



BRITISH
COLUMBIA

BC Farm Industry Review Board

Rules of Practice and Procedure for Appeals under
the Natural Products Marketing (BC) Act, R.S.B.C.
1996, c. 330

Approved by the BC Farm Industry Review Board – July 2016

Contents

Introduction	6
PART I: Definitions and Computing Time (Deadlines)	7
Definitions.....	7
Computing Time (Deadlines)	8
PART II: Filing and Withdrawing Appeals	9
RULE 1: How to File an Appeal.....	9
RULE 2: Appeals Involving Similar Questions	10
RULE 3: How to Withdraw an Appeal.....	11
PART III: Duties and Status of Marketing Boards on Appeals	11
RULE 4: Duty to Produce Documents	11
RULE 5: Right of Participation.....	12
PART IV: Pre-Hearing Procedure	12
RULE 6: Applying for a Stay.....	12
RULE 7: Pre-Hearing Conference	12
RULE 8: Facilitated Settlement and Mandatory Facilitated Settlement.....	13
Facilitated Settlement	13
Mandatory facilitated settlement	14
RULE 9: Pre-Hearing Applications	14
RULE 10: Applying for Intervener Status.....	15
RULE 11: Production of Documents and Confidentiality.....	16
RULE 12: Applying to Exclude Documents.....	16
RULE 13: Applying for Document Production.....	16
RULE 14: Applying for a Summons.....	17
RULE 15: Expert Evidence.....	18
RULE 16: Adjournments.....	18
PART V: Hearing Procedure	19
RULE 17: Notice and Form of Hearing	19
RULE 18: Public Access and Recording	19
RULE 19: Participation at Hearings.....	20
RULE 20: Order of Presentation at Oral Hearings.....	20
RULE 21: Evidence at Hearings.....	20

RULE 22: Authorities.....	21
RULE 23: Costs	22
PART VI: Post-Hearing Matters.....	22
RULE 24: Issuance and Publication of Decisions.....	22
RULE 25: Correction and Clarification of Decisions.....	23
PART VII: General.....	23
RULE 26: Address of Record	23
RULE 27: Serving Documents on Other Parties, Interveners, and BCFIRB.....	24
RULE 28: Communicating with BCFIRB.....	25
RULE 29: Extending or Abridging Time Limits.....	25
RULE 30: Failure to Comply with the Rules.....	25
Appendix A: Appeal Form.....	26

Introduction

The British Columbia Farm Industry Review Board (“BCFIRB”) is constituted under [section 3 of the Natural Products Marketing \(BC\) Act](#), R.S.B.C. 1996 c. 330 (“the NPMA”). BCFIRB is a quasi-judicial tribunal with statutory authority to, among other things, hear appeals from persons aggrieved by or dissatisfied with an order, decision or determination (“decisions”) of a board or commission responsible for regulated marketing in British Columbia.

On hearing an appeal, BCFIRB may: make an order confirming, reversing or varying the order, decision or determination under appeal; refer the matter back to the marketing board or commission with or without directions; or make another order it considers appropriate in the circumstances ([NPMA, s. 8\(9\)](#)).

Appeals to BCFIRB are governed by sections [8.1, 8.2 and 8.3 of the NPMA](#), as well as [section 3.1 of the NPMA](#), which make applicable to BCFIRB certain provisions of the [Administrative Tribunals Act](#), S.B.C. 2004, c. 45 (the “ATA”). The [ATA](#) provisions deal with a number of powers and procedures relevant to the hearing of appeals, including a general power to make rules “respecting practice and procedure to facilitate the just and timely resolution of the matters before it.”¹

The purpose of these Rules is to encourage clear, consistent and efficient practice concerning appeals under section 8 of the [NPMA](#).² As recognized by section 11(3) of the [ATA](#), BCFIRB may waive or modify any of these rules in any particular case if BCFIRB considers there are exceptional circumstances. Further, BCFIRB reserves the right to generally add to, amend, or repeal any or all of these rules at any time, or to make any other procedural order it considers necessary.

Note that if, after an appeal is filed under section 8 of the [NPMA](#), an appeal panel considers that some or all of the subject matter of the appeal is more appropriately addressed in a supervisory process the appeal panel may, after giving the parties an opportunity to be heard, defer further consideration of the appeal until after the supervisory process is completed. If an appeal is deferred and the supervisory process is complete the appellant may give notice that it intends to proceed with the appeal. In this event, BCFIRB will proceed with and decide the appeal.

These rules are effective as of July 29, 2016. Persons involved in an appeal must proceed on the basis that these rules apply unless BCFIRB directs otherwise. Where there may be a discrepancy between these rules and the legislation, the legislation applies.

For further information regarding BCFIRB including the legislation it applies, its processes and its prior decisions, please see www.gov.bc.ca/BCFarmIndustryReviewBoard.

¹ There are other provisions of the [NPMA](#), the [NPMA Regulations](#) and [ATA](#) that may be relevant to the hearing of an appeal. While an effort has been made to cross-reference relevant provisions from those acts, any person involved in an appeal remains responsible for reviewing and understanding those other acts as well as the matters specifically addressed in these Rules.

