

## Chapter ATCP 148

### GINSENG MARKETING ORDER

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**Note:** Chapter Ag 148 was renumbered chapter ATCP 148 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

**ATCP 148.01 Definitions.** As used in this chapter:

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

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

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

(4) "Marketing board" means a ch. 181, Stats., non-stock corporation which consists of affected producers who are elected to serve as board members, and which is responsible for administering the ginseng marketing order pursuant to ch. 96, Stats., ch. ATCP 140, and this chapter.

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

**History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**ATCP 148.02 Purpose.** (1) The primary objectives of this marketing order are to improve the quality and expand sales of ginseng. This includes maintaining experimental gardens or programs for conducting research on root quality problems, pesticide applications and pesticide labeling; conducting consumer nutrition and health research related to ginseng consumption; improving methods and practices related to the marketing of ginseng; developing new markets for ginseng and ginseng products; and providing educational programs for producers, handlers and consumers.

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

**History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**ATCP 148.03 Voting requirements; creation, amendment or termination.** This chapter shall not be adopted, amended or repealed until the secretary finds that the proposed adoption, amendment or repeal has been approved by not less than 50% of the producers voting in a referendum, and that at least 50% of the eligible producers have voted in the referendum.

**History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**ATCP 148.04 Marketing board.** (1) **MEMBERSHIP: INITIAL ELECTION.** A ginseng marketing board consisting of 7 producers is established to administer this order. Board members shall be nominated and elected as prescribed in s. 96.10 (1), Stats., and s. ATCP 140.20. Board members shall be elected on an at large basis, by vote of eligible affected producers. In the initial election, the 7 nominees receiving the highest number of at large votes shall

be elected as marketing board members for staggered terms, as provided in sub. (2).

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

(3) **SUBSEQUENT ELECTIONS.** Not later than 90 days prior to the expiration of a marketing board member's term of office, the marketing board shall issue a call for nominations for the election of the succeeding marketing board member. Nominations shall be filed not later than 60 days before the marketing board member's term of office expires. The election of a succeeding marketing board member shall be held prior to the expiration of a marketing board member's term of office. If no nominations are made by producers within the time specified in a call for nominations, the secretary or marketing board may extend the time period within which nominations may be filed.

(4) **ELIGIBILITY TO HOLD OFFICE; APPOINTMENTS TO FILL VACANCIES.** A marketing board member is no longer eligible to continue in office if, at any time during his or her term in office, the marketing board member ceases to be an affected producer. If a marketing board member ceases to be an affected producer, his or her position on the marketing board becomes vacant. If a vacancy occurs on the marketing board for any reason, the marketing board shall appoint an affected producer to serve the remainder of the unexpired term of office.

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

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

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

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

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

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

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

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

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

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

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

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

**History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**ATCP 148.05 Applicability of marketing order.** This chapter applies to all ginseng produced in the state and sold into commercial channels, except for sales of ginseng seed and tissue culture by a producer directly to any person, where the seed and tissue culture are to be used only for planting the buyer's own ginseng gardens.

**History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**ATCP 148.06 Assessments.** (1) For ginseng sales made during the first calendar year for which the marketing order is effective, each affected producer shall be liable for an assessment of 10¢ per pound on all dry or live root ginseng, and \$1.50 per pound on all ginseng seed sold into commercial channels. Thereafter, the marketing board shall annually determine the rate of assessment to be levied and collected, but in no event shall the rate exceed 20¢ per pound on all dry or live root ginseng and \$3.00 per pound on all ginseng seed sold into commercial channels. Assessments on tissue culture sold into commercial channels during the first year of the marketing order shall be \$20.00 per ounce up to a maximum rate of \$40.00 per ounce in subsequent years. Pounds of ginseng shall be determined on the basis of shipment certificates, scale tickets, invoices, bills of lading, or other sales or shipping documents, or any combination of the above.

(2) When ginseng is sold by producers to handlers, assessments shall become due to the marketing board at the time title to the ginseng is transferred from producers to handlers.

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

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

(5) Prior to March 1 of each year, the secretary shall make a determination of assessments due and payable by individual affected producers to the marketing board, based on ginseng sales made during the preceding calendar year. The determination shall

be based upon the information on shipping certificates submitted to the department by producers and handlers under s. 94.50, Stats. Prior to March 1 of each year, the secretary shall notify each affected producer in writing of assessments due and payable to the marketing board for the previous calendar year. Assessments become due and payable upon receipt of notice from the secretary. Assessments due and payable by individual affected producers shall be determined in a manner which protects the confidentiality of information related to the businesses of producers and handlers.

**History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**ATCP 148.07 Records; inspection; reports.** (1) Each affected producer shall maintain accurate records of all ginseng production and sales to handlers. Each handler shall maintain accurate records and accounts of all ginseng purchased from affected producers by the handler. The secretary may require an affected producer or handler to make records available for inspection and copying by the department, or may require a producer or handler to file reports with the department, if the secretary determines that the inspection or filing is necessary to ensure compliance with this chapter. No information related to the individual businesses of producers and handlers may be disclosed to the public or marketing board members, except as otherwise provided under s. 94.50, Stats.

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

**History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**ATCP 148.08 Violations.** Any person who violates a provision of this order is subject to the penalties provided in s. 96.17, Stats.

**History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86.

**ATCP 148.09 Review.** Affected producers shall be afforded the opportunity to participate in an advisory referendum every 5 years from the effective date of this order for the purpose of amending or terminating this order. The secretary shall conduct the advisory referendum. If more than 50% of the affected producers voting in the referendum disapprove continuation of the marketing order, or a specified portion of the marketing order the board shall recommend that the secretary initiate action to amend or repeal the marketing order.

**History:** Cr. Register, June, 1986, No. 366, eff. 7-1-86.