

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-175 Prior Approval

March 9, 2022

Decision Summary

1. For period A-175 and A-176, the BC Chicken Marketing Board (the Chicken Board) interim formula is amended to include:

Plus

A provision to cover 50% of the current formula costs exceeding the upper guardrail 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-175.¹ If the resulting number is negative, no adjustment will be made to live weight price.

2. The Chicken Board is directed to provide a clear description of how the interim pricing formula is applied for periods A-175 and A-176 to BCFIRB and supply chain members.
3. The Chicken Board is not precluded from requesting future amendments the interim pricing formula until such time as the Panel amends or lifts its July 3, 2020 Interim Order.

Introduction

4. In March 2020, BCFIRB established a Chicken Sector Pricing Supervisory Review Panel (the Panel) to address the Broiler Hatching Egg Commission's (the Commission) notice to exit the price linkage agreement and any related supervisory matters the Panel deemed necessary.
5. 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 formula² as a related supervisory matter in the review.
6. 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" (the Interim Pricing decision). That chronology will not be repeated here.

¹ For example, if the BC feed and chick cost gap over Ontario is such that BC growers are losing 12¢/kg because of the upper guardrail cap, and if in a given pricing period the Ontario COPF changes grower margins (e.g. the anticipated addition of 3.46 cents/kg in A-175), then the pricing amendment would add 4.27¢/kg to the BC live price (12¢/kg – 3.46¢/kg = 8.54¢/kg X 50% = 4.27¢/kg).

² The June 2018 Chicken Board interim formula was appealed by the Primary Poultry Processors Association of BC and the BC Chicken Growers Association, 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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7. 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.
8. 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 supply chain members, the Panel decided on August 20, 2021, that it would not be amending or rescinding the Interim Order.
9. For quota period A-173 (November 21, 2021 to January 15, 2022), the BC Chicken Growers Association (the BCCGA) applied to the Chicken Board for a variation based on exceptional circumstances. BCCGA requested that the live price for chicken be set above the Chicken Board's interim pricing formula's upper guardrail due to rising costs. The Chicken Board found that the BCCGA did not provide sufficient and substantive new information to change the pricing formula. The Chicken Board set the A-173 price at the upper guardrail, as calculated under the interim pricing formula.
10. On January 20, 2022, the Chicken Board sought BCFIRB's prior approval to amend the interim pricing formula, commencing in quota period A-174 (January 16, 2022 to March 12, 2022). On February 4, 2022, the Panel denied the request for the reasons set out in its decision (the A-174 supervisory decision).
11. The Chicken Board now seeks BCFIRB's prior approval to amend the interim pricing formula commencing in quota period A-175 (March 13, 2022 to April 7, 2022).

Issue

12. Does the following amendment to the Chicken Board's interim pricing formula accord with sound marketing policy?

Ontario Price based on the weight category of 2.45 to 2.65 kilograms. It will NOT include the \$0.012 per kilogram CFO modular loading cost recovery of \$0.0120; CFO AI Insurance recovery of \$0.0015; or OBHEC chick levy of \$0.0006 if still applicable in quota period A-175.

Plus

75% of the difference in feed and chick costs per kilogram of live chicken between BC and Ontario. It will not be based on a 6-period rolling average.

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Plus

\$0.04 per kilogram which is the current catching cost. Increases or decreases in the price of catching must be approved by the BCCMB in advance. If approved, these increases or decreases will be reflected in the live price as was the case for quota period A-174 when the processors and catching crews reached an agreement to increase the price by \$0.0035 (an increase from \$0.0365 cents to \$0.0400/kg)

Plus

Guardrails will be set at a maximum of \$0.1284 and a minimum of \$0.1005 (reflecting the new catching costs effective in quota period A-174).

