

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Potato Marketing Order
Adm. Code Reference: ATCP 149
Rules Clearinghouse#: 09-023
DATCP Docket #: 08-R-07

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

¹ This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under s. 227.114, Stats.

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.

Background

The Department of Agriculture, Trade and Consumer Protection (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.

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).

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.

Accommodation for Small Business

Most of the potato producers affected by this rule are “small businesses.” The rule allows for an increased maximum assessment rate to finance continued operation of the potato marketing order, for the benefit of all affected producers (including “small business” producers).

This rule will have a minimal impact on producers. Increased assessments will increase producer costs, but only slightly (see above). This rule does not distinguish between “small business” producers and other producers, and does not make any special accommodation for “small business” producers. However, this rule will not take effect unless it is approved in a referendum of all affected producers.

Conclusion

This rule will have a minimal adverse impact on potato producers, and will benefit all potato producers (including “small business” producers) by allowing the Potato Industry Board to carry out the research, marketing and educational activities contemplated by the potato marketing order. This rule will also ensure fair representation on the Potato Industry Board, based on the current geographic distribution of the potato industry in this state. 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 _____ day of May, 2009

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Perry Brown, Acting Administrator,
Division of Agricultural Development