

**Schedule 15**  
(Part 55)  
(Section 55.4)

**Board Decision or Determination**

Form B

*attach applicable Forms A, if available*

***A-169 Pricing request for Exceptional Circumstances.***

***April 15, 2021***

1. **Date(s) of this decision:** April 15, 2021

2. **Members of Board present for decision:**

H. Sasaki, DA Janzen, A. Johnston, G. Hahn and R. Nickel

3. **What sources of information did the Board consider in coming to its decision?**

Form A - Application for Decision or Determination

Board Staff's Briefing Note

Applicant's oral submissions

Board's Orders (give reference numbers, if applicable):

Schedule 2

Other (explain):

- 2021-04-09 – Joint PPAC Minutes (draft)
- Pricing Order #160 – Mainstream price for quota period A-169
- 2021-04-12 – Notice to PPAC of request for variation of exceptional circumstances by processors
- 2021-04-12 – Correspondence from PPPABC requesting variation for exceptional circumstances – re: A-169 Live Bird Pricing in BC – Variation for Exceptional Circumstances

- 2021-04 14 – Correspondence from BCCGA re: April 12/21 Exceptional Circumstances – BCCGA submission
- 2021-04-14 draft PPAC Minutes
- 2021-04-14 – supplemental documentation from PPPABC in response to questions from BCCGA
- 2021-04-14 – Further analysis by BCCGA
- 2021-04-15 – Processors develop more detailed pricing comparison and comment on R. Nickel assertion
- 2021-04-15 – BCCGA “2 quick comments” to supplemental documentation provided by PPPABC

#### **4. What is the Board’s decision?**

To not reopen and amend Pricing Order #160 dated April 9, 2021 for live price of mainstream chicken for quota period A-169 (April 11 – June 5, 2021).

#### **5. Why did the Board come to this decision?**

After considering the advice of the PPAC; due consideration of all information received; and the BCFIRB Review Panel directive requiring prior approval of any changes to the existing pricing formulas, the Board found that it was not presented sufficient and substantive evidence to vary its decision with respect to A-169 live pricing for mainstream chicken. Order #160 dated April 9, 2021 for mainstream live pricing for quota period A-169 remains in place.

#### The Revised Ontario Farm-Gate Minimum Live Price (the “COPF”)

The Board, along with other provincial boards participated in a Zoom conference on April 7, 2021 during which the Chicken Farmers of Ontario provided an update and explanation of the changes made to the Ontario COPF for A-169. Subsequently, the Board sought the expertise of Serecon to enable a more fulsome understanding of the implications on the BC live price formula resulting from the changes to the Ontario COPF by way of Zoom conference on April 8, 2021.

## Ontario Annual Adjustments and Feed Conversion Ratios

Serecon identified to the Board that changes related to the elimination of the annual adjustments as well as the change to feed conversion ratio used in the Ontario COPF had a profound effect on the feed cost differential component in the BC formula. The increase in BC feed prices and the elimination of the Ontario annual adjustments combined with the reduction in the Ontario feed conversion ratio increased the feed cost differential between BC and Ontario in A-169. The higher feed conversion ratio used in pre-A169 pricing served to minimize the feed cost differential between BC and Ontario, which served to understate the BC live price.

## Flow of Benefits

In their March 4, 2021 letter, the PPPABC asserted that “without a change to the current BC Live Price Formula any reductions in efficiency adjustments in the new ON COPF will flow entirely to BC broiler growers”. The Board assessed the question of flow of benefits resulting from the changes in the Ontario COPF.

Prior to A-169, the Ontario annual adjustments reached a maximum of 13.3 cents/kg. For the last eight cycles (A-161 – A-169) the BC live price difference over the comparable Ontario COPF weight class ranged from a low of 9.7 cents/kg (A-163, A-167 and A-168) to a high of 12.49 cents/kg (A-165 and A-166) inclusive of the BC cost of catching (3.65 cents/kg). After netting out the BC catching cost, the higher BC price differential over Ontario ranged from 45.5% to 66.5% of the Ontario annual adjustments. This would appear to indicate that prior to A-169 the cost/benefit of the Ontario annual adjustments were close to equal in distribution between BC broiler growers and BC processors. In other words, during the last 8 periods the BC live price has equally triggered both lower and upper guardrails indicating a balance in the model approach.

With the removal of the annual adjustment in the Ontario COPF and the lowering of the Ontario feed conversion ratio, the current difference of 12.49 cents/kg less BC catching costs yields an 8.84 cent/kg BC difference over Ontario. The April 12, 2021 PPPABC proposal suggested that the pre A-169 Ontario feed conversion ratio be used to calculate the Ontario/BC feed cost differential for purposes of the A-169 BC live price. The effect of the proposal would be to

reduce the feed cost difference resulting in the feed plus chick cost difference falling below the lower guard rail and a net 6.05 cents/kg (9.7 – 3.65 (catching cost)) difference over Ontario.