Plus [the proposed amendment]

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.
[emphasis added]

Legal Authorities

13. Under s. 7.1 of the *Natural Products Marketing (BC) Act (NPMA)*, BCFIRB is responsible for the general supervision of all provincial marketing boards and commissions, 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”.
14. 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*]”.
15. 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

16. Prior to the Chicken Board making its submission of February 25, 2022 to BCFIRB, it:
 - a. Engaged with the Pricing and Production Advisory Committee (PPAC) on February 16, 2022;³
 - b. Considered the A-174 submissions from the Primary Poultry Processors Association of BC (PPPABC) and the BCCGA together with the A-174 supervisory decision and other related documents; and
 - c. Considered two PPPABC letters received on February 24, 2022.

³ The BCFIRB Chicken Sector Pricing Liaison attended the meeting.

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17. The Chicken Board reported that the PPPABC committed to sending written recommendations but the Chicken Board did not receive anything from the PPPABC by February 25.
18. While the Chicken Board chose to pursue BCFIRB's prior approval before the Ontario price was set, it stated its decision to seek prior approval was not a barrier to having any meaningful dialogue or considering further written feedback.
19. The Panel determined it would not ask for submissions from the supply chain members given there was no substantial change in feed and chick costs between A-174 and A-175 and a timely decision is in the chicken sector's best interest. The supply chain members are responsible for providing information to the Chicken Board as its first instance regulator, unless requested directly by the Panel. Subsequently, the Panel received correspondence from PPPABC and BCCGA on March 8, 2022. The Panel did not consider their correspondence as part of this decision.

Analysis

20. Similar to the A-174 supervisory decision, this decision was not an easy one for the Panel to make. The Panel knows that the Chicken Board and all supply chain members continue to deal with substantive business and regulatory challenges in addition to cost pressures arising from circumstances beyond their direct control.

Process

21. In the A-174 supervisory decision, the Panel pointed out that the Chicken Board's request had not given supply chain members adequate time for consultation. Rather, the Chicken Board waited until the sector was well into period A-174 when payments and business contracts were already in play.
22. The Chicken Board remedied this process issue with its A-175 submission.
23. The Panel reminds all supply chain members that BCFIRB's role is to determine whether the amendment to the interim pricing formula accords with sound marketing policy and is in the public interest, based on the information it has before it. BCFIRB is not here to take sides on unproductive criticisms being leveled by supply chain members against each other.
24. The Panel is discouraged that supply chain members could not agree on a pricing approach. It appears that working relationships are deteriorating, not strengthening, in the face of industry pricing challenges. The Panel reminds the Chicken Board and all supply chain members of their expressed commitment and optimism at the outset of the Chicken Sector Pricing Supervisory Review for collaboration and cooperation that would benefit BC's entire chicken sector.

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Recommended formula amendment

25. Processors and growers are taking highly divisive positions on the business impact on growers in the current operating environment. Growers and all supply chain members (hatching egg producers, hatcheries, chicken growers and processors) are dealing with the impact of extraordinary feed costs, the continuing divergence in wheat-corn prices and generally escalating operating costs.
26. The interim formula is intended to ensure growers recover 75% of the feed and chick cost differential over Ontario. This formula component recognizes that BC is a higher cost production province than Ontario. The feed and chick cost differential plus catching costs are then added to the Ontario price to calculate the BC formula price for live chicken. To support the competitiveness of BC's chicken processors and ensure reasonable returns to BC growers, guardrails cap the live price to a minimum of 10.05¢/kg and a maximum of 12.84¢/kg. If the guardrails are triggered, the "posted price" for live chicken will differ from the "formula price".
27. The guardrails have been effective in balancing grower and processor business needs and providing price stability. The lower guardrail is intended to support a fair return for efficient growers. The upper guardrail is intended to support processor competitiveness.
28. Last summer's drought resulted in crop losses and lower wheat supplies, raising the price of BC's wheat-based feed and widening the price gap over corn-based feed (used by Ontario growers) to an unprecedented level. This gap has been escalating since A-170 (July 2021) and has pushed the BC formula price over the upper guardrail for multiple pricing periods. In an opposite situation, the lower guardrail would protect BC growers from falling wheat prices and escalating corn prices.
29. The Chicken Board argues that producers are not achieving cost recovery, primarily due to the diverging corn and wheat prices, and as a result, growers are unable to reinvest in their farms and highly leveraged new entrant growers are in a precarious financial situation.
30. Based on the Chicken Board's submission, the PPPABC argues that the price for live chicken set above the upper guardrail will negatively impact their competitiveness, and that grower margins at this time are adequate for managing current costs. The PPPABC points to factors that benefit BC growers such as the forecasted A-175 Ontario grower margin increase, an overstatement of feed costs in the interim pricing formula due to out-of-date feed conversion ratios, and the use of a higher Ontario weight category in the formula.
31. Extraordinary feed and escalating operating costs are not a BC anomaly. Cost pressures are being felt across the West, placing all western growers and processors in an analogous position. However, the on-going divergence in wheat-

