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

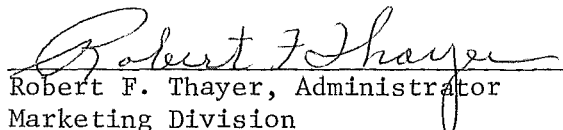
MAY 16 1984
4:10 pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Robert F. Thayer, Administrator, Marketing Division, State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order adopting rules relating to a red tart cherry marketing order for the levy and payment of assessments for the purpose of financing research, market development and educational programs, and the creation of a marketing board for administration of the marketing order, Chapter Ag 141, Wis. Adm. Code, was duly approved and adopted by the Department on May 15, 1984.

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 15 day of May, 1984.


Robert F. Thayer, Administrator
Marketing Division

2-1-84

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MAY 16 1984

ORDER OF THE

STATE OF WISCONSIN

Revisor of Statutes
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DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

ADOPTING, AMENDING AND REPEALING RULES

1 To repeal Chapter Ag 96 and to create Chapter Ag 141 relating
2 to a cherry marketing order for the levy and payment of assessments
3 for the purpose of financing market research and development,
4 industrial research and educational programs, and the creation of a
5 marketing board for administration of the marketing order.

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

The department's rules relating to production and marketing of red tart cherries, in Door and Kewaunee counties, apply to all producers of cherries sold for processing. The rule creates a cherry marketing order for the purposes of financing research, market development and educational programs related to production and marketing of cherries. Funds will be raised through producer assessments of two-tenths of one cent per pound (\$4.00/ton) of pitting cherries sold for processing during the first crop year in which the marketing order is in effect. In subsequent years, the marketing board would annually set the rate of assessment depending on its annual operating budget but with a maximum allowable assessment of five-tenths of one cent per pound (\$10.00/ton). Assessment rates on cherries used for manufacturing juice will be annually determined by the board but in no event will it be more than one-half the assessment rate on pitting cherries. Funds may also be used to jointly sponsor projects with any public or private organization to meet the objectives of the marketing order.

The marketing order will be administered by a cherry marketing board consisting of 7 producers. Six board members are elected by districts and one member is elected at large for staggered 3-year terms. The board would be incorporated as a non-stock, non-profit corporation. In addition to the responsibilities associated with the administration of the marketing order, the duties of the marketing board include: collection of marketing information, protection of confidential information, reporting non-compliance with the provisions of the marketing order, recommending rules and amendments related to the marketing order, and collection and allocation of funds. The marketing board is required to maintain a bond on its officers and employees and to annually prepare a statement of operations.

The marketing order contains a minimum volume requirement of 2,000 pounds. Producers must sell at least 2,000 pounds of cherries

for processing in a given crop year to be included as affected producers in the marketing order. Producers that do not meet this requirement are excluded. The marketing board is to develop procedures for determining whether or not the minimum volume requirement has been satisfied among all producers.

Each producer selling cherries to handlers for processing is liable for payment of assessments under the cherry marketing order. The marketing order does not contain a provision for producer refunds. Handlers receiving and purchasing cherries from producers are responsible for collecting the assessment from amounts due the producers. Assessments are payable to the marketing board by November 1 of each calendar year. Producers acting as handlers on their own behalf must also remit assessments due on their own cherries.

In addition to collecting and remitting assessments, handlers must maintain accurate records of purchases of cherries from producers and may be required to submit reports to the marketing board to verify assessments paid into the marketing order. The secretary has authority to examine records of handlers or producers as necessary to ensure compliance.

It is estimated that the cherry marketing order will generate \$20,000-50,000 per year in assessment revenue. The estimated average volume of cherries sold by a producer in this state is 50,000 pounds, with variations between years and among growers.

Any department services required by the marketing board will be provided on a cost-recovery basis.

Every 4 years from the effective date of the marketing order, there will be a producer review. The marketing board will afford affected producers the opportunity to vote in an advisory referendum to determine if producers want the order amended or terminated. If more than 50 percent of those voting disapprove continuation of any or all aspects of the order, the board must recommend action to the secretary to amend or terminate the order.

