauged is how many growers will exit the industry in the next cycle, next year, or next five years if things stay the same. Twenty-two growers (6.6%) have left the industry since 2010.

Primary Poultry Processors' Association of BC

37. The Chicken Board did not allot sufficient time for meaningful consultation with stakeholders. As the proposed change was submitted almost two weeks into the period A-174 pricing cycle, approval of the Chicken Board recommendation would cost processors approximately \$2.7 million.
38. PPPABC questions whether the feed price differential is necessarily impacting grower gross returns and noted that returns to growers currently appear to be similar to returns at the start of the supervisory review. It also noted that the Chicken Board analysis ignores BC grower margin increases of \$0.10/kg realized through changes in the Ontario Cost of Production Formula. (An addition of \$0.05 in period A-169 brought grower margins to pre-supervisory review levels; \$0.02 more was added in A-174 and \$0.036 is scheduled to be added in period A-175.) The price increase proposed by the Chicken Board would increase grower returns by 15-20% over gross returns at the start of the supervisory review, providing growers with gross margins in excess of \$0.48 in A-174 and greater than \$0.51 in A-175.
39. The price would be \$2.023, \$0.18 over Ontario when adjusted for catching and Ontario-specific items.⁴ This would be the largest differential ever experienced over Ontario and cost processors an incremental \$18 million/year with the present formula.
40. The Chicken Board does not provide any analysis of a fair return to growers and processor competitiveness. The analysis it provided was not objective and was biased towards a predetermined outcome. There was no evidence that the recommendation is required for industry stability, orderly marketing or maintenance of a competitive position. If approved, the new price will become the "reasonable benchmark for grower returns and processor competitiveness" with no supporting data.

⁴ PPPABC's cited price of \$2.023 was based on the information contained in the Chicken Board's request of January 20, 2022, to the Panel for prior approval to add \$0.072 to the A-174 live price for regular broiler chicken (\$1.951/kg.). Subsequently, the Chicken Board acknowledged a mathematical error in its request - the price increase it meant to propose was \$.0619/kg, not \$.072/kg, resulting in a live price of \$2.0129/kg.

BC Broiler Hatching Egg Commission

41. The lack of certainty in the live price for a period that has already started impacts the entire supply chain, including the hatching egg sector through linkage.
42. The Commission agrees chicken growers and hatching egg producers are experiencing feed cost increases. Addressing these increases while accounting for the competitive need of the processors is a difficult and on-going balancing act for the Chicken Board.
43. Pricing issues will always present challenges but a common, long-term BC industry-wide pricing framework focusing on all stakeholder costs would enable the first instance regulators to have a transparent, evidence-based, stable, and certain platform from which to address pricing matters.

Analysis

44. This decision was not an easy one to make. The Panel knows that the Chicken Board and all of the stakeholders continue to deal with substantive business and regulatory challenges arising from circumstances beyond their direct control.

Process

45. The Panel agrees with the PPPABC that the Chicken Board's request did not give stakeholders adequate time for consultation before the sector was well into period A-174 and payments and business contracts were in play. While the Ontario live price data was not available until January 10, 2022, it is evident that the Chicken Board, the BCCGA and the PPPABC anticipated that the upper guardrail would be exceeded again given the continued extraordinary feed costs.
46. The Panel does not expect the Chicken Board to make a final pricing decision before the Ontario price is actually posted. Indeed, the Chicken Board could not do so within the current formula. However, there was opportunity to work with supply chain members on establishing options, and ideally, agreement, on what the approach would be, should the upper guardrail be exceeded again. To clarify, whether there is agreement or not between supply chain members, it remains the Chicken Board's responsibility as the first instance regulator to set price in accordance with sound marketing policy.
47. The Chicken Board forecasts that feed price pressures may continue into the fall. The Panel expects the Chicken Board, the PPPABC and the BCCGA to start discussing now what sound marketing policy pricing would be for production period A-175, and potentially beyond.

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Recommended pricing amendment

48. The Panel agrees revisiting the upper guardrail on price is strategic and effective if that guardrail is regularly being exceeded.
49. However, no party provided satisfactory evidence (data and analysis) to support that a change in the interim pricing formula is required to ensure “fair returns for efficient growers” for period A-174. The Chicken Board argues its recommendation balances chicken grower and processor business needs (*i.e.*, everyone shares in loss). The Panel agrees that this is a strategic consideration, however there is no substantive rationale or analysis to support the Chicken Board’s specific proposed price increase over the upper guardrail.
50. Despite the Chicken Board’s recommendation and the BCCGA’s rationale being based on extraordinary feed costs, no data or analysis was provided on the changes in feed costs and how these changes may impact “fair returns” to BC growers. Forecasting lost revenue, in the absence of any context or benchmarks, is insufficient evidence for amending the interim pricing formula.
51. The Panel gave little weight to arguments that BC grower gross margins must remain on par with grower gross margins across the country, and that BC grower gross margins are in serious decline. Supply management is neither intended nor designed to guarantee equality of gross grower margins across the country. Supply management is intended to ensure a fair return to efficient growers. Data, information and rationale relied on by the Chicken Board about what constitutes a “fair return” to a BC grower remains an outstanding question in the Panel’s view.
52. Declining trends in grower gross margins and/or instability can only be effectively resolved by developing a transparent and accountable long-term pricing formula that takes into consideration costs of all the stakeholders. BCFIRB was satisfied with the Chicken Board’s data showing grower margins vary by period.
53. The BCCGA points to growers exiting the industry. The BCCGA did not explain why 8 of 67 new entrant growers have left the industry since 2007, a fourteen year period. It is difficult for the Panel to give much weight to this argument in the context of one pricing period. Grower entry and exit involves many interacting personal business and regulatory factors and grower returns cannot be considered in isolation.
54. BC is considered one of the highest cost production provinces. Recent variation on historical pricing patterns only strengthens BCFIRB’s view that coordinated pricing across the western provinces would benefit BC’s chicken supply chain. The Panel also notes that, as a high-cost production province, the chicken supply chain has additional pressure to seek and implement efficiencies.
55. Before making any future recommendations to amend the interim pricing formula, the Chicken Board must clearly demonstrate that it considered processor

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competitiveness in detail beyond a mere statement indicating that the loss was shared. Similar to fair grower returns, the Panel finds the Chicken Board has not adequately demonstrated how it assessed data, information and rationale about what constitutes processor competitiveness.

56. Lastly, the PPPABC and the BCCGA should both be prepared to work meaningfully, effectively and transparently with the Chicken Board to assess where they can exercise some short-term flexibility during these challenging times for the benefit of the full value chain.

Decision

57. The Panel does not approve the Chicken Board's recommendation to amend the interim pricing formula for period A-174.
58. The Chicken Board is not precluded from submitting 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 4th day of February 2022.



Peter Donkers
Chair, Chicken Sector Pricing Review Panel



Al Sakalauskas
Member, Chicken Sector Pricing Review Panel



Harveen Thauli
Member, Chicken Sector Pricing Review Panel