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Details:

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**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2005-06**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on ... Agriculture (AC-Ag)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                      (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

- 1 1. "F" means foundation seed potatoes.
- 2 2. "Ex" means experimental foundation seed potatoes.
- 3 3. "Certified" means certified seed potatoes other than foundation seed potatoes.
- 4 4. In each column, classifications are listed from highest (top) to lowest (bottom).

5 (2) CLASSIFICATION BASED ON YEARS OF FIELD PROPAGATION. (a) Except as  
6 provided in sub. (3), the college may not do any of the following:

7 1. Certify, under the standard classification, seed potatoes from a line with more  
8 than 7 generations of field propagation.

9 2. Certify, under the experimental classification, seed potatoes from a line with  
10 more than 3 generations of field propagation. The college shall classify the first field-  
11 propagated generation as "Ex5."

12 **NOTE:** "Field propagation" does not include outdoor production of propagative  
13 material at a breeding farm, prior to time that the college approves that  
14 propagative material under s. ATCP 156.03(1)(f) for use at a seed potato  
15 farm. See s. ATCP 156.01(10)(b).

16  
17 (b) The college shall downgrade the classification of certified seed potatoes by  
18 one step for each year of field propagation, except that no potatoes may be certified as  
19 foundation seed potatoes unless they meet the standards under s. ATCP 156.03.

20 **NOTE:** Pathogen populations in seed potatoes normally increase with each year  
21 (generation) of field propagation. Under the standard classification  
22 system, seed potatoes may be certified for up to 6 generations as  
23 "foundation" seed potatoes (for use as seed for other certified seed  
24 potatoes). The 7<sup>th</sup> generation may be certified as seed for commercial  
25 potatoes, but *not* for growing other *certified seed potatoes*.

26  
27 Seed potatoes are normally downgraded by one step for each year of field  
28 propagation. But if they fail to meet standards under s. ATCP 156.03(5)  
29 for "foundation" seed potatoes, they must be downgraded to "certified"  
30 class even if they have been propagated in the field for fewer than 7 years.  
31 If they fail to meet the basic standards for certification under s. ATCP  
32 156.03, they may not be certified at all.

1  
2 (c) Foundation seed potatoes certified by another state shall be treated as having  
3 an equivalent classification under *Table 3* based on years of field propagation. If the seed  
4 potatoes do not bear a classification showing the year of field propagation, they shall be  
5 treated as FY5.

6 **NOTE:** Under s. ATCP 156.03(1)(e), foundation seed potatoes certified by  
7 another state may be used to grow certified seed potatoes in this state if the  
8 other state uses equivalent certification standards and the college pre-  
9 approves the use.

10  
11 **(3) CLASSIFICATION RENEWAL.** (a) The college may grant one of the following  
12 classification renewals one time for any line of certified seed potatoes:

13 1. The college may classify, as “FY5” rather than “certified,” certified seed  
14 potatoes produced from seed potatoes classified as “FY6.”

15 2. The college may classify, as “Ex5” rather than “certified,” certified seed  
16 potatoes produced from seed potatoes classified as “Ex6.”

17 **NOTE:** Among other things, a classification renewal under par. (a) may allow  
18 continued production of a minor or experimental variety for which there  
19 may be a limited seed supply. A renewal gives seed potato growers  
20 another 3 years to find a new seed source for that variety.

21  
22 (b) The college may grant a classification renewal under par. (a) if all of the  
23 following apply:

24 1. The seed potato grower requests the renewal in writing, and submits  
25 information to justify the renewal.

26 **NOTE:** For example, the seed potato grower may document favorable test  
27 results, “tuber unit planting,” a limited supply of a special variety, or other  
28 conditions that may warrant the renewal. “Tuber unit planting” means  
29 cutting seed potatoes into pieces and planting the pieces together in the  
30 field in such a way that if any progeny plants from any tuber are diseased  
31 or off-variety, all progeny from that tuber will be identified and discarded.  
32

1           2. The college finds that the seed potatoes affected by the renewal meet all of the  
2 certification standards under s. ATCP 156.03.

3           3. The college finds that the renewal will not jeopardize seed potato quality, or  
4 pose a significant risk of harm to the potato industry or consumers.

5           (c) The college may require laboratory tests on a representative sample of any  
6 seed potatoes for which a seed potato grower requests a classification renewal under par.

7 (a).

8           **ATCP 156.06 Storage and handling of certified seed potatoes. (1) STORAGE**  
9 **WITH OTHER POTATOES PROHIBITED. No person may store** certified seed potatoes in the  
10 same storage facility with uncertified seed potatoes, except that a person may store lots of  
11 certified seed potatoes in the same facility with any of the following:

12           (a) Lots of seed potatoes that have been proposed for certification.

13           (b) Lots of seed potatoes that have been rejected for certification solely because  
14 of unacceptable virus levels.

15           **NOTE:** Viruses, unlike bacteria or nematodes, cannot spread from tuber to tuber  
16 in storage.

17  
18           **(2) VARIETIES MAY NOT BE COMMINGLED.** No person may store, in the same bin  
19 or container, certified seed potatoes from more than one variety.

20           **(3) CLEAN AND DISINFECTED STORAGE FACILITIES.** No person may store certified  
21 seed potatoes in a facility previously used to store potatoes other than certified seed  
22 potatoes, unless all of the following first occur:

23           (a) The person cleans and disinfects the storage facility according to college  
24 specifications.

