

# 👉 07hr\_CRule\_07-067\_AC-Ag\_pt01



Details:

(FORM UPDATED: 07/12/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2007-08

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on ... Agriculture (AC-Ag)

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
  - Clearinghouse Rules ... **CRule**
  - Hearing Records ... bills and resolutions
    - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)
    - (**sb** = Senate Bill)                            (**sr** = Senate Resolution)
  - Miscellaneous ... **Misc**
- (**ajr** = Assembly Joint Resolution)  
(**sjr** = Senate Joint Resolution)



State of Wisconsin  
Jim Doyle, Governor

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

**PUBLIC NOTICE**

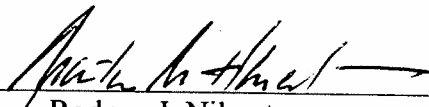
**FINAL DRAFT RULE TO LEGISLATURE**

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

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

Dated this 27<sup>th</sup> day of April, 2008

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION

By   
Rodney J. Nilsestuen  
Secretary

*Agriculture generates \$51.5 billion for Wisconsin*



State of Wisconsin  
Jim Doyle, Governor

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

**DATE:** April 9, 2008

**TO:** The Honorable Fred Risser  
President, Wisconsin State Senate  
Room 220 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

The Honorable Michael Huebsch  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
P.O. Box 8952  
Madison, WI 53708-8952

**FROM:** Rodney J. Nilsestuen, Secretary  
Department of Agriculture, Trade and Consumer Protection

**SUBJECT:** **Agricultural Marketing Orders; Final Draft Rule**  
*(Clearinghouse Rule #07-067)*

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

**SUMMARY:**

***Background***

The 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.

*Agriculture generates \$51.5 billion for Wisconsin*

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 (by referendum) the adoption, amendment or repeal of a marketing order. DATCP may bill a marketing board for administrative services provided to the marketing board.

### *Rule Contents*

The 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 communication.
  - 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 cherry 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) as follows:
  - 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 ginseng 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.

### ***Public Hearings***

DATCP held 3 hearings on these proposed rule changes. DATCP held the hearings on August 9<sup>th</sup>, 2007 in Wausau, Tuesday August 14<sup>th</sup>, 2007 at DATCP and Wednesday, August 15<sup>th</sup>, 2007 at the UW Peninsular Research Station in Door County, WI. A total of 6 persons attended the first hearing. No one attended the other two hearings. Each of the 6 persons expressed support for the proposed rule. A summary of the testimony is attached.

### ***Changes from Hearing Draft***

DATCP made minor changes to the final draft rule to address comments from the Legislative Council Rules Clearinghouse.

### ***Response to Rules Clearinghouse Comments***

DATCP addressed all of the Rules Clearinghouse comments in the final draft rule.

### ***Producer Referenda***

Under ch. 96, Stats., before DATCP may adopt a rule to create, amend or repeal an agricultural marketing order, affected producers must approve the rule in a referendum. This rule amends the current cherry and ginseng marketing orders, and repeals the current mint marketing order. Following public hearings, DATCP held referenda of affected cherry, ginseng and mint producers. In those referenda, the cherry, ginseng and mint producers approved all of the rule provisions affecting their respective marketing orders.

### ***Fiscal Estimate***

The rule changes will not have a significant fiscal impact on DATCP and will have no fiscal effect on local government. This rule will probably increase the amount of assessments collected by the ginseng marketing board. A complete fiscal estimate is attached.

## ***Business Impact***

### **Businesses Affected**

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, and there are no adverse effects on small business. A complete Business Impact Analysis is attached.

### **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 communication to conduct referenda and elections (DATCP is not required to use electronic communication).
- 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 may be passed on to marketing boards and individual producers. 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 requires ginseng marketing order assessments to be based on acres in production, rather than sales. 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.

This rule repeals a current marketing order provision that requires an advisory referendum of ginseng producers every 5 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.