Notwithstanding the PPPABC April 12, 2021 proposal, another perspective on the flow of benefits is to examine the effect of the higher feed conversion ratio used in Ontario prior to A-169. It is important to note that the Ontario annual feed efficiency adjustment was not applied to the feed cost for purposes of calculating the BC – Ontario feed cost difference. The annual feed efficiency adjustment was combined with the annual volume adjustment and producer efficiency adjustment and subtracted from the Ontario COPF to yield the Farm-Gate Minimum Live Price. As stated previously, the higher feed conversion ratio used in pre-A169 pricing raised the Ontario feed cost and served to minimize the feed cost differential between BC and Ontario. Had the annual feed efficiency adjustment of 4.4 cents/kg been applied, the feed and chick cost differential for the BC live price would have increased by 3.3 cents/kg (75% of 4.4 cents/kg). For periods A-161 to A-168, the live price would have been 3.3 cents/kg higher in all periods except for A-165 and A-166 which triggered the upper guard rails. In other words, BC processors benefitted from the pre-A-169 Ontario COPF treatment of feed conversion ratio and annual feed efficiency adjustments from the outset of the Ontario COPF, A-129, albeit to varying degrees from 1.13 cents/kg to the current 3.3 cents/kg.

#### Guard Rails.

The Board fully understood the impacts the changes the Ontario COPF created, and felt that the consequences were captured within the parameters of the guardrails contained with the current BCCMB pricing formula for mainstream chicken consistent with previous pricing cycles.

The current BC formula has guardrails (upper and lower) to minimize significant increases or decreases due the change in Ontario pricing. These guardrails are effective and have not been challenged over time. The guardrails have been deployed 6 times, three times hitting the upper rail of 12.49 cents per kilogram (A-165, A-166 and A-169) and 3 times hitting the lower rail of 9.70 cents per kilogram (A-163, A-167, A-168). At each instance, no exceptional circumstances requests were triggered by any of the stakeholders.

The PPPABC tabled a proposal after the PPAC meeting, expecting the Board to accept a fundamental change to the existing formula without full consensus of industry stakeholders. The treatment of feed cost did have an impact, but processors put forth an arbitrary method to adjust the price without PPAC consensus. The PPPABC may contend that they expressed “the need for an interim A-169 pricing solution with all parties to address foreseeable changes in the CFO annual adjustments” in their March 24, 2021 meeting with the Board. In their April 9, 2021 letter the PPABC state “Unfortunately the BCCMB did not act upon our request.” The Board did not act on the March 4 or March 24 PPPABC requests owing to the fact that information specific to the nature and details of the changes to the Ontario COPF for A-169 pricing had not been revealed at that time and any dialogue between interested parties would only be speculative in nature. The Board did however, upon receiving details on the changes to the Ontario COPF (April 7, 2021) request a meeting of the PPAC, which was held on April 9, 2021 prior to the Board making its Pricing Order for A-169.

The April 14 PPPABC request was to amend the pricing formula to achieve an outcome that would trigger the lower guardrail (9.7 cents) instead of using the formula which triggered the upper guardrail (12.49 cents). The difference between the two is:  $12.49 \text{ cents} - 9.7 \text{ cents} = 2.79 \text{ cents}$ . This represents a 1.49% difference between the live price set and the PPPABC request, which the Board feels does not meet the threshold of exceptional circumstances.

The difference between the upper and lower guardrails is approximately 2.79 cents/kg. Processors currently pay a 2 cents per kilogram “loyalty bonus” which is designed to retain supply from their grower groups. One option available to the processors is the elimination of the loyalty bonus which offers the processors a means to reduce their costs by the amount of the loyalty bonuses paid to growers.

While the Processors were unaware of the change in feed cost prior to the release of the new ON COPF, the Board was aware of it when it made its pricing decision. Processors claim to have lost confidence in the pricing review process and that their submissions are being ignored or discounted by the Board. The pricing review process is separate from this decision – the BCCMB has made no determination respecting a new pricing formula going forward. The list of documents considered by the Board is at the beginning of this SAFETI.

As to the claim respecting Alberta and Saskatchewan changing their longstanding positions respecting modular loading and AI insurance recovery, it is the understanding of the BCCMB that these province's position has not changed; they continue using the Ontario posted and published live price and has been reflected as such since Ontario originally made the adjustments.

With regard to the BCCGA's (the growers) claim that the previous Ontario COPF benefitted the processors at a cost savings of over \$41 million dollars, the Board does not agree (refer to previous Flow of Benefits section). While the BC processors certainly benefitted from the previous Ontario COPF to some degree (A-129 to A-168), the Board is unable to quantify the benefit in actual dollars. The Board is aware from previous submissions that approximately 40% of processor sales are comprised of contracts based on live prices in effect at the time of the actual sale of the product. For this and a number of other factors the Board felt that the benefit to the processors is overstated in the grower's submission.