1 (b) The college inspects the storage facility, and posts in the facility a dated  
2 written notice certifying that the storage facility has been cleaned and disinfected to  
3 college specifications.

4 (4) LABELING STORAGE BINS. A person storing certified seed potatoes shall  
5 clearly label each storage bin with the bin measurements, the name of the seed potato  
6 grower, the potato variety, and the source of the foundation seed potatoes or other  
7 propagative material used to produce the certified seed potatoes.

8 (5) SHIPMENTS PROTECTED. Certified seed potatoes and other propagative  
9 material shall be protected from deterioration and contamination during shipment. The  
10 college may disqualify propagative material from use under s. ATCP 156.03(1) if the  
11 college finds that shipping methods do not comply with this subsection.

12 **ATCP 156.07 Approved laboratory or greenhouse. (1) LABORATORY OR**  
13 **GREENHOUSE IN THIS STATE.** The college may approve a laboratory or greenhouse in this  
14 state, for purposes of s. ATCP 156.03(1)(d), if all of the following apply:

15 (a) The college first inspects the laboratory or greenhouse facilities, equipment,  
16 procedures and records before granting approval for production of propagative material.

17 (b) The college inspects all greenhouse-produced minitubers at least once during  
18 their growth, and at least once at harvest or in storage, prior to shipment and field  
19 planting.

20 (c) In the preparation and distribution of propagative material, the laboratory or  
21 greenhouse uses testing, propagation, isolation and sanitation procedures approved by the  
22 college.

1 (d) The initial tissue culture plantlets or other propagative material used for  
2 laboratory propagation is tested for all pathogens of concern using methods approved by  
3 the college.

4 (e) The operator of the laboratory or greenhouse does all of the following:

5 1. Applies to the college for approval, and provides information reasonably  
6 required by the college for purposes of evaluation and approval under this subsection.

7 2. Agrees to pay the college's reasonable costs to inspect, evaluate and approve  
8 the laboratory or greenhouse under this subsection.

9 3. Keeps complete records of laboratory or greenhouse operations, and makes the  
10 records available to the college for inspection upon request.

11 4. Keeps complete and accurate records of all propagative materials distributed  
12 for use in the production of certified seed potatoes. Records shall include the applicable  
13 college approval under s. ATCP 156.03(1)(d), the potato variety, the type of propagative  
14 material, the amount of propagative material produced and distributed, the date of each  
15 shipment, the name and address of the person receiving each shipment, and a complete  
16 record of all disease tests on the propagative material.

17 5. Labels propagative material as directed by the college, consistent with this  
18 chapter.

19 **(2) LABORATORY OR GREENHOUSE OUTSIDE THIS STATE.** The college may  
20 approve a laboratory or greenhouse in another state, for purposes of s. ATCP 156.03, if  
21 the seed potato certification agency in the other state approves that laboratory or  
22 greenhouse based on standards and procedures equivalent to the standards and procedures  
23 in sub. (1).

1           **ATCP 156.08 Review of college actions. (1) REQUEST FOR MEETING TO REVIEW**  
2 ACTION. A person adversely affected by an action of the college under this subchapter,  
3 including an action denying or withdrawing any certification or approval under this  
4 subchapter, may make a written request for an informal meeting with the college to  
5 discuss the action.

6           **(2) MEETING TO REVIEW ACTION.** (a) If the college receives a written request  
7 under sub. (1), a representative designated by the college shall hold an informal meeting  
8 with the requester. The college shall hold the informal meeting within 30 days after it  
9 receives the written request, unless the requester agrees to a later meeting date. The  
10 meeting may be held in person or by telephone.

11           (b) At the informal meeting under par. (a), the college may explain the basis for  
12 its action. A requester may also present information or arguments related to the action.

13           **(3) REVIEW BY THE DEPARTMENT.** (a) If a disputed matter under sub. (1) is not  
14 resolved after a meeting under sub. (2), the person who requested the meeting may  
15 request a contested case hearing before the department, pursuant to s. 227.42, Stats., and  
16 ch. ATCP 1. The person shall make the request under s. ATCP 1.06, as if the person  
17 were requesting a hearing on a department action. The department shall grant or deny the  
18 hearing request as provided in s. ATCP 1.06(3).

19           (b) Following a contested case hearing under ch. 227, Stats., and ch. ATCP 1, the  
20 department may reverse, modify or remand an action of the college under this subchapter  
21 if the department finds that the action is contrary to this subchapter. The department may  
22 not reverse, modify or remand an action of the college if the college has acted within the  
23 scope of its discretion under this subchapter.

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**SUBCHAPTER III**  
**GRADING**

**ATCP 156.10 Grading certified seed potatoes; general. (1) GRADING BY**

DEPARTMENT. At the request of a seed potato grower, the department may grade a lot of seed potatoes that the college has certified under s. ATCP 156.02(1). The department shall grade the lot according to this subchapter, based on a grading inspection under sub. (5). The department may not grade the lot until the college issues its certification in writing under s. ATCP 156.02(3).

**(2) GRADE ASSIGNMENT.** Whenever the department grades a lot of certified seed potatoes under sub. (1), the department shall assign that lot a grade under sub. (3). The department may refuse to assign a grade if the lot fails to comply with any of the grade standards under sub. (3). The department shall do all of the following whenever the department assigns a grade to a lot:

(a) Issue to the seed potato grower a grade certificate that includes all of the following:

1. A unique identification number for the graded lot.

*NOTE: A graded lot may be a subset of a lot certified by the college under subch. II.*

2. The identity of the seed potato grower.

3. A description of the graded lot. The description shall include the potato variety and shall identify the storage bin, container or conveyance in which the potatoes were held when graded.

