

CR 85-201

STATE OF WISCONSIN)
) SS.
DEPARTMENT OF AGRICULTURE,)
TRADE & CONSUMER PROTECTION)

RECEIVED

MAY 13 1986

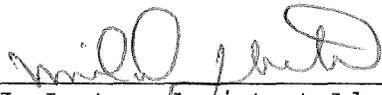
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Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Michael J. Lester, Assistant Administrator, Marketing Division, State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order adopting rules relating to a ginseng marketing order and ginseng marketing board, Chapter Ag 148, Wis. Adm. Code, was duly approved and adopted by the Department on May 12, 1986.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 12th day of May, 1986.



Michael J. Lester, Assistant Administrator
Marketing Division

9-1-86

1 ORDER OF THE
2 STATE OF WISCONSIN
3 DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
4 ADOPTING, AMENDING AND REPEALING RULES
5 To create ch. Ag 148 relating to a ginseng marketing order
6 and ginseng marketing board.

Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection

Ch. Ag 148, Wis. Adm. Code, establishes a ginseng marketing order for the purposes of financing research, market development and education programs. The marketing order applies to all ginseng (dry root, live root, tissue culture and seed) produced in Wisconsin and sold for any purpose other than for seed sales between growers, provided the seed is used for planting the buyer's own ginseng gardens. The objectives of the marketing order are to improve the quality and expand sales of ginseng. These objectives will be accomplished through the funding of programs which include:

1. Maintaining experimental gardens or programs for conducting research on root quality problems, pesticide application and pesticide labeling;
2. Conducting consumer nutrition and health research related to ginseng consumption.
3. Improving methods and practices related to marketing ginseng;
4. Developing new markets for ginseng and ginseng products; and
5. Providing educational programs for producers, handlers or consumers.

Funds will be raised through producer assessments of 10 cents per pound (\$0.10/lb.) on all ginseng dry root and live root, and one dollar and fifty cents per pound (\$1.50/lb.) on all ginseng seed sold during the first crop year in which the marketing order is in effect. In subsequent years, the marketing board will annually set the rate of assessment depending on its annual budget but with a maximum allowable assessment of 20 cents per pound (\$0.20/lb.) on ginseng dry root and live root, and 3 dollars per pound (\$3.00/lb.) on ginseng seed. Assessments on tissue culture sold in commercial channels will be 20 dollars per ounce (\$20.00/ounce) in the first year, with a maximum of 40 dollars per ounce (\$40.00/ounce) in subsequent years. The funds may be used to jointly sponsor projects with any public or private organization to meet the objectives of the marketing order.

The marketing order will be administered by a 7 member ginseng marketing board nominated and elected by and from among

affected producers. The initial marketing board will consist of 2 board members elected for 3-year terms, 3 board members for 2-year terms, and 2 members for one-year terms. Board members will be elected for 3-year terms in subsequent elections. The marketing board is incorporated as a nonstock, nonprofit corporation. Members of the marketing board are responsible for managing the marketing order which includes duties such as: allocating funds to programs allowable under the marketing order; providing for banking, legal, clerical, and informational services necessary to administer the marketing order; and recommending rules and amendments related to the marketing order. The marketing board is required to maintain a bond on its officers and employees and to annually prepare an annual report and financial statement which has been audited independently by a certified public accountant.

Each affected producer who sells ginseng (dry root, live root, tissue culture or seed) into commercial channels, either directly or through a handler, is liable for payment of assessments under the ginseng marketing order. A handler is any person including a dealer, agent or producer who sells or resells ginseng into commercial channels. Assessments due and payable to the marketing board by individual affected producers will be determined each year by the secretary of the department. Assessments will be determined on the basis of information currently submitted to the department under s. 94.50, Stats., (the Cultivated Ginseng Law). The secretary will notify each producer in writing, by March 1 of each year, of the assessment amounts which are due from sales of ginseng made during the previous calendar year. Assessments are payable to the marketing board by April 1 of the year in which the assessment notice is issued. No information related to the individual businesses of producers and handlers may be disclosed to the public or marketing board members, except as provided under s. 94.50, Stats.

