



BC Farm Industry Review Board

Supervisory Rule

PROTECTION OF PRIVACY AND CONFIDENTIALITY IN BCFIRB SUPERVISORY PROCESSES AND REVIEWS

May 22, 2020

Whereas s. 7.1(7) of the *Natural Products Marketing (BC) Act (NPMA)* authorizes the British Columbia Farm Industry Review Board (BCFIRB) to make rules governing its procedure and it has enacted Supervisory Rules effective August 19, 2010 (reviewed and confirmed December 11, 2013), BCFIRB makes these additional rules to address how potentially sensitive and confidential information is managed by BCFIRB under its supervisory mandate.

1. BCFIRB recognizes the importance of transparency and inclusiveness in how, as a public body, it carries out its mandate. BCFIRB's own governance principles (SAFETI) highlight the importance of being strategic, accountable, fair, effective, transparent and inclusive. Through these principles, BCFIRB strives to ensure that processes, practices, procedures, and reporting on how the supervisory mandate is exercised are open, accessible and fully informed. In addition, BCFIRB strives to ensure that appropriate interests, including the public interest, are considered.
2. BCFIRB, when exercising its supervisory capacity, has the discretion at common law to receive information in confidence. Where information is received in confidence in a supervisory hearing, the *Freedom of Information and Protection of Privacy Act (FOIPPA)* does not apply because the information received is protected from disclosure pursuant to section 61(2)(c) of the *Administrative Tribunals Act (ATA)*. A hearing is broadly defined by BCFIRB as any process where a party is given an opportunity to provide information, in oral or written submission format.
3. While BCFIRB strives to ensure that its processes are open and accessible, there will be situations where BCFIRB determines that certain information should be received in confidence and/or participants wish to rely on confidential or sensitive information (e.g., financial information that could harm the competitive or negotiating position of a third party), which they seek to protect in order to participate in a meaningful and effective manner.
4. Where the supervisory panel determines it is appropriate to do so and in accordance with the proper administration of justice, it may order a commodity board to produce certain information on a confidential basis. The supervisory panel may, at its discretion, provide hearing participants with a redacted version of any confidential information it receives.

5. Where a participant in a supervisory hearing determines that it wishes to rely on potentially confidential or sensitive information (either orally or in documentary form), the participant may apply, as early as possible in the proceedings and before the information is disclosed, for a non-disclosure order from the supervisory panel.
6. A supervisory panel, in deciding whether a non-disclosure order is consistent with the proper administration of justice, will weigh the following types of interests, along with any others a panel considers relevant or important:
 - a) What is the importance of the individual's interest at stake?
 - b) Is the order necessary to prevent a serious risk to that important interest, including a commercial interest, grounded in evidence?
 - c) What is the impact on that protected interest by disclosure?
 - d) Is there a public interest in maintaining confidentiality?
 - e) Are there reasonable alternatives available to such an order or can the order be restricted as much as is reasonably possible while still preserving the commercial interest in question?
7. Where the supervisory panel deems a non-disclosure order is appropriate in the circumstances, it will establish an appropriate in camera or confidential process to receive the information in such a manner to ensure the information is protected both in the supervisory review and in the future.
8. Where a supervisory panel issues a non-disclosure order, and pursuant to section 61(2)(c) of the *ATA*, any information covered by that order cannot be disclosed in a Freedom of Information (FOI) request by third parties.
9. Where the supervisory panel deems a non-disclosure order is not appropriate in the circumstances, the information that was subject to the application for a non-disclosure order will be admitted into the hearing and will be subject to disclosure on terms established by the supervisory panel.

Dated: May 22, 2020 at Victoria, British Columbia.



Peter Donkers, Chair

British Columbia Farm Industry Review Board