4. A copy of the tag issued by the college under 156.02(3m).



1           5. The identification numbers of the department seals issued for the graded lot  
2 under par. (b).

3           (b) Issue an appropriate number of seals for the graded lot. Each seal shall bear  
4 an identification number that is unique to that seal. The seed potato grower may use the  
5 seals to attach certification tags, issued by the college under s. ATCP 156.02(3)(a), to  
6 seed potato shipments from the graded lot. Certification tags shall be those issued for the  
7 certification lot from which the graded lot originates.

8           **NOTE:** The issuance of the seal does not necessarily mean the department  
9                       actually seals the bag, tote, bin, truck or other container of inspected  
10                      potatoes. In many cases, the potatoes are handled by other persons after  
11                      the department inspects the potatoes and before they are delivered to the  
12                      customer.

13  
14           **(3) GRADES AND GRADE STANDARDS.** The following grades of certified seed  
15 potatoes shall meet the following grade standards:

16           (a) *Badger state brand.* Badger state brand potatoes shall meet the grade  
17 standards in s. ATCP 156.12.

18           (b) *Yellow tag brand.* Yellow tag brand potatoes shall meet the grade standards  
19 in s. ATCP 156.13.

20           (c) *Badger state foundation brand.* Badger state foundation brand potatoes shall  
21 meet the grade standards in s. ATCP 156.14.

22           (d) *Yellow tag foundation grade.* Yellow tag foundation grade potatoes shall  
23 meet the grade standards in s. ATCP 156.15.

24           **(4) REQUEST FOR GRADING.** A seed potato grower shall make a grading request  
25 under sub. (1) in writing, on a form provided by the department. The requester shall

1 agree to pay the department's reasonable grading costs, as determined by the department.

2 A grading request may cover 2 or more lots of seed potatoes.

3 **NOTE:** To obtain the form required under sub. (4), a seed potato grower may do  
4 any of the following:

- 5
- 6 • Visit the department's website at [www.datcp.state.wi.us](http://www.datcp.state.wi.us).
- 7 • Call the department's fruit and vegetable inspection office at
- 8 715/345-5212.
- 9 • Call the department's Bureau of Business Trade Practices at
- 10 608/224-4998
- 11

12 **(5) GRADING INSPECTION.** The department shall grade a lot of certified seed  
13 potatoes based on visual inspection of one or more samples of potatoes selected from that  
14 lot. The department shall select samples that appear to be visually representative of the  
15 lot. Each sample shall include at least 20 pounds of potatoes and the number of  
16 individual samples from each lot may vary with the size of the lot. Tolerances for size  
17 and defects shall be calculated on the basis of weight. The department shall inspect  
18 enough samples to obtain a reliable representation of the lot.

19 **(6) APPLYING TOLERANCES.** (a) The occurrence rate for a defect or size violation  
20 in a graded lot, determined as an average of the occurrence rates for each of the samples  
21 selected under sub. (5) from the graded lot, may not exceed the applicable tolerance  
22 specified under s. ATCP 156.12 or 156.13.

23 (b) Within an individual sample selected under sub. (5) from a graded lot, except  
24 as provided in par. (c) or (d):

25 1. No defect or size violation may occur at a rate that is more than 1.5 times the  
26 applicable tolerance specified in s. ATCP 156.12 or 156.13 if that tolerance is more than  
27 10%.

1           2. No defect or size violation may occur at a rate that is more than twice the  
2 applicable tolerance specified in s. ATCP 156.12 or 156.13 if that tolerance is 10% or  
3 less.

4           (c) Within an individual sample selected under sub. (5) from a graded lot:

5           1. The rate of sprout damage may not exceed the applicable sprout damage  
6 tolerance specified in s. ATCP 156.12 or 156.13.

7           2. There may be no more than one off-size potato and one defective potato.

8           (d) Potatoes damaged by freezing, soft rot or wet breakdown may not occur, at  
9 more than 3 times the applicable tolerance specified in s. ATCP 156.12 or 156.13, in  
10 more than one-tenth of the samples selected under sub. (5) from a graded lot.

11           **ATCP 156.11 Defects. (1) EXTERNAL DEFECTS.** External defects in a certified  
12 seed potato include the following:

13           (a) Deep air cracks that penetrate beyond the vascular ring.

14           (b) Shallow air cracks that materially detract from the appearance of the potato.

15           (c) Second growth or growth cracks that materially detract from the appearance  
16 of the potato.

17           (d) Brown or dark skin discoloration that materially detracts from the appearance  
18 of the potato.

19           (e) Shriveling, sponginess or flabbiness, except minor shriveling.

20           (f) A sprout over one inch long.

21           (g) One or more scabs that together cover more than 5% of the potato surface.

22 Scabs may include pitted scabs.

23           (h) Pitted scab that causes a loss of more than 5% of the weight of the potato.

1 (i) Rhizoctonia that materially detracts from the appearance of the potato.

2 (j) Wireworm or grass damage that includes any of the following:

3 1. In a potato that is at approximately 2½ inches wide or weighs approximately 6  
4 ounces, a hole more than ¾ inch long or multiple holes with an aggregate length of more  
5 than 1¼ inch.

6 2. Proportionately smaller or larger holes in a smaller or larger potato.

7 (k) A more than slight amount of dirt or foreign matter adhering to the potato, or  
8 present in the sample of potatoes.