### *Federal and Surrounding State Regulations*

#### **Federal Regulation**

The U.S. Department of Agriculture administers several federally authorized programs with purposes similar to Wisconsin's marketing order program. Under federal law, agricultural marketing orders have broad authority to regulate prices or production as well as provide for promotion and research. There are also federal check-off programs which authorize a commodity's producers to be assessed for market development, promotion, research and education. Federal check-off programs exist for potato, corn, dairy and soybeans, each of which also has a Wisconsin marketing order. While these check-off programs collect money from producers to fund their programs, none of the changes proposed in this rule conflict with or duplicate federal check-off programs or federal marketing orders.

#### **Surrounding State Regulation**

Almost all ginseng grown in the United States is grown in Wisconsin. While some other surrounding states produce ginseng they do not have a program to record or track the planting, growth or sales of cultivated ginseng.

Other commodities covered by Wisconsin market orders are much more widely grown regionally and are covered by other state marketing orders. For example, states in the region with state marketing orders or check off programs for corn include Illinois, Iowa, Minnesota and Michigan. The States of Illinois and Iowa also have state marketing orders for soybeans and milk in addition to other commodities.

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

1 The state of Wisconsin department of agriculture, trade and consumer protection  
2 proposes an order *to repeal* ATCP 141.09, ch. ATCP 147, 148.06(2) and (3) and 148.09;  
3 *to amend* ATCP 140.13(1)(b)3.(intro.) and a., 140.14(2)(d), 140.19(4)(b)6., (5)(a), (b)3.,  
4 (c) and (e), and (6)(a) and (b)3., 140.20(2), and 148.01(1); *to repeal and recreate* ATCP  
5 148.06(1) and (5); and to create ATCP 140.01 (1m), *relating to* agricultural marketing  
6 orders and marketing boards.

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

This rule modifies current rules governing Wisconsin's agricultural marketing order program (ATCP 140). This rule also repeals the current mint marketing order (ATCP 147), and amends current marketing orders related to cherries (ATCP 141) and ginseng (ATCP 148).

***Statutory Authority***

Statutory Authority: ss. 93.07(1) and 96.15, Stats.  
Statutes Interpreted: ch. 96, Stats.

DATCP has general authority, under s. 93.07(1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP is specifically authorized, under s. 96.15, Stats., to adopt rules to administer the marketing order program under ch. 96, Stats.

***Background***

The 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 (by referendum) the adoption, amendment or repeal of a marketing order. DATCP may bill a marketing board for administrative services provided to the marketing board.

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- Amends the cherry marketing order (ATCP 141) to eliminate the requirement of an advisory referendum every 4 years (non-binding advisory referendum asks producers whether they wish to continue the cherry 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 marketing 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 of an advisory referendum every 5 years (advisory referendum asks producers whether they wish to continue the ginseng 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.
- Makes other minor changes to current rules.

### ***Fiscal Impact***

The proposed rules will not have a significant fiscal impact on DATCP and will have no fiscal effect on local government. A complete fiscal estimate is attached.

### ***Business Impact***

#### **Businesses Affected**

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, and there are no adverse effects on small business. A complete Business Impact Analysis is attached.

#### **Agricultural producers; general**

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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 may be passed on to marketing boards and individual producers. 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 requires ginseng marketing order assessments based on acres in production, rather than sales. 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.

This rule repeals a current marketing order provision that requires an advisory referendum of ginseng producers every 5 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.

## ***Federal Regulation***

The United States Department of Agriculture (USDA) administers an agricultural marketing order program, under which USDA has broad authority to regulate prices and production, as well as to charge assessments for market development, promotion, research and education. USDA has adopted marketing orders for some of the same commodities covered by Wisconsin marketing orders (including potatoes, corn, milk and soybeans). However, the state marketing orders do not directly duplicate or conflict with the federal marketing orders.

### *Surrounding State Regulation*

Surrounding states have marketing orders for some, but not all, of the commodities covered by Wisconsin marketing orders. For example, Illinois, Iowa, Minnesota and Michigan have marketing orders for corn. Illinois and Iowa also have marketing orders for soybeans, milk and other commodities. Nearly all United States ginseng is grown in Wisconsin, so no other states have ginseng marketing orders.