Both producers and handlers are required to maintain accurate records of sales and purchases of ginseng. The department will monitor each producer's compliance with the marketing order by inspection of shipping certificates submitted under s. 94.50, Stats. The secretary may require a producer or handler to make records available for inspection and copying by the department, or may require a producer or handler to file reports with the department, if the secretary determines that the inspection or filing is necessary to ensure compliance with the marketing order.

It is estimated that the ginseng marketing order will generate between \$150,000 and \$300,000 per year in assessment revenues.

Services provided by the department to the ginseng marketing board will be provided under contract, on a cost recovery basis. The department will also monitor the activities of the marketing board to ensure compliance with ch. 96, Stats., and rules adopted thereunder.

Every 5 years from the effective date of the marketing order, there will be an advisory referendum on the marketing order. Affected producers will be afforded the opportunity to vote in the advisory referendum to determine if producers want the order

amended or terminated. If more than 50 percent of those voting disapprove continuation of all, or a specified part of the order, the board must recommend action to the secretary to amend or terminate the order.

No amendment or repeal of the marketing order will become effective until the secretary finds that the proposal is approved by not less than 50 percent of the producers voting in a referendum and that at least 50 percent of eligible producers have voted in the referendum.

1 Pursuant to authority vested in the State of Wisconsin
2 Department of Agriculture, Trade and Consumer Protection by
3 s. 96.15, Stats., the State of Wisconsin Department of Agricul-
4 ture, Trade and Consumer Protection adopts rules as a ginseng
5 marketing order interpreting Chapter 96, Stats., as follows:

6 SECTION 1. Chapter Ag 148 is created to read:

7 Chapter Ag 148
8 GINSENG MARKETING ORDER

9 Ag 148.01 DEFINITIONS. As used in this chapter:

10 (1) "Affected producer" means an individual, partnership,
11 corporation or other business entity in Wisconsin engaged in the
12 production and sale of ginseng.

13 (2) "Ginseng" or "cultivated ginseng" means the dry roots,
14 live roots, tissue culture or seeds produced from any cultivated
15 variety of *Panax quinquefolium* L.

16 (3) "Handler" means any person, including a dealer, agent,
17 or producer, who buys ginseng from an affected producer for resale
18 into commercial channels.

19 (4) "Marketing board" means a ch. 181, Stats., non-stock
20 corporation which consists of affected producers who are elected
21 to serve as board members, and which is responsible for adminis-

1 tering the ginseng marketing order pursuant to ch. 96, Stats.,
2 ch. Ag 140, and this chapter.

3 (5) "Secretary" means the secretary of the state of
4 Wisconsin department of agriculture, trade and consumer
5 protection.

6 Ag 148.02 PURPOSE. (1) The primary objectives of this mar-
7 keting order are to improve the quality and expand sales of gin-
8 seng. This includes maintaining experimental gardens or programs
9 for conducting research on root quality problems, pesticide appli-
10 cations and pesticide labeling; conducting consumer nutrition and
11 health research related to ginseng consumption; improving methods
12 and practices related to the marketing of ginseng; developing new
13 markets for ginseng and ginseng products; and providing
14 educational programs for producers, handlers and consumers.

15 (2) Funds collected under this order may be used by the mar-
16 keting board to meet one or more of the objectives described under
17 sub. (1). Funds may be used by the marketing board to sponsor
18 projects in cooperation with any private or public organization to
19 meet the objectives of this order.

20 Ag 148.03 VOTING REQUIREMENTS; CREATION, AMENDMENT OR TER-
21 MINATION. This chapter shall not be adopted, amended or repealed
22 until the secretary finds that the proposed adoption, amendment or
23 repeal has been approved by not less than 50% of the producers
24 voting in a referendum, and that at least 50% of the eligible
25 producers have voted in the referendum.