9 (2) INTERNAL DEFECTS. Internal defects in a certified seed potato include the  
10 following:

11 (a) Ingrown sprouts, if removal causes a loss of more than 5% of the weight of  
12 the potato.

13 (b) Internal discoloration, occurring entirely within the vascular ring, which  
14 includes any of the following:

15 1. In a potato that is at approximately 2½ inches wide or weighs approximately 6  
16 ounces, the equivalent of 3 scattered light brown spots 1/8 inch in diameter.

17 2. A proportionately smaller or larger number or size of spots in a smaller or  
18 larger potato.

19 (c) Internal discoloration located or extending outside of the vascular ring, if  
20 removal causes a loss of more than 5% of the weight of the potato.

21 (3) DEFECTS CONSTITUTING SERIOUS DAMAGE. The following defects constitute  
22 serious damage:

23 (a) Caked dirt covering more than ½ of the potato.

1 (b) Brown or dark skin discoloration that seriously detracts from the appearance  
2 of the potato.

3 (c) Excessive shriveling, sponginess or flabbiness.

4 (d) One or more scabs that together cover more than 50% of the potato surface.  
5 Scabs may include pitted scabs.

6 (e) Pitted scab that causes a loss of more than 10% of the weight of the potato.

7 (f) Wireworm or grass damage that includes any of the following:

8 1. In a potato that is at approximately 2½ inches wide or weighs approximately 6  
9 ounces, a hole more than 1¼ inches long or multiple holes with an aggregate length of  
10 more than 2 inches.

11 2. Proportionately smaller or larger holes in a smaller or larger potato.

12 (g) Ingrown sprouts, if removal causes a loss of more than 10% of the weight of  
13 the potato.

14 (h) Internal discoloration, occurring entirely within the vascular ring, which  
15 includes any of the following:

16 1. In a potato that is at approximately 2½ inches wide or weighs approximately 6  
17 ounces, the equivalent of 6 scattered light brown spots 1/8 inch in diameter.

18 2. A proportionately smaller or larger number or size of spots in a smaller or  
19 larger potato.

20 (i) Internal discoloration located or extending outside of the vascular ring, if  
21 removal causes a loss of more than 10% of the weight of the potato.

1           **ATCP 156.12 Badger state brand. (1) GRADE REQUIREMENTS.** To qualify for  
2 the badger state brand, a lot of certified seed potatoes shall meet all of the following  
3 requirements:

4           (a) The college shall certify the lot under subchapter II.

5           (b) All potatoes in the lot shall be of the same variety, subject to a tolerance of  
6 0.25% for varietal mixture. The tolerance shall be applied according to s. ATCP  
7 156.10(6).

8           (c) All potatoes in the lot shall comply with size standards in subs. (2) to (4),  
9 subject to tolerances specified in subs. (2) to (4). Tolerances shall be applied according  
10 to s. ATCP 156.10(6).

11           (d) All potatoes in the lot shall be fairly well shaped.

12           (e) No potatoes in the lot may be frozen at the time of inspection.

13           (f) The lot shall be free of all the following:

14           1. Blackheart.

15           2. Bacterial ring rot.

16           3. Nematode or tuber moth injury.

17           4. Defects in excess of tolerances specified in sub. (5). Tolerances shall be  
18 applied according to s. ATCP 156.10(6).

19           5. Other damage.

20           **NOTE:** See definition of “damage” in s. ATCP 156.01(4). “Damage” includes,  
21 but is not limited to, “serious damage” as defined in s. ATCP 156.01(31).  
22

23           **(2) MINIMUM DIAMETER.** (a) Except as provided in par. (b), not more than 3% of  
24 the potatoes in any lot of badger state brand certified seed potatoes may have a diameter

1 smaller than 1 ½ inches or, if the seller guarantees a different minimum diameter, the  
2 minimum diameter guaranteed.

3 (b) If a seller guarantees a minimum diameter under par. (a) of at least 2¼ inches,  
4 not more than 5% of the potatoes in the lot may have a diameter that is smaller than the  
5 guarantee.

6 (3) MINIMUM WEIGHT. (a) Except as provided in par. (b), not more than 3% of  
7 the potatoes in any lot of badger state brand certified seed potatoes may have a weight  
8 less than the minimum weight, if any, guaranteed by the seller.

9 (b) If a seller guarantees a minimum weight under par. (a) of at least 5 ounces,  
10 not more than 5% of the potatoes in the graded lot may have a weight that is less than the  
11 guaranteed minimum.

12 (4) MAXIMUM SIZE. Not more than 10% of the potatoes in any lot of badger state  
13 brand certified seed potatoes may have any of the following:

14 (a) A weight of more than 12 ounces or, if the seller guarantees a different  
15 maximum weight, the guaranteed maximum.

16 (b) A diameter that exceeds the maximum guaranteed by the seller, if the seller  
17 guarantees a maximum diameter.

18 (5) DEFECT TOLERANCES. A lot of badger state brand certified seed potatoes may  
19 not contain any of the following defects in excess of the following tolerances, specified  
20 as a percentage by weight of affected potatoes compared to weight of potatoes in the lot:

21 (a) Serious damage from hollow heart: 10%.

22 (b) Damage from defects listed in s. ATCP 156.11(1) or (2), other than sprout  
23 damage: 5%.

1 (c) Sprout damage: 10%.

2 (d) Late blight tuber rot: 1%

3 (e) Serious damage from dry- or moist-type fusarium tuber rot: 2%.

