



State of Wisconsin  
Jim Doyle, Governor

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**Department of Agriculture, Trade and Consumer Protection**  
Rod Nilsestuen, Secretary

**DATE:** June 2, 2008

**TO:** Bruce Hoesly, Legislative Reference Bureau  
1 East Main Street, Suite 200

**FROM:** Rodney J. Nilsestuen, Secretary

**SUBJECT:** **Agricultural Marketing Orders; ATCP 140, 141, 147 & 148**  
*Clearinghouse Rule No.07-067*

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby submits the following rule for publication:

**CLEARINGHOUSE RULE #:** 07-067  
**SUBJECT:** Agricultural Marketing Orders  
**ADM. CODE REFERENCE:** ATCP 140, 141, 147 & 148  
**DATCP DOCKET #:** 06-R-01

We are enclosing a copy of the final draft rule, as adopted by DATCP. We are also providing the following information for publication with the rule, as required by s. 227.114(6), Stats.

**Final Regulatory Flexibility Analysis (Summary)**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin’s agricultural marketing order program under ch. 96, Stats. DATCP may adopt marketing orders for Wisconsin agricultural commodities, with the approval of affected commodity producers. DATCP has adopted marketing orders for cherries, cranberries, corn, milk, mint, soybeans, ginseng and potatoes.

A marketing order imposes assessments on commodity producers. Affected producers elect a marketing board, which spends assessment revenues for purposes specified in the marketing order. Marketing orders may be used to finance market development, research, and education. DATCP monitors marketing board activities for compliance with applicable law, including the marketing order.

DATCP has adopted general rules to govern the operation of marketing orders and marketing boards. DATCP must also adopt marketing orders as rules. Affected producers must approve the adoption, amendment or repeal of a marketing order in a referendum. DATCP may bill marketing boards for administrative services provided to the marketing board.

***Rule Content***

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This rule does all of the following:

- Amends current rules (ATCP 140) governing all marketing order referenda and marketing board elections:
  - Authorizes, but does not require, DATCP to conduct referenda and elections by electronic communications.
  - As an alternative to mailing ballots to all eligible producers in a marketing board election (but not a marketing order referendum), authorizes DATCP to notify producers how they may obtain election ballots.
- Amends the cherry marketing order (ATCP 141) to eliminate the requirement for an advisory referendum every 4 years (non-binding advisory referendum asks producers whether they wish to continue the marketing order). A marketing order may be repealed at any time, with or without a non-binding advisory referendum if the repeal is approved in a formal binding referendum of affected producers.
- Repeals the mint marketing order (ATCP 147).
- Amends the ginseng marketing order (ATCP 148):
  - Eliminates the current annual producer assessment based on sales, and replaces it with an assessment based on acres in ginseng production.
  - The ginseng board must annually determine the assessment rate, which may not exceed \$150 per acre in ginseng production. The ginseng board may require affected producers to report acreage in production.
  - The ginseng board may verify reported acreage by aerial photography or other reliable means.
  - The ginseng board must annually notify each producer of the assessment amount owed by that producer.
  - DATCP no longer determines assessment amounts, but may audit the ginseng board's determination of assessment amounts.
  - Eliminates the requirement for an advisory referendum every 5 years (non-binding advisory referendum asks producers whether they wish to continue the marketing order). A marketing order may be repealed at any time, with or without a non-binding advisory referendum if the repeal is approved in a formal binding referendum of affected producers.

## **Business Impact**

In a general sense, this rule affects producers of all agricultural commodities that are covered by an agricultural marketing order or that may be covered in the future. This rule more specifically affects cherry, mint and ginseng producers. Many of the affected businesses are “small businesses.” The effects of this rule are generally insignificant.

### **Agricultural producers; general**

This rule gives DATCP more procedural flexibility related to the conduct of marketing order referenda and marketing board elections. Under this rule:

- DATCP may use electronic communications to conduct referenda and elections (DATCP is not required to use electronic communications.)
- In a marketing board election (but not a marketing order referendum), DATCP may notify producers how to obtain ballots rather than actually mailing ballots to all producers.

DATCP may use these alternative procedures where appropriate. In appropriate circumstances, the alternative procedures may be at least as effective in encouraging producer participation, and may be substantially cheaper. Cost savings to individual producers will not be significant.

### **Mint Producers**

This rule repeals the current mint marketing order and eliminates the producer assessments associated with that order. There may be some cost savings to individual mint producers, but the savings will be insignificant. Currently, there are only 14 mint producers in Wisconsin.

### **Cherry Producers**

This rule repeals a current marketing order provision that requires an advisory referendum of cherry producers every 4 years, to determine whether they support continuation of the marketing order. The repeal will save some costs for the marketing board and affected producers. The savings for individual producers will not be significant.

### **Ginseng Producers**

This rule changes ginseng marketing order assessments from assessments based on sales to assessments based on acres in production. Sales assessments are difficult to collect because most buyers are outside the United States. This rule will charge assessments based on reported acres in production (verified by aerial photography or other reliable means). Assessments based on acres in production will be more fair and reliable. Some individual assessments will go up, but others will go down. Overall assessments will increase, but there will not be a major financial impact on ginseng producers.

### **Steps to Assist Small Business**

Most of the businesses affected by this rule are “small businesses.” The rule primarily serves to reduce expenses related to operation of the marketing order program. Those expenses are indirectly paid by producers through their assessments. This rule may produce very modest savings for affected producers. The rule change to base ginseng assessments on production acreage, rather than sales, will yield more reliable and equitable assessments.

### **Conclusion**

This rule will generally benefit affected businesses, including “small businesses.” This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2) (e), Stats.

### **Comments from Legislative Committees (Summary)**

DATCP submitted the rule to the Legislature April 10, 2008. The rule was assigned to the Senate Committee on Agriculture and Higher Education April 15, 2008 and to the Assembly Committee on agriculture April 17, 2008. Neither of the committees took action or had comments concerning the rule.