

CR 85-52

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

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, La Verne Ausman, Secretary, State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the annexed order adopting rules relating to agricultural marketing orders, marketing agreements and marketing boards, Chapter Ag 140, Wis. Adm. Code, was duly approved and adopted by the Department on October 16, 1985.

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 16th day of October, 1985.



La Verne Ausman, Secretary

LA/T5/1/D10
10/16/85

12-1-85

ORDER
OF THE
STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES

1 To repeal ch. Ag 2 and create ch. Ag 140 relating to
2 agricultural marketing orders, marketing agreements and marketing
3 boards.

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

Chapter 96, Stats., as amended by ch. 283, laws of 1981, provides for the creation of marketing orders and marketing agreements for agricultural commodities. Marketing orders and marketing agreements are adopted by referendum or assent of affected producers and handlers. Marketing orders are financed by assessments collected from affected producers and handlers, and administered by marketing boards elected by the producers and handlers. Marketing agreements are administered by the department, and apply only to assenting producers and handlers. The purposes for which marketing orders and marketing agreements may be established are provided by statute.

Ch. Ag 140, Wis. Adm. Code (Agricultural Marketing Orders, Marketing Agreements and Marketing Boards) establishes basic rules governing the administration of ch. 96, Stats. It establishes rules for the adoption, amendment or repeal of marketing orders and marketing agreements; the election and organization of marketing boards; the administration of marketing orders and marketing agreements; and the relationship between marketing boards and the department. Marketing boards are incorporated as nonstock, non-profit corporations under ch. 181, Stats., and are authorized to administer marketing orders under ch. 96, Stats. Under ch. 96, Stats., the department is not directly involved in the administration of marketing orders, but is authorized to monitor marketing board operations for compliance with law.

Proceedings to adopt, amend or repeal a marketing order or marketing agreement are to be conducted by the department as rule-making proceedings under ch. 227, Stats., except as otherwise provided under ch. 96, Stats. Ch. Ag 140 establishes the specific procedures to be followed by the department at each stage of the proceedings, including: the decision to initiate proceedings; the preparation of draft proposals; the conduct of hearings; the secretary's decision to deny a proposal or advance it to a referendum of affected producers and handlers; the conduct of marketing order referenda (or marketing agreement assent proceedings), including requirements pertaining to voter eligibility, bloc voting and

balloting; the election of marketing boards, including nomination and election procedures, election districts, and terms of office; and the final adoption of approved proposals.

Ch. Ag 140 clarifies the purposes for which a marketing agreement may be adopted, and the procedures to be used in adopting, amending or repealing a marketing agreement. It limits the use of marketing agreement fees, and establishes procedures for the setting of fees by the department.

Ch. Ag 140 establishes basic rules to govern the organization and operation of marketing boards, and the oversight of marketing board operations by the department. Marketing board articles of incorporation and bylaws are to be developed in consultation with the department, and be submitted for review by the secretary prior to adoption. Articles of incorporation and bylaws may be disapproved by the secretary. Every marketing board must adopt written operating procedures to govern essential marketing board operations, including those specified in the proposed rule.

Under Ch. Ag 140, every marketing board must adopt and file an annual budget with the secretary. A marketing board budget or expenditure provision may be disapproved by the secretary if the expenditure violates ch. 96, Stats. or the prohibitions set forth in the rule. No marketing board may make or contract for any expenditure under a budget provision which is disapproved by the secretary. A budget amendment must be filed with the secretary whenever the marketing board anticipates a significant change in the budget. A marketing board's annual budget must include: a statement of projected annual receipts; a statement of projected annual expenditures, broken down into specific expenditure categories; and a reasonable contingency reserve. The secretary may require the marketing board to file additional information as necessary for the review of a budget.

Every marketing board must maintain a written or retrievable computerized record of every expenditure by the marketing board. Records must be kept on file for at least 7 years, and be made available for inspection and copying by the department. All expenditures, except budgeted expenditures for routine overhead and operating expenses, must be made under written contract. Contracts must be made available for inspection, copying and audit by the department. Proposed contracts must be made available for inspection by the secretary prior to execution, if requested by the secretary.

No person may expend moneys or enter into contracts on behalf of a marketing board without a written delegation of authority from the marketing board. All expenditures must be approved by the marketing board. The rule prohibits marketing boards from making certain types of expenditures, or engaging in certain activities. A marketing board may enter into an agreement with the department for the provision of administrative services to the marketing board, under terms specified in the rule.

Every marketing board must maintain a complete accounting system for the management of marketing board receipts and expenditures. Accounting procedures must conform to generally accepted accounting principles, and provide for the generation of periodic reports indicating the marketing board's financial position. A marketing board must provide the secretary with such financial reports as the secretary may require.

Marketing board fiscal operations must be independently audited on an annual basis by a certified public accountant, and the audit report must be filed with the department. The department may audit marketing board fiscal operations at any time. Every marketing board must prepare a year-end financial statement, independently audited by a certified public accountant and filed with the department. A marketing board must also prepare an annual report, which must include the audited financial statement and a description of the projects funded by the marketing board during the year. The report shall be made available for free distribution to affected producers and handlers.

Complete minutes of every marketing board meeting must be filed with the secretary within 15 days. Every marketing board must keep and preserve all documents and records which are lawfully in the possession of the marketing board. A marketing board may not dispose of records except under a specific written disposal policy filed with the secretary. A proposed disposal policy may be disapproved by the secretary. Upon termination of a marketing order, all documents and records must be filed with the department. Information relating to the individual businesses of producers and handlers must be kept confidential, and must not be disclosed to the public or marketing board members.

A marketing order may provide for variable assessment rates up to a maximum rate specified in the marketing order, and may also provide for assessment refunds upon request. Assessment rate adjustments and assessment refunds must comply with procedures set forth in Ch. Ag 140.

A marketing board is initially responsible for the collection of assessments from producers and handlers. The rule specifies procedures for the collection of assessments by marketing boards. If preliminary collection procedures prove unsuccessful, marketing board may request the secretary to bring a civil court action to collect the assessment. A marketing board may request a producer or handler to file information or reports needed to verify the assessment amounts which are payable by a producer or handler. If the producer or handler fails to file the requested information or reports, the marketing board may ask the department to use its authority to compel production of the information. The department may, in its discretion, conduct inspections or audits at the request of a marketing board.

Ch. Ag 140 establishes a code of ethics for marketing board members, employes and agents.

1 Pursuant to authority vested in the state of Wisconsin
2 department of agriculture, trade and consumer protection by
3 ss. 93.07(1) and 96.15, Stats., the department adopts rules
4 interpreting ch. 96, Stats. as follows:

5 SECTION 1: Chapter Ag 2 is repealed.

6 SECTION 2: Chapter Ag 140 is created to read:

7 CHAPTER AG 140

8 AGRICULTURAL MARKETING ORDERS, MARKETING AGREEMENTS

9 AND MARKETING BOARDS

10 SUBCHAPTER I

11 DEFINITIONS

12 Ag 140.01 DEFINITIONS. As used in this chapter:

13 (1) "Department" means the state of Wisconsin department of
14 agriculture, trade and consumer protection.

15 (2) "Marketing agreement" means a marketing agreement
16 created or proposed under ch. 96, Stats.

17 (3) "Marketing board" means a marketing board created or
18 proposed under ch. 96, Stats.

19 (4) "Marketing order" means a marketing order created or
20 proposed under ch. 96, Stats.

21 (5) "Secretary" means the secretary of the department of
22 agriculture, trade and consumer protection.

23 (6) "Sponsor" means a person submitting a request or petition
24 for the adoption, amendment or repeal of a marketing order.

25 SUBCHAPTER II

26 MARKETING ORDERS; ADOPTION, AMENDMENT AND REPEAL

27 Ag 140.10 RULEMAKING PROCEEDINGS. Proceedings to adopt, amend

1 or repeal a marketing order shall be conducted as rulemaking
2 proceedings under ch. 227, Stats., except as otherwise provided
3 in ch. 96, Stats. Every proposal to adopt, amend or repeal
4 a marketing order shall be prepared in the form of a proposed
5 order of the department adopting, amending or repealing rules
6 under ch. 227, Stats.

7 Ag 140.11 DECISION TO INITIATE PROCEEDINGS. The secretary
8 may, in consultation with the board of agriculture, trade and con-
9 sumer protection, initiate proceedings to adopt, amend or repeal a
10 marketing order. To initiate proceedings, the secretary shall
11 hold a public hearing on the proposal, as provided under ss. 96.05
12 and 96.06, Stats., and this subchapter. The decision to initiate
13 proceedings may be made in response to a petition under
14 s. 96.05(2), Stats., or on the secretary's own motion. A decision
15 to proceed on the secretary's own motion may be made in response
16 to a request by any person. A decision to initiate proceedings
17 shall be made in writing, and set forth the basis for the
18 decision. A decision to initiate proceedings may be withheld
19 until the sponsors of a proposal have complied with any require-
20 ments established by the secretary under s. Ag 140.13.

21 Ag 140.12 REFUSAL TO INITIATE PROCEEDINGS; DENIAL OF PETITION
22 OR REQUEST. (1) The secretary may deny a petition under
23 s. 96.05(2), Stats., if the secretary determines that the proposal
24 does not effectuate the declared policy of ch. 96, Stats., or
25 exceeds the purposes or limitations of ch. 96, Stats. The sec-
26 retary's decision to deny a petition shall be made in consultation
27 with the board of agriculture, trade and consumer protection. If a

1 petition under s. 96.05(2), Stats., is denied, the secretary shall
2 publish notice setting forth the specific reasons for the denial,
3 as provided in s. 96.05, Stats. If denied, the petition may not be
4 reconsidered by the secretary for a period of one year from the
5 date of notice of the denial.

6 (2) If a proposal to adopt, amend or repeal a marketing order
7 is not received in the form of a petition under s. 96.05(2),
8 Stats., the proposal may be summarily denied by the secretary,
9 with or without a written or published explanation. The denial of
10 a proposal does not preclude the secretary from reconsidering the
11 proposal within one year of the denial, except as provided under
12 subd. 1.