### *Summary of Factual Data and Analytical Methods*

DATCP worked with the affected producers and the marketing boards that represent them to obtain the information that supports the need for this rule. In particular, the Mint Marketing Board provided the historical data evidencing the reduction of mint producers and the Ginseng Marketing Board provided the historical data on ginseng assessments and the information needed for the new assessment method.

### *Agency Contact*

Noel Favia  
Wisconsin Department of Agriculture Trade and Consumer Protection  
Agricultural Development Division  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone: 608-224-5140  
Email [noel.favia@datcp.state.wi.us](mailto:noel.favia@datcp.state.wi.us).

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1           **SECTION 1.** ATCP 140.01 (1m) is created to read  
2           ATCP 140.01 (1m) "Electronic communication" means Internet, electronic mail,  
3 facsimile, or any other form or process of communication that does not directly involve  
4 the physical transfer of paper and that is suitable for the retention, retrieval and  
5 reproduction of information by the recipient.

6           **SECTION 2.** ATCP 140.13(1)(b)3.(intro.) and a. are amended to read:  
7           ATCP 140.13(1)(b)3.(intro.) A specific statement describing how marketing  
8 order assessments would be computed and paid under the marketing order. The

1 ~~description shall be illustrated by examples which are based on typical market~~  
2 ~~transactions in the affected commodity.~~ The description shall indicate:

3 a. How the ~~volume~~ basis for assessments would be determined.

4 SECTION 3. ATCP 140.14(2)(d) is amended to read:

5 ATCP 140.14(2)(d) "Assessment due" means an assessment for which a  
6 producer, handler or producer-handler has incurred a specific legal obligation of payment  
7 under the marketing order. ~~An assessment becomes due when title to the affected~~  
8 ~~commodity transfers and the volume basis used to determine the assessment amount~~  
9 ~~becomes known.~~

10 SECTION 4. ATCP 140.19(4)(b)6. and (5)(a), (b)3., (c) and (e) are amended to  
11 read:

12 ATCP 140.19(4)(b)6. Balloting instructions, indicating whether the referendum is  
13 to be conducted by mail ~~ballots~~ or electronic communication, or at polling places under  
14 sub. (5)(e). If the referendum is to be conducted at polling places, rather than by mail  
15 ~~ballot~~ or electronic communication, the notice of announcement shall give the locations  
16 of polling places and the times during which votes may be cast at the polling places.

17 (5)(a) Referendum ballots and related materials shall be prepared and distributed  
18 by mail or electronic communication, or at polling places pursuant to par. (e). Every  
19 ballot shall be designed and handled so as to insure the secrecy of the producer's or  
20 handler's vote. Ballots shall be accompanied by the instructions required under par. (b).  
21 Every ballot shall be accompanied by a separate certificate, ~~to be signed by the producer~~  
22 ~~or handler~~, certifying that the producer or handler is eligible to vote in the referendum.  
23 No vote is valid unless accompanied by a ~~signed~~ certificate of eligibility. Ballots and

1 certificates shall be returned together, but shall be designed and handled so that the  
2 department removes and separates the certificates from the ballots before any vote can be  
3 examined or counted, so that no vote when revealed can be identified with a certificate.

4 (b)3. Instructions for entering a vote on the ballot and ~~signing~~ returning the  
5 certificate of eligibility which accompanies the ballot. Instructions shall state that no vote  
6 may be counted unless returned with a ~~signed~~ valid certificate of eligibility.

7 (c) Except as provided in par. (e), the department shall mail or send by electronic  
8 communication a referendum ballot to every producer or handler who is included on the  
9 list of affected producers or handlers compiled by the department under s. ATCP 140.15.  
10 The department shall exclude from its mailing list those producers for whom an  
11 incorporated cooperative association has been authorized to cast a bloc vote, and who are  
12 listed by the cooperative as being represented in the bloc vote. A producer or handler  
13 who is not on the department's mailing list, or who did not receive a referendum ballot,  
14 may request a ballot from the department. A producer who desires to be excluded from a  
15 cooperative's bloc vote may request an individual ballot as provided in sub. (3)(e). The  
16 department may require documentation to verify that any person requesting a ballot is  
17 eligible to vote in the referendum.

