

Chapter 15.35 RCW
WASHINGTON STATE MILK POOLING ACT

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RCW 15.35.010 Short title. This chapter may be known and cited as the Washington state milk pooling act to provide for equitable pricing and pooling among producers and processors of milk and milk products. [1993 c 345 § 1; 1971 ex.s. c 230 § 1.]

RCW 15.35.030 Declaration of public interest. It is hereby declared that:

- (1) Milk is a necessary article of food for human consumption;

(2) The production, distribution, and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(3) It is the policy of the state to promote, foster, and encourage the intelligent production and orderly marketing of adequate supplies of pure and wholesome milk and milk products necessary to its citizens, to promote competitive prices, and to eliminate economic waste, destructive trade practices, and improper accounting for milk purchased from producers;

(4) Economic factors concerning the production, marketing, and sale of milk in the state may not be accurately reflected in federal programs;

(5) Conditions within the milk industry of this state are such that it may be necessary to establish marketing areas wherein pricing and pooling arrangements between producers are necessary, and for that purpose the director shall have the administrative authority, with such additional duties as are herein prescribed, after investigations and public hearings, to prescribe such marketing areas and modify the same when advisable or necessary. [1993 c 345 § 2; 1991 c 239 § 1; 1971 ex.s. c 230 § 3.]

RCW 15.35.060 Purposes. The purposes of this chapter are to:

(1) Authorize and enable the director to prescribe marketing areas and to establish pricing and pooling arrangements which are necessary to prevent disorderly marketing of milk due to varying factors of costs of production, health regulations, transportation, and other factors in said marketing areas of this state;

(2) Authorize and enable the director to formulate marketing plans subject to the provisions of this chapter, in accordance with chapter 34.05 RCW, which provide for pricing and pooling arrangements and declare such plans in effect for any marketing area;

(3) Provide funds for administration and enforcement of this chapter by assessments to be paid by producers. [1993 c 345 § 3; 1991 c 239 § 2; 1971 ex.s. c 230 § 6.]

**RCW 15.35.070 Powers conferred to be liberally construed—
Monopoly—Price setting.** It is the intent of the legislature that the powers conferred in this chapter shall be liberally construed. Nothing in this chapter shall be construed as permitting or authorizing the development of conditions of monopoly in the production or distribution of milk, nor shall this chapter give the director authority to establish wholesale or retail prices for processed milk products. [1993 c 345 § 5; 1991 c 239 § 3; 1971 ex.s. c 230 § 7.]

RCW 15.35.080 Definitions. For the purposes of this chapter:

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

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

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent, or employee thereof. This term shall import either the singular or plural as the case may be;

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

(5) "Milk" means all fluid milk from cows as defined in chapter 15.36 RCW and rules adopted under chapter 15.36 RCW;

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

(7) "Milk dealer" means any person engaged in the handling of milk in his or her capacity as the operator of a milk plant, as that term is defined in chapter 15.36 RCW and rules adopted under chapter 15.36 RCW:

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

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

(8) "Producer" means a person producing milk within this state for sale under a grade A milk permit issued by the department under the provisions of chapter 15.36 RCW or, if the director so provides by rule, a person who markets to a milk dealer milk produced under a grade A permit issued by another state;

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

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

(11) "Producer-dealer" means a producer who engages in the production of milk and also operates a plant from which an average of more than three hundred pounds daily of milk products, except filled milk, is sold within the marketing area and who has been so designated by the director. A state institution which processes and distributes milk of its own production shall be considered a producer-dealer for purposes of this chapter, but the director may by rule exempt such state institutions from any of the requirements otherwise applicable to producer-dealers. [1994 c 143 § 509; 1993 c 345 § 4; 1992 c 58 § 1; 1991 c 239 § 4; 1971 ex.s. c 230 § 8.]