13 Ag 140.13 PETITION OR REQUEST TO INITIATE PROCEEDINGS;

14 REQUIREMENTS. (1) Before initiating proceedings on any proposal
15 to adopt, amend or repeal a marketing order, the secretary may
16 require the sponsors of the proposal to submit or deposit with the
17 secretary:

18 (a) A written draft of the proposed marketing order or
19 marketing order amendment, if the sponsors propose to adopt or
20 amend a marketing order. A written draft shall be included with
21 all petitions under s. 96.05(2), Stats., and with other proposals
22 if required by the secretary. The draft proposal may be modified
23 by the department as provided in s. Ag 140.14 before any hearing
24 is held on the proposal.

25 (b) A clear statement of the substance or nature of the pro-
26 posal. The statement shall be included with all petitions under
27 s. 96.05(2), Stats., and with other proposals if required by the

1 secretary. If the sponsors propose to adopt a marketing order,
2 the statement shall include:

3 1. The objectives of the proposed marketing order. Objec-
4 tives shall be consistent with the provisions of s. 96.03(2),
5 Stats.

6 2. A description of the class of producers or handlers who
7 would be affected by the proposed marketing order, including the
8 approximate number of producers or handlers who would be
9 affected.

10 3. A specific statement describing how marketing order
11 assessments would be computed and paid under the marketing order.
12 The description shall be illustrated by examples which are based
13 on typical market transactions in the affected commodity. The
14 description shall indicate:

15 a. How the volume basis for assessments would be
16 determined.

17 b. The situations in which handlers would be expected to
18 collect and remit assessments.

19 c. The situations in which producers would be expected to
20 collect and remit assessments

21 d. The point at which assessments would become due and
22 payable.

23 e. The records which producers or handlers would be required
24 to keep in order to document whether assessments are due and pay-
25 able, and in what amounts.

26 4. The size of the marketing board and the representation
27 of producers and handlers on the marketing board under the

1 proposed marketing order, pursuant to s. 96.10, Stats.

2 5. The amount of revenue, in the form of producer or handler
3 assessments, needed each year to accomplish the purposes of the
4 proposed marketing order.

5 6. A proposed voting requirement to be used in determining
6 whether the proposal is approved or disapproved in a referendum of
7 affected producers or handlers. The voting requirement shall be
8 chosen from among the alternative voting requirements set forth in
9 s. 96.08, Stats. A proposal to amend or repeal a marketing order
10 shall be subject to the same voting requirement that was used to
11 adopt the marketing order.

12 (c) An amount of money sufficient to defray the reasonably
13 anticipated expenses which may be incurred by the department in
14 the proposed proceedings to adopt, amend or repeal the marketing
15 order, pursuant to s. 96.05(6), Stats. In lieu of a single
16 deposit to cover the entire proceedings, the secretary may permit
17 the sponsors of the proposed marketing order to make deposit
18 installments at various stages of the proceedings. Deposit
19 installments shall be sufficient to defray the department's
20 reasonably anticipated expenses for each stage of the proceedings.
21 The department shall provide the sponsors with an accounting of
22 all expenses incurred by the department, and refund any portion of
23 the sponsor's deposit which exceeds the department's actual
24 expenses. Actual expenses may include general overhead and
25 operating expenses which are reasonably attributable to the
26 marketing order proceedings.

27 (2) Sponsors of a proposal to adopt, amend or repeal a

1 marketing order may withdraw their sponsorship at any point in the
2 proceedings. A sponsor shall be liable for any expenses incurred
3 by the department up to the time of the withdrawal of sponsorship.
4 If sponsorship is withdrawn, the department may terminate the
5 proceedings or proceed at the department's expense.

6 Ag 140.14 HEARING DRAFT PROPOSAL; FORMAT. (1) If a decision
7 is made to initiate proceedings for the adoption, amendment or
8 repeal of a marketing order, a hearing draft including a proposed
9 voting requirement shall be prepared by the department in the form
10 required for administrative rules under s. 227.024, Stats. The
11 proposal submitted by the sponsors of a marketing order may be
12 modified by the department to conform with ch. 96, Stats., this
13 chapter and other applicable law. The hearing draft of a proposed
14 order adopting, amending or repealing a marketing order shall be
15 submitted to the legislative council staff for review prior to
16 hearing, as provided in s. 227.029, Stats.

17 (2) To the maximum extent feasible, consistent with the
18 objectives of each proposal, the department shall maintain a con-
19 sistency of terms, provisions, organization and drafting style
20 between marketing orders. Terms defined in s. 96.01, Stats.,
21 shall be used consistently in every marketing order. The fol-
22 lowing terms shall be used consistently in marketing orders and
23 when used shall have the following meanings:

24 (a) "Producer-handler" means an affected producer who sells
25 the affected commodity to a nonresident handler.

26 (b) "Nonresident handler" means a handler who takes title to
27 the affected commodity outside of this state.

1 (c) "Transfer of title" means the passing of title from
2 seller to buyer as provided in s. 402.401, Stats., or as otherwise
3 provided under a written sales agreement.

4 (d) "Assessment due" means an assessment for which a producer,
5 handler or producer-handler has incurred a specific legal obliga-
6 tion of payment under the marketing order. An assessment becomes
7 due when title to the affected commodity transfers and the volume
8 basis used to determine the assessment amount becomes known.

9 (e) "Assessment payable" means an assessment due for which
10 the time specified for payment under the marketing order has
11 arrived. An assessment becomes payable on the payment date
12 prescribed under the marketing order.

13 Ag 140.15 LIST OF AFFECTED PRODUCERS OR HANDLERS;
14 COMPILATION PRIOR TO HEARING. If a decision is made to initiate
15 proceedings for the adoption, amendment or repeal of a marketing
16 order, the secretary shall establish a current list of producers
17 and handlers who will be affected by the proposal, as provided in
18 ss. 96.05(3) through (5), Stats. The list shall be used in
19 determining whether the proposal to adopt, amend or repeal a
20 marketing order is approved in a referendum of producers and
21 handlers, as provided in s. Ag 140.16. The list shall be
22 established and updated using the procedures under ss. 96.05(3)
23 through (5), Stats., before any notice of public hearing is issued
24 on the proposal.

25 Ag 140.16 HEARING NOTICES. (1) Notice of hearing on any
26 proposal to adopt, amend or repeal a marketing order shall be
27 given as provided under ss. 96.06 and 227.021, Stats. The

1 department may issue such press releases or public announcements
2 concerning the hearings as it may consider appropriate. The times
3 and places of hearing shall be determined at the discretion of the
4 secretary and be included in the hearing notice. The hearing
5 notice may also specify a deadline date after the conclusion of the
6 hearings for filing written comments on the proposal. Written com-
7 ments received on or before the deadline date shall be included in
8 the hearing record.

9 Ag 140.17 HEARING. Hearings on any proposal to adopt, amend
10 or repeal a marketing order shall be conducted as rulemaking
11 hearings, pursuant to ss. 96.06(2) and 227.022, Stats. Nothing in
12 this chapter or ch. 96, Stats., shall be construed as requiring a
13 contested case hearing within the meaning of ch. 227, Stats.

14 Ag 140.18 DECISION AFTER HEARING. (1) Following hearing on a
15 proposal to adopt, amend or repeal a marketing order, the secretary
16 shall make and publish a decision on the proposal, as provided
17 under s. 96.07, Stats., in consultation with the board of agricul-
18 ture, trade and consumer protection. The decision shall be issued
19 within 45 days after close of the hearing record, and shall set
20 forth the factual basis and rationale for the decision, including
21 the findings or determinations required under sub. (2). The
22 decision shall determine:

23 (a) Whether the proposal is denied, or advanced to a
24 referendum of affected producers or handlers under s. Ag 140.19.
25 No proposal may be advanced to a referendum unless the secretary
26 makes findings or determinations as provided in ss. 96.07(1)(a)
27 through (c), Stats.

1 (b) Whether, and how the proposal will be modified for refer-
2 endum. The decision shall include the complete text of the final
3 proposal to be submitted to referendum. Changes from the hearing
4 draft proposal shall be clearly noted.

5 (c) The voting requirement to be used in determining whether
6 the proposal is approved or disapproved upon referendum. The voting
7 requirement shall be chosen from among the alternatives set forth
8 under s. 96.08, Stats., and may be different from the voting
9 requirement requested by the sponsors or included in the hearing
10 draft. A proposal to amend or repeal a marketing order shall be
11 subject to the same voting requirement that was used to adopt the
12 marketing order. Bloc voting is permitted in connection with the
13 voting requirements under ss. 96.08(1)(b)1, (b)3, (b)5, and (b)6.
14 Bloc voting is not permitted in connection with the voting require-
15 ments under ss. 96.08(1)(b)2 or (b)4, Stats.

16 (2) The secretary's decision under sub. (1) shall include:

17 (a) A list of persons testifying at the hearings, or submitting
18 written comments within the comment period specified in the hearing
19 notice.

20 (b) The identity of the sponsors of the marketing order
21 proposal, if proceedings on the proposal were initiated in response
22 to a petition or request.

23 (c) The history of the proposal.

24 (d) The nature and objectives of the proposal, as presented by
25 the sponsors and represented in the hearing draft.

26 (e) A discussion and analysis of the hearing arguments for and
27 against the proposal.

1 (f) A projection and analysis of the financial impact of the
2 proposal on affected producers and handlers.

3 (g) The projected market impact of the proposal, including the
4 potential impact on consumers and small business.

5 (3) If the proposal would create or expand the size of a market-
6 ing board, and if the secretary's decision advances the proposal to
7 referendum, the decision shall include a call for nominations to the
8 marketing board, pursuant to s. 96.10, Stats., and s. Ag 140.20.

9 (4) Copies of the secretary's findings and decision shall be
10 mailed, within the time period provided under sub. (1), to all persons
11 appearing at the hearings or submitting written comments for the hear-
12 ing record. If the decision includes a call for nominations under
13 sub. (3), the decision shall be announced in a statewide press release
14 by the department.