18 (e) If the secretary determines that it would be unreasonably costly or difficult to  
19 conduct a referendum by mail ~~ballot~~ or electronic communication, the secretary may  
20 direct that ballots be cast at polling places announced by the secretary as provided in sub.  
21 (4)(b)6. The secretary may further direct that ballots be pre-distributed to producers by  
22 mail or electronic communication, rather than at the designated polling places.

23 SECTION 5. ATCP 140.19(6)(a) and (b)3. are amended to read:

1           ATCP 140.19(6)(a) Referendum ballots shall be tabulated by the department,  
2 according to procedures set forth in this subsection. Before tabulating ballots, the  
3 department shall examine voting certificates to determine the validity of each ballot cast.  
4 All referenda, including referenda conducted at polling places, shall be conducted so as to  
5 exclude ineligible voters and assure the secrecy of individual votes. ~~Signed certificates~~  
6 Certificates of eligibility shall be obtained from all voters in conjunction with the casting  
7 of ballots, but shall be separated from all ballots before any vote is examined or counted,  
8 so that no vote can be identified with a certificate of eligibility.

9           (b)3. The certificate of eligibility required to accompany the ballot was not  
10 properly ~~signed or~~ returned.

11           SECTION 6. ATCP 140.20(2) is amended to read:

12           ATCP 140.20(2) ELECTION PROCEDURE: GENERAL. The election of marketing  
13 board members shall be conducted by the department according to applicable procedures  
14 set forth under s. ATCP 140.19 for marketing order referenda. In a marketing board  
15 election, as an alternative to sending a ballot to every producer and handler, the  
16 department may send to each producer or handler a notice by mail, electronic  
17 communication or other effective means explaining how the producer or handler may  
18 obtain a ballot. The department may also make other changes in the procedure under s.  
19 ATCP 140.19 ~~may be modified by the department as~~ that are necessary to accommodate  
20 relevant differences between a marketing order referendum and an election of marketing  
21 board members. Supplementary procedures, not inconsistent with this chapter, may be  
22 set forth in the marketing order. A marketing board shall reimburse the department for its

1 costs in conducting an election of marketing board members. Bloc voting is not  
2 permitted in the election of marketing board members.

3 **SECTION 7.** ATCP 141.09 is repealed.

4 **SECTION 8.** Chapter ATCP 147 is repealed.

5 **SECTION 9.** ATCP 148.01(1) is amended to read:

6 ATCP 148.01(1) "Affected producer" means an individual, partnership,  
7 corporation or other business entity in Wisconsin engaged in the production ~~and sale~~ of  
8 ginseng.

9 **SECTION 10.** ATCP 148.06(1) is repealed and recreated to read:

10 ATCP 148.06(1) An affected producer shall pay, for each calendar year, an  
11 annual assessment for each acre of land that the producer has in ginseng production at  
12 any time during that calendar year. The ginseng board shall annually determine and  
13 publish the assessment rate per acre, which may not exceed \$150 per acre. The  
14 assessment for any fraction of an acre shall be proportionate to the assessment per acre.  
15 The ginseng board may require affected producers to report acreage in ginseng  
16 production, and may use aerial photography or other reliable methods to verify reported  
17 acreage.

18 **SECTION 11.** ATCP 148.06(2) and (3) are repealed.

19 **SECTION 12.** ATCP 148.06(5) is repealed and recreated to read:

20 ATCP 148.06(5) Prior to March 1, 2009 and each year thereafter, the ginseng  
21 board shall determine the assessment amount owed by each affected producer under sub.  
22 (1) for the last completed calendar year, and shall issue to each producer a written notice  
23 showing the assessment amount owed by that producer. The assessment is due and



1 payable when the producer receives the notice from the ginseng board. The ginseng  
2 board shall determine and record assessments in a manner that protects the confidentiality  
3 of producer information.