² BCFIRB also hears complaints under the [Farm Practices Protection \(Right to Farm\) Act](#) and hears appeals under the [Agricultural Produce Grading Act](#) and the [Prevention of Cruelty to Animals Act](#). These rules do not apply to BCFIRB proceedings under those Acts.

PART I: Definitions and Computing Time (Deadlines)

Definitions

- (1) Terms used in these Rules are as defined in the [NPMA](#), the regulations established under the [NPMA](#) or the [ATA](#), unless otherwise stated in these Rules.
- (2) In these Rules:

“address of record” means a current postal address and includes a fax number.

“appellant” means the person who files the appeal.

“business day” means the regular hours of business for the office of BCFIRB from Monday to Friday, 8:30 a.m. to 4:30 p.m. excluding statutory holidays.

“calendar day” means any day of the week and includes weekends and statutory holidays.

“decision” includes an order, decision or determination.

“document” means any form of recorded information, including information recorded in electronic form.

“file” means effective delivery of a communication to BCFIRB under [Rule 11](#).

“Executive Director” means the executive director of BCFIRB and includes any case manager or other staff member the executive director assigns to provide administrative support to BCFIRB or to a BCFIRB panel.

“facilitated settlement process” means a confidential and without prejudice process, including mediation, whether undertaken voluntarily or required by BCFIRB under these rules, the purpose of which is to resolve the dispute or narrow the issues needing to be addressed in a formal appeal hearing.

“hearing” means a hearing whether oral or written, as follows:

- (a) **“oral hearing”** means a hearing involving the parties or their representatives attending in person before a panel.
- (b) **“electronic hearing”** means a hearing held by telephone, teleconference or other electronic means.

(c) **“written hearing”** means a hearing held by means of exchange of documents.

“intervener” means a person other than a party who has been granted the right to participate in an appeal by the panel under [s. 33 of the ATA](#).

“marketing board” includes a marketing commission under the [NPMA](#).

“party” means an appellant, a marketing board whose decision has been appealed, or another person to whom BCFIRB has granted party status but does not include an intervener.

“serve” or “service” means the effective delivery of a document to the party, intervener, representative or other person required to be served under the [NPMA](#), [ATA](#) or these Rules.

“summons” means an order requiring a person to attend a hearing to give evidence or produce documents under [s. 34\(3\) of the ATA](#) and [Rule 14](#).

Computing Time (Deadlines)

- (1) Statutory deadlines, (e.g. the deadline for filing an appeal and applications to amend a final decision) are calculated using calendar days. To calculate the number of days allowed for submitting an appeal and the required filing fee see [Rule 1](#).
- (2) Except where noted in [Rule 15](#) and [Rule 25](#), BCFIRB’s procedural deadlines, (e.g. the deadline to file or respond to an application and disclose documents) are calculated using business days.
- (3) If the calculation of calendar days results in the time for doing an act falling or expiring on a Saturday, Sunday or statutory holiday, the time is extended to the next business day.
- (4) In the calculation of business days or calendar days, the first day must be excluded and the last day included.
- (5) When a document is delivered on a Saturday, Sunday or statutory holiday to BCFIRB, or any day after 4:30 pm, it will be deemed to be received on the next business day.
- (6) If the time for doing an act at BCFIRB’s office falls or expires on a day when the office is not open during regular business hours, the time is extended to the next business day.

PART II: Filing and Withdrawing Appeals

Rule 1: How to File an Appeal

- (1) To commence an appeal under [s. 8\(1\) of the NPMA](#), a person must file a written Notice of Appeal with BCFIRB within 30 calendar days after the date of the marketing board's decision ([ATA, s. 24 \(1\)](#)). The Notice of Appeal must be received by BCFIRB **at or before 4:30 p.m. of the 30th calendar day**.
- (2) If a Notice of Appeal is filed more than 30 calendar days after the marketing board's decision, the person filing the appeal must apply in writing to BCFIRB explaining what special circumstances exist that warrant BCFIRB accepting an appeal after the time to file has expired. If satisfied that special circumstances exist, BCFIRB may extend the time limit to file a Notice of Appeal ([ATA, s. 24\(2\)](#)).
- (3) A Notice of Appeal may be in the form attached as [FORM "A"](#), or any other form, so long as it is in writing, signed by the appellant or a person acting as agent and contain the following information ([ATA, s. 22\(2\)](#)):
 - (a) the marketing board decision that is being appealed;
 - (b) why the decision should be changed;
 - (c) the outcome requested;
 - (d) the contact information for the appellant (and agent if applicable); and
 - (e) an address of record for delivery of any notices regarding the appeal (see [Rule 26](#)).
- (4) A Notice of Appeal must be accompanied by payment of the prescribed filing fee of \$100 ([ATA, s.22\(3\)](#), [NPMA Regulations, s. 6.1](#)). Payment may be made by cheque, money order or bank draft (payable to the Minister of Finance), or by cash in person.
- (5) If a Notice of Appeal is filed by fax or email, the \$100 fee must be received by BCFIRB no later than 2 business days from the date the appeal was filed or 32 calendar days of the marketing board decision under appeal, whichever is later. If the filing fee is not received within the time allowed, the person filing the appeal must apply in writing to BCFIRB for an extension of time for payment. If the extension is granted, the filing fee must be received within that period of time. If BCFIRB does not receive the filing fee within the time required, the Notice of Appeal is not perfected, and the appeal will not proceed.