RCW 15.35.090 Milk control between states. (1) The director shall in carrying out the provisions of this chapter and any marketing plan thereunder confer with the legally constituted authorities of other states of the United States, and the United States department of agriculture, for the purpose of seeking uniformity of milk control with respect to milk coming in to the state and going out of the state in interstate commerce with a view to accomplishing the purposes of this chapter, and may enter into a compact or compacts which will insure a uniform system of milk control between this state and other states.

(2) In order to facilitate carrying out the provisions and purposes of this chapter, the department may hold joint hearings with authorized officers or agencies of other states who have duties and powers similar to those of the department or with any authorized person designated by the United States department of agriculture, and may enter into joint agreements with such authorized state or federal agencies for exchange of information with regard to prices paid to

producers for milk moving from one state to the other or any purpose to carry out and enforce this chapter. [1991 c 239 § 5; 1971 ex.s. c 230 § 9.]

RCW 15.35.100 Director's authority—Subpoena power—Rules.

Subject to the provisions of this chapter, the director is hereby vested with the authority:

(1) To investigate all matters pertaining to the production, processing, storage, transportation, and distribution of milk and milk products in the state, and shall have the authority to:

(a) Establish classifications of processed milk and milk products, and a minimum price or a formula to determine a minimum price to be paid by milk dealers for milk used to produce each such class of products;

(b) Require that payment be made by dealers to producers of fluid milk or their cooperative associations and prescribe the method and time of such payments by dealers to producers or their cooperative associations in accordance with a marketing plan for milk;

(c) Determine what constitutes a natural milk market area;

(d) Establish quota systems within marketing plans, and to determine by using uniform rules, what portion of the milk produced by each producer shall be assigned to each quota classification;

(e) Provide for the pooling of minimum class values from the sales of each class of milk to milk dealers, and the equalization of returns to producers;

(f) Provide and establish market pools for a designated market area with such rules as the director may adopt;

(g) Employ an executive officer, who shall be known as the milk pooling administrator;

(h) Employ such persons or contract with such entities as may be necessary and incur all expenses necessary to carry out the purposes of this chapter;

(i) Determine by rule, what portion of any increase in the available quotas shall be assigned to new producers or existing producers.

(2) To issue subpoenas to compel the attendance of witnesses and/or the production of books, documents, and records anywhere in the state in any hearing affecting the authority of privileges granted by a license issued under the provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel as provided for in chapter 2.40 RCW.

(3) To make, adopt, and enforce all rules necessary to carry out the purposes and policies of this chapter subject to the provisions of chapter 34.05 RCW concerning the adoption of rules. Nothing contained in this chapter shall be construed to abrogate or affect the status, force, or operation of any provision of the public health laws enacted by the state or any municipal corporation or the public service laws of this state. [1993 c 345 § 6; 1991 c 239 § 6; 1971 ex.s. c 230 § 10.]

RCW 15.35.105 Minimum milk price—Competition from outside the marketing area. (1) In establishing a minimum milk price or a formula to determine a minimum milk price, as provided under RCW 15.35.060 and

15.35.100, the director shall, in addition to other appropriate criteria, consider the:

- (a) Cost of producing fluid milk for human consumption;
- (b) Transportation costs;
- (c) Milk prices in states or regions outside of the state that influence prices within the marketing areas;
- (d) Demand for fluid milk for human consumption;
- (e) Alternative enterprises available to producers; and
- (f) Economic impact on milk dealers.

(2) A milk dealer who believes that actual competition from outside the marketing area is having a significant economic impact on that milk dealer, may petition the director for a public hearing on an expedited basis to consider whether the minimum milk price in the market plan should be changed relative to the milk price to a competitor located outside the state plus transportation costs for that competitor to compete with the petitioning milk dealer.

(a) To be considered, the petition must identify the specific action requested, and must be accompanied by a statement summarizing the facts and evidence that would be provided at a public hearing by or on behalf of the petitioner to support the need for the requested action, including an identification of circumstances that have changed since the last rule-making proceeding at which the minimum price was established.