4 **SECTION 13.** ATCP 148.09 is repealed.

**SECTION 14. 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 \_\_\_\_\_  
Rodney J. Nilsestuen,  
Secretary

5

**Wisconsin Department of Agriculture, Trade and Consumer Protection**

**Business Impact Analysis<sup>1</sup>**

**Rule Subject:** Agricultural Marketing Orders  
**Adm. Code Reference:** ATCP 140, 141, 147 and 148  
**Rules Clearinghouse #:** No. 07-067  
**DATCP Docket #:** 06-R-01

***Background***

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.

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<sup>1</sup> This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under s. 227.114, Stats.

- 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):
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### **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.

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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.

Dated this 23 day of October, 2007

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Will Hughes  
Will Hughes, Administrator,  
Division of Agricultural Development

<b>FISCAL ESTIMATE</b> DOA-2048 (R 10/94) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	LRB or Bill No. / Adm. Rule No. ATCP 140, ch's. ATCP 141, 147 & 148 Amendment No. (If Applicable)
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**Subject:**  
 Rule Changes to Chapter ATCP 140 for Agricultural Marketing Order Program

<b>Fiscal Effect</b> <b>State:</b> <input checked="" type="checkbox"/> No State Fiscal Effect  Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation.  <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs –  May be possible to absorb within agency's budget? <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
---	--

<b>Local :</b> <input checked="" type="checkbox"/> No local government costs  1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<b>5. Types of Local Gov. Unit Affected:</b> <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other: _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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<b>Fund Source Affected:</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>Affected Ch. 20 Appropriations:</b>
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**Assumptions Used in Arriving at Fiscal Estimate**

The 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.

The 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.

**Long - Range Fiscal Implications**  
 Probable increase in collection of assessments dollars due the Ginseng Board of Wisconsin.

<b>Agency/prepared by: (Name &amp; Phone No.)</b> DATCP	<b>Authorized Signature/Telephone No.</b> <i>Barbara Knapp</i>	<b>Date</b> 10-23-07
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- 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.
  
- Repeals the mint marketing order (ATCP 147).
  
- Amends the ginseng marketing order (ATCP 148).
  - Requires assessments based on ginseng production acreage, rather than ginseng sales.
  - Eliminates the requirement for an advisory referendum every 5 years.

This rule will have no significant fiscal impact on DATCP, and no fiscal impact on local units of government. This rule may reduce some DATCP workload and fees for services provided to marketing boards, but the effect will be insignificant. This rule may reduce some costs incurred by marketing boards, but the reduction will not be significant. This rule may increase the amount of marketing assessments collected by the ginseng marketing board.

Testimony at Public Hearings Regarding  
Proposed Changes to ATCP 140, 141, 147 and 148.

Hearings were held August 9, 2007 at the UW Extension Office Marathon County; August 14, 2007 at the Department of Agriculture, Trade and Consumer Protection, Madison; and on August 15, 2007 at the Wisconsin Peninsular Research Station in Sturgeon Bay.

Persons who attended the hearings are Kirk Baumann, Wausau, Mary Dorsch, Wausau, Joe Heil, Edgar, Art LaRue, Wausau, Butch Weege, Mosinee and Barney Fischer, Wausau.

A summary of the oral testimony follows:

1) **Joe Heil- Ginseng Board Member and Ginseng Grower**

I support the changes to the ginseng marketing order. In particular, the proposed assessment based on acres in production will produce a fairer and more reliable method of assessment of ginseng growers.

2) **Butch Weege- Ginseng Board Member and Ginseng Grower**

I support the changes to the ginseng marketing order. In particular, the proposed assessment base upon acres in production will insure that all growers pay their fair share for the benefits that accrue to all ginseng growers.

3) **Kirk Baumann- Ginseng Board Member and Ginseng Grower**

I support the changes to the ginseng marketing order because they will produce a fairer and more reliable assessment of ginseng growers.

