

## Chapter ATCP 149

### POTATO MARKETING ORDER

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**Note:** Chapter Ag 149 was renumbered chapter ATCP 149 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

#### ATCP 149.01 Definitions. As used in this chapter:

(1) “Affected producer” means an individual, partnership, corporation, or other business entity selling in commercial channels potatoes produced in this state on 5 or more acres which the producer owns or leases.

(2) “District” means an area of the state as defined in s. ATCP 149.03 from which representatives are elected to serve on the marketing board.

(3) “Handler” or “designated handler” means any person including an agent, broker, dealer, processor, or producer who buys potatoes from an affected producer and sells them in commercial channels or prepares an affected producer’s potatoes for delivery into commercial channels.

(4) “Potatoes” means the production from any variety of *Solanum tuberosum*.

(5) “Potato industry board” or “marketing board” means a ch. 181, Stats., non-stock corporation consisting of affected producers elected to serve as board members, and which is responsible for administering the potato marketing order pursuant to ch. 96, Stats., ch. ATCP 140 and this chapter.

(6) “Producer–handler” means any person who sells or delivers potatoes of their own production directly to wholesalers, retailers, consumers or non–resident handlers.

(7) “Secretary” means the secretary of the state of Wisconsin department of agriculture, trade and consumer protection.

**History:** Cr. Register, September, 1989, No. 405, eff. 10–1–89.

**ATCP 149.02 Purpose.** (1) The primary objectives of this marketing order are to improve the quality and promote the marketing of potatoes and the potato industry. This may include conducting research on potato production, quality, and storage practices; improving methods and practices related to the production, processing or marketing of potatoes; developing new and existing markets for potatoes and potato products; and providing educational programs for producers, handlers, buyers and consumers.

(2) Funds collected under this order may be used by the potato industry board to meet one or more of the objectives described in sub. (1). Funds may be used by the potato industry board to sponsor projects in cooperation with any private or public organization to meet the objectives of this order.

**History:** Cr. Register, September, 1989, No. 405, eff. 10–1–89.

**ATCP 149.03 Districts.** (1) The state shall be divided into 3 districts for purposes of electing producers to the potato industry board and one producer shall be elected at large. The following counties shall constitute the respective districts:

(a) *District 1.* 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.

(b) *District 2.* Marathon, Outagamie, Portage, Shawano, Waupaca and Waushara counties.

(c) *District 3.* 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.

(2) Not sooner than July 1, 2013, the potato industry board with the approval of the secretary may reapportion the districts under sub. (1) to assure fair representation to affected producers. The potato industry board may reapportion districts no more than once in the 3–year period beginning on July 1, 2013, and no more than once in any subsequent 3–year period beginning on the day after the termination of the last preceding 3–year period under this subsection.

**History:** Cr. Register, September, 1989, No. 405, eff. 10–1–89; CR 09–023: am. (1) (intro.), r. and recr. (1) (a) to (c) and (2), r. (1) (d) and (e) Register June 2010 No. 654, eff. 7–1–10.

**ATCP 149.04 Potato industry board.** (1) **MEMBERSHIP.** A potato industry board consisting of 9 affected producers, 3 each from districts 1 and 2, 2 from district 3, and one elected from the state at large, is established to administer this order. Board members shall reside in the district they are elected to represent, except that the member elected at large may reside anywhere in the state. Board members shall be nominated and elected as prescribed in s. 96.10 (1), Stats., and s. ATCP 140.20.

(2) **TERM OF OFFICE.** All elections to the potato industry board shall be for 3–year terms. No reapportionment under s. ATCP 149.03 (2) may remove a potato industry board member from office during the member’s term. If as a result of a reapportionment under s. ATCP 149.03 (2) a board member no longer resides in the district which that member was elected to represent, the member shall nevertheless continue to represent that district until his or her term expires.

(3) Potato industry board members holding office on July 1, 2010, shall continue to serve until their terms of office expire. As those terms of office expire, the potato industry board shall hold elections for new board members according to subs. (4) to (7).

(4) In the first election held after July 1, 2010, one board member shall be elected from district 1, one board member shall be elected from district 2, and one board member shall be elected from district 3.

(5) In the second election held after July 1, 2010, one board member shall be elected from district 1, one board member shall be elected from district 2, and one board member shall be elected from district 3.

(6) In the third election held after the effective date of this rule, one board member shall be elected from district 1, one board member shall be elected from district 2, and one board member shall be elected at large.

(7) **SUBSEQUENT ELECTIONS.** Not later than 90 days prior to the expiration of a potato industry board member’s term of office, the potato industry board shall issue a call for nominations for the election of the succeeding board member. Nominations shall be filed not later than 60 days before the potato industry board member’s term of office expires. The election of a succeeding potato

industry board member shall be held prior to the expiration of a potato industry board member's term of office. If no nominations are made by producers within the time specified in a call for nominations, the secretary or potato industry board may extend the time period within which nominations may be filed.

**(8) ELIGIBILITY TO HOLD OFFICE; APPOINTMENTS TO FILL VACANCIES.** If a potato industry board member ceases to be an affected producer at any time during his or her term in office, his or her position on the potato industry board becomes vacant. If a vacancy occurs on the potato industry board for any reason, the potato industry board shall appoint an affected producer to serve the remainder of the unexpired term.

