

**Clearinghouse Rule 14-042**

**DATCP Docket No. 13-R-15**  
**Rules Clearinghouse No.**

**Proposed Hearing Draft**  
**March 20, 2014**

**PROPOSED ORDER**  
**OF THE STATE OF WISCONSIN DEPARTMENT OF**  
**AGRICULTURE, TRADE AND CONSUMER PROTECTION**  
**ADOPTING AND AMENDING RULES**

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following order to amend ATCP 142.05, relating to the cranberry agricultural marketing order and affecting small businesses.

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

This rule increases the maximum assessment the cranberry marketing board may charge to cranberry producers under Chapter ATCP 142, the cranberry marketing order as follow:

- The maximum assessment the cranberry marketing board may charge increases from ten cents per barrel to a maximum of 15 cents per barrel beginning the year this amendment to the marketing order becomes effective, to a maximum of 20 cents per barrel beginning in 2017 and to a maximum of 25 cents per barrel beginning in 2019.

***Statutory Authority***

Statutory authority: ss. 93.07(1), and 96.15, Stats.  
Statutes interpreted: Ch. 96, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) has general authority to adopt rules interpreting statutes under its jurisdiction under s. 93.07(1), Stats. DATCP is specifically authorized to adopt rules under s. 96.15, Stats., to facilitate the administration and enforcement of Ch. 96, Stats (the Agricultural Marketing Act).

***Related Rules or Statutes***

Chapter ATCP 140 is the overarching rule applicable to each of the individual marketing orders. Chapters ATCP 141 through 148 are the marketing orders with ATCP 142 being the marketing order for cranberries.

## *Plain Language Analysis*

### *Background*

DATCP administers Wisconsin's agricultural marketing law which authorizes the creation of marketing orders for agricultural commodities. Each marketing order board collects assessments from producers of the applicable commodity. The assessments may be expended by the board for promotion, research or consumer education of the commodity. The provisions of Ch. 96, Stats., and Ch. ATCP 140 Wis. Adm. Code and the applicable marketing order (Chs. ATCP 141 to 148) govern the organization of each of the seven marketing order boards, the election of marketing board members, the assessment of producers and the use of assessments.

Wisconsin produces more cranberries than any other state in the nation. In 2012 Wisconsin growers produced 4,830,000 barrels of cranberries. Cranberry is the state's No. 1 fruit crop in both value and acreage. The cranberry industry currently provides nearly \$300 million annually to the state's economy and supports approximately 3,400 jobs across the state. Cranberry assessments have been used effectively to expand the market for cranberries dramatically from a time when cranberries were thought of primarily for a relish at the Thanksgiving dinner to today when cranberries have become part of the everyday diet and are used in a wide range of dishes. Assessments also support crop and environmental research including sustainable production practices, nutrient management, water conservation and water quality protection. The current maximum rate of assessment of ten cents per barrel has existed since 1983. To continue the successful marketing and research, the Cranberry Board believes increased funding is required.

In order to make any change to a marketing order, in addition to conducting the traditional rulemaking process, the change must be approved at a referendum of the producers of the affected commodity.

### *Rule Contents*

The proposed rule increases maximum assessment the cranberry marketing board may charge from ten cents per barrel to a maximum of 15 cents per barrel beginning the year this amendment to the marketing order becomes effective, to a maximum of 20 cents per barrel beginning in 2017 and to a maximum of 25 cents per barrel beginning in 2019.

### *Federal and Surrounding State Programs*

#### **Federal Programs**

There is a federal marketing order for cranberries under which assessments are collected in a manner similar to the state cranberry marketing order. The state and federal marketing orders are operated cooperatively to effectively use the assessments for the benefit of cranberry growers.

#### **Surrounding State Programs**

There are very few cranberry producers in the surrounding states and none of the surrounding states have a cranberry marketing order.

### ***Data and Analytical Methodologies***

DATCP worked with representatives of the Wisconsin cranberry industry to determine the assessment changes proposed in this rule.

### ***Analysis and Supporting Documents used to Determine Effect on Small Business***

DATCP worked with representatives of the Wisconsin cranberry industry determine the effect of the proposed rule on small businesses.

### ***Business Impact***

Cranberry growers are all small businesses. In 2012 the growers collectively produced a total crop of 4,830,000 barrels valued at approximately \$231 million. The price per barrel in 2012 was \$47.80. At the assessment rate of 10 cents per barrel the assessment in 2012 equaled approximately .02 percent of the crop value. If the Cranberry Board assess at the maximum rates, the assessment, based on 2012 price per barrel, will equal .031 % of the crop value in 2015 and 2016, .042% in 2017 and 2018 and .052% thereafter. The result is a modest cost increase for each grower. However, if the use of assessments produces the kind of market share increase that the industry has seen in recent years the increased assessment cost will be more than made up for by increased sales.

### ***DATCP Contact***

Questions and comments related to this rule may be directed to:

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E-Mail: [dennis.fay@ wisconsin.gov](mailto:dennis.fay@wisconsin.gov)

### ***Where and when comments May Be Submitted***

Questions and comments related to this rule may be directed to:

Dennis Fay  
Department of Agriculture, Trade and Consumer Protection  
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Telephone (608) 224-5006  
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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this proposed rule is approved by the DATCP Board.

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**SECTION 1.** ATCP 142.05 (1) is amended to read:

ATCP 142.05 (1) Each producer for the first crop year for which the marketing order is effective shall be liable for an assessment of 5 cents (\$0.05) per barrel on all cranberries produced during the crop year. Thereafter, the marketing order board shall annually determine the rate of assessment to be levied and collected, but in no event shall it exceed ~~40~~ 15 cents (~~\$0.40~~15) per barrel on all cranberries produced in 2015 and 2016, 20 cents (\$0.20) per barrel on all cranberries produced in 2017 and 2018 and 25 cents on all cranberries produced during 2019 and thereafter.

Number of barrels shall be determined on the basis of acreage and yields, scale tickets, invoices, bills of lading, or other sales or shipping documents, or any combination of the above.

**SECTION 2. EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel, Secretary