

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

IN THE MATTER OF THE *NATURAL PRODUCTS MARKETING (BC) ACT* AND  
BC Chicken Marketing Board Long Term Formula Development Plan

November 1, 2022

## Decision Summary

1. The Chicken Sector Pricing Supervisory Review Panel (the Panel) will meet with the Chair and Vice Chair of the BC Chicken Marketing Board (Chicken Board) once a new Chair has been confirmed, as the current Chair's appointment ends on December 21, 2022. The Panel's concerns with the current adversarial situation will be discussed, along with options for moving forward, which may result in further direction from the Panel.
2. The Chicken Board is expected to direct the Cost Recovery Model Committee (CRMC) to immediately proceed with developing and providing recommendations to the Chicken Board on definitions and benchmarks for processor competitiveness and reasonable returns for efficient growers.
3. The Chicken Board is to provide a monthly written progress report against its Plan to the Panel, BCFIRB and stakeholders.
4. The Chicken Board is to work with the Pricing Liaison to schedule a progress report meeting with the Panel every two months going forward

## Introduction

5. In March 2020, the BC Farm Industry Review Board (BCFIRB) established a 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 inter-connected nature of broiler hatching egg and chicken pricing, the Panel decided to include the outstanding long-term chicken pricing formula<sup>1</sup> as a related supervisory matter.
7. A full chronology of events leading to the Chicken Sector Pricing Supervisory Review (Pricing 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. On October 28, 2020 a final Terms of Reference, developed by the Chicken Board and Commission, informed by stakeholders and approved by the Panel, was circulated. On August 8, 2022 the Panel confirmed the Terms of

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<sup>1</sup> 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.

British Columbia Farm Industry Review Board  
Chicken Board Long Term Formula Development Plan  
November 1, 2022

Reference remain in place and continue to reflect its overall expectations and the continued role and responsibilities of BCFIRB's Pricing Liaison.

9. The Commission and Chicken Board made a joint submission to the Panel on March 4, 2022. As per the Terms of Reference goals, the Commission provided a detailed rationale for its recommended verified cost of production pricing mechanism for hatching egg producers, a path forward to ensure hatcheries receive a reasonable margin for hatching service and addressed a breeder chick pricing formula and confirmation of developing a breeder vaccination program formula for hatcheries.
10. On June 3, 2022 the Panel approved implementation of the Commission's long-term pricing recommendations.
11. The Chicken Board's March 4, 2022 submission sets out a plan to develop a long-term pricing formula (Plan).
12. On August 8, 2022<sup>2</sup> the Panel issued its initial expectations and directions regarding the Chicken Board's Plan and reiterated its commitment to issue final expectations and directions no later than September 2022, later extended to October 2022. The August 8 decision confirmed that the October 2020 Terms of Reference (Terms of Reference) remain in place, and the role and responsibilities of BCFIRB's Pricing Liaison continue.

### Issue

13. What further supervisory directions are required to ensure the Terms of Reference are fulfilled by the Chicken Board in a timely and strategic way to deliver a sound marketing policy-based long term pricing solution that considers supply chain interests?

### Legal Authorities

14. 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".
15. 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*]".

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<sup>2</sup> 2022 August 8. BCFIRB. BCFIRB Initial Expectations and Directions – BC Chicken Marketing Board (Chicken Board) Long Term Formula Development Process.

British Columbia Farm Industry Review Board  
Chicken Board Long Term Formula Development Plan  
November 1, 2022

16. The Chicken Board has the authority to regulate the price of regulated products under s. 4.01(g) of the BC Chicken Marketing Scheme (Scheme).

### **Process Summary**

17. On April 28, 2022, the Panel invited stakeholders and the Chicken Board to meet with the Panel about the Chicken Board's proposed Plan. The Panel met with the BC Chicken Growers Association (BCCGA) on June 16, 2022, the Primary Poultry Processors Association of BC (PPPABC) on July 26, 2022, and the Chicken Board on August 3, 2022. No other stakeholder representatives requested a meeting. In the meantime, the Chicken Board started on its formula development process with the Panel's support in principle.
18. The PPPABC provided the Panel with further unsolicited written input on September 7, 2022. The Chicken Board notified the Panel it did not intend to respond to the PPPABC's September submission. The Panel determined it would consider the PPPABC's written input.
19. As summarized in the Panel's August 8, 2022 decision:

In the Panel's meeting with the PPPABC, the processor representatives expressed very serious concerns about the Chicken Board and its conduct in relation to pricing. The PPPABC indicated they have lost all confidence in the Chicken Board to be able to lead the development of a sustainable and fair long-term pricing formula, or to be able to proactively work with the PPPABC in an open, fair and trustworthy fashion to consider and balance the interests of the processor sector alongside those of growers. The processors told the Panel they have reached a point that they are no longer willing to work with the Chicken Board or engage in its process. The PPPABC further asked BCFIRB to take over the process of developing a long-term pricing formula and engage an independent third party that they could work with and provide data and information to.

