



State of Wisconsin  
Governor Scott Walker

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

**DATE:** March 6, 2015

**TO:** The Honorable Mary Lazich  
President, Wisconsin State Senate  
Room 220 South, State Capitol  
PO Box 7882  
Madison, WI 53707-7882

The Honorable Robin Vos  
Speaker, Wisconsin State Assembly  
Room 211, West, State Capitol  
PO Box 8952  
Madison, WI 53708-895

**FROM:** Ben Brancel, Secretary  
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Cherry Marketing Order, ch. ATCP 141; Final Draft Rule (Clearinghouse Rule #14-050)**

### *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 141, Wis. Adm. Code, authorizing the Cherry Marketing Board to change the Board membership from 7 to 5 and to elect all members at large.

### *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

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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.

### ***Public Hearing***

DATCP held a public hearing on this rule on September 30, 2014, in Sturgeon Bay, and accepted written comments until October 14, 2014. The department did not receive any oral or written testimony.

### ***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***

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. A complete regulatory flexibility analysis is attached.

### *Federal and Surrounding State Laws*

#### **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.