(b) Within twenty-one days of receiving the petition, the director shall either:

(i) Adopt rules on an emergency basis, in accordance with RCW 34.05.350;

(ii) File, and distribute to all milk dealers and other interested parties, notice that a hearing will be held within sixty days of receiving the petition;

(iii) Advise the petitioner in writing that the request for rule making is denied, and explain the reasons for the denial; or

(iv) Advise the petitioner in writing that the petition provides insufficient information from which to find that rule making should be initiated, and request that the petition be resubmitted with additional information.

(c) Except as otherwise specifically provided in this section, this petition must be handled in accordance with RCW 34.05.330, and the rule-making procedures of chapter 34.05 RCW.

(3) The director may adopt rules of practice or procedure with respect to the proceedings. [1993 c 345 § 7; 1991 c 239 § 7.]

RCW 15.35.110 Referendum on establishing or discontinuing market area pooling arrangement. (1) The director, either upon his or her own motion or upon petition by ten percent of the producers in any proposed area, shall conduct a hearing to determine whether to establish or discontinue a market area pooling arrangement. Upon determination by the director that in order to satisfy the purposes of this chapter a pooling arrangement should be established, a referendum of affected individual producers and milk dealers shall be conducted by the department.

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

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

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

(c) Producer-dealers providing notice to the director under RCW 15.35.115(1), shall be authorized to vote both as producers and as milk dealers.

(3) Except as provided in subsection (4) of this section, the director, within ninety days from the date the results of a referendum approved under subsection (2) of this section are filed with the secretary of state, shall adopt rules to establish a market pool in the market area, as provided for in this chapter. In conducting hearings on rules proposed for adoption under this subsection, the director shall invite public comment on whether milk regulation similar to the market area pooling plan proposed in the rules exists in neighboring states and whether a lack of such milk regulation in neighboring states would render such a market area pooling plan in this state ineffective or impractical.

(4) If, following hearings held under subsection (3) of this section, the director determines that the lack of milk regulation in neighboring states similar to the market area pooling plan proposed for this state would render such a pooling arrangement in this state ineffective or impractical, the director shall so state in writing. The director shall file the statement with the code reviser for publication in the Washington State Register. In such a case, a market area pooling plan shall not be established in the market area under subsection (3) of this section based upon the referendum that precipitated the hearings.

If the director determines that such a lack of milk regulation in neighboring states would not render such a market area pooling plan ineffective or impractical in this state, the director shall adopt rules in accordance with subsection (3) of this section.

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

(6) A referendum of affected producers, producer-dealers, and milk dealers shall be conducted only when a market area pooling arrangement is to be established. Only producers, milk dealers, and producer-dealers who are subject to the plan may vote on the termination of a pooling plan. [1993 c 345 § 8; 1992 c 58 § 4; 1991 c 239 § 8; 1971 ex.s. c 230 § 11.]

RCW 15.35.115 Referendum on establishing or discontinuing market area pooling arrangement—Producer-dealers. (1) Not less than sixty days before a referendum creating a market area and pooling plan with quotas is to be conducted under RCW 15.35.110, the director shall notify each producer-dealer regarding the referendum. Any producer-dealer may choose to vote on the referendum and each choosing to do so shall notify the director in writing of this choice not later than thirty days before the referendum is conducted. Such a producer-dealer and any person who becomes a producer-dealer or producer by acquiring the quota of such a producer-dealer shall be a fully regulated producer under such an approved plan and shall receive a quota which

is not less than the sales of milk in fluid form from the producer facilities during the reference period used by the director in determining quotas for producers. Such a producer-dealer shall also be a fully regulated milk dealer under the terms of such an approved plan. RCW 15.35.310(1) does not apply to a producer-dealer who is subject to regulation under this subsection.

