



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary-designee Randy Romanski

DATE: July 9, 2021

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary-designee
Krista Knigge, Administrator, Division of Agricultural Development

SUBJECT: ATCP 149, (Potato Industry)

PRESENTED BY: Sharon Henes, Program Policy Analyst, Division of Agricultural Development

REQUESTED ACTION:

At the July 22, 2021, Board meeting, the Department will request approval of a preliminary rule draft, regarding ch. ATCP 149 relating to the potato industry in order for the Department to submit the preliminary rule draft to the Legislative Council Rules Clearinghouse and for the Department to hold a public hearing on the proposed rule.

SUMMARY:

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.

Section 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public interest due to a national emergency or other reason deemed meritorious by the secretary. 1991 Wisconsin Act 39 repealed the potato industry act, therefore, this section is obsolete.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.

The Department will hold a public hearing on the preliminary rule draft on August 26, 2021.

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

PROPOSED ORDER

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

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 (1989) repealed by 1991 Act 39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
Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

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
(608) 381-2808
Sharonm.Henes@wisconsin.gov

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

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.

(END OF TEXT OF RULE)

Dated this 9th day of July, 2021

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION



By: Randy Romanski, Secretary-designee

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 6 July 2021</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 149.10</p>	
<p>4. Subject Potato Industry</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule Section ATCP 149.10 specifies the process for suspending operations under the potato industry act. 1991 Wisconsin Act 39 repealed the potato industry act, therefore, this section is obsolete. This rule repeals the obsolete section.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. This rule was posted on the Department website for 14 days to obtain economic impact comments and none were received.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This rule does not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the State's Economy as a Whole.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is to remove an obsolete provision. The alternative is to retain the rule which creates confusion when there are references to a repealed statutory provision.</p>	
<p>16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is statutory compliance.</p>	
<p>17. Compare With Approaches Being Used by Federal Government 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.</p>	

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
Minnesota has rules related to potato industry promotion, however, Minnesota does not have a provision for suspension based upon a national emergency or other reason deemed meritorious by the Commissioner other than the promotional order being contrary to or does not effectuate the provisions of Minnesota Statutes. Illinois, Iowa and Michigan do not have rules related to potato marketing.

19. Contact Name Sharon Henes	20. Contact Phone Number (608) 381-2808
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject: Potato Industry
Admin. Code Reference: ATCP 149.10
Rules Clearinghouse #:
DATCP Docket #: 21-R-01

Rule Summary

ATCP 149.10 specifies the process for suspending operations under the potato industry act. 1991 Wisconsin Act 39 repealed the potato industry act, therefore, this section is obsolete. This rule repeals the obsolete section.

Small Business Affected

This is a technical change removing an obsolete provision. No small businesses are affected.

Proposed Reporting, Bookkeeping, and Other Procedures Required for Compliance

The proposed rule does not create any new reporting, bookkeeping, or other procedural requirements for compliance with the rule.

Professional Skills Necessary for Compliance

The proposed rule does not create any new professional skill requirements for compliance with the rule.

Accommodation for Small Business

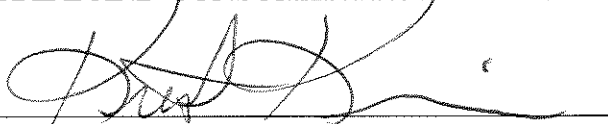
No accommodations for small business will be necessary for the proposed rule.

Conclusion

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

Dated this 6th day of July, 2021

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION


By: Krista Knigge, Administrator
Division of Agricultural Development

**State of Wisconsin
Department of Agriculture, Trade and Consumer Protection**

NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

The Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a permanent rule for ATCP 149 relating to the potato industry, at the time and place shown below.

Hearing Date and Location:

DATE: Thursday, August 26, 2021

TIME: 2:00 p.m.

LOCATION: Prairie Oaks State Office Building, Room 106
2811 Agriculture Drive
Madison, Wisconsin 53708

Appearances at the Hearing and Submittal of Written Comments:

Comments may be submitted to Sharon Henes, Program Policy Analyst – Advanced, Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708-8911 or by email to Sharonm.Henes@wisconsin.gov. Comments must be received by September 2, 2021 to be included in the record of rule-making proceedings.

The rule may be reviewed and comments made at: <https://docs.legis.wisconsin.gov/code/chr/hearings>. You may also obtain a copy by contacting the division program policy analyst, Sharon Henes, at Sharonm.henes@wisconsin.gov or by calling (608) 381-2808.

Hearing-impaired persons may request accommodation for this hearing. Please make reservations by August 23, 2021, by writing, calling, or emailing the program policy analyst, Sharon Henes.

Initial Regulatory Flexibility Analysis

The rule does not have an economic impact on small business, as defined in s. 227.114 (1), Stats. The Initial Regulatory Flexibility Analysis is attached.

Agency Small Business Regulatory Coordinator

Bradford Steine, Bradford.Steine1@wisconsin.gov, (608) 224-5024

Dated this 9th day of July, 2021

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION



By _____
Randy Romanski, Secretary-designee