4 (f) Damage from freezing, soft rot or wet breakdown: 0.5%, except that the  
5 tolerance is 1% if the potatoes are inspected en route to or at the point of receipt by the  
6 potato buyer.

7 (6) SALE IN BAGS OR TOTES. The following requirements apply whenever badger  
8 state brand certified seed potatoes are sold in bags or totes, as certified seed potatoes:

9 (a) The potatoes shall be sold only in clean new bags or totes. Each bag or tote  
10 shall be labeled with the name and address of the seller.

11 (b) Each bag or tote may be labeled with the words "Badger State Brand." No  
12 other brand, other than the seller's trademark, may appear on the bag or tote without the  
13 department's approval.

14 (c) Each bag or tote shall bear a blue tag issued by the college under s.  
15 156.02(3)(a). The blue tag shall clearly disclose all of the following:

16 1. The words "Wisconsin Certified Seed Potatoes Badger State Brand."

17 2. The potato variety.

18 3. The year in which the potatoes were grown.

19 4. The name and address of the seed potato grower.

20 5. The classification assigned by the college under s. ATCP 156.05.

21 (d) Each bag or tote shall bear a net weight statement, and any potato size  
22 guarantees under subs. (2) to (4) that differ from standard sizes specified in subs. (2) to

23 (4).



1 (e) Each bag, if hand sewn, shall be sealed with a seal issued by the department.

2 **NOTE:** “Sell,” as defined in s. ATCP 156.01(30), means “to contract or offer for  
3 sale, hold for sale, transport or distribute for sale, or advertise or label for  
4 sale.”

5  
6 (7) SALE IN BULK. The following requirements apply whenever badger state  
7 brand certified seed potatoes are sold in bulk, as certified seed potatoes:

8 (a) The potatoes shall be sold in a sealed container or conveyance that is  
9 thoroughly cleaned and disinfected before each use as a seed potato container or  
10 conveyance.

11 (b) Each container or conveyance shall bear all of the following:

12 1. A blue tag, issued by the college, that complies with sub. (6)(c).

13 2. A seal issued by the department under s. ATCP 156.10(2)(b).

14 **NOTE:** “Sell,” as defined in s. ATCP 156.01(30), means “to contract or offer for  
15 sale, hold for sale, transport or distribute for sale, or advertise or label for  
16 sale.”

17  
18 **ATCP 156.13 Yellow tag grade. (1) GRADE REQUIREMENTS.** To qualify for the  
19 yellow tag grade, a lot of certified seed potatoes shall meet all of the following  
20 requirements:

21 (a) The college shall certify the lot under subchapter II.

22 (b) All potatoes in the lot shall be of the same variety, subject to a tolerance of  
23 0.25% for varietal mixture. The tolerance shall be applied according to s. ATCP  
24 156.10(6).

25 (c) All potatoes in the lot shall comply with size standards in subs. (2) to (4),  
26 subject to tolerances specified in subs. (2) to (4). Tolerances shall be applied according  
27 to s. ATCP 156.10(6).

1 (d) The lot may not include any seriously misshapen potatoes, except that a lot  
2 containing seriously misshapen potatoes may qualify for the yellow tag grade if the buyer  
3 states in writing that the seriously misshapen potatoes are acceptable. The department  
4 shall review the buyer's statement before making the grade assignment.

5 (e) No potatoes in the lot may be frozen at the time of inspection.

6 (f) The lot shall be free of all the following:

7 1. Blackheart.

8 2. Bacterial ring rot.

9 3. Nematode or tuber moth injury.

10 4. Defects in excess of tolerances specified in sub. (5). Tolerances shall be  
11 applied according to s. ATCP 156.10(6).

12 **(2) MINIMUM DIAMETER.** (a) Except as provided in par. (b), not more than 3% of  
13 the potatoes in any lot of yellow tag grade certified seed potatoes may have a diameter  
14 smaller than 1½ inches or, if the seller guarantees a different minimum diameter, the  
15 minimum diameter guaranteed.

16 (b) If a seller guarantees a minimum diameter under par. (a) of at least 2¼ inches,  
17 not more than 5% of the potatoes in the lot may have a diameter that is smaller than the  
18 guarantee.

19 **(3) MINIMUM WEIGHT.** (a) Except as provided in par. (b), not more than 3% of  
20 the potatoes in any lot of yellow tag grade certified seed potatoes may have a weight less  
21 than the minimum weight, if any, guaranteed by the seller.

1 (b) If a seller guarantees a minimum weight under par. (a) of at least 5 ounces,  
2 not more than 5% of the potatoes in the graded lot may have a weight that is less than the  
3 guaranteed minimum.

4 (4) MAXIMUM SIZE. Not more than 15% of the potatoes in any lot of yellow tag  
5 grade certified seed potatoes may have any of the following:

6 (a) A weight of more than 12 ounces or, if the seller guarantees a different  
7 maximum weight, the guaranteed maximum. If the maximum weight under this  
8 paragraph is not more than 12 ounces, not more than 5% by weight of potatoes in the lot  
9 may exceed 16 ounces.

10 (b) A diameter that exceeds the maximum guaranteed by the seller, if the seller  
11 guarantees a maximum diameter.

12 (5) DEFECT TOLERANCES. A lot of yellow tag grade certified seed potatoes may  
13 not contain any of the following defects in excess of the following tolerances, specified  
14 as a percentage by weight of affected potatoes compared to weight of potatoes in the lot:

15 (a) Damage from defects listed in s. ATCP 156.11(1) or (2): 20%, except as  
16 provided in pars. (c) and (d).