15 Ag 140.19 REFERENDUM. (1) GENERAL. Based on the secretary's
16 decision under s. Ag 140.18, a proposal to adopt, amend or repeal a
17 marketing order may be submitted to a referendum of affected producers
18 or handlers, as provided in s. 96.08, Stats. No proposal to adopt,
19 amend or repeal a marketing order may be adopted by the department
20 unless the proposal is approved in a referendum of affected producers
21 and handlers. The referendum shall be scheduled and announced as pro-
22 vided in sub. (4), and be conducted according to the procedures set
23 forth in this section. The results of the referendum shall be
24 determined according to the voting requirement specified in the
25 decision of the secretary under s. Ag 140.18(1)(c).

26 (2) VOTER ELIGIBILITY. In a referendum held on a proposal to
27 adopt, amend or repeal a marketing order, the eligible voters shall

1 consist of producers or handlers who are affected by the proposed
2 marketing order, or by the current marketing order which is to be
3 amended or repealed under the proposal. The department may establish
4 the marketing year or years for which the voting eligibility of a
5 producer or handler is to be determined. Each affected producer or
6 handler is entitled to one vote in the referendum. A corporation,
7 partnership, trust, or other entity or association engaged in
8 business as a producer or handler is entitled to only one vote as a
9 producer or handler, except where an incorporated cooperative
10 association casts a bloc vote as provided under sub. (3). A producer
11 or handler may not vote by proxy or agent, except that the vote of a
12 business entity or association may be cast by its officer, employe or
13 representative. The department may audit the list of affected pro-
14 ducers or handlers compiled under s. Ag 140.15, or the voting status
15 of any person casting a ballot, to ensure that all producers or
16 handlers appearing on the list or casting ballots are eligible to
17 vote in the referendum. The secretary may require supporting doc-
18 umentation from any person claiming to be an eligible producer or
19 handler.

20 (3) BLOC VOTING. (a) If the secretary's decision prescribes a
21 referendum voting requirement under s. Ag 140.18(1)(c) which allows
22 for possible bloc voting, an incorporated cooperative association
23 engaged in marketing the affected commodity on behalf of the
24 cooperative's affected producer members may cast a bloc vote on
25 behalf of its affected members, as provided in s. 96.08(3), Stats. A
26 bloc vote may be cast by the board of directors of the cooperative
27 with the authorization of the cooperative members. A bloc

1 referendum vote may be cast for or against a proposal to adopt,
2 amend or repeal a marketing order. The bloc vote shall be counted
3 as the equivalent of multiple individual votes, according to the
4 number of affected producer members represented in the bloc vote.
5 If production volume is relevant to the referendum voting
6 requirement, the volume of the affected commodity represented by a
7 bloc vote shall be the combined volume produced by the individual
8 producer members represented in the bloc vote. An incorporated
9 cooperative association marketing an affected commodity as the agent
10 of its members, and not as a purchaser, shall exclude from its bloc
11 vote any of its affected producer members for whom a bloc vote will
12 be cast by a second incorporated cooperative association in which
13 the same producers are also members, if the second incorporated
14 cooperative association markets the affected commodity as a
15 purchaser from the producers.

16 (b) At least 45 days prior to the referendum, an incorporated
17 cooperative association intending to cast a bloc vote shall file
18 the following with the secretary:

19 1. A copy of the resolution adopted by the cooperative's
20 membership or board of directors authorizing the cooperative to
21 cast a bloc vote in the marketing order referendum on behalf of its
22 members.

23 2. Proof that the affected producer members of the coopera-
24 tive have been notified in writing of their right to vote
25 individually and be excluded from the cooperative's bloc vote, as
26 provided under par. (d).

27 3. A certified list of cooperative members who qualify as

1 affected producers for purposes of the marketing order and refer-
2 endum, and for whom the cooperative claims the right to cast a
3 bloc vote in the referendum. The list shall include the names and
4 addresses of the affected producers or handlers in a format
5 specified by the department. At the request of the secretary, the
6 cooperative shall submit documentation to prove that the listed
7 producers are eligible to vote in the marketing order referendum,
8 and that the cooperative is authorized to cast a bloc vote on
9 their behalf.

10 4. Any other information or documentation required by the
11 secretary in order to determine the validity of the cooperative's
12 bloc vote.

13 (c) At any time before or during a referendum, the secretary
14 may invalidate the bloc vote of an incorporated cooperative
15 association if the secretary determines that the cooperative has
16 failed to file the information and documentation required under
17 par. (b).

18 (d) If an incorporated cooperative association intends to cast
19 a bloc vote in a marketing order referendum, it shall so notify its
20 individual members in writing at least 45 days prior to the refer-
21 endum. The notice shall further inform the members of their right
22 to vote as individuals and be excluded from the cooperative's bloc
23 vote, as provided under par. (e). Notice published in an official
24 publication of the cooperative, and distributed to all members of
25 the cooperative, constitutes adequate written notice. Notice need
26 not state whether the cooperative intends to cast its bloc vote for
27 or against the marketing order proposal.

1 (e) Affected producers who are members of an incorporated
2 cooperative association may, by notifying the secretary in writing
3 during the referendum period, exclude themselves from the coop-
4 erative's bloc vote in the referendum, and may cast their votes as
5 individuals. Upon receiving notice from an affected producer, the
6 department shall remove the producer from the list of cooperative
7 members included in the cooperative's bloc vote, and shall mail an
8 individual referendum ballot to the producer.

9 (f) The bloc vote of an incorporated cooperative association
10 shall be cast within the referendum period prescribed under sub. (4).
11 The secretary may prescribe a separate ballot for cooperative bloc
12 voting, or the cooperative may cast a bloc vote in the form of a
13 letter addressed to the secretary and sent by certified mail.

14 (4) REFERENDUM SCHEDULE; ANNOUNCEMENT. (a) The referendum on
15 a proposal to adopt, amend or repeal a marketing order shall begin
16 on the date set forth in the secretary's final decision under
17 s. Ag 140.18 advancing the proposal to referendum. The referendum
18 period during which affected producers or handlers may cast their
19 votes shall extend for at least 14 days.

20 (b) At least 10 days before the start of the referendum period,
21 the department shall issue a statewide press release announcing the
22 referendum. The department may publish additional notices to
23 affected areas or persons. Notice under this paragraph shall state:

- 24 1. The nature and purpose of the referendum.
- 25 2. The beginning and ending dates of the referendum period.
- 26 3. The class of affected producers or handlers who are
27 eligible to vote in the referendum.

1 4. The voting requirement under s. 96.08, Stats. which will
2 be used to determine the results of the referendum.

3 5. Whether bloc voting by incorporated cooperative associations
4 is permitted in the referendum. If bloc voting is permitted, the
5 notice or announcement shall set forth the procedure by which pro-
6 ducer members may be excluded from a cooperative's bloc vote and be
7 permitted to cast their votes individually.

8 6. Balloting instructions, indicating whether the referendum
9 is to be conducted by mail ballots or at polling places under sub.
10 (5)(e). If the referendum is to be conducted at polling places,
11 rather than by mail ballot, the notice or announcement shall give
12 the locations of polling places and the times during which votes may
13 be cast at the polling places.

14 7. Instructions to eligible producers and handlers for
15 obtaining a ballot if the producer or handler does not receive a
16 ballot by mail from the department.

17 (5) DISTRIBUTION OF REFERENDUM BALLOTS.

18 (a) Referendum ballots and related materials shall be prepared
19 and distributed by the department. Ballots may be distributed by
20 mail, or at polling places pursuant to par. (e). Every ballot shall
21 be designed and handled so as to insure the secrecy of the pro-
22 ducer's or handler's vote. Ballots shall be accompanied by the
23 instructions required under par. (b). Every ballot shall be accom-
24 panied by a separate certificate, to be signed by the producer or
25 handler, certifying that the producer or handler is eligible to
26 vote in the referendum. No vote is valid unless accompanied by a
27 signed certificate of eligibility. Ballots and certificates shall

1 be returned together, but shall be designed and handled so that the
2 department removes and separates the certificates from all ballots
3 before any vote can be examined or counted, so that no vote when
4 revealed can be identified with a certificate.

5 (b) Every referendum ballot shall be accompanied by instruc-
6 tions to the producer or handler. Instructions shall include:

7 1. An objective statement of the nature and purpose of the
8 referendum.

9 2. An explanation of voter eligibility requirements for
10 producers or handlers wishing to vote in the referendum.

11 3. Instructions for entering a vote on the ballot and signing
12 the certificate of eligibility which accompanies the ballot.

13 Instructions shall state that no vote may be counted unless
14 returned with a signed certificate of eligibility.

15 4. Instructions for reporting the volume of the affected
16 commodity produced or handled by the voter, if the applicable
17 voting requirement under s. 96.08, Stats., takes volume into con-
18 sideration. Ballot forms shall be designed and handled so that
19 reported volumes may be tabulated without being identifiable to an
20 individual producer or handler.

21 5. Instructions for returning the ballot and certificate. If
22 the referendum is to be conducted by mail ballot, the instructions
23 shall include mailing instructions.

24 6. The time period within which the ballot must be delivered
25 to the department or otherwise cast. Ballots cast by mail shall be
26 postmarked not later than the last day of the referendum period
27 prescribed under sub. (4)(a). Ballots postmarked after the last

1 day of the referendum period are invalid.

2 (c) Except as provided in par. (e), the department shall mail
3 a referendum ballot to every producer or handler who is included on
4 the list of affected producers or handlers compiled by the
5 department under s. Ag 140.15. The department shall exclude from
6 its mailing list those producers for whom an incorporated cooperative
7 association has been authorized to cast a bloc vote, and who are
8 listed by the cooperative as being represented in the bloc vote. A
9 producer or handler who is not on the department's mailing list, or
10 who did not receive a referendum ballot, may request a ballot from
11 the department. A producer who desires to be excluded from a coop-
12 erative's bloc vote may request an individual ballot as provided in
13 sub. (3)(e). The department may require documentation to verify that
14 any person requesting a ballot is eligible to vote in the
15 referendum.

16 (d) Ballots mailed to producers or handlers under par. (c) shall
17 be mailed first class unless third class mail is approved by the sec-
18 retary. Outbound envelopes for third class mail shall contain the
19 statement "FORWARDING AND ADDRESS CORRECTION REQUESTED," or the
20 statement "RETURN POSTAGE GUARANTEED." Producers or handlers to whom
21 ballots are mailed shall be provided with postage paid return
22 envelopes, pre-addressed to the department at a post office box
23 reserved exclusively for the receipt of marketing order referendum
24 and election ballots.