## **RATIONALE FOR DECISION BASED ON OUTCOME BASED PRINCIPLES**

### **Strategic**

- The Board has the authority to determine the price of the regulated product under the *Natural Products Marketing (BC) Act 11(1)(k)* “to set the prices, maximum prices, minimum prices or both maximum and minimum prices at which a regulated product or grade or class of it may be bought or sold in British Columbia or that must be paid for the regulated product by a designated agency and to set different prices for different parts of British Columbia;”
- The Board has the authority to make orders and rules considered by the marketing board necessary to control and regulate the regulated product under the *Natural Products Marketing (BC) Act 11(1)(q)* “to make orders and rules considered by the marketing board or commission necessary or advisable to promote, control and regulate effectively the production, transportation, packing, storage or marketing of a regulated product, and to amend or revoke them;”
- The Board has the power to make orders within its jurisdiction, as that jurisdiction is set out under the *British Columbia Chicken Marketing Scheme (1961)* under section 4.01 “(g) to fix the price or prices, maximum price or prices, minimum price or prices, or both maximum and minimum prices at which the live prices over 2 days old that are regulated product, or any grad or class of chicken thereof, may be bought or sold in the Province, or that shall be paid for the regulated product by a designated agency, and may fix different prices for different parts of the Province;”
- The Board is required under 3.20(3) of the *British Columbia Chicken Marketing Scheme (1961)* to “consult with the PPAC and consider the committee’s advice before the Board makes any decision relating to pricing and production.”

- The Board's Strategic Plan requires the Board to regulate the pricing and production of BC chicken while meeting consumer expectations including animal care and on farm food safety; and working with industry partners to maintain sustainability as we grow the market. The Board is to implement programs that provide the opportunity for a fair return to producers and allow processors to be competitive in the domestic market.
- The Board's General Orders at Schedule 2(7) Variation for Exceptional Circumstances notes that the Board will not reopen the issue of pricing for a Quota period once a period has started unless exceptional circumstances is triggered. A concise set of rules outlines the process and timeline to be followed in this instance.
- The decision to not reopen and amend Pricing Order #160 does not detract from the BCFIRB Supervisory Pricing Review objective to ensure interim pricing stability while completing an inclusive process to establish a long-term pricing formula for mainstream chicken in BC.

#### Accountable

- The Board is accountable to industry members, processors and growers in its value chain including the public.
- The BCFIRB Interim Pricing decision of July 3, 2020 specifically orders the BCCMB and the Commission to not change any aspect of the current pricing structure as defined in the decision, unless by way of BCFIRB prior approval or until such time as BCFIRB determines otherwise. Had the PPAC been able to provide a consensus position on an alternate method to set the A-169 live price, the Board may have been able to approach the BCFIRB Review Panel with a request for implementation of said consensus position. According to the minutes of April 9<sup>th</sup> and April 14<sup>th</sup> this did not occur.
- A decision by the Chicken Board with respect to exceptional circumstances is appealable to BCFIRB. Any person aggrieved by a decision of the Board may appeal to



BCFIRB. However this may be constrained as the FIRB directive to the BCCMB and BCHEC to not make any amendments to the current live price formula without receiving prior approval (BCFIRB In The Matter Of The Natural Products Marketing (BC) Act and Interim Pricing In The BC Chicken Sector– July 3, 2020). This BCFIRB directive was fully considered by the Board prior to its decision making.

- The Board has provided some relief for processors by the exclusion of removing the following items from the current CFO posted live price: modular loading, AI insurance cost recoveries and OBHECC service charge related to emergency depopulation services. Further the guardrails provide some assurance for processors on the maximum and minimum differential over Ontario. The guardrails have been activated for the fourth consecutive period since A-166.

#### Fair

- All parties who will be impacted by this decision have been considered and heard.
- The Board adheres to a fundamental principle that the decision be made using sufficient, substantive fact base evidence. Finding exceptional circumstances based using a portion of the old Ontario formula (feed conversion ratio) but not taking into account the feed efficiency adjustment is flawed in the view of the Board.

#### Effective

- The decision promotes the objectives of the Board for the BC chicken industry and is consistent with sound marketing policy.
- The decision is based on timelines contained in the General Orders.

## Transparent & Inclusive

- The rules are contained in the General Orders respecting pricing and exceptional circumstances.
- All parties were given the opportunity to participate in the process as per the General Orders.
- A copy of the decision of the Board and its rationale will be circulated to the PPAC. A notice of the decision will be included in the Board Newsletter and posted on the Board website.