17 (b) Sprout damage: 10%.

18 (c) Scab damage: 10%

19 (d) Late blight tuber rot: 1%

20 (e) Damage from freezing, soft rot or wet breakdown: 1%.

21 (6) SALE IN BAGS OR TOTES. The following requirements apply whenever yellow  
22 tag grade certified seed potatoes are sold in bags or totes, as certified seed potatoes:

1 (a) The potatoes shall be sold only in clean new bags or totes. Each bag or tote  
2 shall be conspicuously labeled with the name and address of the seller.

3 (b) No brand, other than the seller's trademark, may appear on the bag or tote  
4 without the department's approval.

5 (c) Each bag or tote shall bear a yellow tag issued by the college under s.  
6 156.02(3)(a). The yellow tag shall clearly disclose all of the following:

7 1. The words "Wisconsin Certified Seed Potatoes Yellow Tag Grade."

8 2. The potato variety.

9 3. The year in which the potatoes were grown.

10 4. The name and address of the seed potato grower.

11 5. The classification assigned by the college under s. ATCP 156.05.

12 (d) Each bag or tote shall bear a net weight statement, and any potato size  
13 guarantees under subs. (2) to (4) that differ from standard sizes specified in subs. (2) to  
14 (4).

15 (e) Each bag, if hand sewn, shall be sealed with a seal issued by the department.

16 **NOTE:** "Sell," as defined in s. ATCP 156.01(30), means "to contract or offer for  
17 sale, hold for sale, transport or distribute for sale, or advertise or label for  
18 sale."  
19

20 (7) SALE IN BULK. The following requirements apply whenever yellow tag grade  
21 certified seed potatoes are sold in bulk, as certified seed potatoes:

22 (a) The potatoes shall be sold in a sealed container or conveyance that is  
23 thoroughly cleaned and disinfected before each use as a seed potato container or  
24 conveyance.

25 (b) Each container or conveyance shall bear all of the following:



- 1           3. The potato variety.
- 2           4. The year in which the potatoes were grown.
- 3           5. The name and address of the seed potato grower.
- 4           6. The classification assigned by the college under s. ATCP 156.05.

5           (d) Each bag or tote shall bear a net weight statement.

6           (e) Each bag or tote shall bear a statement of potato size guarantees if the  
7 guaranteed sizes differ from the sizes specified for yellow tag grade potatoes in s. ATCP  
8 156.12(2) to (4).

9           (f) Each bag, if hand sewn, shall be sealed with a seal issued by the department.

10          **NOTE:** “Sell,” as defined in s. ATCP 156.01(30), means “to contract or offer for  
11 sale, hold for sale, transport or distribute for sale, or advertise or label for  
12 sale.”  
13

14          **(3) SALE IN BULK.** The following requirements apply whenever badger state  
15 foundation brand seed potatoes are sold in bulk, as certified foundation seed potatoes:

16          (a) The potatoes shall be sold in a sealed container or conveyance that is  
17 thoroughly cleaned and disinfected before each use as a seed potato container or  
18 conveyance.

19          (b) Each container or conveyance shall bear all of the following:

- 20           1. A blue tag, issued by the college, that complies with sub. (2)(c).
- 21           2. A seal issued by the department under s. ATCP 156.10(2)(c).

22          **NOTE:** “Sell,” as defined in s. ATCP 156.01(30), means “to contract or offer for  
23 sale, hold for sale, transport or distribute for sale, or advertise or label for  
24 sale.”  
25

1           **ATCP 156.15 Yellow tag foundation grade. (1) GRADE REQUIREMENTS.** To  
2 qualify for the yellow tag foundation grade, a lot of certified seed potatoes shall meet all  
3 of the following requirements:

4           (a) The college shall certify the lot under subch. II as foundation seed potatoes.

5           (b) The lot shall comply with all requirements applicable to yellow tag grade  
6 certified seed potatoes under s. ATCP 156.13.

7           **(2) SALE IN BAGS OR TOTES.** The following requirements apply whenever yellow  
8 tag foundation grade seed potatoes are sold in bags or totes, as certified foundation seed  
9 potatoes:

10          (a) The potatoes shall be sold only in clean new bags or totes. Each bag or tote  
11 shall be labeled with the name and address of the seller.

12          (b) Each bag or tote may be labeled with the words "Yellow Tag Grade." No  
13 other brand, other than the seller's trademark, may appear on the bag without the  
14 department's approval.

15          (c) Each bag or tote shall bear a yellow tag issued by the college under s. ATCP  
16 156.02(3)(a). The yellow tag shall clearly disclose all of the following:

17           1. The words "Wisconsin Certified Seed Potatoes Yellow Tag Grade."

18           2. The word "Foundation" overprinted on the face of the tag.

19           3. The potato variety.

20           4. The year in which the potatoes were grown.

21           5. The name and address of the seed potato grower.

22           6. The classification assigned by the college under s. ATCP 156.05.

1 (d) Each bag or tote shall bear a net weight statement, and any potato size  
2 guarantees under s. ATCP 156.13(2) to (4) that differ from standard sizes specified in s.  
3 ATCP 156.13(2) to (4).

4 (e) Each bag, if hand sewn, shall be sealed with a seal issued by the department  
5 under s. ATCP 156.10(2)(b).