25 (e) If the secretary determines that it would be unreasonably
26 costly or difficult to conduct a referendum by mail ballot, the sec-
27 retary may direct that ballots be cast at polling places announced by

1 the secretary as provided in sub. (4)(b)6. The secretary may
2 further direct that ballots be pre-distributed to producers by mail,
3 rather than at the designated polling places.

4 (6) TABULATION OF BALLOTS.

5 (a) Referendum ballots shall be tabulated by the department,
6 according to procedures set forth in this subsection. Before tabu-
7 lating ballots, the department shall examine voting certificates to
8 determine the validity of each ballot cast. All referenda, including
9 referenda conducted at polling places, shall be conducted so as to
10 exclude ineligible voters and assure the secrecy of individual votes.
11 Signed certificates of eligibility shall be obtained from
12 all voters in conjunction with the casting of ballots, but shall
13 be separated from all ballots before any vote is examined or
14 counted, so that no vote can be identified with a certificate of
15 eligibility.

16 (b) A ballot shall be invalidated before being counted if the
17 department determines that:

18 1. The ballot was not cast within the prescribed referendum
19 period.

20 2. The person who cast the ballot was not an eligible voter.

21 3. The certificate of eligibility required to accompany the
22 ballot was not properly signed or returned.

23 4. The person casting the ballot was included in a valid bloc
24 vote of an incorporated cooperative association, and did not file a
25 timely request to be excluded from the bloc vote.

26 5. The ballot duplicates another ballot cast by the same per-
27 son, or the same business entity.

1 6. The person casting the ballot failed to report the volume
2 of the affected commodity produced or handled by that person, if
3 that information is required by the applicable voting requirement
4 under s. 96.08, Stats.

5 7. The ballot was otherwise not properly completed or cast.

6 (c) Every ballot which is invalidated by the department shall
7 be marked "INVALID," and be subscribed with a notation stating the
8 reason for invalidation. Invalidated ballots shall not be counted
9 in determining the outcome of the referendum, but shall be sepa-
10 rately counted and recorded by the department as provided in
11 par. (e).

12 (d) After the department has excluded all invalid ballots,
13 the department shall record the total number of ballots validly
14 cast, the number of valid ballots cast in favor of the referendum
15 proposal, and the number of valid ballots cast in opposition to the
16 referendum proposal. An unmarked ballot shall not be invalidated
17 if otherwise validly cast, and shall be counted among the total
18 ballots validly cast. If the applicable voting requirement under
19 s. 96.08, Stats., takes into consideration the volume of the
20 affected commodity produced or handled by each voter, the volume
21 shall be counted accordingly, based on information supplied by the
22 voter on the ballot or on a related form provided to the voter by
23 the department. Based on validly cast ballots counted and
24 recorded, the department shall apply the applicable voting
25 requirement under s. 96.08, Stats., to determine the result of the
26 referendum.

27 (e) In addition to recording the validly cast ballots to

1 determine the results of the referendum under par. (d), the depart-
2 ment shall separately record:

3 1. The total number of ballots cast in the referendum,
4 whether valid or invalid.

5 2. The total number of invalid ballots cast. The department
6 shall identify the principal reasons for which ballots were inval-
7 idated, and shall record the number of ballots invalidated for each
8 principal reason cited.

9 (7) REFERENDUM RESULTS; ANNOUNCEMENT; EFFECT. After the
10 results of the referendum are determined, the secretary shall issue
11 a referendum decision certifying the results. If the proposal to
12 adopt, amend or repeal a marketing order is approved by referendum,
13 the department shall proceed toward adopting the proposal by rule,
14 pursuant to ch. 227, Stats. A proposed rule to adopt, amend or
15 repeal a marketing order is subject to legislative committee review
16 prior to adoption, as provided in ch. 227, Stats., and may be sub-
17 mitted for review prior to referendum. If the proposal is disap-
18 proved by referendum, the proceedings to adopt the proposal shall
19 be terminated. Referendum results may not be published or dissemi-
20 nated until the secretary's decision is issued.

21 (8) INVALIDATION OF REFERENDUM BY SECRETARY. The secretary may
22 invalidate a referendum if the secretary determines that the outcome
23 of the referendum was significantly affected by electioneering prac-
24 tices of the type prohibited under ch. 12, Stats.; by errors or
25 omissions in referendum procedure; or by wrongful claims of voter
26 eligibility. If a referendum is invalidated, the secretary may
27 extend or reschedule the referendum. If the referendum is

1 invalidated because of fraud or prohibited electioneering practices
2 by the sponsors of a marketing order proposal, proceedings to
3 consider the proposal may be terminated.

4 Ag 140.20 ELECTION OF MARKETING BOARD. (1) INITIAL ELECTION.

5 Every proposed marketing order shall provide for the establishment of
6 a marketing board, pursuant to s. 96.10, Stats. No marketing order
7 may take effect until a marketing board has been elected. The sec-
8 retary's decision under s. Ag 140.18 advancing a proposed marketing
9 order to referendum shall include a call for marketing board nom-
10 inations, and shall further specify a deadline by which nominations
11 must be filed with the secretary. Marketing board members shall be
12 elected by affected producers or handlers from the list of candidates
13 nominated in accordance with sub. (5), or entered as write-in
14 candidates. If the election results in a tie between candidates, the
15 secretary may determine the winner by means of an impartial method,
16 such as the drawing of lots. The election of marketing board members
17 may be held concurrently with the referendum under s. Ag 140.19, at
18 the discretion of the secretary.

19 (2) ELECTION PROCEDURE; GENERAL. The election of marketing
20 board members shall be conducted by the department according to
21 applicable procedures set forth under s. Ag 140.19 for marketing
22 order referenda. The procedures under s. Ag 140.19 may be modified
23 by the department as necessary to accommodate relevant differences
24 between a marketing order referendum and an election of marketing
25 board members. Supplementary procedures, not inconsistent with this
26 chapter, may be set forth in the marketing order. A marketing board
27 shall reimburse the department for its costs in conducting an

1 election of marketing board members. Bloc voting is not permitted in
2 the election of marketing board members.

3 (3) ELECTION DISTRICTS; CONSTITUENCY. Pursuant to s. 96.10,
4 Stats., marketing board members shall be elected by affected pro-
5 ducers or handlers according to area, size or any other measure
6 providing for fair representation, as determined under the market-
7 ing order and approved by the secretary. Except when marketing
8 board members are to be elected at large, the electoral district
9 represented by each marketing board member shall be set forth in
10 the marketing order, and be identified by the secretary in the sec-
11 retary's call for marketing board nominations and in the notice of
12 the marketing board election. Separate ballots and voting instruc-
13 tions for affected producers or handlers shall be distributed in
14 each electoral district.

15 (4) TERM OF OFFICE. Every marketing order shall prescribe
16 the terms of office for marketing board members. A term of office
17 may not exceed 4 years, or be less than one year. A marketing
18 order may prescribe terms of varying lengths for members elected to
19 the initial marketing board, and uniform terms for all members
20 elected thereafter, so that terms will be staggered and a propor-
21 tionate number of marketing board members will be elected at each
22 regular election.

23 (5) NOMINATIONS. (a) Only an affected producer or handler may
24 serve as a member of a marketing board, or nominate another
25 affected producer or handler for election to a marketing board.
26 The secretary shall certify the eligibility of all persons nom-
27 inated for election to a marketing board.

1 (b) The secretary shall call for nominations for the initial
2 election of members to a marketing board as provided in sub. (1).
3 Nominations for any subsequent election may be called for by the sec-
4 retary, or by the marketing board as provided in the marketing order,
5 but shall in all cases be filed with the secretary within the time
6 period prescribed in the call for nominations. The call for nom-
7 inations shall precede the deadline date for the filing of nominations
8 by at least 14 days, and shall announce the availability of nomination
9 forms from the department. Nominations need not be filed on official
10 forms, but shall be filed in writing according to instructions
11 included in the call for nominations.

12 (c) If an insufficient number of nominations are filed with the
13 secretary during the time period prescribed by the secretary or the
14 marketing board in the call for nominations, the secretary or
15 marketing board may extend the nomination period until sufficient nom-
16 inations are received to fill the available positions on the marketing
17 board.

18 Ag 140.21 PRODUCER AND HANDLER ASSESSMENTS; RATE ADJUSTMENTS.

19 (1) Producer and handler assessments shall be levied at the rates
20 established in the marketing order. A marketing order may provide for
21 a variable assessment rate, to be determined annually by the marketing
22 board, provided the annual rate does not exceed a maximum rate
23 established in the marketing order. An annual adjustment in the
24 variable assessment rate may be made by the marketing board, without a
25 rule amendment under ch. 227, Stats., if approved by a two-thirds vote
26 of the marketing board and by the secretary. If approved by the
27 secretary, the adjusted assessment rate shall take effect on the first

1 day of the marketing board's next fiscal year, provided the marketing
2 board gives notice to affected producers and handlers as required
3 under sub. (3).

4 (2) No adjustment of a variable assessment rate is effective
5 unless approved by the secretary. A proposed adjustment approved by
6 the marketing board shall be referred to the secretary at least 60
7 days before the adjustment is intended to take effect, unless the 60
8 day advance referral requirement is waived by the secretary. The
9 proposal shall be accompanied by a written justification of the
10 adjustment, and by an annual budget proposal which reflects the
11 adjustment. The secretary shall approve or disapprove a proposed
12 adjustment within 30 days after receipt. Pursuant to s. 96.11(2),
13 Stats., the secretary may disapprove a proposed assessment rate
14 adjustment if the secretary determines that the adjustment violates
15 ch. 96, Stats. or the marketing order.

16 (3) No adjustment of a variable assessment rate is effective
17 unless the marketing board mails written notice of the adjustment to
18 affected producers and handlers at least 30 days prior to the
19 scheduled effective date, unless this requirement is waived by the
20 secretary. Notice shall be mailed to every producer or handler who
21 paid an assessment during the fiscal year in which the adjustment is
22 approved.

