

CR 89-7

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STATE OF WISCONSIN )  
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DEPARTMENT OF AGRICULTURE, ) SS.  
 )  
TRADE & CONSUMER PROTECTION )

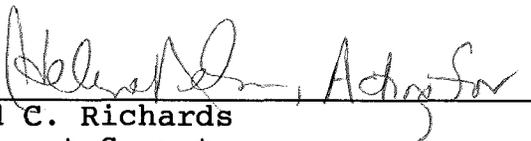
AUG 15 1989  
2:30pm  
Revisor of Statutes  
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Howard C. Richards, Secretary, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the annexed order adopting rules relating to a potato marketing order for the levy and payment of assessments for purposes of financing research, market development, industry communication, and educational programs, and the creation of a marketing board for administration of the marketing order, Chapter Ag 149, Wis. Adm. Code, was duly approved and adopted by the Department on August 11, 1989.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department offices in the City of Madison, this 11th day of August, 1989.

  
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Howard C. Richards  
Department Secretary

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

The department of agriculture, trade and consumer protection adopts the following order to create chapter Ag 149, relating to a potato marketing order, for the levy and payment of assessments for purposes of financing research, market development, industry communication, and educational programs, and the creation of a marketing board for administration of the marketing order.

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

Statutory authority: ss. 96.05 and 96.15, Stats.

Statutes interpreted: ch. 96, Stats.

The Potato Industry Act (s. 100.39, Wis. Stats.) was created in 1973 for the purpose of developing programs to (a) stabilize the potato industry, (b) conduct research which will enhance the production and marketing of potatoes and potato by-products, (c) promote the marketing and growth of the potato industry, and (d) educate the industry on new and improved methods of production and marketing. An assessment check-off rate of \$0.02 per hundredweight is imposed on all growers and shippers within the state. The current Potato Industry Act is administered by the department.

Proposed Chapter Ag 149, Wis. Adm. Code, creates a potato marketing order which restructures the current Potato Industry Board as a Chapter 96, Wis. Stats., marketing board for the purposes of financing potato research, market development, industry communication and educational programs.

Under the proposal, the Wisconsin Potato Industry Board (WPIB) would be administered by a 10-member board incorporated as a non-stock, non-member corporation under ch. 181, Wis. Stats. The board members of the WPIB will be nominated and elected by affected producers of the district in which they reside. The state is divided into five districts with one representative from each of districts 1 and 5, two from district 2, and three each from districts 3 and 4. Elections to the WPIB are for three-year terms. With the approval of the Secretary, the WPIB may reapportion the districts no more frequently than every three years.

All potatoes grown in the state and sold into commercial channels are subject to a 3 cents (\$0.03) per hundredweight assessment. Potatoes exempt from the assessment are those produced by any person whose total acreage in any year is less than five acres or which are used in the household or on the farm of the affected producer. The WPIB may increase the assessment by no more than \$0.01 per hundredweight in any one year and in no event can the total assessment exceed \$0.06 per hundredweight. This proposal does not contain a refund provision.

This proposal may not be adopted, amended or repealed until the Secretary finds that at least 50 percent of the eligible producers have voted in the referendum and that at least 50 percent of those voting have voted in favor of the proposal. The Secretary will suspend operation of the Wisconsin Potato Industry Act pursuant to s. 100.39(10), Wis. Stats., concurrently with the effective date of this administrative rule (marketing order).

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SECTION 1. Chapter Ag 149 is created to read:

Chapter Ag 149  
POTATO MARKETING ORDER

Ag 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. Ag 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. Ag 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.

Ag 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.

Ag 149.03 DISTRICTS. (1) The state shall be divided into 5 districts for purposes of electing affected producers to the potato industry board. The following counties shall initially constitute the respective districts.

(b) District 1. Ashland, Barron, Bayfield, Burnett, Chippewa, Clark, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Lincoln, Marinette, Oneida, Pepin, Pierce, Polk, Price, Rusk, Sawyer, St. Croix, Taylor, Vilas, and Washburn counties.

(a) District 2. Brown, Door, Kewaunee, Langlade, Menomonie, and Oconto counties.