(2) If a person was not a producer-dealer at the time notice was provided to producer-dealers under subsection (1) of this section regarding a referendum on a proposed market area and pooling plan with quotas, the plan was approved by referendum, and the person subsequently became a producer-dealer (other than by virtue of the person's acquisition of the quota of a producer-dealer who is fully regulated under the plan), the person is subject to all of the terms of the plan for producers and milk dealers during the duration of the plan and RCW 15.35.310(1) does not apply to such a person with regard to that plan.

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

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

If changes are made, on a market area-wide basis, to the quotas established under the plan, the director shall by rule adjust the fifty percent limitation provided by this section by an equivalent amount. [1993 c 345 § 9; 1992 c 58 § 2.]

RCW 15.35.120 Qualifications for producers to sign petitions or vote in referendums.

(1) The producers qualified to sign a petition, or to vote in any referendum concerning a market pool, shall be all those producers shipping milk to the market area on a regular supply basis and who would or do receive or pay equalization in an existing market pool in a market area, or in a market pool if established in such market area.

(2) The milk dealers qualified to vote in any referendum establishing a market pool shall be all those milk dealers who operate a plant which is located within the state and who would receive milk priced under a market pool if established in such market area.

(3) The director is authorized during business hours to review the books and records of milk dealers to obtain a list of the producers qualified to sign petitions or to vote in referendums and to verify that such milk dealers are qualified to vote in a referendum. [1991 c 239 § 9; 1971 ex.s. c 230 § 12.]

RCW 15.35.130 Form of producer petitions. Petitions filed with the director by producers shall:

(1) Consist of one or more pages, each of which is dated at the bottom. The date shall be inserted on each sheet prior to, or at the time the first signature is obtained on each sheet. The director shall not accept a sheet on which such date is more than sixty days, prior to the time it is filed with the director. After a petition is filed, additional pages may be filed if time limits have not expired.

(2) Contain wording at the top of each page which clearly explains to each person whose signature appears thereon the meaning and intent of the petition. Such wording shall also clearly indicate to the director if it is in reference to a request for public hearing, exactly what matters are to be studied and desired. Similar information must be directed to the director if the matter relates to a referendum. The director has the authority to clarify wording from a petition before making it a part of a referendum.

No informalities or technicalities in the conduct of a referendum, or in any matters relating thereto, shall invalidate any referendum if it is fairly and reasonably conducted by the director. [1971 ex.s. c 230 § 13.]

RCW 15.35.140 Director to establish systems within market areas.

(1) The director shall establish a system of classifying, pricing, and pooling of all milk used in each market area established under RCW 15.35.110.

(2) Thereafter the director may establish a system in each market area for the equalization of returns for all quota milk and all surplus over quota milk whereby all producers selling milk to milk dealers or delivering milk in such market area, or their cooperative associations, will receive the same prices for all quota milk and all surplus over quota milk, except that any premium paid to a producer by a dealer above established prices shall not be considered in determining average pool prices. Such prices may reflect adjustments based on the value of component parts of each producer's milk. [1991 c 239 § 10; 1971 ex.s. c 230 § 14.]

RCW 15.35.150 Determination of quota. (1) Under a market pool and as used in this section, "quota" means a producer's or producer-dealer's portion of the total sales of milk in a market area in fluid form or, in the director's discretion, in other forms.

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

In any system of establishing quotas, provision shall be made for new producers to qualify for allocation of quota in a reasonable proportion and for old and new producers to participate in any new increase in available quota in a reasonable proportion. The director

may establish a method to proportionately decrease quota allocations in the event decreases in milk usage occur.

All subsequent changes or new quotas issued shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. [1993 c 345 § 10; 1992 c 58 § 5; 1991 c 239 § 11; 1971 ex.s. c 230 § 15.]

RCW 15.35.160 Contracts, rights and powers of associations not affected. No provision of this chapter shall be deemed or construed to:

(1) Affect or impair the contracts of any such cooperative association with its members or other producers marketing their milk through such corporation;

(2) Impair or affect any contract which any such cooperative association has with milk dealers or others which are not in violation of this chapter;

(3) Affect or abridge the rights and powers of any such cooperative association conferred by the laws of this state under which it is incorporated. [1971 ex.s. c 230 § 16.]

