

## Chapter ATCP 141

### CHERRY MARKETING ORDER

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**Note:** Chapter Ag 141 was renumbered chapter ATCP 141 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

**ATCP 141.01 Definitions.** As used in this chapter, unless the context requires otherwise:

- (1) "Affected producer" means an individual, partnership, corporation or other business entity engaged in the production of cherries in Door or Kewaunee counties and in the sale of at least 2,000 pounds of cherries for processing in a crop year.
- (2) "Cherries" means all varieties of *Prunus cerasus*.
- (3) "Handler" means any person, including a producer, performing any of the functions of processing red tart cherries.
- (4) "Processing" means the operation of canning, packing, freezing, preserving, extracting juice or otherwise preparing red tart cherries for marketing in any form other than for fresh consumption.
- (5) "District" means an area of the state as defined in s. ATCP 141.03 from which representatives are elected to serve on the marketing board.
- (6) "Marketing board" or "board" means a ch. 181, Stats., non-stock corporation consisting of affected producers elected to serve as board members and having the duties described in this order.
- (7) "Producer-handler" means an affected producer who sells cherries to a non-resident handler.
- (8) "Secretary" means the secretary of the state of Wisconsin department of agriculture, trade and consumer protection.

**History:** Cr. Register, June, 1984, No. 342, eff. 7-1-84.

**ATCP 141.02 Purpose. (1)** The primary objective of this marketing order is to maintain and expand sales of red tart cherries. This includes developing new products and new markets; improving methods and practices related to producing, processing or marketing of cherries; and providing educational programs for producers, handlers or consumers.

(2) Funds collected under this order may be used by the marketing board to meet one or more of the objectives described in this order including advertising and promotion, market research and development, industrial research and educational programs. Funds may be used by the marketing board to jointly sponsor projects with any private or public organization to meet the objectives of this order.

**History:** Cr. Register, June, 1984, No. 342, eff. 7-1-84.

**ATCP 141.03 Districts. (1)** The area of the state to which this order applies shall be divided into 2 districts for the purposes of electing affected producers to the marketing board. The following regions of the state shall initially constitute the respective districts.

- (a) District 1. That portion of Door county north of the town of Sevastopol.
- (b) District 2. That portion of Door county south of and including the town of Sevastopol and all of Kewaunee county.

(2) The district boundaries designated in sub. (1) shall exist for 3 years after the effective date of the marketing order, at which time the marketing board may reapportion the districts, with the

approval of the secretary, to assure fair representation to affected producers. The board may reapportion districts no more frequently than every 3 years with an effective date that coincides with the anniversary date of the order. No alteration of district boundaries due to reapportionment shall have the effect of removing a marketing board member from office during the member's term.

**History:** Cr. Register, June, 1984, No. 342, eff. 7-1-84.

**ATCP 141.04 Marketing board. (1) MEMBERSHIP. (a)** A cherry marketing board consisting of 7 affected producers, 3 from each district and one member at large, is established to administer this order. Board members shall be affected producers in the district they are elected to represent. The board member at large shall be an affected producer from either district. Board members shall be nominated and elected as prescribed in s. 96.10 (1), Stats. Notice of the secretary's decision for issuance of this marketing order shall contain a call for nominations for election of board members to initial terms of office. Nominations shall be filed not earlier than 58 days and not later than 75 days after the secretary's call for nominations, and the election held within 60 days after approval of the marketing order by referendum. A call for nominations of affected producers for subsequent election to an expired term of office on the marketing board shall be made by the board not later than 90 days before expiration of the term, and nominations shall be filed not later than 60 days before the term of office expires. Elections to fill expired terms of office shall be held within the 60-day period preceding expiration of the terms of office. If no nominations are made by affected producers within the times specified, the secretary or marketing board may extend the time period within which nominations may be filed.

(b) Affected producers in each district shall elect 3 affected producers from the district to serve on the marketing board. The member at large shall be nominated separately and shall be elected by producers from both districts. Nominees receiving the highest number of votes in a district election shall be the board members representing that district and the member at large shall be the nominee receiving the highest number of votes in the election for that office.

(2) **TERM OF OFFICE; REMOVAL; VACANCIES. (a)** For the initial terms of marketing board members, the board member receiving the highest number of votes in each district shall hold office for a period of 3 years, the board member receiving the second highest number of votes in each district and the board member at large shall hold office for a period of 2 years, and the board member receiving the lowest number of votes in each district shall hold office for a period of one year.

(b) All subsequent elections to the marketing board shall be for 3-year terms.

(c) Each member of the marketing board shall continue to be an affected producer during the term of office. Failure of a board member to continue as an affected producer shall create a vacancy on the marketing board.

(d) If a vacancy occurs for any reason, the marketing board shall appoint an affected producer to serve the remainder of the term of office. The successor shall be from the same district from

which the vacancy occurs, except the successor to the member at large may be any affected producer.