Pursuant to authority vested in the State of Wisconsin Department of Agriculture, Trade and Consumer Protection by s. 96.15, Stats., the State of Wisconsin Department of Agriculture, Trade and Consumer Protection hereby adopts rules as a cherry marketing order interpreting Chapter 96, Stats., as follows:

1 SECTION 1. Chapter Ag 96 is repealed.

2 SECTION 2. Chapter Ag 141 is created to read:

3 CHERRY MARKETING ORDER

4 Ag 141.01 DEFINITIONS. As used in this chapter, unless the
5 context requires otherwise:

1 (1) "Affected producer" means an individual, partnership,
2 corporation or other business entity engaged in the production of
3 cherries in Door or Kewaunee counties and in the sale of at least
4 2,000 pounds of cherries for processing in a crop year.

5 (2) "Cherries" means all varieties of Prunus cerasus.

6 (3) "Handler" means any person, including a producer, perform-
7 ing any of the functions of processing red tart cherries.

8 (4) "Processing" means the operation of canning, packing,
9 freezing, preserving, extracting juice or otherwise preparing red
10 tart cherries for marketing in any form other than for fresh
11 consumption.

12 (5) "District" means an area of the state as defined in s. Ag
13 141.03 from which representatives are elected to serve on the
14 marketing board.

15 (6) "Marketing board" or "board" means a ch. 181, Stats., non-
16 stock corporation consisting of affected producers elected to serve
17 as board members and having the duties described in this order.

18 (7) "Producer-handler" means an affected producer who sells
19 cherries to a non-resident handler.

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

22 Ag 141.02 PURPOSE. (1) The primary objective of this market-
23 ing order is to maintain and expand sales of red tart cherries.
24 This includes developing new products and new markets; improving
25 methods and practices related to producing, processing, or marketing
26 of cherries; and providing educational programs for producers, han-
27 dlers, or consumers.

1 (2) Funds collected under this order may be used by the market-
 2 ing board to meet one or more of the objectives described in this
 3 order including advertising and promotion, market research and
 4 development, industrial research and educational programs. Funds
 5 may be used by the marketing board to jointly sponsor projects with
 6 any private or public organization to meet the objectives of this
 7 order.

8 Ag 141.03 DISTRICTS. (1) The area of the state to which this
 9 order applies shall be divided into two districts for the purposes
 10 of electing affected producers to the marketing board. The follow-
 11 ing regions of the state shall initially constitute the respective
 12 districts.

13 (a) District 1. That portion of Door county north of the
 town of Sevastopol.

14 (b) District 2. That portion of Door county south of and
 15 including the town of Sevastopol and all of
 Kewaunee county.

16 (2) The district boundaries designated in sub. (1) shall exist
 17 for 3 years after the effective date of the marketing order, at
 18 which time the marketing board may reapportion the districts, with
 19 the approval of the secretary, to assure fair representation to
 20 affected producers. The board may reapportion districts no more
 21 frequently than every 3 years with an effective date that coincides
 22 with the anniversary date of the order. No alteration of district
 23 boundaries due to reapportionment shall have the effect of removing
 24 a marketing board member from office during the member's term.

25 Ag 141.04 MARKETING BOARD. (1) MEMBERSHIP. (a) A cherry
 26 marketing board consisting of 7 affected producers, 3 from each
 27 district and one member at large, is established to administer this

1 order. Board members shall be affected producers in the district
2 they are elected to represent. The board member at large shall be
3 an affected producer from either district. Board members shall be
4 nominated and elected as prescribed in s. 96.10(1), Stats. Notice
5 of the secretary's decision for issuance of this marketing order
6 shall contain a call for nominations for election of board members
7 to initial terms of office. Nominations shall be filed not earlier
8 than 58 days and not later than 75 days after the secretary's call
9 for nominations, and the election held within 60 days after approval
10 of the marketing order by referendum. A call for nominations of
11 affected producers for subsequent election to an expired term of
12 office on the marketing board shall be made by the board not later
13 than 90 days before expiration of the term, and nominations shall be
14 filed not later than 60 days before the term of office expires.
15 Elections to fill expired terms of office shall be held within the
16 60-day period preceding the expiration of the terms of office. If
17 no nominations are made by affected producers within the times
18 specified, the secretary or marketing board may extend the time
19 period within which nominations may be filed.