- (6) A Notice of Appeal may be delivered to BCFIRB by mail, courier, fax or email or in person or by courier as follows:

<p>By Mail: <u>Attention:</u> Executive Director British Columbia Farm Industry Review Board PO Box 9129 Stn Prov Govt Victoria BC V8W 9B5</p> <p>By Fax: 250 356-5131</p>	<p>In Person or by Courier: <u>Attention:</u> Executive Director British Columbia Farm Industry Review Board 1st Floor, 2975 Jutland Rd Victoria BC V8T 5J9</p> <p>By E-Mail: firb@gov.bc.ca</p>
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- (7) The appellant must serve the marketing board with a copy of the Notice of Appeal at the same time the appellant files it with BCFIRB.
- (8) BCFIRB may give notice it has received an appeal and provide a copy of the Notice of Appeal to any other person BCFIRB considers may have an interest in the outcome of the appeal.
- (9) If a Notice of Appeal is deficient in terms of the information referenced in Rule 1(3), the chair or the chair’s delegate may allow a reasonable period of time within which the Notice of Appeal may be corrected. If such a period of time is granted and the Notice of Appeal is not corrected within the time required, BCFIRB may summarily dismiss the appeal ([ATA, s. 31\(1\)\(e\)](#)) after giving the appellant an opportunity to be heard.
- (10) BCFIRB will notify the appellant and marketing board once all necessary application information and the filing fee have been received and the Notice of Appeal has been perfected.

Rule 2: Appeals Involving Similar Questions

- (1) BCFIRB, at its discretion, may combine appeals, or make any other order permitted by section 37 of the ATA, where the appeals involve the same or similar questions ([ATA, s. 37](#)).³
- (2) Before making an order under [section 37 of the ATA](#), BCFIRB will provide the parties with an opportunity to comment on the appropriateness of the appeals being combined.

³ Section 37(1) of the [ATA](#) states that if 2 or more appeals before the tribunal involve the same or similar questions, the tribunal may “(a) combine the applications or any part of them, (b) hear the applications at the same time, (c) hear the applications immediately after the other, or (d) stay one or more of the applications until after the determination of another one of them.”

Rule 3: How to Withdraw an Appeal

- (1) An appellant may withdraw all or part of an appeal by filing a written Notice of Withdrawal with BCFIRB, in which case BCFIRB must order the appeal or that portion of the appeal dismissed ([ATA, s. 17](#)). The appellant must serve a copy of the Notice of Withdrawal on every other party and intervener.
- (2) The Notice of Withdrawal must identify the appeal and the parties and be signed by the appellant or the appellant's representative.
- (3) Where a marketing board or other party does not agree to the withdrawal of the appeal on a "without costs" basis and considers that the withdrawal of the appeal has resulted in costs thrown away, that party may apply for an order for costs ([ATA, s.47](#)).
- (4) If the parties reach a settlement or partial settlement of the issues on appeal, and wish to apply for a consent order that includes the terms of settlement ([ATA, ss. 16 and 17](#)), the parties must:
 - (a) set out the particulars of the proposed order; and
 - (b) provide proof satisfactory to BCFIRB that the order is consented to by all parties to the appeal.
- (5) The decision whether to issue a consent order is one for BCFIRB's discretion and BCFIRB is not required to issue a consent order solely on the basis that the parties have requested one. If BCFIRB has questions or otherwise considers it necessary to hear further from the parties on whether to issue a consent order, it will specify a process for hearing from the parties on the matters at issue. If BCFIRB declines to make a consent order, it will provide the parties with written reasons.

PART III: Duties and Status of Marketing Boards on Appeals

Rule 4: Duty to Produce Documents

- (1) A marketing board must promptly produce to BCFIRB every bylaw, order, rule or other document touching on the matter under appeal ([NPMA s.8\(4\)](#)).⁴

⁴ http://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/boards-commissions-tribunals/bc-farm-industry-review-board/correspondence/cross-sectoral/15_dec_16_bcfirb_ed_to_boards_re_statutory_disclosure_requirements.pdf

- (2) A marketing board complies with subsection (1) of this Rule if it carries out its duty within 15 business days from the date BCFIRB confirms that an appeal has been filed or within such other time as BCFIRB directs.
- (3) Where a marketing board considers that a document or portion of a document submitted to BCFIRB in accordance with Rule 4(1) should not be disclosed to one or more parties or interveners to the appeal, it must apply in writing to BCFIRB under Rule 12 for a non-disclosure order ([ATA, s. 42](#)).

Rule 5: Right of Participation

- (1) The marketing board whose decision is being appealed is a respondent to the appeal and has the same status and rights of participation as every party to the appeal.