23 SUBCHAPTER III

24 MARKETING AGREEMENTS

25 Ag 140.30 ADOPTION, AMENDMENT, AND REPEAL. (1) Proceedings to
26 adopt, amend or repeal a marketing agreement shall be conducted as
27 rulemaking proceedings under ch. 227, Stats., in accordance with

1 procedures set forth under ss. Ag 140.10 through Ag 140.20, except as
2 otherwise provided in ch. 96, Stats., or this section.

3 (2) No marketing agreement may be adopted until the secretary
4 finds that at least 50% of the affected producers or handlers assent
5 to the proposed marketing agreement. The percentage of affected pro-
6 ducers or handlers assenting to the proposed marketing agreement
7 shall be determined according to s. Ag 140.19, except as provided in
8 this section.

9 (3) Except as provided in s. Ag 140.35, no marketing agreement
10 may be amended or repealed until the secretary finds that at least
11 50% of the current assentors to the marketing agreement have assented
12 to the amendment or repeal. Current assentors include current
13 affected producers or handlers who assented to the marketing agree-
14 ment at the time of its adoption, or at any time subsequent to its
15 adoption pursuant to sub. (4), and who have not withdrawn their
16 assent. The percentage of current assentors who assent to the pro-
17 posed amendment or repeal shall be determined according to the proce-
18 dures under s. Ag 140.19, except as otherwise provided under this
19 section.

20 (4) A marketing agreement, once adopted, is binding only upon
21 producers or handlers who assent to the agreement. A marketing
22 agreement shall permit eligible producers or handlers to assent to
23 the marketing agreement at any time after the marketing agreement is
24 adopted. A marketing agreement shall further permit assenting pro-
25 ducers or handlers to withdraw their assent at the end of each year
26 by giving the secretary advance notice in writing of their intent to
27 withdraw. To be effective, notice of withdrawal shall be given to

1 the secretary at least 30 days prior to the anniversary date of the
2 agreement, except as otherwise provided in the marketing agreement.
3 A withdrawal of assent shall be effective on the anniversary date of
4 the marketing agreement, following written notice as provided in this
5 subsection.

6 (5) In an assent proceeding under this section, the department
7 shall distribute assent forms on which affected producers or handlers
8 may certify their eligibility to participate in the assent proceeding,
9 and signify their assent to the proposed adoption, amendment or repeal
10 of a marketing agreement. The assent forms serve in place of ballots
11 and certificates of eligibility under s. Ag 140.19. The secret ballot
12 requirements of s. Ag 140.19 do not apply to assent proceedings under
13 this subsection.

14 Ag 140.31 MARKETING AGREEMENT PROVISIONS. A marketing agreement
15 may include only those provisions enumerated under s. 96.04(2), Stats.
16 A marketing agreement may not include any provision which is
17 authorized solely for marketing orders under s. 96.03(2), Stats.
18 Marketing agreement fees collected by the department under
19 s. 96.04(2)(f), Stats., and Ag 140.33 may be used only to compensate
20 the department for costs incurred by the department in the
21 administration and enforcement of the marketing agreement. Fees may
22 not be used for any other purpose.

23 Ag 140.32 MARKETING AGREEMENT COUNCILS. (1) GENERAL. The
24 secretary shall appoint a marketing agreement council if a council is
25 authorized by the marketing agreement. The marketing agreement shall
26 specify the number of council members and all requirements related to
27 their selection, term of office, and duties. Duties of a marketing

1 agreement council shall include, but not be limited to those set forth
2 in s. 96.09(2), Stats.

3 (2) QUALIFICATIONS. A marketing agreement council member shall
4 be an affected producer or handler who has assented to the marketing
5 agreement. A new council member shall be appointed to fill the unex-
6 pired portion of the term of office of any council member who fails to
7 meet the qualifications for serving on the council.

8 (3) TERM OF OFFICE. Each marketing agreement shall set forth the
9 term of office for marketing agreement council members. A term of
10 office may be not less than one nor more than 4 years. Initial terms
11 of office may extend for varied lengths of time to allow for regular
12 staggered terms over the duration of the marketing agreement.

13 (4) NOMINATIONS. Procedures for nominating affected producers or
14 handlers for appointment to the council may be set forth in the mar-
15 keting agreement or by the secretary. The call for nominations shall
16 be published by the secretary at least 14 days prior to the deadline
17 date for filing of nominations. The call for nominations shall be
18 published in a statewide press release issued by the department. An
19 advance notice, announcing the impending call for nominations, shall
20 also be published in a statewide press release, issued at least
21 10 days prior to the publication of the call for nominations. The
22 department may publish additional notices to specifically affected
23 areas or persons. Nominations shall be filed with the secretary with-
24 in the time period specified in the call for nominations.

25 (5) APPOINTMENTS. The secretary may appoint members to the mar-
26 keting agreement council from those persons nominated in accordance
27 with sub. (4).

1 Ag 140.33 MARKETING AGREEMENT ADMINISTRATION; FEES. The
2 department shall administer every marketing agreement adopted under
3 ch. 96, Stats. Pursuant to s. 96.04(2)(f), Stats., every marketing
4 agreement shall include provisions for the collection of fees from
5 affected producers or handlers as reimbursement for costs incurred by
6 the department in the administration and enforcement of the marketing
7 agreement. A written schedule of fees shall be established by the
8 secretary, and distributed to affected producers or handlers. Fees
9 shall be assessed against affected producers or handlers on an equi-
10 table basis. Fees may include reimbursement for general overhead and
11 operating expenses of the department which are reasonably attributable
12 to the administration of the marketing agreement. Affected producers
13 or handlers shall be liable for the payment of fees in the manner set
14 forth in the marketing agreement. Fees due from affected producers or
15 handlers under any marketing agreement shall constitute a personal
16 debt of the producer or handler, collectable pursuant to s. 96.17,
17 Stats. The department shall notify producers or handlers of changes
18 in a fee schedule at least 60 days prior to the beginning of the
19 fiscal year in which the change becomes effective.

20 Ag 140.34 RECORDS AND AUDITS. The department shall keep separate
21 records of all fees received and deposited and all expenses incurred
22 in the administration of each marketing agreement. The department
23 shall prepare an annual operating statement, and review annually all
24 receipts and expenses for each marketing agreement. A copy of the
25 annual operating statement shall be made available to affected pro-
26 ducers or handlers within 120 days after the close of the fiscal
27 year.

1 Ag 140.35 SUSPENSION OF MARKETING AGREEMENTS. The secretary may
 2 suspend a marketing agreement if after public hearing, the secretary
 3 determines that the marketing agreement cannot be reasonably
 4 enforced, or is contrary to the purposes of ch. 96, Stats.

5 SUBCHAPTER IV

6 MARKETING BOARD ORGANIZATION

7 AND OPERATION; PROCEDURES

8 NOTE: Marketing boards are incorporated as nonstock,
 9 nonprofit corporations under ch. 181, Stats., and are
 10 authorized to administer marketing orders under ch. 96,
 11 Stats. Under ch. 96, Stats., the department is not directly
 involved in the administration of marketing orders, but is
 authorized to monitor marketing board operations for
 compliance with law.

12 Ag 140.40 ARTICLES OF INCORPORATION AND BYLAWS. Every marketing
 13 board shall adopt articles of incorporation and bylaws, as provided
 14 in s. 96.10(3), Stats. Proposed articles of incorporation, bylaws,
 15 and amendments to bylaws shall be developed in consultation with the
 16 secretary, and be submitted to the secretary for review prior to
 17 final adoption. No articles of incorporation may be filed with the
 18 secretary of state or become effective until approved by the
 19 secretary. The secretary may disapprove proposed articles of
 20 incorporation or bylaws if the secretary determines that the proposed
 21 articles of incorporation or bylaws are inconsistent with ch. 96,
 22 Stats., the marketing order or this chapter, or otherwise violate
 23 applicable law. No articles of incorporation may be approved by the
 24 secretary until the articles of incorporation meet the requirements
 25 of s. 96.10(3), Stats., and s. Ag 140.49(6) concerning procedures
 26 for assuring the confidentiality of business information.

27 Ag 140. 41 WRITTEN OPERATING PROCEDURES; GENERAL (1) Every

1 marketing board shall adopt written operating procedures to govern
2 essential operations of the marketing board, including the
3 procedures required under sub. (2). Operating procedures may be
4 adopted as bylaws. Proposed operating procedures shall be filed
5 with the secretary for review prior to adoption by a marketing
6 board. Operating procedures shall conform to ch. 96, Stats., the
7 marketing order and this chapter.

8 (2) The written operating procedures of a marketing board shall
9 include provisions for:

10 (a) Receiving and depositing assessments.

11 (b) Collecting assessments from producers and handlers, pursuant
12 to s. Ag 140.51.

13 (c) Receiving and acting upon requests by producers or handlers
14 for assessment refunds pursuant to s. Ag 140.50, if the marketing
15 order provides for refunds.

16 (d) Developing and adopting annual budgets and approving expen-
17 ditures, pursuant to ss. Ag 140.42 and Ag 140.45.

18 (e) Soliciting and evaluating project proposals, and reviewing
19 the progress and results of projects funded by the marketing
20 board.

21 (f) Protecting the confidentiality of business information per-
22 taining to producers and handlers under s. Ag 140.49(6). This is
23 in addition to procedures required to be set forth in the articles
24 of incorporation under s. 96.10(3), Stats.

25 (g) Monitoring compliance with the marketing order by producers
26 and handlers, reviewing compliance problems, and referring
27 compliance problems to the department for appropriate action

1 pursuant to ch. 96, Stats., and this chapter.

2 (h) Preparing and disseminating the annual report of the
3 marketing board, pursuant to s. Ag 140.46(4).

4 (i) Calling for nominations to fill a membership vacancy on the
5 marketing board, pursuant to ch. 96, Stats., this chapter and the
6 marketing order.

7 (j) The custody, handling and disposition of marketing board
8 documents and records, pursuant to s. Ag 140.49.

