

CERTIFICATION OF ENROLLMENT

SENATE BILL 6155

Chapter 58, Laws of 1992

52nd Legislature
1992 Regular Session

MILK MARKET AREA POOLING PLANS--REGULATION OF PRODUCER-DEALERS

EFFECTIVE DATE: 6/11/92

Passed by the Senate March 12, 1992
Yeas 38 Nays 8

JOEL PRITCHARD

President of the Senate

Passed by the House March 11, 1992
Yeas 97 Nays 0

JOE KING

**Speaker of the
House of Representatives**

Approved March 26, 1992

BOOTH GARDNER

Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6155** as passed by the Senate and the House of Representatives on the dates hereon set forth.

GORDON A. GOLOB

Secretary

FILED

March 26, 1992 - 12:06 p.m.

**Secretary of State
State of Washington**

SENATE BILL 6155

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1992 Regular Session

State of Washington 52nd Legislature 1992 Regular Session

By Senators Bailey, Gaspard, Anderson, Conner, Newhouse and Barr

Read first time 01/20/92. Referred to Committee on Agriculture & Water Resources.

1 AN ACT Relating to state milk marketing orders; amending RCW
2 15.35.080, 41.06.084, 15.35.110, 15.35.150, and 15.35.310; and adding
3 a new section to chapter 15.35 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 15.35.080 and 1991 c 239 s 4 are each amended to read
6 as follows:

7 For the purposes of this chapter:

8 (1) "Department" means the department of agriculture of the state
9 of Washington;

10 (2) "Director" means the director of the department or the
11 director's duly appointed representative;

12 (3) "Person" means a natural person, individual, firm, partnership,
13 corporation, company, society, and association, and every officer,

1 agent, or employee thereof. This term shall import either the singular
2 or plural as the case may be;

3 (4) "Market" or "marketing area" means any geographical area within
4 the state comprising one or more counties or parts thereof, or one or
5 more cities or towns or parts thereof where marketing conditions are
6 substantially similar and which may be designated by the director as
7 one marketing area;

8 (5) "Milk" means all fluid milk from cows as defined in (~~chapters~~
9 ~~15.32 and 15.36~~) RCW 15.36.011 as enacted or hereafter amended and
10 rules adopted thereunder;

11 (6) "Milk products" includes any product manufactured from milk or
12 any derivative or product of milk;

13 (7) "Milk dealer" means any person engaged in the handling of milk
14 in his or her capacity as the operator of a milk plant, as that term is
15 defined in RCW 15.36.040 as enacted or hereafter amended and rules
16 adopted thereunder:

17 (a) Who receives milk in an unprocessed state from dairy farms, and
18 who processes milk into milk or milk products; and

19 (b) Whose milk plant is located within the state or (~~of any other~~
20 ~~plant~~) from (~~which~~) whose milk plant milk or milk products that are
21 produced at least in part from milk from producers are disposed of to
22 any place or establishment within a marketing area;

23 (8) "Producer" means a person producing milk within this state for
24 sale under a grade A milk permit issued by the department under the
25 provisions of chapter 15.36 RCW as enacted or hereafter amended;

26 (9) "Classification" means the classification of milk into classes
27 according to its utilization by the department;

28 (10) The terms "plan," "market area and pooling arrangement,"
29 "market area pooling plan," "market area and pooling plan," "market
30 pool," and "market plan" all have the same meaning;

1 (11) "Producer-dealer" means a producer who engages in the
2 production of milk and also operates a plant from which an average of
3 more than three hundred pounds daily of milk products, except filled
4 milk, is sold within the marketing area and who has been so designated
5 by the director. A state institution which processes and distributes
6 milk of its own production shall be considered a producer-dealer for
7 purposes of this chapter, but the director may by rule exempt such
8 state institutions from any of the requirements otherwise applicable to
9 producer-dealers.

10 NEW SECTION. **Sec. 2.** A new section is added to chapter 15.35 RCW
11 to read as follows:

12 (1) Not less than sixty days before a referendum creating a market
13 area and pooling plan with quotas is to be conducted under RCW
14 15.35.110, the director shall notify each producer-dealer regarding the
15 referendum. Any producer-dealer may choose to vote on the referendum
16 and each choosing to do so shall notify the director in writing of this
17 choice not later than thirty days before the referendum is conducted.
18 Such a producer-dealer and any person who becomes a producer-dealer or
19 producer by acquiring the quota of such a producer-dealer shall be a
20 fully regulated producer under such an approved plan and shall receive
21 a quota which is not less than the sales of milk in fluid form from the
22 producer facilities during the reference period used by the director in
23 determining quotas for producers. Such a producer-dealer shall also be
24 a fully regulated dealer under the terms of such an approved plan. RCW
25 15.35.310(1) does not apply to a producer-dealer who is subject to
26 regulation under this subsection.

