

Chapter ATCP 151

POTATO MARKETING AGREEMENT

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Note: Chapter Ag 151 was renumbered chapter ATCP 151 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

ATCP 151.01 Definitions. As used in this chapter, unless the context requires otherwise:

(1) “Affected handler” means an individual, partnership, corporation, cooperative or other business entity including a producer-handler, who is engaged in packaging and labeling potatoes in Wisconsin and has assented to the marketing agreement.

(2) “Assent” means a signed statement by affected handlers consenting to the terms of this marketing agreement.

(3) “Damage” means any defect, or any combination of defects, which materially detracts from the edible or marketing quality, or the internal or external appearance of the potato, or any external defect which cannot be removed without a loss of more than 5% of the total weight of the potato.

(4) “Department” means the state of Wisconsin department of agriculture, trade and consumer protection.

(5) “Holding order” means an official order issued by the department prohibiting the sale or shipment of potatoes when the potatoes fail to meet any of the standards of this agreement.

(6) “Marketing agreement assent form” means the document signed by an affected handler which binds the handler to the terms of the marketing agreement.

(7) “Marketing year” means the one-year period beginning July 1 and ending the following June 30.

(8) “Packaging” or “packages” means any bag, box, carton or other container of any size in which potatoes are enclosed.

(9) “Potatoes” means all varieties of *Solanum tuberosum* grown and packaged in the state of Wisconsin and sold or intended to be sold for fresh use or seed stock in commercial channels.

(10) “Secretary” means the secretary of agriculture, trade and consumer protection.

(11) “Serious damage” means any defect, any combination of defects, which seriously detracts from the edible or marketing quality or the internal or external appearance of the potato, or any external defect which cannot be removed without a loss of more than 10% of the total weight of the potato.

(12) “Wisconsin grade” means the official grade standard established under the agreement for any potato or lot of potatoes certified by inspection to meet Wisconsin grade standards.

(13) “Wisconsin seal of quality” means the official seal of quality established under this agreement which affected handlers may use on packages of potatoes certified to meet Wisconsin grade.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.02 Purpose. The objectives of this marketing

agreement are to establish a uniform grading standard for premium quality potatoes grown and packaged in Wisconsin by affected handlers; to require inspection of potatoes sold as Wisconsin grade and identified with the Wisconsin seal of quality; and to promote the orderly and efficient marketing of premium quality Wisconsin potatoes.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.03 Applicability of agreement. (1) **SCOPE.** This marketing agreement is applicable to all potatoes sold in commercial channels or being prepared for sale in packages identifying the potatoes as meeting Wisconsin grade and labeled with the Wisconsin seal of quality, according to the standards of this agreement. The department shall inspect potatoes intended for sale in packages displaying the Wisconsin seal of quality and certify that the potatoes meet the official grade standards and labeling requirements of the agreement.

(2) **EXCLUSIONS.** This marketing agreement does not include potatoes sold for processing.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.04 Marketing agreement contract terms. (1) **INITIAL ASSENT.** A handler may become a party to this agreement by signing a marketing agreement assent form. Any handler who assents to the agreement is an affected handler and thereby becomes subject to the requirements of and is afforded the full rights and privileges of this agreement. A handler may not participate in this agreement unless the handler individually or through a cooperative marketing association signs a marketing agreement assent form.

(2) **RENEWAL.** Assent to the marketing agreement shall automatically renew for a one-year period on each July 1.

(3) **POST-CREATION ASSENT.** Handlers not previously assenting to the agreement may become affected handlers by signing a marketing agreement assent form at any later time during the term of the agreement. Handler assents occurring during the marketing year are renewable for one-year periods on the following July 1.