9 Ag 140.42 ANNUAL BUDGET. (1) REQUIREMENT. Every marketing
10 board shall adopt a budget for each fiscal year. The budget shall
11 comply with the requirements of this section. The marketing board
12 shall adopt and file the budget with the secretary prior to the start
13 of the fiscal year, or prior to contracting for any expenditure which
14 was not contracted for during the preceding fiscal year. The fiscal
15 year shall begin on July 1 of each year except as otherwise provided
16 in the marketing order or bylaws of the marketing board. The market-
17 ing board may not expend or contract for the expenditure of moneys
18 until the budget is filed, unless the expenditures were properly con-
19 tracted for during the preceding fiscal year. No expenditure may be
20 made or committed by a marketing board except pursuant to a budget
21 filed under this subsection, except as provided under sub. (6). A
22 marketing board may continue to meet normal administrative operating
23 and overhead expenses and prior contractual obligations pending the
24 timely filing of its budget and pending review of the budget by the
25 secretary under sub. (4).

26 (2) CONTENTS. The marketing board's annual budget shall
27 include:

1 (a) A statement of projected annual receipts, including a
2 separate statement of each of the following:

3 1. Projected receipts from producer and handler assessments,
4 and the specific assumptions or methods by which the projection was
5 derived.

6 2. Surplus receipts carried over from the preceding fiscal
7 year, if any.

8 3. Other projected receipts, if any, and the sources of the
9 receipts.

10 (b) A statement of projected annual expenditures. Projected
11 expenditures shall be categorized by program objective, pursuant to
12 s. 96.03, Stats., and the marketing order. General overhead and
13 operating expenditures, if not identifiable to a program objective,
14 may be set forth in a separate expenditure category. Within each
15 expenditure category, the budget shall identify the nature and amount
16 of proposed expenditures. Expenditures for salaries, supplies,
17 travel expenses, or other routine overhead and operating expenses
18 incurred in the ordinary course of program operations may be budgeted
19 as a maximum authorized total for each expenditure subcategory.
20 Expenditure subcategories shall be identified to facilitate budget
21 review under sub. (4). The proposed budget shall include a descrip-
22 tion of proposed contract expenditures, including the nature of each
23 proposed expenditure, the specific program objective toward which the
24 proposed expenditure is directed, and the identity of the proposed
25 contract recipient if known.

26 (c) A reasonable contingency reserve consisting of a projected
27 surplus of receipts over expenditures, sufficient to protect the

1 marketing board against unforeseen revenue shortages or cost
2 increases, or other unforeseen contingencies which may affect the
3 accuracy of the budget projections and the ability of the marketing
4 board to meet its payment obligations.

5 (3) BUDGET AMENDMENTS. A marketing board shall file a budget
6 amendment with the secretary if, at any time during the fiscal year,
7 the marketing board anticipates a significant change in the
8 previously submitted budget. The secretary may require a marketing
9 board to submit a current, revised budget at any time during the
10 fiscal year.

11 (4) BUDGET REVIEW. The department shall review marketing board
12 budgets and budget amendments for compliance with ch. 96, Stats., and
13 this chapter. Pursuant to s. 96.11(2), Stats., the secretary may
14 disapprove a budget or a proposed expenditure if the secretary
15 determines that the budget fails to comply with the requirements of
16 this subsection, or that the proposed expenditure violates s. Ag
17 140.47. Written notice of disapproval shall be issued to the
18 marketing board within 30 days after the budget or budget amendment
19 is submitted to the secretary. Notice shall specify the reasons for
20 disapproval, and the budget provisions or proposed expenditures which
21 are disapproved. Failure to disapprove a budget or budget amendment
22 within 30 days does not prevent the secretary from disapproving the
23 budget or budget amendment at a later time, if the disapproval is
24 based on information which was not available to the secretary during
25 the original 30-day review period, and if the information reveals
26 that the budget or budget amendment is not in compliance with ch. 96,
27 Stats., or this chapter. No marketing board may make or contract for

1 any expenditure which is disapproved under this subsection, or which
2 is proposed pursuant to a disapproved budget.

3 (5) ADDITIONAL INFORMATION. The secretary may require a market-
4 ing board to file additional information which the secretary deems
5 necessary for the review of a marketing board budget or expenditure
6 under this subsection. The secretary may disapprove a budget or pro-
7 posed expenditure upon failure of a marketing board to submit the
8 required information.

9 (6) WAIVER; FIRST YEAR OF MARKETING BOARD OPERATIONS. The sec-
10 retary may waive the filing of an annual budget for the first fiscal
11 year of marketing board operations, provided that the marketing board
12 submits its proposed contracts and expenditures for review by the
13 secretary as they are proposed during the fiscal year. Additional
14 conditions may be established at any time, if deemed necessary by the
15 the secretary. The secretary may disapprove a proposed expenditure
16 if the secretary determines that the proposed expenditure violates
17 s. Ag 140.47. No marketing board may expend or contract for any
18 expenditure of moneys if the proposed expenditure has been dis-
19 approved by the secretary.

20 Ag 140.43 RECORD OF EXPENDITURES. Every marketing board shall
21 maintain a written or retrievable computerized record of each
22 expenditure of moneys by the marketing board. The record shall
23 identify the amount of the expenditure, the recipient, and the pur-
24 pose for which the expenditure was made. Records shall be kept on
25 file by the marketing board for at least 7 years, and be made
26 available for inspection, copying and audit by the department. Upon
27 termination of a marketing order, all records shall be filed with the

1 department.

2 Ag 140.44 WRITTEN CONTRACTS. (1) REQUIREMENT. All
3 expenditures of marketing board funds shall be made pursuant to a
4 written contract or purchase order, except for budgeted expendi-
5 tures for employe salaries, supplies, travel expenses, and other
6 overhead and operating expenses incurred by a marketing board in the
7 ordinary course of its operations.

8 (2) CONTENTS. Every contract or purchase order under this
9 section shall include:

10 (a) The names and addresses of the contracting parties.

11 (b) A specific description of the materials to be provided, or
12 the services to be performed under the contract or purchase order.

13 (c) The time period for contract performance.

14 (d) The amount to be paid by the marketing board under the
15 contract or purchase order, the time of payment, and any applicable
16 terms and conditions of payment. If a contract or purchase order
17 provides for payment out of funds receivable by a marketing board
18 in any future fiscal year, other than the current budgeted fiscal
19 year, the contract or purchase order shall be made contingent on
20 the availability of revenues for the contract or purchase order in
21 the future fiscal year.

22 (e) A provision whereby the contractor agrees to provide
23 documentation which may be reasonably necessary for the marketing
24 board to review contract performance. The secretary may direct a
25 marketing board to review a contractor's contract performance, and
26 provide answers to specific questions asked by the secretary.
27 Marketing boards may be audited by the department at the discretion

1 of the secretary to determine whether expenditures under contracts
2 executed by the marketing board are in accordance with s. Ag 140.47
3 or ch. 96, Stats.

4 (f) Any other provision which the secretary may require prior
5 to the execution of a contract or purchase order, including a
6 provision requiring a contractor to:

7 1. Maintain segregated accounts for moneys received from a
8 marketing board, if necessary, to assure that expenditures are made
9 in accordance with ch. 96, Stats., and s. Ag 140.47.

10 2. Use generally accepted accounting principles when
11 accounting for moneys received from a marketing board.

12 3. Adhere to specified restrictions on the use of funds, in
13 accordance with s. Ag 140.47 or other applicable law.

14 4. File interim and final reports with the marketing board on
15 contract performance.

16 5. File with the marketing board a copy of the contractor's
17 annual financial statement or security for performance.

18 (3) CONTRACT RECORDS; INSPECTION. Contracts and purchase
19 orders shall be made available for inspection, copying and audit by
20 the department. Proposed contracts and purchase orders shall be
21 made available for inspection by the department prior to execution,
22 if requested by the secretary. Contracts and purchase orders shall
23 be kept on file with the marketing board for at least 7 years after
24 the completion date specified in the contract or purchase order.
25 Upon termination of a marketing order, all contracts and purchase
26 orders shall be filed with the department.

27 Ag 140.45 EXPENDITURE AUTHORIZATIONS. (1) PERSONS AUTHORIZED.

1 No person may expend, or contract for the expenditure of moneys on
2 behalf of a marketing board except under a direct written delegation
3 of authority from the marketing board. Upon request by the
4 secretary, a marketing board shall identify every person who is
5 authorized to expend or contract for the expenditure of moneys on
6 behalf of the marketing board.

7 (2) APPROVAL OF EXPENDITURES. No person, including any person
8 authorized under sub. (1), may expend or contract for the expenditure
9 of moneys on behalf of a marketing board unless the expenditure has
10 been specifically approved by the marketing board. Procedures for
11 the approval of expenditures shall be set forth in the bylaws of the
12 marketing board. A marketing board may, by means of a budget
13 authorization, grant prospective approval for routine overhead or
14 operating expenditures, and may delegate authority to a bonded
15 officer or employe to make individual payments or expenditures pur-
16 suant to the budget authorization. The budget authorization shall
17 specify the nature of the authorized expenditures, the maximum total
18 expenditure authorized in each expenditure subcategory, and the time
19 period to which the authorization is applicable. The marketing board
20 shall adopt bylaws or written procedures for the exercise of dele-
21 gated expenditure authority by a bonded officer or employe, including
22 any required requisition and voucher procedures.

23 AG 140.46 ACCOUNTING SYSTEMS; AUDITS; REPORTS. (1) ACCOUNTING
24 SYSTEM. Every marketing board shall maintain a complete accounting
25 system for the management of marketing board receipts and
26 expenditures. Accounting procedures shall conform to generally
27 accepted accounting principles. Accounting systems shall provide for

1 the periodic generation of balance sheets, income statements, state-
2 ments of account balances, and other indicators of marketing board
3 financial position. A marketing board shall provide the secretary
4 with such reports of a marketing board's financial position as the
5 secretary may require.

6 (2) AUDITS. (a) Marketing board receipts, expenditures,
7 accounts and fiscal operations shall be independently audited on an
8 annual basis by a certified public accountant, in accordance with
9 generally accepted accounting and audit principles. The audit shall
10 include a review of compliance with applicable law, and with the
11 established bylaws and procedures of the marketing board. The
12 results of the audit shall be filed with the secretary within 120
13 days after the end of the marketing board's fiscal year.

14 (b) Marketing board receipts, expenditures, accounts, fiscal
15 operations, and all other records and operations of a marketing
16 board may be audited by the department at any time, for the purpose
17 of ascertaining compliance with applicable law. The department may
18 exercise its authority under ch. 93, Stats., in support of its
19 audit.

