

DATCP Docket No. 14-R-06  
Rules Clearinghouse No.

Hearing Draft Rule  
June 10, 2014

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

- 2 The Wisconsin department of agriculture, trade and consumer protection proposes the following  
3 rule *to repeal* ch. ATCP 141.03 and 141.04 (1) (b); and *to amend* 141.04 (1) (a) and (2) (a)  
4 *relating to* the cherry marketing order.

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

This rule changes the cherry marketing board from a 7 member board, with two districts each represented by 3 board members plus one at large member, to a 5 member board with all members elected at large.

***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 141 being the marketing order for cherries.

***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.

In recent years, the number of cherry growers has decreased so that currently there are 33 growers. The number of growers in each district has also changed. With the number of growers down to 33, it became difficult to consistently elect 7 members willing to serve on the Board. The Board requested the proposed amendment in order to have representation appropriate to the size of the industry. The Board also requested that the elections be at large rather than by district so that the representation would remain equitable regardless of changes to the location of producers.

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 Content**

This rule changes the cherry marketing board from a 7 member board, with two districts each represented by 3 board members plus one at large member, to a 5 member board with all members elected at large.

## ***Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations***

### **Federal Programs**

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

### **Surrounding State Programs**

Michigan is the only one of the surrounding states that has a cherry marketing order.

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

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

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

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

*Effect on Small Business*

This rule will have no negative economic impact on small businesses. The reduction of board membership plus the elimination of election districts will reduce the cost of administering elections and thus free up more assessment monies for cherry promotion, research and education benefiting cherry growers.

*DATCP Contact*

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*Where and When comments May Be Submitted*

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

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Comments must be received no later than two weeks after the administrative hearing DATCP will hold on this proposed rule. A date and location for the administrative hearing has yet to be determined and will be published in the in the Wisconsin Administrative Register at least 10 days prior to the date of the hearing.

1           **SECTION 2.** ATCP 141.04 (1) (a) is amended to read:

2           ATCP 141.04 (1) (a) A cherry marketing board consisting of 7 ~~5~~ affected producers,~~3~~  
3 ~~from each district and one member at large~~ is established to administer this order. Board  
4 members shall be elected producers. ~~The board member at large shall be an affected producer~~  
5 ~~from either district.~~ Board members shall be nominated and elected as prescribed in 96.10 (1),  
6 Stats. Notice of the secretary's decision for issuance of this marketing order shall contain a call  
7 for nominations for election of board members to initial terms of office. Nominations shall be  
8 filed not earlier than 58 days and not later than 75 days after the secretary's call for nominations,  
9 and the election held within 60 days after approval of the marketing order by referendum. A call  
10 for nominations of affected producers for subsequent election to an expired term of office on the  
11 marketing board shall be made by the board not later than 60 days before the term of office  
12 expires. Elections to fill expired terms of office shall be held within the 60-day period preceding  
13 expiration of the terms of office. If no nominations are made by affected produces within the  
14 times specified, the secretary, or marketing board may extend the time period within which  
15 nominations may be filed.

16           **SECTION 3.** ATCP 141.04 (1) (b) is repealed.

17           **SECTION 4.** ATCP 141.04 (2) (a) is amended to read:

18           ATCP 141.04 (2) (a) For the initial terms of marketing board members following the  
19 effective date of this amendment of the marketing order, the board ~~member~~ members receiving  
20 the highest and second highest number of votes ~~in each district~~ shall hold office for a period of 3  
21 years, the board ~~member~~ members receiving the ~~second~~ third and fourth highest number of votes  
22 ~~in each district and the board member at large~~ shall hold office for a period of 2 years, and the

1 board member receiving the lowest fifth highest number of votes ~~in each district~~ shall hold office  
2 for a period of one year.

3 **SECTION 5. EFFECTIVE DATE:** This rule takes effect on the first day of the month  
4 following publication in the Wisconsin administrative register, as provided in s.  
5 227.22(2)(intro.), Stats.

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

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By: \_\_\_\_\_  
Ben Brancel  
Secretary

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