(4) **WITHDRAWALS.** Affected handlers may withdraw from the agreement by notifying the secretary in writing of their intent to withdraw at least 60 days prior to July 1 of any year.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.05 Official grade; standards; adjustment of standards. (1) **OFFICIAL GRADE; GRADING STANDARDS.** Potatoes under the marketing agreement shall be classified as “Wisconsin grade” potatoes, and shall conform to applicable grading standards under this chapter. Applicable standards may be adjusted as provided in sub. (3), provided that the standards meet or exceed the minimum standards set forth under s. ATCP

151.06. The applicable standards are the minimum standards set forth under s. ATCP 151.06, except as the applicable standards are otherwise adjusted under sub. (3).

(2) **OFFICIAL SEAL OF QUALITY.** The official seal of quality which may be used on packages of potatoes meeting Wisconsin grade shall be referred to as the "Wisconsin seal of quality." The Wisconsin seal of quality shall be used only by affected handlers provided the package complies with applicable labeling requirements under s. ATCP 151.07.

(3) **GRADING STANDARD ADJUSTMENTS.** The secretary, in consultation with the marketing agreement council, may adjust the applicable grading standards for potatoes under the marketing agreement. Applicable grading standards may not be adjusted unless the department determines that at least 50% of the affected handlers who assented to the agreement assent to the proposed adjustment. An adjustment in applicable grading standards may become effective only on July 1 of any year. All affected handlers shall be notified in writing of the adjusted standards at least 60 days before the adjusted standards are scheduled to take effect. Applicable standards shall at all times meet or exceed the minimum standards set forth under s. ATCP 151.06.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.06 Wisconsin grade, minimum standards. (1) **GRADE REQUIREMENTS.** (a) *Fresh use potatoes.* 1. Wisconsin grade potatoes for fresh use shall consist of potatoes which are:

- a. Similar in varietal characteristics in that the potatoes in any lot have the same general shape, color and character of skin, and color of flesh.
- b. Firm in that the potato is not shriveled or flabby.
- c. Fairly clean in that at least 90% of the potatoes in any lot are reasonably free from dirt or staining and not more than a slight amount of loose dirt or foreign matter is present in the container.
- d. Fairly well shaped in that the potato is not materially pointed, dumbbell-shaped or otherwise materially deformed.
- e. Washed.
- f. Slightly skinned, in that not more than 10% of the potatoes in the lot have more than 25% of the skin missing or feathered.
- g. Free of frost damage or any evidence of freezing.
- h. Free of blackheart, late blight, southern bacterial wilt, ring rot, soft rot, and wet breakdown.
- i. Free from damage or serious damage resulting from external or internal defects as determined under standard procedures in the joint federal-state inspection agreement.

2. In order to allow for variations incident to proper grading and handling, not more than a total of 8% by weight of the potatoes in any lot may fail to meet the grade requirements set forth in subd. 1. a., b., d., e., g., h. and i., provided that included in this tolerance not more than the listed percentages shall be allowed for the following defects:

- a. A 5% tolerance for external defects;
- b. A 5% tolerance for internal defects;
- c. A total tolerance of 3% for potatoes which are affected by freezing, southern bacterial wilt, ring rot, late blight, soft rot or wet breakdown, except that not more than one percent of the lot may consist of potatoes which are frozen or affected by soft rot or wet breakdown.

(b) *Seed potatoes.* Wisconsin grade for seed potatoes shall consist of the same grade requirements and tolerances for defects as the Badger State Brand specified in s. ATCP 156.05.

(2) **SIZE REQUIREMENTS.** (a) *Fresh use potatoes.* Wisconsin

grade potatoes for fresh use shall conform to the following applicable size requirements:

1. **Round shape varieties.** Round shape varieties shall have a minimum diameter of 2 inches and a maximum diameter of 4 inches. Lots of potatoes shall contain at least 50% of potatoes which are $2\frac{1}{2}$ inches in diameter or larger or 6 ounces in weight or larger.

2. **Long varieties.** Long varieties shall have a minimum diameter of 2 inches or minimum weight of 4 ounces. Lots of potatoes shall contain at least 30% of the potatoes which are $2\frac{1}{2}$ inches in diameter or larger or 6 ounces in weight or larger.