20 (3) FINANCIAL STATEMENTS. Every marketing board shall prepare
21 a year-end financial statement, independently audited and cer-
22 tified by a certified public accountant. The financial statement
23 shall be filed with the secretary within 120 days after the end of
24 the marketing board's fiscal year.

25 (4) ANNUAL REPORTS. Every marketing board shall prepare an
26 annual report on marketing board operations for each fiscal year,
27 to be published at the conclusion of the fiscal year. The annual

1 report shall include, at a minimum, a description of the projects
2 funded during the year, the progress or results of each funded
3 project, and the audited financial statement prepared under sub. (3).
4 The annual report shall be filed with the secretary within 120 days
5 after the end of the fiscal year. The annual report shall be made
6 available for inspection and copying by the public. Within 180 days
7 after the end of the fiscal year, the marketing board shall either
8 mail a free copy of the annual report to each affected producer or
9 handler, or publish notice to affected producers and handlers inform-
10 ing them that the annual report is available for free distribution to
11 affected producers and handlers upon request.

12 Ag 140.47 PROHIBITED EXPENDITURES AND BUSINESS PRACTICES. A
13 marketing board may not:

14 (1) Expend, or contract for the expenditure of moneys:

15 (a) For any purpose which is not authorized under ch. 96,
16 Stats., and the marketing order, or which is inconsistent with
17 ch. 96, Stats., and the marketing order.

18 (b) In violation of ch. 96, Stats., the marketing order or
19 this chapter.

20 (c) Whose aggregate amount exceeds the annual receipts of the
21 marketing board for the fiscal year in which the expenditures occur.
22 Annual receipts, for purposes of this paragraph, include any surplus
23 receipts carried over from the preceding fiscal year. This paragraph
24 does not prohibit a marketing board from contracting for the
25 expenditure of anticipated receipts during the current fiscal year in
26 which the receipts are anticipated, if the expenditure is budgeted
27 and approved in compliance with ss. Ag 140.42 and Ag 140.45. A

1 marketing board shall periodically review its projections of
2 anticipated receipts during the fiscal year, to determine whether
3 the projections are accurate, and whether any adjustment of proposed
4 expenditures may be necessary to comply with this paragraph.

5 (d) To promote or fund any other marketing order. This does
6 not prohibit joint funding of marketing order projects and programs
7 with other marketing boards.

8 (e) To influence state or federal legislation or rulemaking.
9 This does not prohibit any of the following activities, unless the
10 secretary determines that expenditures for activities are excessive
11 in relation to the purposes for which the marketing order is created:

12 1. The publication and distribution of information describing
13 the programs, activities and accomplishments of the marketing board.

14 2. The publication and distribution of information related to
15 any proposal under subch. I for the amendment or repeal of the mar-
16 keting order, if the information is published and distributed prior
17 to the secretary's decision under s. Ag 140.18 advancing the proposed
18 amendment or repeal to a referendum of producers or handlers.

19 3. Communication by a marketing board member or employe with
20 any state public official or employe concerning the proposed amend-
21 ment or repeal of the marketing order, or concerning any other rule-
22 making which is directly related to the marketing order.

23 4. The publication and distribution of information concerning
24 an impending advisory referendum on the marketing order, provided
25 that the marketing board does not directly recommend or suggest how
26 producers or handlers should vote in the advisory referendum.

27 (f) For salaries, administrative expenses, travel expenses or

1 personal expenses, except those which are reasonable and necessary
2 for the operation of the marketing board, or which are a reasonable
3 and necessary incident to the performance of administrative or con-
4 tract services for the marketing board.

5 (g) For any market development program which makes false or
6 unwarranted claims on behalf of an affected commodity or disparages
7 the quality, value, sale or use of any other agricultural commodity.

8 (h) For any market research or development program which makes
9 reference to, or which exclusively promotes a private brand or trade
10 name of the affected commodity.

11 (2) Expend or contract for the expenditure of moneys if the
12 expenditure is exclusively or primarily intended to promote an
13 individual private interest without regard to the general interest of
14 producers or handlers of the affected commodity. This does not
15 prohibit the expenditure of moneys for the general benefit of affected
16 producers or handlers where the expenditure also has incidental
17 benefits to an individual private interest.

18 (3) Make any loan or extend credit. This does not prohibit a
19 marketing board from depositing moneys in a savings and loan asso-
20 ciation, state bank, savings and trust company, mutual savings
21 bank, or national bank in this state which receives or holds public
22 deposits pursuant to ch. 34, Stats.

23 (4) Engage in the purchase or sale of agricultural
24 commodities. This does not prohibit limited and occasional purchases
25 of agricultural commodities, or limited and occasional sales of
26 agricultural commodities at cost, where the purchase or sale is
27 incidental to the conduct of a research, educational or promotional

1 program under ch. 96, Stats., and the marketing order.

2 (5) Engage in the business of selling goods or services. This
3 does not prohibit the occasional sale of educational or promotional
4 materials at cost, where the sale is incidental to the conduct of
5 an educational or promotional program under ch. 96, Stats., and the
6 marketing order.

7 (6) Make any gift or gratuitous payment for which the
8 recipient gives no bona fide consideration.

9 Ag 140.48 ADMINISTRATIVE SERVICES PROVIDED BY DEPARTMENT.

10 (1) Pursuant to s. 96.10(5), Stats., a marketing board may request
11 the department to provide administrative services to the marketing
12 board in the administration of a marketing order. This does not pro-
13 hibit a marketing board from employing its own staff, or contracting
14 with other persons for the provision of administrative services to
15 the marketing board. Administrative services provided by the depart-
16 ment may include accounting, clerical, financial, managerial, print-
17 ing and secretarial services. A marketing board shall reimburse the
18 department for all costs incurred by the department, pursuant to a
19 written contract between the marketing board and the department.
20 Reimbursed costs shall include general overhead and operating costs
21 which may be reasonably attributed to the administrative service.
22 The department shall record and account for all administrative ser-
23 vice costs incurred by the department, according to generally
24 accepted accounting principles.

25 (2) All contracts or agreements for the provision of
26 administrative services to a marketing board shall be in writing.
27 Contracts under this subsection shall comply with s. Ag 140.44.

1 Contracts with the department need not comply with s. Ag 140.44(2)(e).
2 This subsection does not require a marketing board to have written
3 contracts with its employes.

4 Ag 140.49 MARKETING BOARD MEETINGS; RECORDS.

5 (1) FILING OF MINUTES. Within 15 days after every meeting of a
6 marketing board or a formally constituted subunit of a marketing
7 board, the marketing board shall file complete minutes of the meeting
8 with the secretary.

9 NOTE: Every meeting of a "governmental body" is
10 subject to the Wisconsin open meeting law, ss.
11 19.81 through 19.98, Stats. Under s. 19.82(1),
12 Stats., a "governmental body" includes a state or
13 local "agency, board, committee, council, depart-
14 ment, or public body corporate and politic created
by constitution, statute, rule or order; a govern-
mental or quasi-governmental corporation; or a
formally constituted subunit of any of the fore-
going. . ."

15 (2) CUSTODY OF RECORDS; GENERAL. Every marketing board, and
16 every officer and employe of a marketing board shall safely keep and
17 preserve all documents and records which are lawfully in the posses-
18 sion or custody of the marketing board. Every marketing board shall
19 adopt written bylaws or procedures to govern the custody, handling
20 and disposition of marketing board documents and records. Proposed
21 bylaws and procedures shall be filed with the secretary for review by
22 the department prior to adoption.

23 NOTE: Under the Wisconsin public records law,
24 ss. 19.31 through 19.35, Stats., members of the
25 public have certain rights to inspect and copy
26 records which are in the possession of an "author-
27 ity." Under s. 19.32(1), Stats., an "authority"
includes a "...board, commission, committee, coun-
cil, department or public body corporate and pol-
itic created by constitution, law, ordinance rule or
order...", and also includes a "quasi-governmental
corporation."

1 (3) DISPOSAL OF RECORDS; AUTHORIZATION. No marketing board may
2 dispose of documents or records except under a specific records dis-
3 posal policy adopted by the marketing board. The policy shall be
4 adopted in writing, and specify the types of records for which dis-
5 posal is authorized, the length of time each type of record must be
6 kept prior to disposal, and the disposal procedures to be observed.
7 Proposed records disposal policies shall be filed with the department
8 for review prior to adoption. The secretary may disapprove a pro-
9 posed records disposal policy if the policy may impede the admin-
10 istration of ch. 96, Stats., or otherwise adversely affect the public
11 interest. No bylaw or procedure authorizing the disposal of records
12 is effective if disapproved by the secretary.

13 (4) RECORDS TO BE FILED WITH DEPARTMENT UPON TERMINATION OF
14 MARKETING ORDER. Upon termination of a marketing order, all
15 documents and records of the marketing board shall be filed with
16 the department.

17 (5) RECORDS FILED WITH DEPARTMENT; PUBLIC ACCESS.

18 (a) No marketing board may fail or refuse to file a document or
19 record with the department as provided under ch. 96, Stats., or this
20 chapter on the ground that the document or record is protected from
21 public inspection by law. If a marketing board determines that a
22 document or record required to be filed with the department is pro-
23 tected from public inspection by law, the marketing board shall give
24 written notice to the department identifying that information which,
25 in the opinion of the marketing board, is protected from public
26 inspection. Notice shall further specify the legal grounds on which
27 the information may be withheld from public inspection.

1 (b) The department shall promptly notify a marketing board of any
2 public request for inspection of marketing board documents or records
3 on file with the department, if the documents or records have been
4 designated as confidential by the marketing board under par. (a).

5 (c) The department may make available to the public upon request,
6 for inspection and copying, any marketing board documents or records
7 which are on file with the department if the department determines
8 that disclosure is required by law, notwithstanding the contrary
9 request of the marketing board. In making the decision, the depart-
10 ment shall consider the notice and request of a marketing board under
11 par. (a). If the department determines that disclosure is required by
12 law, the department shall give the marketing board reasonable notice
13 prior to disclosure.