4) **Art LaRue-Ginseng Grower**

I support the changes to the ginseng marketing order. The assessment based upon acres in production will produce an equitable assessment so that all growers pay their fair share for the benefits of the Ginseng Marketing Program. The repeal of the advisory referendum will end an unproductive expense.

The department did not receive any written comments.





ballots mailed out, 28 ballots were received back from cherry producers.

(2) Producers receiving a ballot were asked to determine their eligibility to participate in the referendum based on the criteria specified in the instructions and to attest to their eligibility by signing the certificate envelope.

3) The voting requirements under s. 96.08(1)(b)3 and (c), Stats., were used to determine whether the amendment to the marketing order was adopted. The provisions require that not less than 50% of the producers voting in the referendum approve the proposed change and that at least 50% of the producers on the established list vote in the referendum in order for the change to be approved. Failure to approve the amendment in the referendum would leave the cherry marketing order in effect in its present form.

4) Producers were asked to vote "Yes" or "No" on the following referendum question: "YES, I am in support of the proposed change to the Cherry Marketing Order, Ch. ATCP 141". Or, "NO, I am against the proposed change to the Cherry Marketing Order, Ch. ATCP 141". The proposed change was described on the ballot as an amendment to the marketing order to "eliminate the requirement of an advisory referendum every 4 years. (The advisory referendum asks producers whether they wish to continue the cherry marketing order.)"

(5) In addition to the 28 returned ballots, 6 "voting packets" were returned to the department marked "Undeliverable" or "Temporarily Away" with no forwarding addresses.

(6) The balloting period began February 25, and all ballots filed or postmarked on or before March 12, 2008, were tabulated.

(7) During the referendum period, 28 producers representing 54.9 percent of the registered cherry growers returned ballot envelopes to the department. Of the 28 ballots returned to the department, all 28 were considered to be valid.

(8) With 6 voting packets returned as "Undeliverable", 11.7 percent of the voting

producers were not countable in the final voting tabulation. Of the 28 valid ballots returned, the total number of votes for or against the cherry marketing order amendment is indicated below:

<u>Vote</u>	<u>Count</u>	<u>Percentage of Total Valid Ballots</u>
Yes	21	75.0 %
No	7	25.0 %

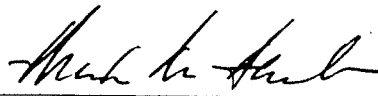

DECISION

(1) With more than 50 percent of the producers voting in the referendum and with more than 50% of the voting producers voting in favor of the amendment, the amendment to eliminate the requirement of an advisory referendum every 4 years is approved.

Dated this 11 day of April, 2008.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By

  
\_\_\_\_\_  
 Rodney J. Nilsestuen, Secretary



(2) Producers receiving a ballot were asked to determine their eligibility to participate in the referendum based on the criteria specified in the instructions and to attest to their eligibility by signing the certificate envelope.

3) The voting requirements under s. 96.08(1)(b)3 and (c), Stats., were used to determine whether the amendments to the marketing order were adopted. The provisions require that not less than 50% of the producers voting in the referendum approve the proposed change and that at least 50% of the producers on the established list vote in the referendum in order for the change to be approved. Failure to approve the amendment in the referendum would leave the mint marketing order in effect in its present form.

4) Mint growers were asked to vote "Yes" or "No" on the following referendum question: "YES, I am in support of the proposed change to terminate the Mint Marketing Order, Ch. ATPC 147". Or, "NO, I am against the proposed change to terminate the Mint Marketing Order, Ch. ATPC 147".

(5) The department did not receive any "Undeliverable" ballots.

(6) The balloting period began February 25, and all ballots filed or postmarked on or before March 12, 2008, were tabulated.

(7) During the referendum period, 12 producers representing 63.15 percent of the registered mint growers returned ballot envelopes to the department. Of the 12 ballots returned to the department, all 12 were considered to be valid.