In the Panel's meeting with the BCCGA, the grower representatives generally supported the Chicken Board's plan, but see regular and timely updates from the Chicken Board on progress as critical. The growers pointed out that some cost components planned for the long-term formula will never find agreement (e.g., land and labour). Rather than letting lack of agreement become a log jam and delay formula development, the growers recommended that the Chicken Board identify the extremely contentious cost components and have a third party establish the values.

In the meantime, the Chicken Board has started its process with the Panel's support in principle. It is critical to industry stability that a strategic and sustainable long-term pricing formula for live broiler chicken is reached as soon as possible. The Chicken Board reported that a Project Manager was retained as of June 2022 and Serecon has been engaged for survey work and data collection.

British Columbia Farm Industry Review Board  
Chicken Board Long Term Formula Development Plan  
November 1, 2022

20. Since the Panel meetings, the following developments have occurred:
  - a. on August 9, 2022 the Chicken Board's contracted Project Manager resigned;
  - b. on August 11, 2022 the Chicken Board's CRMC held its first meeting;
  - c. on August 25, 2022 the Chicken Board finalized the CRMC Terms of Reference; and,
  - d. on October 11, 2022 informed the Panel it had retained Chicken Board Chair Harvey Sasaki as its Project Manager.
21. The Panel also received a letter from PPPABC on October 13, 2022 following the Chicken Board's announcement of its replacement Project Manager. The Panel has taken PPPABC's written input into account in this decision.
22. In its decision, the Panel has also taken into consideration the process steps started or completed by the Chicken Board, and any Plan modifications made by the Chicken Board since March 4, 2022.

## **Analysis**

### Formula Development Management

23. Given the Chicken Board's lack of progress over the past two years and its goal of developing a long-term formula within the coming year, a dedicated professional Project Manager is necessary to ensure project milestones are met. Extensive work remains, including but not limited to re-engaging stakeholders, developing a communications strategy, finalizing definitions and metrics for a fair return for efficient producers and processor competitiveness, determining formula cost components, verifying data and modelling, determining how to integrate supply chain pricing and finalizing final pricing recommendations and rationale for BCFIRB's prior approval.
24. PPPABC objects to the Chicken Board's decision to contract the current Chair as the replacement Project Manager despite the Chair committing to recuse themselves from decisions as appropriate. In PPPABC's view, this decision is inconsistent with the principles of good governance as it "...creates both a perceived and actual conflict of interest and creates a reasonable apprehension of bias." It has shared these views directly with the Chicken Board and the Panel. To the Panel's knowledge, the Chicken Board has not responded to the PPPABC's concerns to date. Nor, to the Panel's knowledge, have other supply chain members commented on the

British Columbia Farm Industry Review Board  
Chicken Board Long Term Formula Development Plan  
November 1, 2022

Chicken Board's decision to contract the current Chair as the replacement Project Manager.

25. The PPPABC and BCCGA shared differing perspectives on the formula development progress. The BCCGA generally agrees with the Chicken Board's approach, but is concerned about progress and timeliness. The PPPABC continues to state that the Chicken Board is failing to fulfill Terms of Reference and that the Chicken Board is unable to "...effectively and objectively structure and manage the pricing process."
26. As noted above, extensive work remains. The Panel has not received final pricing recommendations from the Chicken Board. As such, it would be premature for the Panel to assess whether the Chicken Board has met its Terms of Reference goals, and if any further action is required. As per the Terms of Reference, the Chicken Board continues to depend on the PPPABC and BCCGA as the primary contacts for input and feedback. In turn, PPPABC and BCCGA remain responsible for the timely submission of requested information.
27. What has become evident to the Panel, though, is that the formula development process has become adversarial in nature, and has been for the past several months.
28. For example, the Pricing and Production Advisory Committee (PPAC) no longer provides considered recommendations to the Chicken Board on pricing matters as per its regulatory intent. Rather, grower and processor PPAC members provide separate written submissions from their respective positions. In several communications of late, the Chicken Board has stated it would not respond to issues and concerns from supply chain members for fear of getting into a negative and unconstructive "back and forth".
29. A multi-decade history of pricing appeals and supervisory reviews has more than adequately demonstrated a stable long-term approach to supply chain pricing is not achievable unless the Chicken Board, with cooperation from the BCGGA and PPPABC, finds a transparent and accountable path to balance a fair return for efficient producers with processor competitiveness. An adversarial process - with BCGGA and PPPABC presenting conflicting views in supervisory review input forums and a PPAC offering no further discussion or compromise - will likely result in on-going pricing disputes rather than stability in pricing and the supply chain.