RCW 15.35.170 Quotas—Transfer of—Limitations. Quotas provided for in this chapter may not in any way be transferred without the consent of the director. Regulations regarding transfer of quotas shall be determined by the department after due notice and the opportunity for a hearing as provided in chapter 34.05 RCW. Any contract for the transfer of quotas, unless the transfer has previously been approved by the director, shall be null and void. The director shall make rules and regulations to preclude any person from using a corporation as a device to evade the provisions of this section. The quotas assigned to any producer shall become null and void as of any time the producer does not own the means of production to which the quotas pertain. Quotas shall in no event be considered as property and may be taken or abolished by the state without compensation. [1991 c 239 § 12; 1971 ex.s. c 230 § 17.]

RCW 15.35.180 Records of milk dealers and cooperatives, inspection and audit of. The director shall examine and audit not less than one time each year or at any other such time the director considers necessary, the books and records, and may photostat such books, records, and accounts of milk dealers and cooperatives licensed or believed subject to license under this chapter for the purpose of determining:

(1) How payments to producers for the milk handled are computed and whether the amount of such payments are in accordance with the applicable marketing plan;

(2) If any provisions of this chapter affecting such payments directly or indirectly have been or are being violated.

No person shall in any way hinder or delay the director in conducting such examination.

The director may accept and use for the purposes of this section any audit made for or by a federal milk market order administrator which provides the information necessary for such purposes. [1991 c 239 § 13; 1971 ex.s. c 230 § 18.]

RCW 15.35.190 Records necessary for milk dealers. All milk dealers subject to the provisions of this chapter shall keep the records as deemed necessary by the director. [1971 ex.s. c 230 § 19.]

RCW 15.35.200 Verified reports of milk dealers. Each milk dealer subject to the provisions of this chapter shall from time to time, as required by rule of the director, make and file a verified report, on forms prescribed by the director, of all matters on account for which a record is required to be kept, together with such other information or facts as may be pertinent and material within the scope of the purpose of this chapter. Such reports shall cover a period specified in the order, and shall be filed within a time fixed by the director. [1971 ex.s. c 230 § 20.]

RCW 15.35.210 Milk dealer license—Required. It shall be unlawful for any milk dealer subject to the provisions of a marketing plan to handle milk subject to the provisions of such marketing plan without first obtaining an annual license from the director for each separate place of business where such milk is received or sold. Such license shall be in addition to any other license required by the laws of this state: PROVIDED, That the provisions of this section shall not become effective for a period of sixty days subsequent to the inception of a marketing plan in any marketing area prescribed by the director. [1971 ex.s. c 230 § 21.]

RCW 15.35.220 Milk dealer license—Application for—Contents. Application for a license to act as a milk dealer shall be on a form prescribed by the director and shall contain, but not be limited to, the following:

- (1) The nature of the business to be conducted;
 - (2) The full name and address of the person applying for the license if an individual; and if a partnership, the full name and address of each member thereof; and if a corporation, the full name and address of each officer and director;
 - (3) The complete address at which the business is to be conducted;
 - (4) Facts showing that the applicant has adequate personnel and facilities to properly conduct the business of a milk dealer;
 - (5) Facts showing that the applicant has complied with all the rules prescribed by the director under the provisions of this chapter;
 - (6) Any other reasonable information the director may require.
- [1971 ex.s. c 230 § 22.]

RCW 15.35.230 Milk dealer license—Fees—Additional assessment for late renewal. (1) Application for each milk dealer's license shall be accompanied by an annual license fee to be established by the director by rule.

(2) If an application for the renewal of a milk dealer's license is not filed on or before the first day of an annual licensing period a late fee of up to one-half of the license fee shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional

assessment shall not apply if the applicant furnishes an affidavit that the applicant has not acted as a milk dealer subsequent to the expiration of his or her prior license. [1991 c 239 § 14; 1971 ex.s. c 230 § 23.]