(e) District 3. Marathon, Outagamie, Portage, Shawano, and Waupaca counties.

(d) District 4. Adams, Buffalo, Crawford, Green Lake, Jackson, Juneau, LaCrosse, Marquette, Monroe, Richland, Sauk, Trempealeau, Vernon, Waushara, and Wood counties.

(e) District 5. Calumet, Columbia, Dane, Dodge, Fond du Lac, Grant, Green, Iowa, Jefferson, Kenosha, Lafayette, Manitowoc, Milwaukee, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago counties.

(2) The districts designated in sub. (1) shall exist for at least 3 years after the effective date of this order, after which the potato industry board, with the approval of the secretary, may reapportion the districts to assure fair representation to affected producers. The board may reapportion districts no more frequently than every subsequent 3 year period which coincides with the anniversary of the effective date of this order. No alteration of districts due to reapportionment shall have the

effect of removing a potato industry board member from office during the member's term.

Ag 149.04 POTATO INDUSTRY BOARD. (1) MEMBERSHIP. A potato industry board consisting of 10 affected producers, one each from districts 1 and 5, two from district 2 and three each from districts 3 and 4 is established to administer this order. Board members shall reside in the district they are elected to represent. Board members shall be nominated and elected as prescribed in s. 96.10(1), Stats., and s. Ag 140.20.

(2) TERM OF OFFICE. For the initial election of marketing board members, the terms of office shall be as follows:  
district 1: 1 one year term; district 2: 1 one year term and 1 three year term; district 3 and district 4: 1 one year term, 1 two year term, and 1 three year term in each district; and district 5: 1 three year term. In each district the person receiving the highest number of votes shall receive the longest term of office, in order, until all positions are filled. All subsequent elections to the potato industry board shall be for 3-year terms and may begin with the start of a fiscal year of the potato industry board.

(3) 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 filled 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.

(4) 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.

(5) 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 employes 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. Ag 140.

Ag 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.

Ag 149.06 ASSESSMENTS. (1) For potato sales made during the first year for which this order is effective, each affected producer shall be liable for an assessment of 3 cents (\$0.03) per hundredweight on all potatoes sold into commercial channels. Thereafter, the potato industry board shall annually determine the rate of assessment to be levied and collected. 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 6 cents (\$0.06) 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 are 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.

Ag 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.

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

Ag 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.

Ag 149.10 OPERATIONS UNDER POTATO INDUSTRY ACT SUSPENDED. Pursuant to s. 100.39(10), Stats., and subject to the consent of the potato industry board created under s. 100.39, Stats., operations under s. 100.39, Stats., are suspended on the effective date of this order.

SECTION 2. The rules contained in this order shall take effect subsequent to the election of the marketing board as provided in s. 96.10(1), Stats., on the first day of the month following publication in the Wisconsin administrative register as

provided in s. 227.22(2), Stats., and concurrently with the suspension of operations under the potato industry act (s. 100.39, Stats.) pursuant to s. 100.39(10), Stats.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Howard C. Richards, Secretary

KWM/001/T2  
3/6/89

RECEIVED

AUG 15 1989

CORRESPONDENCE/MEMORANDUM      Revisor of Statutes      State of Wisconsin  
*Department of Agriculture, Trade & Consumer Protection*

*Date:*                    August 14, 1989

*To:*                      Gary Poulson, Revisor of Statutes Office  
                             Room 411 West, State Capitol

*From:*                  James Smith, Administrator, Marketing Division  
                             Wisconsin Department of Agriculture,  
                             Trade & Consumer Protection

*Subject:*                Clearinghouse Rule 89-7, Chapter Ag 149,  
                             Relating to a Potato Marketing Order

Final Regulatory Flexibility Analysis

The proposed rule will not have a significant economic impact on a substantial number of small businesses. The industry has been paying the assessment for fifteen years and the assessment is used to promote the interest of the industry. Therefore, the initial regulatory flexibility analysis becomes the department's final analysis.

Comments from Legislative Committee

The rule was referred to the Senate Agriculture, Health and Human Services Committee on May 16, 1989 and the Assembly Agriculture Committee on May 18, 1989. Neither committee held a hearing on the rule, and the department received no comments from either committee.

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