3. **Potatoes packed in cartons.** a. When size is specified in terms of the customary sizes of potatoes packed to count in standard 50 pound cartons, the potatoes shall meet the weight requirements for each size designation shown in the following table:

**REQUIREMENTS FOR POTATOES
PACKED IN CARTONS**

| Size designation | Weight requirement | |
|------------------|-------------------------|-------------------------|
| | Minimum Weight (Ounces) | Maximum Weight (Ounces) |
| Under 50..... | 15 | |
| 50..... | 12 | 19 |
| 60..... | 10 | 16 |
| 70..... | 9 | 15 |
| 80..... | 8 | 13 |
| 90..... | 7 | 12 |
| 100..... | 6 | 10 |
| 110..... | 5 | 9 |
| 120..... | 4 | 8 |
| 130..... | 4 | 8 |
| 140..... | 4 | 8 |
| Over 140..... | 4 | 8 |

b. In any individual carton, the number of potatoes packed to size shall not vary by more than 5 potatoes above or below the size appearing on the carton for a size of 90 or more. The number shall not vary by more than 4 potatoes above or below the size appearing on the carton for a size of 80 or less.

4. **Size tolerances.** In order to allow for variation incident to proper sizing, not more than 3% by weight of the potatoes in any lot may be smaller than the required or specified minimum size, except that a tolerance of 5% shall be allowed for potatoes packed to meet a minimum diameter requirement of $2\frac{1}{4}$ inches or a minimum weight of 5 ounces. Not more than 10% by weight of the potatoes in any lot may be larger than the required maximum size. Where individual samples are used to determine whether a specified percentage of potatoes in the lot meet the specified sizes for round and long varieties, as provided in this paragraph, each individual sample shall consist of not less than one-half of the percentage specified, provided that the average size for the entire lot is not less than the percentage specified.

(b) *Seed potatoes.* The size requirement and size tolerances shall be the same as for Badger State Brand specified in s. ATCP 156.05.

(3) **APPLICATION OF TOLERANCES.** Individual samples shall have not more than double the tolerances specified, except that at least one defective and off-size potato may be permitted in any sample, provided that the averages for the entire lot are within the tolerances specified in this chapter.

(4) **SAMPLES FOR GRADE AND SIZE DETERMINATION.** Individ-

ual samples shall consist of at least 20 pounds. When individual packages contain at least 20 pounds, each individual sample shall be drawn from one package. When individual packages contain fewer than 20 pounds, a sufficient number of adjoining packages shall be opened to provide at least a 20-pound sample. The total number of potatoes sampled shall vary with the size of the lot in accordance with procedures under the joint federal-state inspection agreement.

(5) **SPROUT INHIBITOR.** Potatoes for fresh use marketed after January 1 of any year shall be treated with sprout inhibitor.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; correction in (1) (b) and (2) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1999, No. 519.

ATCP 151.07 Wisconsin seal; labeling specifications. The Wisconsin seal of quality shall be applied to packages of potatoes which meet Wisconsin grade standards under this agreement in accordance with the following specifications:

(1) **SEAL DESIGN.** The Wisconsin seal of quality shall consist of a simulated "ribbon" award of rectangular shape, in which the vertical dimension is $1\frac{1}{2}$ times longer than the horizontal dimension. The bottom portion of the rectangle shall approximate a 30° isosceles triangle with the bases of the rectangle and triangle coinciding. The words "WISCONSIN POTATOES" shall appear across the upper one-third of the seal in large, bold-faced type and be separated from the bottom two-thirds of the seal by a horizontal line extending across the seal. An outline typifying a potato with the word "Finest" in italic type superimposed on the outline of the potato shall appear in the lower two-thirds of the seal. All type or lettering shall be easily readable and so spaced and designed as to present a symmetrical appearance within the Wisconsin seal of quality as illustrated in the official model set forth below:



The seal illustrated in the official model shall be used for reproduction of the Wisconsin seal of quality in labeling packages of potatoes which meet the Wisconsin grade. Illustrated positions of any segment of the seal may not be altered. Any color or combination of colors may be used in printing the seal.