British Columbia Farm Industry Review Board  
Chicken Board Long Term Formula Development Plan  
November 1, 2022

30. On June 1, 2021, the Panel stated:

Long-term pricing stability benefits the entire BC chicken sector. To reach this challenging goal, open, informed dialogue and analysis, drawing on multiple views and sources of information, is critical. Informed, well-considered recommendations by the Chicken Board and Commission will require thoughtful balancing of the interests of all, demonstrating how the key policy objectives stated above are being met, for the benefit of the entire chain.

31. An adversarial process, in the context of this review, is an ineffective use of sector resources, leads to deterioration of critical business relationships, and is unlikely to result in sound marketing policy outcomes. Strong and creative leadership is required, as is an understanding and acceptance by all supply chain members that stable pricing benefits will only be achieved through tough, but respectful, informed conversations on how to effectively balance interests.
32. This situation as it presently stands has become extraordinarily problematic. The current Chicken Board Chair's Order-in-Council (OIC) appointment ends on December 21, 2022. The Panel will meet with the Chair and Vice Chair of the Chicken Board once a new Chair is confirmed to discuss the Panel's concerns and options for moving forward. This may result in further direction from the Panel.

### Formula Development Process

33. In its September and October letters, the PPPABC requested the Chicken Board "return to the original terms of reference", and establish definitions and metrics for "reasonable return for growers" and "processor competitiveness". Following which, the Chicken Board would develop long-term pricing formula options that can be assessed against the definitions and metrics.
34. The Panel is not prepared to direct the Chicken Board to re-examine its pricing approach. As PPPABC is aware, the Chicken Board consulted with stakeholders on five pricing options, starting in 2020, including through a BCFIRB Pricing Liaison led Roundtable session. Re-development and examination of pricing options is not effective, strategic nor accountable. Both PPPABC and BCCGA clearly expressed that a resolution on the long-term pricing formula is needed sooner rather than later. The Panel remains satisfied the Chicken Board's proposed pricing model reflects, in principle, the Terms of Reference goals. The difference between the proposed Cost Recovery Model and a Cost of Production Model is unclear. The Panel expects further clarification in this regard in the next Chicken Board update.

British Columbia Farm Industry Review Board  
Chicken Board Long Term Formula Development Plan  
November 1, 2022

35. The PPPABC argues that a pricing formula approach cannot be settled on until concepts such as “fair returns for efficient producers” and “processor competitiveness” are defined and metrics established. The Panel shares this frustration that these items remain outstanding two years into the Review. As noted below, the Panel disagrees with the Chicken Board that these definitions and metrics cannot be developed until the Chicken Board has a long-term pricing formula.

Definitions: Fair return for efficient producers and processor competitiveness

36. At the outset of this Review, BCFIRB’s Pricing Liaison identified defining “fair returns for efficient producers” and “processor competitiveness” as critical to a successful pricing outcome. The Liaison facilitated two sector Roundtables (December 2020, January 2021) and solicited written input with the objective of reaching “clear definitions and measures”.
37. Coming out of the Liaison Roundtable process, the following definitions were generally agreed to by processors and growers, recognizing some further work may be needed.
- a. Reasonable Return to Growers: A profit over fixed and variable costs that allows for sustainability maintaining or enhancing production growth.
  - b. Processor Competitiveness: The ability to profitable and sustainably maintain or enhance market share.
38. With the passage of time, the Panel recognizes the above definitions may need to be refined. However, the definitions do provide a starting point for the CRMC to develop final recommendations for the Chicken Board as per the Chicken Board Plan.
39. The Panel agrees with the PPPABC that defining a “fair return for efficient producers” and “processor competitiveness” is critical for a sound marketing policy pricing outcome. These definitions and metrics will inform how the final pricing formula will balance grower and processor business interests to benefit the sector. The Panel disagrees with the Chicken Board that grower survey data and a final formula is required to start moving forward with establishing definitions and metrics. At a minimum, the general definitions can be finalized. Identifying processor competitiveness metrics remains challenging and in the Panel’s view, this work can proceed concurrently with the grower cost of production survey to minimize further delays.
40. The CRMC was established by the Chicken Board and is composed of supply chain representatives, and the BCFIRB Liaison as a non-voting member. The CRMC is tasked with “providing input, feedback and recommendations to the [Chicken] Board on benchmarks that measure



British Columbia Farm Industry Review Board  
Chicken Board Long Term Formula Development Plan  
November 1, 2022

processor competitiveness (i.e. market share) and measure reasonable return to growers (i.e. an efficient grower defined as an average or median farm)". The Panel expects the Chicken Board to direct the CRMC to proceed immediately with this assigned task.