**(9) DUTIES.** The duties of the potato industry board shall include the following:

(a) To adopt bylaws consistent with the articles of incorporation, ch. 96, Stats., and this order.

(b) To develop and maintain administrative services necessary for proper administration of this order.

(c) To protect the confidentiality of information obtained under this order relating to the business of individual producers or handlers.

(d) To develop and recommend to the secretary administrative rules related to this order.

(e) To receive, evaluate and report to the secretary complaints of violations of this order.

(f) To develop procedures for collecting assessments used in funding programs and the administration of this order.

(g) To collect information and data only as necessary for proper administration of this order.

(h) To determine how funds collected under the marketing order are to be allocated.

(i) To annually prepare a statement on operations of this order for the previous marketing year, including an audited financial statement prepared independently.

(j) To maintain a bond on its officers and employees in an amount of not less than 50% of the annual operating budget of this order.

(k) To comply with all applicable provisions of ch. 96, Stats., and ch. ATCP 140.

**History:** Cr. Register, September, 1989, No. 405, eff. 10–1–89; CR 09–023: am. (1) and (2), renum. (3) to (5) to be (7) to (9), cr. (3) to (6) Register June 2010 No. 654, eff. 7–1–10; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register June 2010 No. 654.

**ATCP 149.05 Applicability.** **(1) SCOPE.** Unless otherwise excluded or exempt, this order is applicable to all potatoes grown in the state and sold into commercial channels, including potatoes sold for seed, processing or fresh consumption.

**(2) EXCLUSIONS.** This order does not include potatoes which are used in the household or on the farm of any affected producer.

**History:** Cr. Register, September, 1989, No. 405, eff. 10–1–89.

**ATCP 149.06 Assessments.** **(1)** The potato industry board shall annually determine the rate of assessment to be levied and collected under this chapter on potatoes sold into commercial channels. The assessment may be increased by not more than one cent (\$0.01) per hundredweight per year, but in no event shall the total assessment exceed 10 cents (\$0.10) per hundredweight on potatoes sold into commercial channels. Hundredweights shall be determined on the basis of inspection certificates, scale tickets, invoices, bills of lading, manifests, settlement sheets or other sales or shipping documents, or any combination of these. Potatoes on which an assessment has been paid shall not be reassessed upon subsequent sale.

**(2)** Assessments shall be collected and paid by handlers or deducted from amounts due affected producers and shall become

due to the potato industry board at the following times indicated for the respective type of transactions:

(a) When an affected producer delivers potatoes to a handler who prepares the potatoes for sale, assessments shall become due when title to the potatoes is transferred from the producer to the handler or the volume basis for payment is determined.

(b) When an affected producer delivers potatoes to a handler who acts as a broker or agent for the producer for shipment, assessments shall become due when the basis for payment is determined.

(c) When an affected producer delivers potatoes to a cooperative acting as an agent for the producer, assessments shall become due when the basis for payment is determined.

(d) When an affected producer who is also a producer–handler sells and delivers potatoes of his or her own production directly to wholesalers, retailers, consumers or non–resident handlers, assessments shall become due to the potato industry board when the basis for payment is determined and the potatoes are sold or delivered for sale.

**(3)** The potato industry board may establish, as necessary, additional types of transactions which set forth when, and on what basis, assessments shall become due and payable to the potato industry board, provided the types of transactions established are not otherwise in conflict with this chapter.

**(4)** Assessments shall be payable to the potato industry board within 10 days from the end of the month in which assessments became due in accordance with procedures specified by the potato industry board.

**History:** Cr. Register, September, 1989, No. 405, eff. 10–1–89; CR 09–023: am. (1) Register June 2010 No. 654, eff. 7–1–10.

#### **ATCP 149.07 Records; inspection; reports.**

**(1)** Each affected producer shall maintain accurate records of all potato production and sales to handlers. Each producer–handler shall maintain accurate records of all potato production and sales to wholesalers, retailers, consumers or non–resident handlers. Each handler shall maintain accurate records and accounts of all potatoes purchased from or sold for affected producers by the handler. A separate record shall be maintained on a producer's or handler's own production which was handled by the producer or handler, acting as a producer–handler. The secretary may require an affected producer, producer–handler or handler to make records available for inspection and copying by the department, or may require a producer, producer–handler or handler to file reports with the department, if the secretary determines that the inspection or filing is necessary to ensure compliance with this chapter. No information related to the individual businesses of producers and handlers may be disclosed to the public or potato industry board members.

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

**History:** Cr. Register, September, 1989, No. 405, eff. 10–1–89.

**ATCP 149.08 Violations.** Any person who violates a provision of this order is subject to the penalties provided in s. 96.17, Stats.

**History:** Cr. Register, September, 1989, No. 405, eff. 10–1–89.

**ATCP 149.09 Voting requirements; creation, amendment or termination.** This order shall not be adopted, amended or repealed until the secretary finds that the proposed adoption, amendment or repeal has been approved by not less than 50% of the producers voting in a referendum, and that at least 50% of the eligible producers have voted in the referendum.

**History:** Cr. Register, September, 1989, No. 405, eff. 10–1–89.