27 (2) If a person was not a producer-dealer at the time notice was
28 provided to producer-dealers under subsection (1) of this section
29 regarding a referendum on a proposed market area and pooling plan with

1 quotas, the plan was approved by referendum, and the person
2 subsequently became a producer-dealer (other than by virtue of the
3 person's acquisition of the quota of a producer-dealer who is fully
4 regulated under the plan), the person is subject to all of the terms of
5 the plan for producers and dealers during the duration of the plan and
6 RCW 15.35.310(1) does not apply to such a person with regard to that
7 plan.

8 (3) This subsection applies: To a person who was a producer-dealer
9 at the time the notice was provided to producer-dealers under
10 subsection (1) of this section regarding a referendum which was
11 approved and who did not notify the director under subsection (1) of
12 this section to vote in that referendum; and to a person who acquires
13 the facility of such a person.

14 If such a person's sales of milk in fluid form subsequent to the
15 adoption of the plan increases such that those sales in any year are
16 more than fifty percent greater than the sales of milk in fluid form
17 from the producer facilities during any of the previous five years, RCW
18 15.35.310(1) does not apply to that person with regard to that plan.
19 Such a producer-dealer shall be a fully regulated producer under such
20 an approved plan and shall receive a quota which is not less than the
21 producer-dealer's sales of milk in fluid form during the reference
22 period used by the director in determining quotas for producers. Such
23 a producer-dealer shall also be a fully regulated dealer under the
24 terms of such an approved plan.

25 If changes are made, on a market area-wide basis, to the quotas
26 established under the plan, the director shall by rule adjust the fifty
27 percent limitation provided by this section by an equivalent amount.

28 **Sec. 3.** RCW 41.06.084 and 1990 c 37 s 2 are each amended to read
29 as follows:

1 In addition to the exemptions set forth in RCW 41.06.070, the
2 provisions of this chapter shall not apply in the department of
3 agriculture to the director, the director's confidential secretary, the
4 deputy director, not more than eight assistant directors, ~~((and))~~ the
5 state veterinarian, and the milk pooling administrator employed under
6 RCW 15.35.100.

7 **Sec. 4.** RCW 15.35.110 and 1991 c 239 s 8 are each amended to read
8 as follows:

9 (1) The director, either upon his or her own motion or upon
10 petition by ten percent of the producers in any proposed area, shall
11 conduct a hearing to determine whether to establish or discontinue a
12 market area pooling arrangement. Upon determination by the director
13 that in order to satisfy the purposes of this chapter a pooling
14 arrangement should be established, a referendum of affected individual
15 producers and milk dealers shall be conducted by the department.

16 (2) In order for the director to establish a market area and
17 pooling plan:

18 (a) Sixty-six and two-thirds percent of the producers and producer-
19 dealers that vote must be in favor of establishing a market area and
20 pooling plan; ~~((and))~~

21 (b) Sixty-six and two-thirds percent of the milk dealers and
22 producer-dealers that vote must be in favor of establishing a market
23 area and pooling plan; and

24 (c) Producer-dealers providing notice to the director under section
25 2(1) of this act, shall be authorized to vote both as producers and as
26 milk dealers.

27 The director, within sixty days from the date the results of the
28 referendum are filed with the secretary of state, shall establish a
29 market pool in the market area, as provided for in this chapter.

1 (3) If fifty-one percent of the producers and producer-dealers
2 voting representing fifty-one percent of the milk produced in the
3 market area vote to terminate a pooling plan, the director, within one
4 hundred twenty days, shall terminate all the provisions of said market
5 area and pooling arrangement.

6 (4) A referendum of affected producers, producer-dealers, and milk
7 dealers shall be conducted only when a market area pooling arrangement
8 is to be established (~~or terminated~~). Only producers and producer-
9 dealers who are subject to the plan may vote on the termination of a
10 pooling plan.

11 **Sec. 5.** RCW 15.35.150 and 1991 c 239 s 11 are each amended to read
12 as follows:

13 (1) Under a market pool and as used in this section, "quota" means
14 a producer's or producer-dealer's portion of the total sales of milk in
15 fluid form in a market area plus a reserve determined by the director.

16 (2) The director may in each market area subject to a market plan
17 establish each producer's and each producer-dealer's initial quota in
18 the market area. Such initial quotas shall be determined by the
19 department after due notice and the opportunity for a hearing as
20 provided in chapter 34.05 RCW. In making this determination,
21 consideration shall be given to a history of the producer's production
22 record. In no case shall a producer-dealer receive as a quota an
23 amount which is less than his or her fluid milk sales for the reference
24 period used by the director in determining quotas for other producers.

