



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: February 5, 2015

TO: The Honorable Mary Lazich
President, Wisconsin State Senate
Room 220 South, State Capitol
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The Honorable Robin Vos
Speaker, Wisconsin State Assembly
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Cranberry Marketing Order, ch. ATCP 142; Final Draft Rule (Clearinghouse Rule #14-042)

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats. This rule makes revisions to ch. ATCP 142, Wis. Adm. Code, authorizing the Cranberry Marketing Board to gradually increase the assessments charged to cranberry growers from the current 10 cents per barrel to 25 cents per barrel in 2019.

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 for 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

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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 as 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 Content

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.

Public Hearing

DATCP held two public hearings on this rule on July 29, 2014, one in Wisconsin Rapids and one in Tomah, and accepted written comments until August 12, 2014. Of those who testified and submitted written comments, eight supported the proposal and two opposed adoption of the proposal at this time because of the difficult economic times for a large segment of growers. Two supported the rule if the monies are used for the economic benefit of the growers.

Rule Changes Following Public Hearing

The only changes DATCP made to the hearing draft are minor editorial changes suggested by the Legislative Council Rules Clearinghouse.

Small Business Regulatory Review Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Fiscal Impact

This rule will not have a fiscal impact on state government or local government. A complete *fiscal estimate* is attached.

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.

A complete regulatory flexibility analysis is attached.

Federal and Surrounding State Laws

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.