14 (6) CONFIDENTIAL BUSINESS RECORDS. (a) Information obtained by a
15 marketing board under ch. 96, Stats., relating to the individual busi-
16 nesses of producers and handlers shall be kept on a confidential
17 basis, pursuant to s. 96.20(5), Stats. Confidential business informa-
18 tion includes names and addresses or any production, sales, price or
19 purchase data which are identifiable to an individual producer or
20 handler, and any aggregate summary or analysis of individual busi-
21 ness information which, if disseminated to marketing board members
22 or others, may have the effect of restraining trade, or conferring
23 a competitive advantage on any person. Confidential business
24 information under this subsection shall not be disclosed either to
25 the public or to marketing board members. This prohibition applies
26 at all times, and is applicable during any marketing board consid-
27 eration of compliance and collection problems pertaining to

1 producers and handlers. This paragraph does not prohibit the
2 required disclosure of confidential business information in a court
3 proceeding, or the disclosure of confidential business information to
4 the department pursuant to a contract for administrative services or
5 a request for collection or enforcement action.

6 (b) The duty to maintain the confidentiality of business
7 records under this subsection applies to the marketing board, the
8 department, and all employes and agents of a marketing board,
9 including all suppliers of administrative services to the marketing
10 board. Every contract between a marketing board and its agent,
11 whereby the agent may acquire access to confidential business
12 information, shall clearly set forth the agent's duty to keep the
13 information confidential, and include adequate procedures to insure
14 confidentiality.

15 Ag 140.50 REFUND OF ASSESSMENTS. If a marketing order provides
16 for the refund of producer assessments pursuant to s. 96.13(2),
17 Stats. the marketing board shall adopt written forms and procedures
18 to be used by affected producers in filing refund claims. Claim
19 forms shall be promptly mailed to producers or handlers upon request.
20 Refund procedures shall comply with s. 96.13(2), Stats. No refund
21 may be paid on a claim which is filed with the marketing board more
22 than 90 days after the assessment became due and payable.

23 Ag 140.51 COLLECTING ASSESSMENTS; REPORTS BY PRODUCERS AND
24 HANDLERS; AUDIT OF AMOUNTS DUE. (1) COLLECTION PROCEDURE; GENERAL.
25 The marketing board is responsible for the receipt and collection of
26 assessments from affected producers and handlers under a marketing
27 order, except as otherwise provided in ch. 96, Stats., and this

1 chapter. Any assessment which is due and payable by an affected
2 producer or handler under the marketing order constitutes a personal
3 debt of the producer or handler, as provided in s. 96.17(1), Stats.
4 Each marketing board shall adopt and file with the secretary written
5 procedures and forms to govern the collection of assessments from
6 affected producers and handlers. Procedures may include the prelim-
7 inary collection procedures set forth under sub. (2). Procedures
8 shall comply with applicable law, and with the provisions of
9 s. 427.104, Stats. If a marketing board is unable, through the use of
10 preliminary collection procedures, to obtain payment of assessments
11 which are due and payable from a producer or handler, the marketing
12 board may request action by the secretary under s. 96.17, Stats. The
13 request shall be accompanied by evidence and documentation substan-
14 tiating the existence and amount of the debt, the identity and address
15 of the debtor, and the fact that the marketing board has exhausted its
16 preliminary collection procedures. Pursuant to s. 96.17, Stats., the
17 secretary may impose an assessment surcharge not exceeding 10 percent
18 of the assessment to cover the department's costs of collection, and
19 may bring a civil action against the debtor under sub. (3) to collect
20 the assessment and surcharge. The secretary shall give the debtor at
21 least 10 days advance written notice, by mail, of any intended civil
22 action under this paragraph. Notice shall include a statement of any
23 assessment surcharge imposed by the secretary under s. 96.17, Stats.

24 (2) PRELIMINARY COLLECTION PROCEDURES. Sequential procedures
25 used by a marketing board in the collection of marketing order assess-
26 ments may include the issuance of:

27 (a) A generalized or personalized reminder letter.

1 (b) A personalized warning letter.

2 (c) A final demand letter, setting forth the facts and circum-
3 stances giving rise to the final demand, and stating a final deadline
4 for payment. The final demand letter shall be personally addressed to
5 the debtor and sent by certified mail. In its final demand letter, a
6 marketing board may notify the debtor of the actions which will be
7 requested by the marketing board under s. 96.17(1), Stats., in the
8 event of nonpayment. A marketing board may not threaten a producer or
9 handler with any civil forfeiture or criminal action for nonpayment of
10 assessments, or threaten to request either action of the department.

11 (3) COURT ACTION TO COLLECT ASSESSMENTS. Upon written request of
12 a marketing board, the secretary may bring a civil action pursuant to
13 s. 96.17(1), Stats. for the collection of unpaid marketing order
14 assessments, together with any assessment surcharges imposed by the
15 secretary under s. 96.17(1), Stats. No court action for the col-
16 lection of assessments may be brought by a marketing board on its
17 own behalf, or by the secretary except upon specific request of a
18 marketing board. The decision to take action under s. 96.17(1),
19 Stats., is discretionary with the secretary. Before bringing any
20 court action to collect assessments, the secretary shall review
21 the adequacy of the marketing board's preliminary collection pro-
22 cedures under subs. (1) and (2).

23 (4) REPORTS BY PRODUCERS AND HANDLERS. Pursuant to
24 s. 96.14(1), Stats., a marketing board may request a producer or
25 handler to file with the marketing board such information or
26 reports as may be necessary to determine or verify the assessment
27 amounts which may be due and payable by the producer or handler

1 under the marketing order. If a producer or handler fails or
2 refuses to submit information or reports upon request of a market-
3 ing board, the marketing board may request the department to
4 exercise its authority under ch. 93, Stats., and s. 96.14(1),
5 Stats., to compel submission of the required information or reports
6 to the department. The exercise of the department's authority is
7 discretionary with the department.

8 (5) AUDIT OF PRODUCERS AND HANDLERS. (a) Department audit;
9 request by marketing board. A marketing board may request the
10 department to audit any producer or handler, for the purposes set
11 forth in par. (b), if the marketing board reasonably believes that
12 the producer or handler may be an affected producer or handler.
13 The request shall specify the purposes for which the audit is
14 requested. The department may conduct a requested audit at its
15 discretion, for the purposes set forth under par. (b). Pursuant to
16 an audit under this subsection, the department may require a pro-
17 ducer or handler to produce documents and records, and may other-
18 wise exercise its authority under ch. 93, Stats., and s. 96.14,
19 Stats. The marketing board shall reimburse the department for all
20 costs incurred by the department in conducting the audit, including
21 general overhead and operating expenses which are reasonably attri-
22 butable to the audit service.

23 (b) Audit purposes. A producer or handler may be audited by
24 the department under this subsection for any of the following
25 purposes:

26 1. To determine whether the producer or handler is an
27 affected producer or handler under ch. 96, Stats., and the

1 marketing order.

2 2. To determine or verify the assessment amounts which may be
3 due and payable by the producer or handler under the marketing
4 order.

5 3. To determine or verify the accuracy of any report or claim
6 submitted by the producer or handler to the marketing board.

7 4. To determine whether the producer or handler has paid the
8 full amount of assessments which are due and payable by the pro-
9 ducer or handler under the marketing order.

10 Ag 140.52 MARKETING BOARD CODE OF ETHICS. No member, employe
11 or agent of a marketing board may:

12 (1) Use his or her position with the marketing board, or the
13 prestige or influence of that position, to obtain financial gain or
14 anything of substantial value for his or her private benefit, or
15 for the benefit of his or her immediate family, or an organization
16 with which he or she is associated. Financial gain, for purposes
17 of this paragraph, does not include salaries or other normal com-
18 pensation received from the marketing board by the employe, agent
19 or marketing board member.

20 (2) Solicit or accept from any person or organization, dir-
21 ectly or indirectly, anything of value if the thing of value:

22 (a) Could reasonably be expected to influence the actions
23 or judgment of the marketing board member, employe or agent, in his
24 or her capacity as a member, employe or agent of a marketing board;
25 or

26 (b) Could reasonably be considered as a reward for any
27 action or inaction by the marketing board member, employe or agent,

1 acting in his or her capacity as a member, employe or agent of the
2 marketing board.

3 (3) Intentionally use or disclose information gained in the
4 course of or by reason of his or her position as a member, employe
5 or agent of a marketing board in any way that could result in the
6 receipt of anything of value by him or her, by his or her immediate
7 family, or by any other person or organization with which he or she
8 is associated, if the information is not public information and has
9 not been communicated to the public.

10 (4) Use or attempt to use his or her position as a member,
11 employe or agent of a marketing board to influence or gain unlawful
12 benefits, advantages or privileges for himself or herself, or for
13 others.

14 NOTE: According to unpublished opinions of the Attorney
15 General, dated September 16, 1983 and January 30, 1984,
16 marketing board members are public officers within the
meaning of s. 946.13, Stats., which provides in part as
follows:

17 946.13(1) Any public officer or public employe who does any
18 of the following is guilty of a Class E felony:

19 (a) In his private capacity, negotiates or bids for or
20 enters into a contract in which he has a private
21 precuniary interest, direct or indirect, if at the
22 same time he is authorized or required by law to
23 participate in his capacity as such officer or
24 employe in the making of that contract or to
25 perform in regard to that contract some official
26 function requiring the exercise of discretion on
his part; or

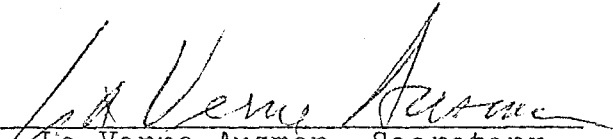
27 (b) In his capacity as such officer or employe,
28 participates in the making of a contract in which
29 he has a private precuniary interest, direct or
30 indirect, or performs in regard to that contract
31 some function requiring the exercise of discretion
32 on his part.

33 SECTION 3: The rules contained in this order shall take

1 effect on the first day of the month following publication in the
2 Wisconsin administrative register, as provided in s. 227.026(1)
3 (intro.), Stats.

4 Dated this 16th day of October, 1985.

5 STATE OF WISCONSIN
6 DEPARTMENT OF AGRICULTURE,
7 TRADE AND CONSUMER PROTECTION

8 By 
9 La Verne Ausman, Secretary

10 JKM/h/T2/1/ADM6-SP
11 10/16/85-7

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