(2) **SEAL OF QUALITY LABELING REQUIREMENTS.** (a) *Fresh use potatoes.* Potatoes which meet Wisconsin grade requirements under this chapter and are intended for fresh use sale shall be labeled with the Wisconsin seal of quality which shall conform to the following dimensional requirements:

1. Bags or cartons. The seal of quality on bags or cartons of potatoes may be of any size.

2. Size and area limitations. The seal of quality may be used on the top, bottom, front, back or side panels of the package. The

area covered by the seal or the combined area of multiple seals appearing on a package shall not exceed 20% of the total package area. Only one seal may appear on any single panel.

(b) *Seed potatoes.* The Wisconsin seal of quality shall meet the design requirements of sub. (1) and may only be affixed to the official inspection certificates for seed potatoes.

(3) **PACKAGE LABELING.** When potatoes intended for fresh use meet Wisconsin grade standards and are labeled under this section, the affected handler shall imprint the Wisconsin seal of quality without embellishment on the bags or cartons in which the potatoes are to be packaged, or affix to the package at the time of inspection an adhesive label bearing the Wisconsin seal of quality. No supplementary labels bearing the Wisconsin seal of quality other than labels authorized under this subsection may be affixed to packages of potatoes, and no handler may incorporate the Wisconsin seal of quality as the principal part of a private label or brand. Packages bearing the Wisconsin seal shall identify the commodity as potatoes meeting Wisconsin grade and include the name and business address of the affected handler. It is the responsibility of each affected handler to ensure that the packaging requirements of this agreement are met.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; am. (3), Register, September, 1985, No. 357, eff. 10-1-85.

ATCP 151.08 Inspection and certification. (1) **GENERAL.** Potatoes may not be sold in packages labeled with the Wisconsin seal of quality and identified as potatoes meeting Wisconsin grade, unless they have been officially inspected by the department and official certificates have been issued showing the potatoes conform to the standards and requirements specified in the agreement, including grade standards, labeling requirements and inspection and certification requirements.

(2) **INSPECTION.** Inspection of potatoes under this agreement shall be made by the department under the U.S.D.A.-Wisconsin joint federal-state inspection agreement. All lots of potatoes shall be inspected at the point of loading or shipment. Inspection of potatoes shall be made according to standard procedures under the joint federal-state agreement.

(3) **REQUEST FOR INSPECTION.** Affected handlers intending to package potatoes in packages labeled with the Wisconsin seal of quality shall request the department to provide inspection services under this agreement. Priority for inspection services shall be given first to affected handlers who are under shipping point contractual arrangements of the joint federal-state agreement, and then to other affected handlers in the order in which requests for inspection services are received.

(4) **ISSUANCE OF CERTIFICATES.** Official certificates shall be issued by department inspectors, and be based on a determination that the lot of potatoes under inspection meets the standards and requirements specified in the agreement. Potatoes certified as Wisconsin grade shall be loaded for shipment within 24 hours after inspection and issuance of the certificate or within 48 hours if the 24-hour period ends on a Saturday, Sunday or legal holiday. Potatoes not loaded within 24 hours shall be reinspected for compliance with Wisconsin grade standards, unless the 48 hours rule applies. Affected handlers shall keep copies of certificates issued by the department for a period of 2 years after the date of issuance. In the issuance of inspection certificates, the department makes no express or implied warranties as to the disease-free status of the potatoes, but certifies only that at the time of inspection the sample potatoes in each lot conformed to the quality standards and requirements of this marketing agreement.