26 Ag 148.04 MARKETING BOARD. (1) MEMBERSHIP; INITIAL
27 ELECTION. A ginseng marketing board consisting of 7 producers is

1 established to administer this order. Board members shall be
2 nominated and elected as prescribed in s. 96.10(1), Stats., and
3 s. Ag 140.20. Board members shall be elected on an at large
4 basis, by vote of eligible affected producers. In the initial
5 election, the 7 nominees receiving the highest number of at large
6 votes shall be elected as marketing board members for staggered
7 terms, as provided in sub. (2).

8 (2) TERM OF OFFICE. For the initial election of marketing
9 board members, the 2 board members receiving the highest number of
10 votes shall hold office for a period of 3 years. The 3 board mem-
11 bers receiving the third, fourth and fifth highest number of votes
12 shall hold office for a period of 2 years. The 2 board members
13 receiving the sixth and seventh highest number of votes shall hold
14 office for a period of one year. All subsequent elections to the
15 marketing board shall be for 3-year terms.

16 (3) SUBSEQUENT ELECTIONS. Not later than 90 days prior to
17 the expiration of a marketing board member's term of office, the
18 marketing board shall issue a call for nominations for the elec-
19 tion of the succeeding marketing board member. Nominations shall
20 be filed not later than 60 days before the marketing board mem-
21 ber's term of office expires. The election of a succeeding mar-
22 keting board member shall be held prior to the expiration of a
23 marketing board member's term of office. If no nominations are
24 made by producers within the time specified in a call for nomina-
25 tions, the secretary or marketing board may extend the time period
26 within which nominations may be filed.

27 (4) ELIGIBILITY TO HOLD OFFICE; APPOINTMENTS TO FILL VACAN-

1 CIES. A marketing board member is no longer eligible to continue
2 in office if, at any time during his or her term in office, the
3 marketing board members ceases to be an affected producer. If a
4 marketing board member ceases to be an affected producer, his or
5 her position on the marketing board becomes vacant. If a vacancy
6 occurs on the marketing board for any reason, the marketing board
7 shall appoint an affected producer to serve the remainder of the
8 unexpired term of office.

9 (5) DUTIES. The duties of the marketing board shall include
10 the following:

11 (a) To adopt bylaws consistent with the articles of
12 incorporation, ch. 96, Stats., and this order.

13 (b) To develop and maintain administrative services
14 necessary for proper administration of this order.

15 (c) To protect the confidentiality of information obtained
16 under this order relating to the businesses of individual
17 producers or handlers.

18 (d) To develop and recommend to the secretary administrative
19 rules related to this order.

20 (e) To receive, evaluate and report to the secretary
21 complaints of violations of this order.

22 (f) To develop procedures for collecting assessments used in
23 funding programs and the administration of this order.

24 (g) To collect information and data only as necessary for
25 proper administration of this order.

26 (h) To determine how funds collected under the marketing
27 order are to be allocated.

1 (i) To annually prepare a statement on operations of this
2 order for the previous marketing year, including an audited
3 financial statement prepared independently.

4 (j) To maintain a bond on its officers and employes in an
5 amount of not less than 50 percent of the annual operating budget
6 of this order.

7 (k) To comply with all applicable provisions of ch. 96,
8 Stats., and ch. Ag 140.

9 Ag 148.05 APPLICABILITY OF MARKETING ORDER. This chapter
10 applies to all ginseng produced in the state and sold into commer-
11 cial channels, except for sales of ginseng seed and tissue culture
12 by a producer directly to any person, where the seed and tissue
13 culture are to be used only for planting the buyer's own ginseng
14 gardens.

