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**Clearinghouse Rule 21-059**

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

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PROPOSED ORDER

2 An order of the department of agriculture, trade and consumer protection *to repeal* ATCP 149.10  
3 *relating to* the potato industry.

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

*Statutes Interpreted:* s. 100.39, Stats. (1989) repealed by 1991 Act 39

*Statutory Authority:* ss. 93.07 and 96.15, Stats.

***Explanation of Agency Authority***

It shall be the duty of the department to make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law. [s. 93.07, Stats.]

The secretary may, in consultation with the appropriate marketing board or council, issue such rules as necessary to facilitate the administration and enforcement of this chapter. [s. 96.15, Stats.]

***Related Statutes and Rules***

Chapter ATCP 149

***Plain Language Analysis***

The Department identified ATCP 149.10 as an obsolete or unnecessary rule in the report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29, Stats.

ATCP 149.10 specifies the process for suspending operations under the potato industry act [s. 100.39, Stats. (1989)]. Section 100.39 (10), Stats. (1989) allowed for operations to be suspended when in the public interest due to a national emergency or other reason deemed meritorious by the secretary. 1991 Wisconsin Act 39 repealed the potato industry act, therefore, this section is obsolete. This rule repeals the obsolete section.

### ***Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations***

There are federal statutes and regulations relating to potato research and marketing. There is a provision for the Secretary to terminate or suspend the operation of a marketing plan when the Secretary finds that the plan or provision obstructs or does not tend to effectuate the declared policy of the Potato Research and Promotion chapter. There are no provisions relating to suspension due to a national emergency or other reason deemed meritorious by the Secretary.

### ***Summary of Public Comments Received on Statement of Scope and a Description of How and To What Extent Those Comments and Feedback Were Taken Into Account in Drafting the Proposed Rule***

The Department held a preliminary public hearing on the Statement of Scope on March 25, 2021 and accepted public comments until April 1, 2021. No one testified or submitted written comments.

### ***Comparison with Rules in Adjacent States***

**Illinois** Illinois does not have rules related to potato marketing.

**Iowa** Iowa does not have rules related to potato marketing.

**Michigan** Michigan does not have rules related to potato marketing.

**Minnesota** Minnesota does have rules related to potato industry promotion. Minnesota rules do not have provisions for suspension based upon a national emergency or other reason deemed meritorious by the Commissioner other than the promotional order being contrary to or not effectuating the provisions of Minnesota Statutes.

### ***Summary of Factual Data and Analytical Methodologies***

The Department reviewed ch. ATCP 149 and identified s. ATCP 149.10 as an obsolete or unnecessary rule in the report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29, Stats. This proposed order repeals the obsolete rule.

### ***Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis***

The rule was posted on the Department's website for economic comments for 14 days and none were received. This proposed order repeals a rule which has been obsolete since 1991 Wisconsin Act 39 repealed the potato industry act and therefore, does not have an effect on small businesses.

***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

***Effect on Small Business***

This proposed rule does not have an economic impact on small business, as defined in s. 227.114 (1), Stats.

The Department's Regulatory Review Coordinator may be contacted by:  
Email at [Bradford.Steine1@wisconsin.gov](mailto:Bradford.Steine1@wisconsin.gov)  
Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

***Department Contact Person***

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***Place Where Comments are to Be Submitted and Deadline for Submission:***

Comments must be received on or before September 2, 2021 to be included in the record of rule-making proceedings. Submit comments:

**By mail to:**

Sharon Henes, Program and Policy Analyst - Advanced  
Division of Agricultural Development  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911

**By email to:** [Sharonm.Henes@wisconsin.gov](mailto:Sharonm.Henes@wisconsin.gov)

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**TEXT OF RULE**

1 SECTION 1. ATCP 149.10 is repealed.

2 SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day  
3 of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22  
4 (2) (intro.), Stats.

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(END OF TEXT OF RULE)

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Dated this 9<sup>th</sup> day of July, 2021

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

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By: Randy Romanski, Secretary-designee