(5) **CERTIFICATE CONTENTS.** The certificate issued by the department after inspecting each lot shall contain the following:

(a) Name and address of affected handler;

- (b) Volume of potatoes in the inspected lot;
- (c) Date on which the certificate was issued;
- (d) Brand or trade name found on the packages of potatoes;
- (e) A statement indicating the potatoes meet the standards of this agreement;
- (f) License number of truck-trailer or identification number of the railroad car on which potatoes are shipped.

(6) **SHIPMENTS.** Shipments of potatoes under the agreement shall be accompanied by a copy of the official certificate covering the inspected lot and shall be attached to bills of lading or other shipping documents.

(7) **FAILURE TO MEET STANDARDS.** (a) The department may issue a holding order, pursuant to s. 97.12 (2), Stats., to prevent the shipment of potatoes which are labeled with the Wisconsin seal of quality, but which violate any standards of the marketing agreement and are misbranded under s. 97.03, Stats. The holding order shall prohibit the shipment or sale of the lot of potatoes identified in the order until the violation has been cured to the satisfaction of the department. The holding order shall specify the nature of the violation; whether the violation may be corrected; and, if the violation cannot be corrected, the manner in which the potatoes may be disposed. Potatoes subject to a holding order shall not be sold or shipped for any purpose, except as authorized by the department.

(b) An affected handler receiving a holding order shall:

1. Correct the violation to the satisfaction of the department, if possible;
2. Re-sort and repackage the potatoes so as to comply with the marketing agreement standards; or
3. Dispose of the potatoes in any manner authorized by the department.

(c) An affected handler after receiving a holding order shall have 7 days from the date of issue to certify in writing and document to the department the manner in which the violation has been corrected, or in which the disposal of the affected potatoes has been carried out. Failure of the handler to provide certification and documentation within the time specified constitutes a violation of the agreement.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84; correction in (5) made under s. 13.93 (2m) (b) 1., Stats., Register, September, 1999, No. 525.

ATCP 151.09 Administration. (1) **SECRETARY.** The department shall provide services for the administration of the marketing agreement, including:

- (a) Establishing a marketing agreement council to assist in the administration of this agreement.
- (b) Determining a fee schedule and procedures for collecting and depositing fees due.
- (c) Providing for inspection services.
- (d) Determining compliance with the agreement.
- (e) Enforcing provisions of the agreement, subject to the discretion of the secretary.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.10 Marketing agreement council. (1) **MEMBERSHIP.** A marketing agreement council consisting of 7 persons appointed by the secretary is established to assist in the administration of the agreement. Composition of the council shall be 5 affected handlers, one board member of and named by the potato industry board, and one member of the board of directors of and named by the Wisconsin potato and vegetable growers association.

(2) **TERM OF OFFICE.** The term of office of the 5 affected handler members shall be for staggered 3 year terms. The initial term

of office shall commence with the effective date of this agreement and end on the date corresponding with the end of the marketing year. The initial terms of the affected handler members shall be 3 years for 2 members, 2 years for one member, and one year for 2 members. Terms of office for council members from the potato industry board and the Wisconsin potato and vegetable growers association shall be for one year. Council members appointed as affected handlers may not serve more than one consecutive 3-year term, and council members appointed from the potato industry board and the Wisconsin potato and vegetable growers association may not serve more than 3 full terms in succession. All members shall serve until their successors have been appointed.

(3) **DUTIES.** The duties of the marketing agreement council shall include the following:

- (a) Recommend to the secretary administrative rules relating to this agreement.
- (b) Receive and report to the secretary complaints of violations of this agreement.
- (c) Recommend to the secretary amendments to this agreement.
- (d) Advise the secretary in the collection of such information and data as the secretary deems necessary for the proper administration of the agreement.
- (e) Recommend to the secretary methods by which administrative costs of the marketing agreement can be recovered.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.11 Fees. (1) **GENERAL.** Each year the secretary shall, in consultation with the marketing agreement council, establish a schedule of fees and provide for the collection of fees to compensate the department for all expenses incurred in administering the agreement. Fees shall be limited to amounts necessary to cover costs of administrative services, including inspection services provided for under the agreement, and an adequate level of reserves. The secretary may use a fee schedule consisting of fixed and variable components in order to ensure recovery of the costs of administration. The secretary shall notify affected handlers of the schedule of fees to be in effect for the next year at least 60 days prior to the beginning of the marketing year.