RCW 15.35.240 Milk dealer license—Denial, suspension, or revocation of—Grounds. The director may deny, suspend, or revoke a license upon due notice and an opportunity for a hearing as provided in chapter 34.05 RCW concerning adjudicative proceedings, or rules adopted thereunder by the director, when he or she is satisfied by a preponderance of the evidence of the existence of any of the following facts:

(1) A milk dealer has failed to account and make payments without reasonable cause, for milk purchased from a producer subject to the provisions of this chapter or rules adopted hereunder;

(2) A milk dealer has committed any act injurious to the public health or welfare or to trade and commerce in milk;

(3) A milk dealer has continued in a course of dealing of such nature as to satisfy the director of his or her inability or unwillingness to properly conduct the business of handling or selling milk, or to satisfy the director of his or her intent to deceive or defraud producers subject to the provisions of this chapter or rules adopted hereunder;

(4) A milk dealer has rejected without reasonable cause any milk purchased or has rejected without reasonable cause or reasonable advance notice milk delivered in ordinary continuance of a previous course of dealing, except where the contract has been lawfully terminated;

(5) Where the milk dealer is insolvent or has made a general assignment for the benefit of creditors or has been adjudged bankrupt or where a money judgment has been secured against him or her upon which an execution has been returned wholly or partially satisfied;

(6) Where the milk dealer has been a party to a combination to fix prices, contrary to law; a cooperative association organized under chapter 23.86 RCW and making collective sales and marketing milk pursuant to the provisions of such chapter, directly or through a marketing agent, shall not be deemed or construed to be a conspiracy or combination in restraint of trade or an illegal monopoly;

(7) Where there has been a failure either to keep records or to furnish statements or information required by the director;

(8) Where it is shown that any material statement upon which the license was issued is or was false or misleading or deceitful in any particular;

(9) Where the applicant is a partnership or a corporation and any individual holding any position or interest or power of control therein has previously been responsible in whole or in part for any act for which a license may be denied, suspended, or revoked, pursuant to the provisions of this chapter or rules adopted hereunder;

(10) Where the milk dealer has violated any provisions of this chapter or rules adopted hereunder;

(11) Where the milk dealer has ceased to operate the milk business for which the license was issued. [2010 c 8 § 6051. Prior: 1989 c 307 § 36; 1989 c 175 § 47; 1987 c 164 § 1; 1971 ex.s. c 230 § 24.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Effective date—1989 c 175: See note following RCW 34.05.010.

RCW 15.35.250 Marketing assessment on producers—Additional assessment for milk testing—Penalty—Court action. (1) There is hereby levied upon all milk sold or received in any marketing area subject to a marketing plan established under the provisions of this chapter an assessment, not to exceed five cents per one hundred pounds of all such milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or his or her agent subject to such marketing plan and shall be paid to the director for deposit into the agricultural local fund.

The amount to be assessed and paid to the director under any marketing plan shall be determined by the director within the limits prescribed by this subsection and shall be determined according to the necessities required to carry out the purpose and provisions of this chapter under any such marketing plan.

(2) In the event a producer's milk dealer does not provide milk testing in a state-certified laboratory, the director may levy an additional assessment on all such milk, not to exceed three cents per one hundred pounds of milk, to be paid by the producer of such milk. Such assessment shall be collected by the first milk dealer who receives or handles such milk from any producer or the producer's agent subject to the marketing plan and shall be paid to the director for deposit into the agricultural local fund. Moneys from such assessments shall be used to provide testing of the milk in a state-certified laboratory.

The amount to be assessed and paid to the director under this subsection shall be determined by the director within the limits prescribed by this subsection.