41. To date, the PPPABC has only agreed to participate on the CRMC as an observer, despite the Chicken Board providing full participatory status and three seats as it did for growers. The Panel once again encourages the PPPABC to fully participate to ensure its interests are included in the CRMC recommendations to the Chicken Board. The Chicken Board, and in turn, BCFIRB will be unable to fully and properly consider processor interests in the absence of PPPABC input.
42. The Chicken Board, in a September 14, 2022 update email to BCFIRB, reported that a fair return is defined as 100% of grower cost recovery. The Panel finds this conclusion premature given that the CRMC has yet to consider and make its recommendations to the Chicken Board on definitions for a "fair return for an efficient grower", "processor competitiveness" and related metrics or benchmarks.

#### Formula components

43. The Panel expects the Chicken Board will give very careful and thorough consideration to which cost components will support a strategic and accountable long-term formula. The components should include an effective update schedule. A fulsome rationale is expected for each cost component in the Chicken Board's final decision. As noted in the Panel's face-to-face meetings with the Chicken Board, quota value, as determined through the private producer marketplace, is not to be included as a cost component in a long-term pricing formula.

#### Supply Chain Pricing

44. Following the Panel's approval of the Commission's long-term pricing recommendations (June 3, 2022<sup>3</sup>), the Chicken Board raised certain concerns with potential impacts on chick price. The Panel is satisfied that the Commission is aware of, and is working with, the Chicken Board on the concerns and questions raised.
45. As per the Terms of Reference, the Panel continues to expect the Chicken Board and Commission's long-term pricing structures will work together to reflect a supply chain pricing approach that addresses the following policy objectives:

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<sup>3</sup> 2022 June 3. BCFIRB. In the Matter of the *Natural Products Marketing (BC) Act* and BC Broiler Hatching Egg Commission Final Pricing Recommendations.

British Columbia Farm Industry Review Board  
Chicken Board Long Term Formula Development Plan  
November 1, 2022

Verified COP/reasonable returns-based pricing mechanisms for BC hatching egg producers and chicken growers.

BC chicken processors being competitive in the Canadian market for chicken.

BC hatcheries receiving a “reasonable” margin for hatching services.

### Reporting

46. Earlier in 2022, the Chicken Board committed to providing the Panel with bi-weekly updates. Since that time Chicken Board reporting has been erratic. In addition to supporting a transparent, strategic and effective process, regular updates will also support a timely prior approval process once the Chicken Board makes its final pricing recommendations.

### Quota Management

47. Throughout this supervisory review, several discussions on quota management and transfer have arisen with the Panel. These discussions reflected concerns about a changing industry structure and grower/processor relationships. Quota, along with price, are central pillars of supply management and shape BC’s chicken sector. The Chicken Board also raised consideration of a quota exchange as part of BCFIRB’s current review of new entrant programs.
48. While outside the scope of this review, the Panel observes that from a strategic perspective, a quota exchange would support a fair, inclusive and transparent process for quota transfers. Once the current pricing review concludes, the Panel recommends the Chicken Board consult with the BC Egg Marketing Board and the BC Milk Marketing Board, who have extensive experience with operating quota exchanges. The Panel also encourages the Chicken Board to discuss options for a joint quota exchange with the Broiler Hatching Egg Commission (Commission).

### **Closing**

49. The Panel agrees with the BCCGA and PPPABC the Chicken Board must make resolution of its long-term pricing recommendations an urgent priority.

### **Decision**

50. The Panel will meet with the Chair and Vice Chair of the Chicken Board, once a new Chair has been confirmed, as the current Chair’s appointment ends on December 21, 2022. The Panel’s concerns with the current adversarial situation will be discussed, along with options for moving forward, which may result in further direction from the Panel.

British Columbia Farm Industry Review Board  
Chicken Board Long Term Formula Development Plan  
November 1, 2022

51. The Chicken Board is expected to direct the CRMC to immediately proceed with developing and providing recommendations to the Chicken Board on definitions and benchmarks for processor competitiveness and reasonable returns for efficient growers.
52. The Chicken Board is to provide a monthly written progress report against its Plan to the Panel, BCFIRB and stakeholders.
53. The Chicken Board is to work with the Pricing Liaison to schedule a progress report meeting with the Panel every two months going forward.

Dated at Victoria, British Columbia, this 1<sup>st</sup> day of November 2022.



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Peter Donkers  
**Chair, Chicken Sector Pricing Review Panel**



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Al Sakalauskas  
**Member, Chicken Sector Pricing Review Panel**