PART IV: Pre-Hearing Procedure

Rule 6: Applying for a Stay

- (1) An appellant may apply in writing to BCFIRB to request a stay of a decision under appeal ([ATA, s. 25](#)) specifying:
 - (a) whether a stay is sought in relation to the entire decision under appeal or only a portion thereof, and
 - (b) the reasons why the appellant submits a stay should be granted, and in particular:
 - (i) whether the appeal raises a serious issue(s) to be considered,
 - (ii) what harm to the applicant, that cannot be remedied, would occur if a stay is not granted, and
 - (iii) why the harm to the applicant outweighs the harm that would occur to others, or to the public interest, if BCFIRB grants the stay.
- (2) A party or intervener who receives a copy of an application under subsection (1) has 3 business days from the date of service of the application to provide BCFIRB with its position on the application.

Rule 7: Pre-Hearing Conference

- (1) BCFIRB may issue written notice directing the parties and interveners to participate in one or more pre-hearing conferences.
- (2) A notice of pre-hearing conference will set out:

- (a) the date, time, location or phone number for the pre-hearing conference; and;
 - (b) the pre-hearing conference agenda.
- (3) BCFIRB may direct the parties or interveners to file documents or submissions prior to the pre-hearing conference.
- (4) If a party or intervener fails to participate in a pre-hearing conference without satisfactory advance explanation to BCFIRB, the conference may proceed in that party or intervener's absence.
- (5) If a board member participates in a pre-hearing conference, the member may issue interim orders or directions regarding any matter arising at the pre-hearing conference. A board member participating in a pre-hearing conference may also participate in the hearing of the matter.
- (6) BCFIRB will issue a pre-hearing conference report to the parties and interveners recording the orders, directions, agreements and undertakings made at a pre-hearing conference.

Rule 8: Facilitated Settlement and Mandatory Facilitated Settlement

Facilitated Settlement

- (1) A party may apply at a pre-hearing conference (see [Rule 7](#)) for BCFIRB to conduct a facilitated settlement process.
- (2) If a party wishes to apply for a facilitated settlement process, other than in a pre-hearing conference, the party must apply in writing to the Executive Director specifying what issues are proposed for a facilitated settlement process, the reasons why the party believes that to be appropriate in the circumstances and be copied to the other parties to which the process applies.
- (3) A party receiving a copy of an application under this Rule may respond to the submission within the time the Executive Director allows.
- (4) Where a facilitated settlement process proceeds, the Executive Director will advise whether the process will be conducted by a staff person, a board member or another person and, as necessary, establish Terms of Reference (TOR).
- (5) A board member participating in a facilitated settlement process, other than a pre-hearing conference, will not participate as a member of the panel should the matter eventually proceed to an appeal hearing, unless all parties agree otherwise.

- (6) Before commencing a facilitated settlement process, the Executive Director or the person responsible for the process will confirm agreement on procedural issues BCFIRB considers necessary for an effective process. These may include:
- (a) confirming the purpose of the facilitated settlement process and the specific issues to be addressed;
 - (b) determining who will be present for and represent the parties, and the extent of the representative's authority to enter into a binding agreement;
 - (c) whether written submissions will be used;
 - (d) the extent to which information shared may be used or cited for other purposes or in legal proceedings;
 - (e) whether any third parties will be involved in the process;
 - (f) the process for confirming in writing, any resulting agreement;
 - (g) the process for seeking a consent order from the panel, if applicable;
 - (h) when and how the facilitated settlement process may be terminated.

Mandatory Facilitated Settlement

- (7) At any time during the appeal process, BCFIRB may require the parties to participate in a facilitated settlement process to explore the potential for resolving one or more issues in dispute on the appeal ([ATA, s. 28](#)), in those circumstances, [Rule 8\(4\)](#) and(5) apply.

Rule 9: Pre-Hearing Applications

- (1) A party may file a pre-hearing application with BCFIRB to:
- (a) vary the application of one or more of these Rules;
 - (b) summarily dismiss an appeal ([ATA, s. 31](#));
 - (c) adjourn the hearing of an appeal (Rule 16, [ATA, s. 39\(2\)](#));
 - (d) request a stay ([Rule 6 \(1\)](#), [ATA, s. 25](#));
 - (e) defer an appeal and request that BCFIRB deal with the matters at issue through its supervisory role ([NPMA, s. 8\(8\)](#));
 - (f) address a jurisdictional issue; or
 - (g) address any other interim or procedural matter.
- (2) All pre-hearing applications must be made in writing unless BCFIRB gives leave for an application to be made orally. Applications will be decided based only on written submission unless BCFIRB concludes an electronic or in-person hearing is appropriate.

- (3) A pre-hearing application must set out the grounds for the application and the relief requested and be accompanied by any evidence relied upon.
- (4) A pre-hearing application must be served on all other parties and interveners at the same time it is filed with BCFIRB.
- (5) BCFIRB may, in its discretion, set a submission schedule for the pre-hearing application.
- (6) A party or intervener making a submission on a prehearing application must serve their submissions and any evidence on the other parties and interveners at the same time they file them with BCFIRB.
- (7) BCFIRB may, in its discretion, defer decision on a preliminary application until a pre-hearing conference, the hearing of the appeal, or issuance of its decision.