(3) Upon the failure of any dealer to withhold out of amounts due to or to become due to a producer at the time a dealer is notified by the director of the amounts to be withheld and upon failure of such dealer to pay such amounts, the director subject to the provisions of RCW 15.35.260, may revoke the license of the dealer required by RCW 15.35.230. The director may commence an action against the dealer in a court of competent jurisdiction in the county in which the dealer resides or has his principal place of business to collect such amounts. If it is determined upon such action that the dealer has wrongfully refused to pay the amounts the dealer shall be required to pay, in addition to such amounts, all the costs and disbursements of the action, to the director as determined by the court. If the director's contention in such action is not sustained, the director shall pay to the dealer all costs and disbursements of the action as determined by the court. [1993 c 345 § 11; 1991 c 239 § 15; 1971 ex.s. c 230 § 25.]

RCW 15.35.260 Records and reports of licensees for assessment purposes. Each licensee, in addition to other records required under

the provisions of this chapter, shall keep such records and make such reports as the director may require for the purpose of computing payments of assessments by such licensee. [1971 ex.s. c 230 § 26.]

RCW 15.35.270 Assessment due date. All assessments on milk subject to the provisions of this chapter and a marketing order shall be paid to the director on or before the twentieth day of the succeeding month for the milk which was received or handled in the previous month. [1971 ex.s. c 230 § 27.]

RCW 15.35.280 Separate account for each marketing plan—Deductions for departmental costs. The director shall establish a separate account for each marketing plan established under the provisions of this chapter, and all license fees and assessments collected under any such marketing plan shall be deposited in its separate account to be used only for the purpose of carrying out the provisions of such marketing plan: PROVIDED, That the director may deduct from each such account the necessary costs incurred by the department. Such costs shall be prorated among the several marketing plans if more than one is in existence under the provisions of this chapter. [1971 ex.s. c 230 § 28.]

RCW 15.35.290 Court actions to implement. In addition to any other remedy provided by law, the director in the name of the state shall have the right to sue in any court of competent jurisdiction for the recovery of any moneys due it from any persons subject to the provisions of this chapter and shall also have the right to institute suits in equity for injunctive relief and for purpose of enforcement of the provisions of this chapter. [1971 ex.s. c 230 § 29.]

RCW 15.35.300 General penalty—Misdemeanor—Exception. Any violation of this chapter and/or rules and regulations adopted thereunder shall constitute a misdemeanor: PROVIDED, That this section shall not apply to retail purchasers who purchase milk for domestic consumption. [1971 ex.s. c 230 § 30.]

RCW 15.35.310 Certain producer-dealers exempt. (1) Except as provided in RCW 15.35.115, the provisions of this chapter shall not apply to persons designated as producer-dealers, except that:

- (a) The director may require pursuant to RCW 15.35.100 any information deemed necessary to verify a producer-dealer's status as a producer-dealer; and
- (b) A producer-dealer shall comply with all requirements of this chapter applicable to milk dealers, except those which the director may deem unnecessary.

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

- (a) In its capacity as a handler, have and exercise complete and exclusive control over the operation and management of a plant at

which it handles and processes milk received from its own milk production resources and facilities as designated in subsection (4) (a) of this section, the operation and management of which are under the complete and exclusive control of the producer-dealer in its capacity as a dairy farmer;

(b) Neither receive at its designated milk production resources and facilities nor receive, handle, process, or distribute at or through any of its milk handling, processing, or distributing resources and facilities, as designated in subsection (4) (b) of this section, milk products for reconstitution into fluid milk products, or fluid milk products derived from any source other than (i) its designated milk production resources and facilities, (ii) other milk dealers within the limitation specified in subsection (2) (e) of this section, or (iii) nonfat milk solids which are used to fortify fluid milk products;

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

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

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

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

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

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

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

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

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

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

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

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

(5) Designation as a producer-dealer shall be canceled automatically upon determination by the director that any of the requirements of subsection (2) of this section are not continuing to be met, such cancellation to be effective on the first day of the month following the month in which the requirements were not met, or the conditions for cancellation occurred. [1992 c 58 § 6; 1991 c 239 § 16; 1971 ex.s. c 230 § 31.]