20 (b) Affected producers in each district shall elect 3 affected
21 producers from the district to serve on the marketing board. The
22 member at large shall be nominated separately and shall be elected
23 by producers from both districts. Nominees receiving the highest
24 number of votes in a district election shall be the board members
25 representing that district and the member at large shall be the
26 nominee receiving the highest number of votes in the election for
27 that office.

1 (2) TERM OF OFFICE; REMOVAL; VACANCIES. (a) For the initial
2 terms of marketing board members, the board member receiving the
3 highest number of votes in each district shall hold office for a
4 period of 3 years, the board member receiving the second highest
5 number of votes in each district and the board member at large shall
6 hold office for a period of 2 years, and the board member receiving
7 the lowest number of votes in each district shall hold office for a
8 period of one year.

9 (b) All subsequent elections to the marketing board shall be
10 for 3-year terms.

11 (c) Each member of the marketing board shall continue to be an
12 affected producer during the term of office. Failure of a board
13 member to continue as an affected producer shall create a vacancy on
14 the marketing board.

15 (d) If a vacancy occurs for any reason, the marketing board
16 shall appoint an affected producer to serve the remainder of the
17 term of office. The successor shall be from the same district from
18 which the vacancy occurs, except the successor to the member at
19 large may be any affected producer.

20 (3) DUTIES. The duties of the marketing board shall include:

21 (a) Adopt by-laws consistent with the articles of incorpora-
22 tion, ch. 96, Stats., and this order.

23 (b) Develop and maintain administrative services necessary for
24 proper administration of this order.

25 (c) Protect the confidentiality of information obtained under
26 this order relating to the businesses of individual producers or
27 handlers.

1 (d) Develop and recommend to the secretary administrative rules
2 related to this order.

3 (e) Receive, evaluate and report to the secretary complaints of
4 violations of this order.

5 (f) Recommend to affected producers or to the secretary
6 amendments to this order.

7 (g) Develop procedures for collecting assessments to cover
8 expenses incurred in carrying out programs and the administration of
9 this order.

10 (h) Collect such information and data as necessary for proper
11 administration of this order.

12 (i) Determine how funds collected under this order are to be
13 allocated.

14 (j) Prepare an annual statement on operations of this order for
15 the previous marketing year, including an audited financial state-
16 ment prepared independently or by the secretary.

17 (k) Maintain a bond on its officers and employees in an amount
18 of not less than 50 percent of the annual budget of this order.

19 Ag 141.05 APPLICABILITY OF ORDER. (1) SCOPE. This marketing
20 order shall be applicable to all cherries produced in Door and
21 Kewaunee counties and sold for processing by affected producers.

22 (2) QUALIFICATION. Each year the marketing board shall make a
23 preliminary determination of whether or not producers are affected
24 producers. The board shall specify the procedures for making the
25 determination, which shall generally be based upon the sales of
26 cherries by producers in the preceding crop year. The board shall
27 make available to all handlers and producers the results of each

1 preliminary determination prior to July 1 of each year. Each
2 handler and producer shall submit to the board, as the board or the
3 secretary may require, information necessary to verify the accuracy
4 of the list of affected producers. In the event of a person's
5 expanded production or of a producer experiencing a crop loss, the
6 board may adjust the list of affected producers at any time based on
7 information supplied by or on behalf of producers or handlers. For
8 purposes of determining whether or not a producer retains voting
9 privileges or a position on the marketing board, the board may
10 calculate the simple average of the 3 preceding crop years to adjust
11 for a partial or total crop loss experienced by a producer.
12 Producers selling less than 2,000 pounds of cherries to a handler
13 for processing in a given crop year shall in no event be subject to
14 assessments during that crop year. Annual determinations of whether
15 or not producers are affected producers and any adjustments made by
16 the marketing board shall be done in a manner which preserves the
17 confidentiality of information related to the businesses of
18 producers or handlers except to the extent of the requirements of
19 this subsection.