Rule 10: Applying for Intervener Status

- (1) Any person wishing to participate in an appeal as an intervener ([ATA, s. 33](#)) must apply in writing to BCFIRB (copied to the parties to the appeal) describing:
 - (a) the proposed intervener's identity;
 - (b) how the proposed intervener can make a valuable contribution or provide a valuable perspective to the appeal that an existing party cannot provide;
 - (c) how the potential benefits of the intervention outweigh any prejudice or inconvenience to a party;
 - (d) the extent of participation that is sought (for example to provide a submission or to give evidence and/or cross examine witnesses); and
 - (e) the date the intervener became aware of the appeal and the reason for any significant delay between that date and the date of the application.
- (2) A party or intervener who receives a copy of an application under subsection (1) has 3 business days from the date of service of the application to provide BCFIRB with its position on the application.
- (3) A person may participate in an appeal as an intervener only if approved by BCFIRB and only to the extent that BCFIRB determines appropriate.
- (4) A person granted intervener status under this Rule must provide BCFIRB with their address of record, which address is deemed to be their address for service or delivery of notices, orders or other documents.

Rule 11: Production of Documents and Confidentiality

- (1) Unless otherwise ordered by BCFIRB, parties and interveners must, no less than 20 business days before the hearing, file with BCFIRB all documents they intend to rely upon at hearing. In the case of documents previously provided to BCFIRB by a marketing board under [Rule 4\(1\)](#) and disclosed to the parties and interveners, it is sufficient if the party or intervener identifies for BCFIRB and other parties and interveners those documents it intends to rely upon.
- (2) A party or intervener must serve all other parties and interveners with documents at the same time it files them with BCFIRB unless [Rule 12](#) applies.

Rule 12: Applying to Exclude Documents

- (1) A party or intervener who believes a document, or portion thereof, should not be disclosed to other parties or interveners at the time of filing with BCFIRB must apply in writing to BCFIRB for non-disclosure ([ATA, s. 42](#))⁵ and must:
 - (a) identify the documents or portions of documents that should not be disclosed, and the reasons for that position; and
 - (b) notify the parties or interveners that an application is being made to BCFIRB respecting non-disclosure of certain documents and summarize the basis upon which the withholding request is being made (without disclosing the information in question).
- (2) A party or intervener who receives a copy of an application under subsection (3) (b) has 3 business days from the date of service of the application to provide BCFIRB with its position on the application.
- (3) Where BCFIRB denies in whole or in part the application to receive evidence in confidence, BCFIRB will either provide those documents to the parties and interveners that have not yet received them or direct the person who made the application for non-disclosure to do so. A person directed to disclose shall do so within 3 business days after receipt of BCFIRB's decision directing disclosure.

Rule 13: Applying for Document Production

- (1) Once production of documents is completed as per [Rule 11](#), a party or intervener may apply in writing to BCFIRB for production of documents ([NPMA, s. 8\(5\)](#)), no later than 15 business days before the hearing, specifying:
 - (a) the documents for which the order is requested;

⁵ [Section 42 of the ATA](#) states: "The tribunal may direct that all or part of the evidence of a witness or documentary evidence be received by it in confidence to the exclusion of a party or parties or any interveners, on terms the tribunal considers necessary, if the tribunal is of the opinion that the nature of the information or documents requires that direction to ensure the proper administration of justice."

- (b) the identity of the person in possession of the documents; and
 - (c) the reasons the party considers the documents necessary for a full and fair appeal hearing.
- (2) A party or intervener who receives a copy of the application under subsection (1) has 3 business days from the date of receiving the application to provide BCFIRB with its position on the application.

Rule 14: Applying for a Summons

- (1) At any time before or during a hearing but prior to issuing its decision, BCFIRB may order a person to attend an oral or electronic hearing to give evidence or to produce for BCFIRB or a party or intervener a relevant and admissible document or other thing in their possession.
- (2) A party or intervener may apply in writing to BCFIRB to request a summons for a witness to attend a hearing specifying:
 - (a) the name, address, telephone number and email address of the person for whom the order is requested;
 - (b) why the person's evidence is relevant to the appeal;
 - (c) what if any documents or things the person is asked to produce or bring to the hearing; and
 - (d) what efforts the applicant has made to have the person attend or produce the documents voluntarily.
- (3) An application under subsection (2) of this Rule does not have to be served on the witness or on any other party.
- (4) Where a proposed witness lives elsewhere than the place of hearing, BCFIRB may make it a condition of the summons that the applicant must pay the witness's reasonable traveling expenses to attend the hearing.
- (5) A person served with a summons may apply to BCFIRB, either in writing prior the hearing, or in person at the hearing, to set aside the summons.
- (6) BCFIRB may set aside a summons order for any reason it considers appropriate, including if it is satisfied that:
 - (a) the summons was not properly served;
 - (b) the evidence of the person is not relevant;
 - (c) the evidence may be obtained through some other means;
 - (d) the evidence is protected by privilege;
 - (e) the person is not able to provide the evidence sought; or
 - (f) the attendance of the person will be unduly inconvenient to the witness.

- (7) Where BCFIRB sets aside a summons, it may make another order it thinks is fair, including an order changing the date of the witness's appearance at the hearing or providing some other means by which the witness's evidence will be obtained.