6 **NOTE:** “Sell,” as defined in s. ATCP 156.01(30), means “to contract or offer for  
7 sale, hold for sale, transport or distribute for sale, or advertise or label for  
8 sale.”  
9

10 (3) **SALE IN BULK.** The following requirements apply whenever yellow tag grade  
11 foundation seed potatoes are sold in bulk, as certified foundation seed potatoes:

12 (a) The potatoes shall be sold in a sealed container or conveyance that is  
13 thoroughly cleaned and disinfected before each use as a seed potato container or  
14 conveyance.

15 (b) Each container or conveyance shall bear all of the following:

- 16 1. A yellow tag, issued by the college, that complies with sub. (2)(c).
- 17 2. A seal issued by the department under s. ATCP 156.10(2)(b).

18 **NOTE:** “Sell,” as defined in s. ATCP 156.01(30), means “to contract or offer for  
19 sale, hold for sale, transport or distribute for sale, or advertise or label for  
20 sale.”  
21

22 **ATCP 156.16 Misrepresentation.** No person may do any of the following in  
23 connection with the sale of potatoes:

24 (1) Represent the potatoes as Wisconsin graded seed potatoes unless the potatoes  
25 are graded, handled and accurately labeled according to this subchapter.

26 (2) Misrepresent the grade of certified seed potatoes, or the basis for that grade.

27 **NOTE:** Section ATCP 156.16 is adopted under authority of s. 100.20(2), Stats.  
28 The department may prosecute fraudulent misrepresentations of grade



1                   pursuant to s. 100.20(6) or 100.26, Stats. A buyer who suffers a monetary  
2                   loss because of a fraudulent misrepresentation of grade may bring a  
3                   private court action for double damages, costs and attorney fees, pursuant  
4                   to s. 100.20(5), Stats.  
5

6                   **ATCP 156.17 Review of grading decisions. (1) REQUEST.** A person adversely  
7                   affected by a department grading decision under this subchapter may make a written  
8                   request for department review of that decision.

9                   **(2) MEETING.** (a) If the department receives a written request under sub. (1), a  
10                  department representative shall hold an informal meeting with the requester. The  
11                  department shall hold the informal meeting within 30 days after it receives the written  
12                  request, unless the requester agrees to a later meeting date. The meeting may be held in  
13                  person or by telephone.

14                  (b) At the informal meeting under par. (a), the department may explain the basis  
15                  for its decision. A requester may also present information or arguments related to the  
16                  decision.

17                  **(3) CONTESTED CASE.** If a disputed matter under sub. (1) is not resolved after a  
18                  meeting under sub. (2), the affected person may request a contested case hearing before  
19                  the department, pursuant to ch. 227, Stats, and ch. ATCP 1. The person shall make the  
20                  request under s. ATCP 1.06. The department shall grant or deny the hearing request as  
21                  provided in s. ATCP 1.06(3).  
22  
23  
24

1           **EFFECTIVE DATE.** This rule takes effect on the first day of the month following  
2 publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.),  
3 Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Rodney J. Nilsestuen, Secretary

## SEED POTATO CERTIFICATION AND GRADING ADMINISTRATIVE RULES

### SUMMARY OF PUBLIC COMMENTS ON PROPOSED RULE

#### Madison, August 7, 2006.

The following table summarizes the attendees at the Madison public hearing.

<i>Name</i>	<i>Representing</i>	<i>Registered in Support</i>	<i>Registered Opposed</i>	<i>Provided Oral Testimony?</i>	<i>Provided Written Testimony?</i>
Noel Favia	DATCP, Div. of Ag. Development – Marketing Orders				
James Spychalla	Kohm and Spychalla, LLC			YES	YES
Dennis Zeloski	Felix Zeloski Farms			YES	

Mr. Spychalla presented both verbal and written testimony. Please see the attached copy of the written comments.

Mr. Zeloski said that he buys seed from the state farm and that the reputation of the Wisconsin Certified Seed Potatoes is very important. He said that the modernization some of the mechanics in the rule -- for example, acknowledging the use of totes as a transport mechanism -- is a much needed improvement. He also expressed frustration with the DATCP and other state agencies' web pages regarding both the existing rule and the proposed new rule.

#### Stevens Point, August 9, 2006.

There were no attendees at the Stevens Point hearing.

**Antigo, August 9, 2006.**

The table below lists persons who signed-in at the Antigo public hearing and/or registered a position on the bill.

<i>Name</i>	<i>Representing</i>	<i>Registered in Support</i>	<i>Registered Opposed</i>	<i>Provided Oral Testimony?</i>	<i>Provided Written Testimony?</i>
Mike Carter	Wis. Potato and Vegetable Growers Assoc.	Yes			
John Gallenberg	Gallenberg Farms, Inc	Yes			
Roy Gallenberg	Gallenberg Farms, Inc				
Bill Guentner	Guentner Farms, Inc.	Yes			
Robert Guentner	Guentner Potato Co., Inc.	Yes			
Dan Hafner	Hafner Seed Farms	Yes			
Dave Hafner	Hafner Seed Farms	Yes			
Kevin Hafner	Hafner Seed Farms	Yes			
John Hein	Sowinski Cert. Seed	Yes			
James Houlihan	Wis. Potato and Vegetable Growers Assoc.	Yes			
Ron Krueger	Felix Zeloski Farms	Yes			
Ron Mack	Mach's Sunny Acres, Inc.				
Jim Mattek	J. W. Mattek & Sons, Inc.	Yes			
John Mattek	J. W. Mattek & Sons, Inc.	Yes			
Dan Rine	Rine Ridge Farms	Yes			
Ken Rine	Rine Ridge Farms	Yes			
John Schroeder		Yes			
Art Seidl	Seidl Farms, Inc.	Yes			
Jim Shafel		Yes			
Tom Wild	Wild Seed Farms	Yes		Yes	

The only testimony presented at the Antigo hearing was verbal comments by Tom Wild. Generally, Mr. Wild expressed support for the rules as written, talked about the need for a well respected certification program and expressed belief that the certification program allowed seed growers to sell a product that is not just a commodity.