20 (3) EXCLUSIONS. This marketing order is not applicable to:

21 (a) Sales of cherries by producers directly to consumers.

22 (b) Sales of cherries for processing by a producer which total
23 less than 2,000 pounds to all handlers in a given crop year.

24 Ag 141.06 ASSESSMENTS. (1) Each affected producer in the
25 first crop year for which the marketing order is effective shall be
26 liable for an assessment of two-tenths of one cent (\$0.002) per
27 pound net weight on all pitting cherries sold to a handler. There-

1 after the marketing board shall annually determine the rate of
2 assessment to be levied and collected but in no event shall it
3 exceed five-tenths of one cent (\$0.005) per pound net weight on all
4 pitting cherries sold to a handler. The assessment rate on cherries
5 used for juice purposes shall be determined annually by the board
6 but in no event shall it be more than one-half the assessment rate
7 on pitting cherries. The net weight of cherries subject to assess-
8 ment shall be determined on the basis of scale tickets, invoices,
9 bills of lading, or other sales or shipping documents, or any combi-
10 nation of the above.

11 (2) Assessments shall be collected by handlers or deducted from
12 amounts due affected producers and shall become due to the marketing
13 board at the time title to the cherries is transferred from affected
14 producers to handlers.

15 (3) When cherries are sold by affected producers to non-
16 resident handlers, affected producers shall be deemed to be
17 producer-handlers acting on their own behalf, and assessments shall
18 be due to the marketing board at the time title to the cherries is
19 taken by the non-resident handler.

20 (4) Assessments shall be payable to the marketing board on or
21 before November 1 of the year in which assessments became due in
22 accordance with procedures specified by the marketing board.

23 (5) When cherries are stored by affected producers under a
24 federal reserve pool, the Cherry Administrative Board shall be
25 deemed to be a handler. Assessments shall be due to the marketing
26 board under this subsection on the date when the cherries are
27 released by the Cherry Administrative Board and payable 180 days

1 from when the assessments are due.

2 (6) The secretary shall have the authority to audit records of
3 handlers, producers, or their agents only as necessary to ensure
4 compliance with this section.

5 Ag 141.07 REPORTS. (1) Each producer shall maintain accurate
6 records of all cherry production. Producer records shall include,
7 but may not be limited to, quantity and disposition of cherry pro-
8 duction. Each handler shall maintain accurate records and accounts
9 of all cherries purchased from affected producers. Handler records
10 shall include, but may not be limited to, names and addresses of
11 each producer from whom cherries were purchased, quantities of
12 cherries purchased, and the dates title to the cherries was taken
13 and payments made. Each handler, producer, and producer-handler
14 shall maintain and submit reports to the marketing board as the
15 secretary or the marketing board may require as often as necessary
16 to ensure compliance with this order and proper collection of
17 assessments.

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

21 Ag 141.08 VIOLATIONS. Any person who violates a provision of
22 this order is subject to the penalties provided in s. 96.17, Stats.

23 Ag 141.09 REVIEW. Affected producers shall be afforded the
24 opportunity to participate in an advisory referendum every 4 years
25 from the effective date of this order for the purpose of amending or
26 terminating this order. The marketing board shall conduct the
27 advisory referendum. If more than 50% of the affected producers

1 voting in the referendum disapprove continuation of any or all
2 aspects of this order, the board shall recommend action to the
3 secretary under s. 96.05, Stats., for the purpose of amending or
4 terminating this order.

5 The rules contained in this order shall take effect subsequent
6 to the election of the marketing board as provided in s. 96.10(1),
7 Stats., and on the first day of the month following publication in
8 the Wisconsin administrative register as provided in s. 227.026(1)
9 (intro.), Stats.

10 Dated: May 15, 1984.

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13 STATE OF WISCONSIN
14 DEPARTMENT OF AGRICULTURE, TRADE
15 AND CONSUMER PROTECTION

16 By Robert F. Thayer
17 Robert F. Thayer, Administrator
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