

# IMPORTANT NOTICE:

## REGULARIZATION POLICY FOR NON-COMPLIANCE UNDER THE GRADUATED ENTRY PROGRAM

The purpose of this notice is to advise of the Board's regularization program for violations of the GEP Rules.

The GEP is intended to provide an effective means for persons to enter the industry as active dairy farmers. The GEP is not intended to provide participants with the means to engage in the mere business of managing quota for profit. It is for this reason that the GEP Rules expressly require that the participant be "actively engaged in milk production".

Section 7 of the Graduated Entry Program Rules provides as follows:

7. (1) The Board will determine, in its sole discretion, whether an entrant is actively engaged in milk production for the purposes of the program. Without limiting the generality of the foregoing, the Board will have regard to the following factors:
  - (a) whether the Total Production Quota allotted under the program is being used for the benefit of the entrant;
  - (b) whether the entrant is active in the day-to-day affairs of the dairy farm, including matters of animal husbandry;
  - (c) whether the entrant operates and controls the dairy farm;
  - (d) whether the entrant owns, leases or rents the dairy farm;
  - (e) whether the entrant pays for feed and other farm supplies utilized on the dairy farm; and
  - (f) whether the entrant enjoys the chance of profit and bears the risk of loss in relation to the operations of the dairy farm.
- (2) For the purpose of determining whether the entrant is actively engaged in the production of milk, the Board shall have regard to the substance and effect of any arrangement made between the entrant and any other Person, irrespective of the form of that arrangement.
- (3) Where it appears to the Board that the entrant is primarily engaged in the business of administering Total Production Quota allotted under the program, and that some other Person is primarily engaged in the

business of milk production associated with that Total Production Quota, the entrant shall be deemed not to be actively engaged in milk production.

In a recent case, the Board cancelled quota allotted to a GEP participant for a failure to be “actively engaged in milk production”. This decision was the subject of an appeal before the British Columbia Farm Industry Review Board, and the resulting decision of the BCFIRB can be obtained here: [http://www.firb.gov.bc.ca/appeals/milk/vanherk\\_dec\\_06-02\\_jun19\\_06.pdf](http://www.firb.gov.bc.ca/appeals/milk/vanherk_dec_06-02_jun19_06.pdf)

The Board’s records indicate that there are other instances where a person other than GEP participant is living on the dairy farm, or there are other indications that the GEP participant may not be “actively engaged in milk production”. In these instances, the Board may not yet be fully aware of the relationship of this person to the GEP entrant. However, if on further investigation the Board concludes that the GEP entrant is not “actively engaged in milk production”, the quota allotment is subject to immediate cancellation.

GEP participants who have consistently been actively engaged in milk production and otherwise compliant with the program may transfer their quota at any time subject to the assessment provisions of the Consolidated Order. Non-compliant GEP participants are effectively unable to transfer their quota because it is subject to immediate cancellation by reason of such non-compliance.

Under the terms of the Board’s regularization program, the Board is offering existing GEP participants a one-time opportunity to formally transfer their quota to the person who has actually been “actively engaged in milk production”, notwithstanding that the GEP participant has engaged in a violation of the program that could otherwise result in immediate cancellation of the quota.

If a non-compliant GEP participant chooses this course of action, the quota may be transferred to the person who is actually “actively engaged in milk production” without going through the Quota Exchange. The Transfer Application form must be signed by the registered GEP participant. A power of attorney or other instrument purporting to confer on some other person the authority to act on behalf of the registered GEP participant will not be accepted by the Board for this purpose. The quota so transferred will be subject to a transfer assessment according to the “10/10/10” principles specified in the Consolidated Order. This direct transfer of quota must be completed and recorded under the name of the new owner as of December 1, 2008. Under the terms of the regularization program, the quota transferred to the new owner will be deemed to have been allotted as at the date of transfer, and will be subject to the usual transfer assessment provisions and the principle of “Last In First Out” (LIFO) for any subsequent quota transfer.

GEP participants are not obligated to exercise this option. However, any GEP participant that does not choose to exercise this option will be asked to provide evidence of compliance with the terms of the GEP. This request will be made in September, 2008. A failure to provide satisfactory evidence establishing that the GEP participant has indeed been consistently “actively engaged in milk production” may result in the cancellation of quota. All other provisions of the Consolidated Order continue to apply including assessment under the 10/10/10 rule for Board allocations.