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corn prices has a significant impact on BC growers due to the structure of the interim pricing formula, including the guardrails.

32. According to the Chicken Board, over five pricing periods (A-170 – A-174), growers have not recovered a portion of their feed costs due to the impact of the upper guardrail. The upper guardrail is doing its job by protecting processor competitiveness from increasing feed costs. However, this protection is occurring at the expense of growers.
33. According to the Chicken Board, neither the PPPABC nor BCCGA have put forward an alternative to the Chicken Board on its proposed amendment.
34. The Panel is satisfied that the Chicken Board provided sufficient evidence that, although gaps in data remain, the divergence in wheat-corn prices is not a one-off situation and the on-going impact on feed cost recovery is not sustainable for BC chicken growers under the current interim pricing formula. The Panel recognizes the difficulty facing the Chicken Board in trying to meet the competitive needs of the processing sector in the face of sharply escalating wheat prices that cannot be fully recovered through the Ontario-based interim pricing formula. The Panel is satisfied that, although gaps in data remain, the Chicken Board took the impact on processor competitiveness into consideration.
35. However, the Panel finds the Chicken Board has not adequately accounted for the impact on the BC live price due to the anticipated Ontario margin increase in A-175. As such, the Panel has revised the Chicken Board's proposed amendment to the interim pricing formula so that it more properly reflects the benefits to BC growers of Ontario margin changes.
36. Achieving some form of pricing stability is extremely challenging in these unpredictable times. However, it is not sound marketing policy, as proposed by the Chicken Board, for the Panel to approve *carte blanche* an amended interim formula "...until the wheat and corn imbalance is resolved...".
37. Overall, the Panel continues to be presented with conflicting information that contains substantive gaps in data when it comes to the impact on grower returns and processor competitiveness.

Decision

38. For period A-175 and A-176, the Chicken Marketing interim formula is amended to include:

Plus

A provision to cover 50% of the current formula costs exceeding the upper guardrail after adjustment for the cumulative increase or decrease in Ontario grower margins arising from changes to the Ontario Cost of Production formula

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(COPF) starting in A-175.⁴ If the resulting number is negative, no adjustment will be made to live weight price.

39. The Chicken Board is directed to provide a clear description of how the interim pricing formula is applied for periods A-175 and A-176 to BCFIRB and supply chain members.
40. The Chicken Board is not precluded from requesting future amendments the interim pricing formula until such time as the Panel amends or lifts its July 3, 2020 Interim Order.

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 9th day of March 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

⁴ For example, if the BC feed and chick cost gap over Ontario is such that BC growers are losing 12¢/kg because of the upper guardrail cap, and if in a given pricing period the Ontario COPF changes grower margins (e.g. the anticipated addition of 3.46 cents/kg in A-175), then the pricing amendment would add 4.27¢/kg to the BC live price (12¢/kg – 3.46¢/kg = 8.54¢/kg X 50% = 4.27¢/kg).