Rule 15: Expert Evidence

- (1) If a party or intervener wishes to qualify a witness as an expert in relation to a matter, the party must, at least 30 calendar days prior to hearing, provide BCFIRB and all parties and interveners with a report setting out:
 - (a) the expert's qualifications; and
 - (b) a summary of the expert's opinion, including the facts and assumptions on which it is based.
- (2) A party who tenders a report under subsection (1) of this Rule is required to produce the expert at the hearing for cross-examination on the expert's qualifications and report, unless the parties and BCFIRB agree such attendance is not necessary.
- (3) BCFIRB may refuse to consider a report where subsections (1) and (2) of this Rule are not complied with.
- (4) BCFIRB may waive the requirements of this Rule where it considers appropriate and may impose such other requirements regarding the receipt and exchange of expert evidence as it considers appropriate in the circumstances.
- (5) It is not necessary for a person to qualify as an expert in order to provide opinion evidence.

Rule 16: Adjournments

- (1) BCFIRB may adjourn a hearing at any time on its own initiative ([ATA, s. 39\(1\)](#)).
- (2) A party may apply in writing to BCFIRB to request an adjournment of a BCFIRB process explaining the reasons why the adjournment application is being made.
- (3) A party or intervener who receives a copy of an application under subsection (2) has 3 business days from the date of service of the application to provide BCFIRB with its position on the application.
- (4) In deciding whether to grant an application for adjournment, BCFIRB will take into account the following factors:

- (a) the reason for the adjournment;
 - (b) whether the adjournment would cause unreasonable delay;
 - (c) the impact of refusing the adjournment on the other parties including any interveners;
 - (d) the impact of granting the adjournment on the other parties including any interveners;
 - (e) the impact of the adjournment on the public interest.
- (5) If a hearing is adjourned, BCFIRB may order any terms and conditions respecting rescheduling, attendance at settlement conferences, production of documents or reports, or any other matters which may assist with the fair and efficient conduct of the appeal process.

PART V: Hearing Procedure

Rule 17: Notice and Form of Hearing

- (1) BCFIRB will at the earliest practicable date notify the parties and interveners of the date, time and location for the hearing.
- (2) Hearings will be oral hearings unless BCFIRB orders otherwise.
- (3) If a written hearing is held, BCFIRB will provide directions regarding the process and schedule for submissions.

Rule 18: Public Access and Recording

- (1) Oral hearings will be open to the public unless BCFIRB is of the opinion that all or part of the information be received to the exclusion of the public on grounds that:
 - (a) the desirability of avoiding disclosure in the interests of any person or party affected or in the public interest outweighs the desirability of adhering to the principle that that hearings are open to the public, or
 - (b) that it is not practical to hold the hearing in a manner that is open to the public ([ATA, s. 41](#)).
- (2) BCFIRB will make documents submitted in a hearing accessible to the public unless it is of the opinion that the desirability of avoiding disclosure of the document outweighs the desirability of public disclosure ([ATA, s. 41\(2\)\(a\), \(3\) and s. 42](#)).
- (3) BCFIRB will determine whether an oral or electronic hearing will be officially recorded by BCFIRB and advise the parties in advance of the hearing.

- (4) Whether or not an oral or electronic hearing is officially recorded, no party or person may electronically record or photograph a hearing.
- (5) In any case where a hearing is recorded and a party wishes to obtain transcripts of the hearing, the party will be required to pay the costs of transcription and copying. Parties are to make arrangements for transcription and copying directly with the court reporter.

Rule 19: Participation at Hearings

- (1) All parties may make submissions on any question of fact, law or policy pertaining to an appeal.
- (2) Participation of persons granted intervener status shall be as determined by BCFIRB under [Rule 10](#).

Rule 20: Order of Presentation at Oral Hearings

The order of presentation and related questioning at an oral hearing will be as follows unless BCFIRB specifies otherwise:

Opening

- (a) Opening statement of appellant
- (b) Opening statement of respondent
- (c) Opening statement of intervener (if applicable)

Evidence

- (a) Presentation of appellant's witnesses (with questioning of each witness by respondent, the panel and interveners if applicable)
- (b) Presentation of respondent's witnesses (with questioning of each witness by appellant, the panel and interveners if applicable)
- (c) Presentation of intervener's witnesses, if applicable (with questioning of each by appellant, respondent and the panel)

Closing

- (a) Argument of the appellant
- (b) Argument of the respondent
- (c) Arguments of the intervener, if applicable
- (d) Reply by the appellant.

Rule 21: Evidence at Hearings

- (1) Parties may file an agreed statement of facts, which will be determinative of those facts for purposes of the appeal. BCFIRB encourages the parties to

explore this possibility as it has the potential to reduce the time, expense and complexity of hearings.

- (2) Evidence will be taken under oath or by affirmation.
- (3) BCFIRB is not bound by the rules of evidence that apply in a court of law. BCFIRB may in its discretion decide whether to admit evidence, its relevance and the amount of weight to be given to it ([ATA, s. 40](#)).
- (4) All documents filed with BCFIRB in advance of a hearing will be evidence that BCFIRB may consider in its decision-making process unless a party objects and BCFIRB rules otherwise.
- (5) Prior to the hearing BCFIRB staff will confirm the number of copies of documents to be made available. The parties are to organize their documents and to sequentially number them so that a document may be readily located by BCFIRB and other parties when referred to during a hearing.
- (6) When presenting documents at the hearing each party will provide copies to:
 - (a) each BCFIRB panel member
 - (b) each party with participation status at hearing
 - (c) panel secretary
 - (d) witness table
 - (e) court reporter
- (7) Documents presented at the hearing but not previously disclosed in accordance with [Rule 11](#) will not be considered by BCFIRB unless BCFIRB determines otherwise.
- (8) Where a party objects to BCFIRB receiving or considering evidence, BCFIRB may make a decision on that question at the time, or it may receive the evidence and consider the objection in the course of rendering its decision on the case.

