



State of Wisconsin  
Jim Doyle, Governor

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

**DATE:** February 24, 2010

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

The Honorable Michael Sheridan  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
PO Box 8953  
Madison, WI 53708-8952

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

**SUBJECT:** **ATCP 149- Potato Marketing Order**  
*(Clearinghouse Rule #09-023)*

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.

DATCP has adopted a potato marketing order (ch. 149, Wis. Adm. Code), pursuant to ch. 96, Stats. (Wisconsin Agricultural Marketing Act). A Potato Industry Board, elected by producers, administers the current marketing order. The board collects producer assessments, and spends assessment revenues for potato market development, research and education.

This rule changes the election and membership of the Potato Industry Board, and authorizes the board to charge higher assessments to potato producers.

### ***Background***

DATCP administers Wisconsin’s agricultural marketing order program under ch. 96, Stats. DATCP may by rule adopt marketing orders for Wisconsin agricultural commodities. Marketing orders (and marketing order amendments) must be approved in a referendum of affected commodity producers. DATCP has adopted marketing orders for cherries, cranberries, corn, milk, soybeans, ginseng and potatoes.

*Agriculture generates \$51.5 billion for Wisconsin*

Each marketing order, including the potato marketing order, provides for assessments on commodity producers. A marketing board, elected by producers, establishes assessment levels within limits specified by the marketing order, and spends assessment revenues for purposes identified in the marketing order. Assessments may be spent for market development, research and education. DATCP monitors marketing board activities for compliance with applicable law, including the marketing order.

The current Potato Industry Board (potato marketing board) consists of 10 members elected from 5 geographic districts for staggered 3-year terms. The board is currently authorized to establish a potato marketing assessment of up to 6 cents per hundredweight, but has established an actual assessment of 5 cents per hundredweight (one cent below the maximum currently allowed).

### ***Rule Contents***

This rule modifies the current potato marketing order (ATCP 149) to do all of the following:

- Increase the maximum assessment that the Potato Industry Board is authorized to charge to producers. This rule changes the maximum assessment rate from 6 cents to 10 cents per hundredweight on potatoes sold into commercial channels.
- Change the election and membership of the Potato Industry Board. This rule reduces the number of election districts from 5 to 3, and reduces the number of board members from 10 to 9. Eight of the 9 members of the modified board will be elected by producers from districts identified in this rule, and one board member will be chosen by all potato producers in a statewide “at large” election. Under this rule, all board members will be elected for 3-year terms.
- Provide for a gradual changeover to the new board membership. Current board members will continue to hold office until their current terms expire.

Under this rule, the new potato marketing board election districts will be as follows:

- ***District 1*** will be represented by 3 board members and will include Ashland, Barron, Bayfield, Brown, Burnett, Chippewa, Clark, Door, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Kewaunee, Langlade, Lincoln, Marinette, Menominee, Oconto, Oneida, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Vilas, and Washburn counties.
- ***District 2*** will be represented by 3 board members and will include Marathon, Outagamie, Portage, Shawano, Waupaca and Waushara counties.
- ***District 3*** will be represented by 2 board members and will include Adams, Buffalo, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa,

Jackson, Jefferson, Juneau, Kenosha, LaCrosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Trempealeau, Vernon, Walworth, Washington, Waukesha, Winnebago and Wood counties.

The changes in election districts, and the election of one “at large” representative, reflect changes in the geographic distribution of potato production in the state. The increase in the maximum authorized marketing order assessment will facilitate additional funding for market development and research, including University of Wisconsin research related to new potato varieties and pesticide and chemical management.

### ***Public Hearings***

DATCP held 2 public hearings on this rule. DATCP held the hearings on April 14, 2009 in Antigo and on April 15, 2009 in Stevens Point and accepted written comments until April 29, 2009. Several Potato Marketing Order Board Members attended the hearings and expressed their support for the proposed rule. A summary of the testimony is attached.

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

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

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

DATCP modified the final draft rule to address all of the comments from the Legislative Council Rules Clearinghouse.

### ***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 potato marketing order. Following public hearings, DATCP held a referendum of affected potato producers at which the potato producers approved the changes to the potato marketing order contained in the proposed rule.

### ***Fiscal Impact***

This rule will have no significant fiscal impact on DATCP or local government. A complete *fiscal estimate* is attached.

### ***Business Impact***

The current potato marketing order is designed to improve the production and marketing of potatoes in this state, for the benefit of potato producers. This rule, initiated at the request of potato producers, is intended to improve the current potato marketing order. This rule must be approved in a referendum of affected producers before it can take effect. Many of the affected producers are “small businesses.”

This rule changes the composition and election of the current Potato Industry Board. The changes reflect changes in the geographic distribution of the Wisconsin potato industry. The changes will have little, if any, impact on affected producers.

This rule also authorizes the Potato Industry Board to increase the current potato marketing assessment from a maximum of 6 cents per hundredweight to a maximum of 10 cents per hundredweight of potatoes sold in commercial channels. The board may not increase the actual assessment rate by more than one cent per year.

While the authorized increase may eventually add expense for producers, the added expense will be small. Wisconsin has over 150 farms that produce nearly 23 million hundredweight of potatoes annually. The current marketing assessment is 5 cents per hundredweight. With potatoes currently selling at nearly \$25 per hundredweight, the current assessment represents only 2/10ths of 1% of the current market value of potatoes. Even if the Potato Industry Board were to increase the assessment (over a period of at least 5 years) to the maximum 10 cents per hundredweight allowed by this rule, that would still amount to only 4/10 of 1% of potato market value. A complete *business impact analysis* is attached

### ***Federal and Surrounding State Regulations***

#### **Federal Programs**

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). However, the state marketing orders do not directly duplicate or conflict with the federal marketing orders.

#### **Surrounding State Programs**

Michigan and Minnesota have marketing assessments for potatoes produced within those states. Minnesota’s current assessment is 3 cents per hundredweight and Michigan’s assessment is 5 cents per hundredweight (the same as Wisconsin’s current assessment).

## Testimony at Public Hearings Regarding Proposed Changes to ATCP 149.

Hearings were held April 14, 2009 at the UW Extension Office, Langlade County at 837 Clermont Street, Antigo, WI and on April 15, 2009 at the Portage County UW Extension, County Annex Building, Stevens Point, WI.

Persons who attended the hearings are Tim Feit of Antigo, Tamas Houlihan of Antigo, Tom Wild of Antigo, Karen Walters of Antigo, Duane Maatz of Wausau and Steve Dierks of Coloma, WI.

A summary of the oral testimony follows:

1) **Tom Wild – Potato Industry Board Member and Potato Producer**

I support the changes to the potato marketing order. As a representative of the PIB and a grower, I find the proposed changes necessary and beneficial to the potato industry. By redistricting, making a change to the directorship and raising the cap on assessments from .06 to .10 cwt., we as a board are anticipating the needs of the industry for the future. The proposed changes are necessary and positive for the future of Wisconsin potatoes.

2) **Duane Maatz – Executive Director of the Wisconsin Potato Industry Board**

I support the changes to the potato marketing order. In particular, the proposed lift on the current assessment cap and to allow for the redistricting in order to better represent the Wisconsin producers.

3) **Steve Dierks - Potato Industry Board Member and Potato Producer**

I feel it's time to modernize and make changes to the districts to better represent producers within our State. By making the necessary marketing changes, it will give the board the abilities to make the changes needed to keep potatoes a viable market in Wisconsin's economy.

The department did not receive any written comments.