**(3) DUTIES.** The duties of the marketing board shall include:

- (a) Adopt by-laws consistent with the articles of incorporation, ch. 96, Stats., and this order.
- (b) Develop and maintain administrative services necessary for proper administration of this order.
- (c) Protect the confidentiality of information obtained under this order relating to the businesses of individual producers or handlers.
- (d) Develop and recommend to the secretary administrative rules related to this order.
- (e) Receive, evaluate and report to the secretary complaints of violations of this order.
- (f) Recommend to affected producers or to the secretary amendments to this order.
- (g) Develop procedures for collecting assessments to cover expenses incurred in carrying out programs and the administration of this order.
- (h) Collect such information and data as necessary for proper administration of this order.
- (i) Determine how funds collected under this order are to be allocated.
- (j) Prepare an annual statement on operations of this order for the previous marketing year, including an audited financial statement prepared independently or by the secretary.
- (k) Maintain a bond on its officers and employees in an amount not less than 50% of the annual budget of this order.

**History:** Cr. Register, June, 1984, No. 342, eff. 7-1-84.

**ATCP 141.05 Applicability of order.** **(1) SCOPE.** This marketing order shall be applicable to all cherries produced in Door and Kewaunee counties and sold for processing by affected producers.

**(2) QUALIFICATION.** Each year the marketing board shall make a preliminary determination of whether or not producers are affected producers. The board shall specify the procedures for making the determination, which shall generally be based upon the sales of cherries by producers in the preceding crop year. The board shall make available to all handlers and producers the results of each preliminary determination prior to July 1 of each year. Each handler and producer shall submit to the board, as the board or the secretary may require, information necessary to verify the accuracy of the list of affected producers. In the event of a person's expanded production or of a producer experiencing a crop loss, the board may adjust the list of affected producers at any time based on information supplied by or on behalf of producers or handlers. For purposes of determining whether or not a producer retains voting privileges or a position on the marketing board, the board may calculate the simple average of the 3 preceding crop years to adjust for a partial or total crop loss experienced by a producer. Producers selling less than 2,000 pounds of cherries to a handler for processing in a given crop year shall in no event be subject to assessments during that crop year. Annual determinations of whether or not producers are affected producers and any adjustments made by the marketing board shall be done in a manner which preserves the confidentiality of information related to the businesses of producers or handlers except to the extent of the requirements of this subsection.

**(3) EXCLUSIONS.** This marketing order is not applicable to:

- (a) Sales of cherries by producers directly to consumers.
- (b) Sales of cherries for processing by a producer which total less than 2,000 pounds to all handlers in a given crop year.

**History:** Cr. Register, June, 1984, No. 342, eff. 7-1-84.

**ATCP 141.06 Assessments.** **(1)** Each affected producer in the first crop year for which the marketing order is effective shall be liable for an assessment of two-tenths of one cent (\$0.002) per pound net weight on all pitting cherries sold to a handler. Thereafter the marketing board shall annually determine the rate of assessment to be levied and collected but in no event shall it exceed five-tenths of one cent (\$0.005) per pound net weight on all pitting cherries sold to a handler. The assessment rate on cherries used for juice purposes shall be determined annually by the board but in no event shall it be more than one-half the assessment rate on pitting cherries. The net weight of cherries subject to assessment shall be determined on the basis of scale tickets, invoices, bills of lading, or other sales or shipping documents, or any combination of the above.

**(2)** Assessments shall be collected by handlers or deducted from amounts due affected producers and shall become due to the marketing board at the time title to the cherries is transferred from affected producers to handlers.

**(3)** When cherries are sold by affected producers to non-resident handlers, affected producers shall be deemed to be producer-handlers acting on their own behalf, and assessments shall be due to the marketing board at the time title to the cherries is taken by the non-resident handler.

**(4)** Assessments shall be payable to the marketing board on or before November 1 of the year in which assessments became due in accordance with procedures specified by the marketing board.

**(5)** When cherries are stored by affected producers under a federal reserve pool, the cherry administrative board shall be deemed to be a handler. Assessments shall be due to the marketing board under this subsection on the date when the cherries are released by the cherry administrative board and payable 180 days from when the assessments are due.

**(6)** The secretary shall have the authority to audit records of handlers, producers, or their agents only as necessary to ensure compliance with this section.

**History:** Cr. Register, June, 1984, No. 342, eff. 7-1-84.

**ATCP 141.07 Reports.** **(1)** Each producer shall maintain accurate records of all cherry production. Producer records shall include, but may not be limited to, quantity and disposition of cherry production. Each handler shall maintain accurate records and accounts of all cherries purchased from affected producers. Handler records shall include, but may not be limited to, names and addresses of each producer from whom cherries were purchased, quantities of cherries purchased, and the dates title to the cherries was taken and payments made. Each handler, producer, and producer-handler shall maintain and submit reports to the marketing board as the secretary or the marketing board may require as often as necessary to ensure compliance with this order and proper collection of assessments.

**(2)** The secretary may require the marketing board to provide information necessary for enforcement of ch. 96, Stats., or this order.

**History:** Cr. Register, June, 1984, No. 342, eff. 7-1-84.

**ATCP 141.08 Violations.** Any person who violates a provision of this order is subject to the penalties provided in s. 96.17, Stats.

**History:** Cr. Register, June, 1984, No. 342, eff. 7-1-84.

**ATCP 141.09 Review.** Affected producers shall be afforded the opportunity to participate in an advisory referendum every 4 years from the effective date of this order for the purpose of amending or terminating this order. The marketing board shall conduct the advisory referendum. If more than 50% of the affected producers voting in the referendum disapprove continuation of any or all aspects of this order, the board shall recommend action to the secretary under s. 96.05, Stats., for the purpose of amending or terminating this order.

**History:** Cr. Register, June, 1984, No. 342, eff. 7-1-84.