Rule 22: Authorities

- (1) Each party and intervener must, 5 business days prior to the hearing, provide to BCFIRB a copy of any authorities (e.g. prior board decisions, court decisions and legislation) that it intends to rely on, as directed by BCFIRB.
- (2) Where practicable, the parties must provide BCFIRB with a joint book of authorities.
- (3) At the hearing, each party must provide copies of the authorities referred to in subsection (1) to:

- (a) each BCFIRB panel member
- (b) each party with participation status at hearing
- (c) panel secretary
- (d) court reporter

Rule 23: Costs

- (1) BCFIRB may award costs, on BCFIRB's initiative or upon request from any party or intervener ([ATA, s. 47](#)).
- (2) Before making any order for costs BCFIRB will provide the parties or interveners who may be affected by such an order with an opportunity to provide BCFIRB with their position. This may occur either at the conclusion of a hearing or following the issuance of a decision.

PART VI: Post-Hearing Matters

Rule 24: Issuance and Publication of Decisions

- (1) BCFIRB's decision is effective on the date it is issued unless otherwise specified in the decision.
- (2) BCFIRB will send a complete copy of its decision, with written reasons, to all parties and interveners ([ATA, s. 51](#)).
- (3) A party or person who objects to publication of specified information must advise BCFIRB in writing not more than 5 business days after the decision is rendered by describing:
 - (a) the information they request be removed from the decision that is to be posted on the website; and
 - (b) the reasons they believe the information should be removed.
- (4) BCFIRB will post a copy of its decision on BCFIRB's website not less than 6 business days after the decision is provided to the parties and interveners and may remove information that would undermine the reasonable privacy interests of parties, interveners and third parties.
- (5) If a party believes there are special circumstances that make early delivery of a decision necessary, the party should advise BCFIRB in writing with a copy to the other parties and interveners identifying the date the decision is required and why.
- (6) Unless special circumstances have arisen after a hearing that make early delivery of a decision necessary, inquiries about the timing of delivery of decisions should not be made.

Rule 25: Correction and Clarification of Decisions

- (1) A party or intervener who believes there is a clerical, typographical or arithmetical error or accidental omission in a decision must advise BCFIRB as soon as the matter comes to their attention ([NPMA, s. 8.3\(1\)](#)) and in any event, no later than 30 calendar days after being served with the final decision.
- (2) BCFIRB will seek the views of the other parties and interveners as to whether a correction is required unless, in BCFIRB's view, the application is unfounded or the error is so minor or obvious that there is no need to solicit the views of the parties and interveners before correcting the decision. BCFIRB may also make such corrections on its own initiative.
- (3) Unless BCFIRB decides otherwise, corrections of errors and omissions will not be made more than 30 calendar days after all parties have been served with the final decision ([NPMA, s. 8.3 \(2\)](#)).
- (4) A party or intervener who believes clarification of a BCFIRB decision is required ([NPMA, s. 8.3\(3\)](#)), may apply in writing to BCFIRB with a copy to the other parties and interveners, within 30 calendar days after being served with the final decision.
- (5) A party or intervener given notice of an application for clarification may, within 3 business days of receiving the notice, provide BCFIRB with its position on the application.
- (6) BCFIRB will issue further reasons to clarify or correct a decision document to all parties and interveners only where it considers it essential to ensure a fair hearing and proper disposition of the appeal ([NPMA, s. 8.3](#)).
- (7) This rule does not limit BCFIRB's ability on its own initiative to reopen the proceeding in order to cure a jurisdictional defect: [NPMA, s. 8.3\(5\)](#).

PART VII: General

Rule 26: Address of Record

- (1) All parties and interveners must provide BCFIRB written notice of their address of record (i.e. current postal address and any fax number) for purposes of service of notices, documents and orders.
- (2) If a person's address of record changes, that person must immediately file notice of the change with BCFIRB and serve a copy of the notice on the other parties and interveners.

- (3) Parties and interveners must, in addition to the address of record, provide an email address if they wish to receive documents electronically.