25 In any system of establishing quotas, provision shall be made for
26 new producers to qualify for allocation of quota in a reasonable
27 proportion and for old and new producers to participate in any new
28 increase in fluid milk sales in a reasonable proportion. The director

1 may establish a method to proportionately decrease quota allocations in
2 the event decreases in fluid milk consumption occur.

3 All subsequent changes or new quotas issued shall be determined by
4 the department after due notice and the opportunity for a hearing as
5 provided in chapter 34.05 RCW.

6 **Sec. 6.** RCW 15.35.310 and 1991 c 239 s 16 are each amended to read
7 as follows:

8 (1) Except as provided in section 2 of this act, the provisions of
9 this chapter shall not apply to persons designated as producer-dealers,
10 except that:

11 (a) The director may require pursuant to RCW 15.35.100 any
12 information deemed necessary to verify a producer-dealer's status as a
13 producer-dealer; and

14 (b) A producer-dealer shall comply with all requirements of this
15 chapter applicable to milk dealers, except those which the director may
16 deem unnecessary.

17 (2) The director shall upon request designate producer-dealers and
18 adopt rules governing eligibility for designation of a producer-dealer
19 and cancellation of such designation. To receive such designation, a
20 producer-dealer shall, at a minimum:

21 (a) In its capacity as a handler, have and exercise complete and
22 exclusive control over the operation and management of a plant at which
23 it handles and processes milk received from its own milk production
24 resources and facilities as designated in subsection (4)(a) of this
25 section, the operation and management of which are under the complete
26 and exclusive control of the producer-dealer in its capacity as a dairy
27 farmer;

28 (b) Neither receive at its designated milk production resources and
29 facilities nor receive, handle, process, or distribute at or through

1 any of its milk handling, processing, or distributing resources and
2 facilities, as designated in subsection (4)(b) of this section, milk
3 products for reconstitution into fluid milk products, or fluid milk
4 products derived from any source other than (i) its designated milk
5 production resources and facilities, (ii) other milk dealers within the
6 limitation specified in subsection (2)(e) of this section, or (iii)
7 nonfat milk solids which are used to fortify fluid milk products;

8 (c) Neither be directly nor indirectly associated with the business
9 control or management of, nor have a financial interest in, another
10 dealer's operation; nor shall any other dealer be so associated with
11 the producer-dealer's operation;

12 (d) Not allow milk from the designated milk production resources
13 and facilities of the producer-dealer to be delivered in the name of
14 another person as producer milk to another handler; and

15 (e) Not handle fluid milk products derived from sources other than
16 the designated milk production facilities and resources, except for
17 fluid milk product purchased from pool plants which do not exceed in
18 the aggregate a daily average during the month of one hundred pounds.

19 (3) Designation of any person as a producer-dealer following a
20 cancellation of its prior designation shall be preceded by performance
21 in accordance with subsection (2) of this section for a period of one
22 month.

23 (4) Designation of a person as a producer-dealer shall include the
24 determination and designation of the milk production, handling,
25 processing, and distributing resources and facilities, all of which
26 shall be deemed to constitute an integrated operation, as follows:

27 (a) As milk production resources and facilities: All resources and
28 facilities, milking herd, buildings housing such herd, and the land on
29 which such buildings are located, used for the production of milk:

1 (i) Which are directly, indirectly, or partially owned, operated,
2 or controlled by the producer-dealer;

3 (ii) In which the producer-dealer in any way has an interest
4 including any contractual arrangement; and

5 (iii) Which are directly, indirectly, or partially owned, operated,
6 or controlled by any partner or stockholder of the producer-dealer.
7 However, for purposes of this item (4)(a)(iii) any such milk production
8 resources and facilities which the producer-dealer proves to the
9 satisfaction of the director do not constitute an actual or potential
10 source of milk supply for the producer-dealer's operation as such shall
11 not be considered a part of the producer-dealer's milk production
12 resources and facilities; and

13 (b) As milk handling, processing, and distributing resources and
14 facilities: All resources and facilities including store outlets used
15 for handling, processing, and distributing any fluid milk product:

16 (i) Which are directly, indirectly, or partially owned, operated,
17 or controlled by the producer-dealer; or

18 (ii) In which the producer-dealer in any way has an interest,
19 including any contractual arrangement, or with respect to which the
20 producer-dealer directly or indirectly exercises any degree of
21 management or control.

22 (5) Designation as a producer-dealer shall be canceled
23 automatically upon determination by the director that any of the
24 requirements of subsection (2) of this section are not continuing to be
25 met, such cancellation to be effective on the first day of the month
26 following the month in which the requirements were not met, or the
27 conditions for cancellation occurred.

Passed the Senate March 12, 1992.

Passed the House March 11, 1992.

Approved by the Governor March 26, 1992.

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