15 Ag 148.06 ASSESSMENTS. (1) For ginseng sales made during
16 the first calendar year for which the marketing order is effec-
17 tive, each affected producer shall be liable for an assessment of
18 10 cents (\$0.10) per pound on all dry or live root ginseng, and
19 one dollar and 50 cents (\$1.50) per pound on all ginseng seed sold
20 into commercial channels. Thereafter, the marketing board shall
21 annually determine the rate of assessment to be levied and col-
22 lected, but in no event shall the rate exceed 20 cents (\$0.20) per
23 pound on all dry or live root ginseng and 3 dollars (\$3.00) per
24 pound on all ginseng seed sold into commercial channels. Assess-
25 ments on tissue culture sold into commercial channels during the
26 first year of the marketing order shall be 20 dollars (\$20.00) per
27 ounce up to a maximum rate of 40 dollars (\$40.00) per ounce in

1 subsequent years. Pounds of ginseng shall be determined on the
2 basis of shipment certificates, scale tickets, invoices, bills of
3 lading, or other sales or shipping documents, or any combination
4 of the above.

5 (2) When ginseng is sold by producers to handlers, assess-
6 ments shall become due to the marketing board at the time title to
7 the ginseng is transferred from producers to handlers.

8 (3) When ginseng is sold by producers, acting as handlers on
9 their own behalf, assessments shall be due at the time title is
10 taken by the buyer.

11 (4) Assessments due to the marketing board for each calendar
12 year shall be payable to the board on or before each April 1 of
13 the next succeeding calendar year.

14 (5) Prior to March 1 of each year, the secretary shall make
15 a determination of assessments due and payable by individual
16 affected producers to the marketing board, based on ginseng sales
17 made during the preceding calendar year. The determination shall
18 be based upon the information on shipping certificates submitted
19 to the department by producers and handlers under s. 94.50, Stats.
20 Prior to March 1 of each year, the secretary shall notify each
21 affected producer in writing of assessments due and payable to the
22 marketing board for the previous calendar year. Assessments
23 become due and payable upon receipt of notice from the secretary.
24 Assessments due and payable by individual affected producers shall
25 be determined in a manner which protects the confidentiality of
26 information related to the businesses of producers and handlers.

27 Ag 148.07 RECORDS; INSPECTION; REPORTS. (1) Each affected

1 producer shall maintain accurate records of all ginseng production
2 and sales to handlers. Each handler shall maintain accurate
3 records and accounts of all ginseng purchased from affected
4 producers by the handler. The secretary may require an affected
5 producer or handler to make records available for inspection and
6 copying by the department, or may require a producer or handler to
7 file reports with the department, if the secretary determines that
8 the inspection or filing is necessary to ensure compliance with
9 this chapter. No information related to the individual businesses
10 of producers and handlers may be disclosed to the public or mar-
11 keting board members, except as otherwise provided under s. 94.50,
12 Stats.

13 (2) The secretary may require the marketing board to provide
14 information necessary for enforcement of ch. 96, Stats., or this
15 order.

16 Ag 148.08 VIOLATIONS. Any person who violates a provision
17 of this order is subject to the penalties provided in s. 96.17,
18 Stats.

19 Ag 148.09 REVIEW. Affected producers shall be afforded the
20 opportunity to participate in an advisory referendum every 5 years
21 from the effective date of this order for the purpose of amending
22 or terminating this order. The secretary shall conduct the
23 advisory referendum. If more than 50% of the affected producers
24 voting in the referendum disapprove continuation of the marketing
25 order, or a specified portion of the marketing order the board
26 shall recommend that the secretary initiate action to amend or
27 repeal the marketing order.

1 SECTION 2. The rules contained in this order shall take
2 effect subsequent to the election of the marketing board as pro-
3 vided in s. 96.10(1), Stats., and on the first day of the month
4 following publication in the Wisconsin administrative register as
5 provided in s. 227.026(1), Stats.

6 Dated: May 12, 1986.

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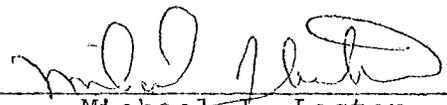
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STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By 
Michael J. Lester
Assistant Administrator
Marketing Division

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