(2) **INITIAL YEAR FEES.** For the first marketing year in which the marketing agreement is effective, each affected handler shall be liable to pay the fee of $\frac{1}{2}$ cent (\$0.005) per hundredweight on all potatoes inspected for the standards of the agreement. This fee shall be in addition to the inspection fee established by the department under the joint federal-state inspection agreement. Fees shall be due at the time of inspection and payable according to the terms of the joint federal-state inspection agreement. In subsequent years, each affected handler shall be liable to pay the established fee in the manner prescribed by the secretary.

(3) **FIXED FEES.** If the secretary establishes a fixed component of the fee, that component may be due and payable in full or in installments at the dates determined by the secretary, provided that the notice required in sub. (1) has been given to affected handlers. Fees due shall be determined on the basis of certificates of inspection.

(4) **ACCOUNTING.** The secretary shall provide to each affected handler within 90 days after the end of each marketing year, an itemized accounting of all expenses incurred by the department in administering the agreement.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.12 Records and reports. Each affected handler shall maintain accurate records and accounts of all potatoes sold in commercial channels. Records shall include, but may

not be limited to, names and addresses of buyers to whom potatoes were sold, quantities of potatoes sold, inspected, and certified to meet Wisconsin grade, and copies of certificates issued by the department. Each affected handler shall maintain and submit reports to the secretary as the secretary may require as often as necessary to ensure compliance with this agreement and the proper collection of fees.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.13 Audits. The department may audit records of affected handlers or their agents and producers as necessary to determine compliance with this agreement. Audits may be conducted by the department on a routine basis or in response to or on the basis of complaints.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.14 Prohibited acts. (1) MISBRANDING. No affected handler may sell, nor any other person may sell, offer for sale, have in possession with intent to sell, advertise, label, or otherwise represent potatoes in packages labeled with the Wisconsin seal of quality which are not officially inspected by the department and certified to meet the standards of this agreement.

(2) APPLICATION OF SEAL. No person may identify packages of potatoes as meeting Wisconsin grade without also applying the Wisconsin seal of quality.

(3) NONRESIDENT SALES. Nonresident handlers may not place potatoes in packages labeled with the Wisconsin seal of quality or Wisconsin grade.

(4) IMPROPER USE OF SEAL. No person may incorporate the Wisconsin seal of quality or the Wisconsin grade as the principal part of any private label or brand.

(5) ALTERATION OF SEAL. No person may mark, scratch, deface, or otherwise attempt to obliterate the Wisconsin seal of quality on any package or container of potatoes.

(6) MISREPRESENTATION. No person may engage in any act or practice or make any representation in selling potatoes which has the tendency or capacity to mislead any purchaser or consumer with respect to potatoes meeting Wisconsin grade requirements, or packages of potatoes bearing the Wisconsin seal of quality.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.

ATCP 151.15 Enforcement. (1) COMPLIANCE. (a) The secretary shall monitor the payment of fees collected from affected handlers and compliance with and enforcement of the agreement.

(b) For the purpose of enforcing the agreement, the department and its agents shall have access at reasonable hours to any packing shed, warehouse or establishment in which potatoes are held for sale, or to enter any vehicles being used to transport or hold potatoes, in order to inspect packages of potatoes affected by this agreement.

(2) VIOLATIONS. Any person who violates a provision of this marketing agreement is subject to the penalties in s. 96.17, Stats.

History: Cr. Register, October, 1984, No. 346, eff. 11-1-84.