State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: September 3, 2014

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
Daniel Smith, Administrator, Agricultural Development Division

SUBJECT: **ATP 142- Cranberry Marketing Order, Final Draft**

PRESENTED BY: **Stacey Ashby**

REQUESTED ACTION:

At the September 17, 2014 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a final draft rule (copy attached) related to the Cranberry marketing Order. This rule authorizes 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.

SUMMARY:

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 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 Hearings

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.

Changes from Hearing Draft

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

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.

Environmental Impact

This rule will not have any environmental impact.

Federal and Surrounding State Programs

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.

Next Steps

If the Board approves this rule, DATCP will conduct a referendum of cranberry growers to determine if there is approval of the proposed rule by the growers. If the growers approve the rule at referendum, DATCP will transmit that final draft rule to the Governor for his written approval and then to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

DATCP Docket No. 13-R-15
Rules Clearinghouse No. 14-042

Final Draft Rule
September 3, 2014

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

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following order to amend ATCP 142.05 (1), relating to the cranberry agricultural marketing order and affecting small businesses.

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

This rule increases the maximum assessment the cranberry marketing board may charge to cranberry producers under Chapter ATCP 142, the cranberry marketing order as follow:

- The maximum assessment the cranberry marketing board may charge increases 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.

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 142 being the marketing order for cranberries.

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.

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 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 for 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 Contents

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.

Federal and Surrounding State Programs

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.

Data and Analytical Methodologies

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

Analysis and Supporting Documents used to Determine Effect on Small Business

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

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.

DATCP Contact

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

Dennis Fay
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5006
E-Mail: dennis.fay@ wisconsin.gov

Where and when comments May Be Submitted

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

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Department of Agriculture, Trade and Consumer Protection
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Madison, WI 53708-8911
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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this proposed rule is approved by the DATCP Board.

SECTION 1. ATCP 142.05 (1) is amended to read:

ATCP 142.05 (1) Each producer for the first crop year for which the marketing order is effective shall be liable for an assessment of 5 cents ($0.05) per barrel on all cranberries produced during the crop year. Thereafter, the marketing order board shall annually determine the rate of assessment to be levied and collected, but in no event shall it exceed ~~10~~ 15 cents (~~$0.10~~ $0.15) per barrel on all cranberries produced in 2015 and 2016, 20 cents ($0.20) per barrel on all cranberries produced in 2017 and 2018 and 25 cents on all cranberries produced during 2019 and thereafter. Number of barrels shall be determined on the basis of acreage and yields, scale tickets, invoices, bills of lading, or other sales or shipping documents, or any combination of the above.

SECTION 2. **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
DEAPARTMENT OF AGRICULUTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject:	**Cranberry Marketing Order**
Adm. Code Reference:	**ATCP 142**
Rules Clearinghouse #:	**14-042**
DATCP Docket #:	**13-R-15**

Rule Summary

This rule increases the maximum assessment the cranberry marketing board may charge to cranberry producers under Chapter ATCP 142, the cranberry marketing order as follow:

The maximum assessment the cranberry marketing board may charge increases 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.

Small Business Affected

This rule affects cranberry growers. 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 the 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.

Reporting, Bookkeeping and other Procedures

The proposed rule creates no reporting, bookkeeping or other procedures for small businesses.

Professional Skills Required

The proposed rule does not require any professional skills for small businesses.

Accommodation for Small Business

All of the businesses affected by this rule are "small businesses." This rule does not make special exceptions for small businesses because the purpose of the marketing order program is to have all members of the producer group share in the cost of joint promotion, research and education that will increase productivity and sales of the commodity.

Conclusion

The result of the proposed rule 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. 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 19 day of August, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Daniel Smith, Administrator
Division of Agricultural Development

ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 142, Cranberry Marketing Order

Subject

Pesticide Use and Control

Fund Sources Affected	Chapter 20, Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG SEG-S	None

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☐ Indeterminate	☐ Increase Existing Revenues ☐ Decrease Existing Revenues	☐ Increase Costs ☐ Could Absorb Within Agency's Budget ☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy ☐ Local Government Units	☒ Specific Businesses/Sectors ☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than $20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

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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.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Local Governments
This rule will not impact local governments.

Cranberry Growers

In 2012 cranberry 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.

Utility Rate Payers

The rule will have no impact on utility rate payers.

General Public

This rule indirectly affects the general public by increasing the ability of an important segment of the Wisconsin economy to maintain the impressive growth it has experienced in recent years.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits

This rule will benefit cranberry growers by providing funding through increased assessments needed to produce the kind of market share increase that the industry has seen in recent years

General Public
The general public will benefit from this rule as a result of continued growth of an important segment of the Wisconsin economy.

Alternatives

The alternative is to leave cranberry assessments at the current level which has existed since 1983. To continue the successful marketing and research, the Cranberry Board believes increased funding is required.

Long Range Implications of Implementing the Rule

Long-term, implementing the rule will benefit business, the general public, and the Wisconsin economy as increased assessment funding will help to continue the impressive growth of the cranberry industry in Wisconsin.

Compare With Approaches Being Used by Federal Government

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.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

There are very few cranberry producers in the surrounding states and none of the surrounding states have a cranberry marketing order.

Comments Received in Response to Web Posting and DATCP Response

No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.