(8) Of the 12 valid ballots returned, the total number of votes for or against the mint marketing order amendment is indicated below:

<u>Vote</u>	<u>Count</u>	Percentage of Total <u>Valid Ballots</u>
Yes	12	100.0%

No

0

00.0 %

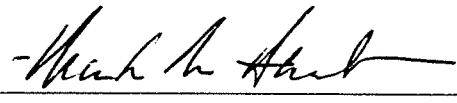

DECISION

(1) With more than 50% of the producers on the established list voting and more than 50% of the voting producers, voting in favor of the repeal, the repeal of Ch. ATCP 147 is approved.

Dated this 4 day of April, 2008.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By

  
\_\_\_\_\_  
 Rodney J. Nilsestuen, Secretary

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
2811 Agriculture Drive, P. O. Box 8911  
Madison, WI 53708-8911

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IN THE MATTER OF THE PROPOSED	)	
AMENDMENTS TO THE	)	
AGRICULTURAL MARKETING	)	FINDINGS AND CERTIFICATION OF
ORDER FOR GINSENG (CHAPTER	)	REFERENDUM
ATCP 148 WIS. ADM. CODE)	)	

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Under the authority of s. 96.08, Stats., the department conducted a referendum to determine whether or not proposed amendments to ch. ATCP 148, Wis. Adm. Code, (Ginseng Marketing Order) should be adopted, as provided in the Secretary's Findings and Decision To Hold Producer Referendum dated February 8, 2006.

NOW, THEREFORE, I, Rodney J. Nilsestuen, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection, as required by s. 96.08, Stats., do hereby make and publish the following findings and decision on the conduct and results of the referendum.

FINDINGS

(1) The Department conducted the ginseng marketing order referendum from February 25 to March 12, 2008. The ginseng producer list was supplied by the department and consisted of 182 ginseng producer names. The list consisted of producers that engaged in the production and sale of ginseng in Wisconsin. Each ginseng producer on record with the department was mailed a ballot which contained the proposed changes to the ginseng marketing order, instructions for participating in the referendum, a self-registration certificate envelope and a self-addressed, postage-paid return envelope. Every ginseng producer in this state, as defined by the marketing order, who grows and sells ginseng in Wisconsin is eligible to vote. The department mailed 182 referendum packets. Of the 182 ballots mailed out, 107 ballots were received back from ginseng producers.

(2) Producers receiving a ballot were asked to determine their eligibility to participate in the referendum based on the criteria specified in the instructions and to attest to their eligibility by signing the certificate envelope.

3) The voting requirements under s. 96.08(1)(b)3 and (c), Stats., were used to determine whether the amendments to the marketing order were adopted. The provisions require that not less than 50% of the producers voting in the referendum approve the proposed change and that at least 50% of the producers on the established list vote in the referendum in order for the change to be approved. Failure to approve the amendments in the referendum would leave the ginseng marketing order in effect in its present form.

4) Producers were asked to vote "Yes" or "No" on the following referendum question: "YES, I am in support of the proposed changes to the Ginseng Marketing Order, Ch. ATCP 148". Or, "NO, I am against the proposed changes to the Ginseng Marketing Order, Ch. ATCP 148". The proposed changes were described in the ballot as follows:

- Eliminates the current annual producer assessment based on sales, and replaces it with an assessment based on acres in ginseng production.
- The ginseng marketing 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 of an advisory referendum every 5 years (advisory referendum asks producers whether they wish to continue the ginseng marketing order).

(5) The United States Postal Service did not return any ballots as "Undeliverable" or



“Temporarily Away”.

(6) The balloting period began February 25, and all ballots filed or postmarked on or before March 12, 2008, were tabulated.

(7) During the referendum period, 106 producers representing 58.2 percent of the registered ginseng growers returned ballot envelopes to the department. Of the 106 ballots returned to the department, 101 were considered to be valid.