Rule 27: Serving Documents on Other Parties, Intervenors and BCFIRB

- (1) A party required to serve a document on another party, or an intervener must do so by one of the following means:
- (a) personal delivery;
 - (b) regular, registered or certified mail to the party's address of record;
 - (c) fax transmission for delivery to the address of record of the party, but only if the document, inclusive of the cover sheet, does not exceed 30 pages, or where longer, if the receiving person consents;
 - (d) courier, including Priority Post, to a party's address of record;
 - (e) email if the party or intervener receiving the documents has provided an email address for delivery under Rule 26; or
 - (f) any other means, authorized, permitted or directed by BCFIRB.
- (2) If it is impractical to serve or deliver documents in accordance with subsection (1) of this Rule, BCFIRB may give such directions for substituted service or delivery and where necessary, may dispense with service or delivery.
- (3) A party filing documents with BCFIRB must do so:
- (a) to BCFIRB's address, fax number or e-mail address described in Rule 1(6); and
 - (b) by one of the methods described in subsection (1) of this Rule, and for the purposes of filing materials with BCFIRB by email the party may use the following email address: firb@gov.bc.ca.
- (4) A fax document must include a cover page with sufficient information to identify the sender, recipient, number of pages sent, date and time of transmission and a telephone number to call in case of transmission problems.
- (5) Service or delivery is deemed to take place on the date of actual delivery, except as follows:
- (a) where service or delivery is by personal delivery, mail, fax, courier or email, and is not received before 4:30 p.m. on a business day, the date of service or delivery is deemed to be on the next business day;
 - (b) where any other means of service or delivery is authorized or permitted by BCFIRB, on the date and time, or deemed date and time, specified in BCFIRB's direction.

Rule 28: Communicating with BCFIRB

- (1) A Notice of Appeal, and all other filings and correspondence with BCFIRB, are to be directed to the attention of the Executive Director.
- (2) All correspondence and documents other than a Notice of Appeal may be filed with BCFIRB via email unless BCFIRB directs otherwise. Parties and interveners wishing to file correspondence and documents via email may use the following email address: firb@gov.bc.ca.
- (3) A person must copy all other parties and interveners with all correspondence to BCFIRB regarding an appeal, except where these Rules expressly provide otherwise.
- (4) The Executive Director of BCFIRB may communicate BCFIRB's orders, decisions or directions with regard to any matter covered by these Rules.

Rule 29: Extending or Abridging Time Limits

- (1) Every time limit set out in these Rules is subject to being extended or abridged by BCFIRB, on application or on its own initiative, whether before or after the time limit has expired, as BCFIRB considers fair and appropriate in the circumstances.

Rule 30: Failure to Comply with the Rules

- (1) If any party believes it has been adversely affected by the failure of another party or intervener to comply with these Rules ([ATA, s. 18](#)), the party may make written application to BCFIRB specifying:
 - (a) the alleged non-compliance,
 - (b) the reasons why it has had an adverse impact on the applying party;
 - (c) the remedy sought to address the non-compliance
- (2) A party or intervener who receives a copy of an application under subsection (1) has 3 business days from the date of service of the application to provide BCFIRB with its position on the application.
- (3) Where BCFIRB finds non-compliance with these Rules to have occurred, it may consider that non-compliance in making any further orders it may have the authority to make under the [NPMA](#), the [ATA](#) or the common law. This includes but is not limited to the power to make awards for costs (see [Rule 23](#)).

APPENDIX A: APPEAL FORM



British Columbia Farm Industry Review Board

BCFIRB

Mailing Address:

PO Box 9129 Stn Prov Govt
Victoria BC V8W 9B5

Location:

1st floor, 2975 Jutland Rd.
Victoria BC V8T 5J9

Telephone: 250 356-8945, Facsimile: 250 356-5131

Email: firb@gov.bc.ca

Website: www.gov.bc.ca/BCFarmIndustryReviewBoard

Notice of Appeal

Please use this form to file with BCFIRB an appeal of an order, decision or determination of a BC marketing board or commission. Appeals must be filed (received by BCFIRB) within 30 days of the order, decision or determination being made. A copy of this Notice of Appeal is to be sent to BCFIRB along with a \$100 cheque or money order payable to the Minister of Finance. (If you send this Notice by email or fax, this filing fee must be sent immediately by mail or courier.) A copy of the Notice and any attachments (less the filing fee) must also be sent to the marketing board or commission concerned. **Please note that BCFIRB may use the contact information below for the purpose of conducting surveys to evaluate and improve services as per (ATA s 59.1).**

A: Appellant Information

Appellant Name:		
Address:		
City:	Province:	Postal Code:
Telephone: ()	Fax: ()	E-Mail:
Mailing Address: if different from above		
City:	Province:	Postal Code:
Telephone: ()	Fax: ()	E-Mail:
Agent/Representative Name: (if applicable)		
Address:		
City:	Province:	Postal Code:
Telephone: ()	Fax: ()	E-Mail:

B. Grounds for Appeal

I am aggrieved or dissatisfied by (Enter Order, Decision or Determination):	Date of Decision:			
Of the: (Name of the marketing board, or commission)				
Specify why the decision should be changed and state the outcome (BCFIRB decision) requested. (If more room is needed please attach a separate sheet and include any relevant documentation).				
Signature: (of Appellant or Agent) X	Date: <table style="float: right; margin-top: 5px;"> <tr> <td><input type="checkbox"/> \$100 Filing Fee attached</td> </tr> <tr> <td><input type="checkbox"/> Copy to marketing board/commission</td> </tr> <tr> <td><input type="checkbox"/> Documentation attached</td> </tr> </table>	<input type="checkbox"/> \$100 Filing Fee attached	<input type="checkbox"/> Copy to marketing board/commission	<input type="checkbox"/> Documentation attached
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