

**BC Farm Industry Review Board Supervisory Directions to the
BC Milk Marketing Board Regarding Graduated Entry Program Regularization**

Introduction and Overview:

Effective new entrant programs in the supply managed sectors are important to the credibility and sustainability of the regulated marketing system. A very serious situation has developed in the dairy sector involving the potential unauthorized transfer of production rights worth millions of dollars and the accrual of significant financial benefits to individuals in non-compliance with the orders of the British Columbia Milk Marketing Board (Milk Board). This compromises the credibility of all new entrant programs and the supply management system generally. In addition to the Milk Board's own concerns regarding the matter, the British Columbia Farm Industry Review Board (BCFIRB) is of the view that non-compliance with the GEP is contrary to the public interest. As such, the Milk Board has been directed to proceed with enforcement to rectify these non-compliant situations through a regularization process, with the clear objective of protecting the long-term integrity of the GEP.

For those who are alleged to be in non-compliance with the Milk Board's orders with respect to the GEP, there are three possible outcomes to the regularization process:

- The GEP producer is found to be in full compliance with the program and as such retains the quota allocated through the GEP;
- The GEP producer is found to be non-compliant and the Milk Board enforces its orders and cancels the quota allocated through the GEP. BCFIRB's decision in the *Van Herk* appeal (available on BCFIRB's website at http://www.firb.gov.bc.ca/appeals/milk/vanherk_dec_06-02_jun19_06.pdf) will provide procedural guidance on such matters; or
- For a limited time period, and after the Milk Board has determined that it is an appropriate disposition of quota allocated through the GEP, regularization may be approved in accordance with BCFIRB's directions.

In all cases, a GEP allocation held by a non-compliant GEP producer can not be disposed of except through the regularization process or cancellation.

BCFIRB Directions:

The key directions provided by the BCFIRB for this process are as follows:

1. BCFIRB expects the Milk Board to enforce compliance with its orders.
2. GEP participants and associated farm managers who fail to apply for regularization as outlined below, and who appear to be in non-compliance, will be required to demonstrate to the Milk Board that they are in compliance or face possible cancellation of their quota.
3. Situations in which the GEP quota is being actively produced by a farm manager other than the GEP participant as of November 1, 2006 are eligible for regularization.

4. Regularization will be a one-time only opportunity for a non-compliant GEP participant to have his or her quota allotted to the non-compliant “farm manager” with whom they have a current and direct association. They must appear together before the Milk Board and must make a joint application in which they both agree to have quota that has been issued to the GEP participant as a special allotment cancelled and re-allotted to the farm manager. Should the Milk Board be satisfied that the specific circumstances warrant regularization, this new allotment of quota shall be issued directly to the farm manager and, effective the date of the Milk Board’s approval, commence being subject to the 10/10/10 assessment schedule and “Last In, First Out” principle at sections 22(1) and (2) of the Milk Board’s Consolidated Order. We leave it to the Milk Board to determine after reviewing the applications whether further conditions, such as any of the rules relating to GEP in Schedule 1 of the Consolidated Order, should be applied to the farm managers in order to forestall future abuses with respect to the disposition of this quota.
5. The Milk Board has noted that there may be some instances where additional quota has been acquired by the (farm manager) but has been officially registered under the name of the GEP participant with whom that farm manager is associated. All quota transfers are subject to the approval of the Milk Board. Any disposition of this or other non-allotted quota involving the non-compliant GEP participant and the non-compliant farm manager must be addressed by the Milk Board as part of the joint application process outlined above.
6. This one-time regularization opportunity applies only to GEP participants and directly associated farm managers currently in non-compliance with the GEP who come forward and make a joint application to the Milk Board, as outlined above.
7. There may be specific situations where the Milk Board in its discretion does not approve an application for regularization. In such cases the Milk Board must take the necessary steps to address any suspected non-compliance. The decision in the *Van Herk* appeal provides procedural guidance on such matters. Persons who are aggrieved or dissatisfied with a subsequent Milk Board decision can appeal that decision to BCFIRB on the facts of their case.

Opportunities for Appeal:

A person wishing to appeal a decision of the Milk Board made as part of the GEP regularization process, can only appeal those decisions which represent an independent exercise of the Milk Board’s discretion. What this means is that the decision to implement the regularization process or the BCFIRB directions themselves are not subject to appeal, as they were directed by BCFIRB. However, a person could appeal the Milk Board’s decision regarding regularization in a particular case if he was of the view that the Milk Board came to wrong conclusion with respect to regularization given the particular circumstances of that case.