(8) Five (5) ballots, 02.7 percent of the voting producers, were considered “Invalid” and were not countable in the final voting tabulation. The ballots were determined to be invalid for the following reasons: 2-No Certification Envelop, 2-Lack of Signature by Voter, and 1 without a ballot. Of the 101 valid ballots returned, the total number of votes for or against the ginseng marketing order amendments is indicated below:

<u>Vote</u>	<u>Count</u>	<u>Percentage of Total Valid Ballots</u>
Yes	61	60.4 %
No	40	39.6 %


#### DECISION

- (1) With more than 50 percent of the producers voting, and with more than 50% of the voting producers voting in favor of the amendments to the ginseng marketing order, the amendments are approved.

Dated this 11 day of April, 2008.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By 

 Rodney J. Nilsestuen, Secretary



## Ruby, Erin

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**From:** Rep.Ott  
**Sent:** Thursday, April 17, 2008 1:11 PM  
**To:** Rep.Garthwaite; Rep.Gronemus; Rep.Jorgensen; Rep.Molepske; Rep.Mursau; Rep.Murtha; Rep.Nerison; Rep.Tauchen; Rep.Vruwink; Rep.WilliamsM  
**Cc:** Arrowood, Craig; Cross, William; Gillis, George; Halbach, Nathan; Hochhausen, Natolie; Hoelter, Jon; Junck, Linda; Kraak, Maureen; McKinny, Chris; Nelson, Elise; Palese, Tony; Patronskey, Mark; Peterson2, Ilsa; Plata, Christian; Potts, Andrew; Rausch, Scott; Smith-Loomans, Sandra; Sweeney, Rebekah; Wolkomir, Jon; 'Moll, Keeley A - DATCP'  
**Subject:** Clearinghouse Rule Referred to Assembly Committee on Agriculture  
**Attachments:** 20080417130743806.pdf

The following Clearinghouse Rule has been referred to the Assembly Committee on Agriculture for a 30 day review period:

**Clearinghouse Rule 07-067:** Agricultural Marketing Orders and Marketing Boards

A copy of the rule is attached (31 pages).



2008041713074380  
6.pdf (2 MB)

Please contact my office if you have any questions, need a hard copy of this document, or would like to request a hearing on this rule.

The initial 30 day deadline for committee review is Monday, May 19, 2008.

DATE: April 17, 2008

TO: Erin Ruby

Committee on Agriculture

FROM: Patrick E. Fuller, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

### **CLEARINGHOUSE RULE 07-067**

AN ORDER to repeal ATCP 141.09, ch. ATCP 147, 148.06 (2) and (3) and 148.09; to amend ATCP 140.13 (1) (b) 3. (intro.) and a., 140.14 (2) (d), 140.19 (4) (b) 6., (5) (a), (b) 3., (c) and (e), and (6) (a) and (b) 3., 140.20 (2), and 148.01 (1); and to repeal and recreate ATCP 148.06 (1) and (5), relating to agricultural marketing orders and marketing boards.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **April 10, 2008.**

To committee on **Agriculture.**

Referred on **Thursday, April 17, 2008.**

Last day for action - **Monday, May 19, 2008.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs choose to do so, you are not required by law or rule to send a copy of the text of the rule to each member at this time. Instead, your notice could state that members should contact you if they wish to receive a hard copy of the rule. Another option would be to email the rule to members. **(Please note that the text of Rules beginning with the prefix "01" is available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Kay Inabnet (6-5550) or your Legislative Council attorney. If you wish to learn more on this subject, read *Review of Administrative Rules* which is part of the Legislative Council's Wisconsin Legislator Briefing Book series, section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.





Al Ott

State Representative • 3rd Assembly District

May 20, 2008

Secretary Rod Nilsestuen  
Wisconsin Department of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive  
Madison, WI 53708

Dear Secretary Nilsestuen,

This letter is to inform you that the following clearinghouse rule has been reported out of the Assembly Committee on Agriculture:

Clearinghouse Rule #07-067

Relating to:

Agricultural Marketing Orders and Marketing Boards

A public hearing was not held, and no committee action was taken on the rule.

Please feel free to contact my office if you have any questions.

Sincerely,

Al Ott  
State Representative  
Chair, Assembly Committee on Agriculture