**Written Comments**

The table below lists all persons who submitted written comments. Copies of all written comments are attached.

<b>Name and Title</b>	<b>Organization</b>
Dr. James Spsychalla, Plant Physiologist	Kohm & Spsychalla LLC
James Mattek	J. W. Mattek & Sons, Inc.
John Schroeder, President	Schroeder Bros. Farms, Inc.
Dr. Amy Charkowski, Assistant Professor	UW College of Agricultural Life Sciences

# Kohm & Spsychalla LLC

*Nuclear and FY1-3 Potato Seed Stocks*



## **August 7, 2006 Comments on DATCP 156**

### Suggested Graduated Entry Program

- A grower can enter any seed lot in the seed certification program.
- Inspections proceed as with any other lot / grower.
- Lots of appropriate pathogen load can be designated "foundation", but for that grower's on-farm use only. Thus generating his/her future seed stocks.
- This restriction would be lifted after a period of time, *e.g.* 5 years.

### Summary

- No harm to existing program or growers.
- Existing seed growers may have no use for the proposal. But on the other hand new entering growers, and seed customers would be expected to be in favor of the suggestion.
- A graduated entry program friendly to new seed growers, would eliminate unnecessary expenses, and minimize biological risks to all involved.

Dr. Bärbel Köhm – plant virologist  
Dr. James Spsychalla – plant physiologist  
N4244 Hwy. 52  
Antigo, WI 54409

e-mail: [potatoes@kohm-spsychalla.com](mailto:potatoes@kohm-spsychalla.com)  
Lab: 715-623-5773  
Shop: 715-623-6052  
Fax: 715-623-0486

SCHROEDER BROS. FARMS, INC.

*"Pride of the North"*

FOUNDATION & CERTIFIED SEED POTATOES

N1435 COUNTY ROAD D

ANTIGO, WI 54409

PHONE (715) 623-2689

FAX # (715) 627-4857

May 9, 2006

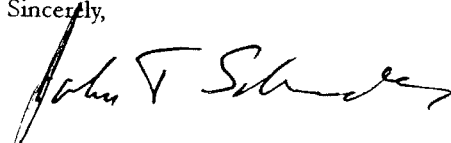
DATCP 156 Hearing

Wisconsin Department of Agriculture, Trade and Consumer Protection

To Whom It May Concern:

We are in support of the regulation changes. We would like to see a modification of the Scab tolerance for Yellow Tag Grade from 5% to 10% to allow shipments of seed to be certified that may otherwise not meet grade standards. We would have liked to attend the hearing in person but unfortunately we can not leave the farm during this demanding planting season.

Sincerely,



John T. Schroeder

President

Schroeder Bros. Farms, Inc.



★ ★ ★ ★

# J. W. Mattek & Sons, Inc.

GROWER & SHIPPER

*Foundation and Certified Seed Potatoes*

N5798 STAR NEVA RD.

DEERBROOK, WI 54424

TELE. # 715-623-6963

FAX # 715-627-7245



X X X X

May 8, 2006

To: Whom it may concern

RE: Regulation Changes to WDATCP AG-156

Due to the planting season, we regret that we cannot attend the WDATCP hearings regarding regulation changes to AG-156. We offer this letter to show our strong support of the rule changes that are being presented.

At this time, we are requesting a modification of the yellow tag grade standards for scab due to the fact that it is becoming more of a problem industry wide. We would like to propose changing the current tolerance on yellow tag to 10%. This change would enable us to ship our product within the tag specifications.

Thank you for considering our modification proposal. We feel as though the changes to AG-156 will be beneficial to the entire potato industry.

Sincerely,

A handwritten signature in cursive script that reads "James E. Mattek".

James E. Mattek

COLLEGE OF  
**& AGRICULTURAL  
LIFE SCIENCES**  
UNIVERSITY OF WISCONSIN-MADISON

Department of Plant Pathology

Aug 25<sup>th</sup>, 2006

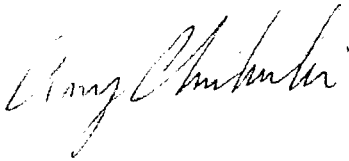
To Whom It May Concern:

As administrative director of the Wisconsin Seed Potato Certification Program (WSPCP), I have been working closely with Wisconsin seed potato growers over the past few years to revise ATCP156, the rule governing seed potato certification. This rule was last revised over 20 years ago and several aspects of it no longer fit the seed potato industry. The WSPCP supports the proposed changes because they better describe what is happening in the seed potato industry and also because the changes better align Wisconsin's rule with those of other seed potato producing states. We greatly appreciate the time and effort that people from the Department of Agriculture and Consumer Protection have put into helping us update ATCP156.

In addition, we noted some small additional changes that need to be made to this rule during the public hearings including:

1. Definition 27 should be changed to "Seed certification agency" means a state agency, state academic institution, or state recognized grower association that is responsible for certifying seed potatoes and issuing certification documentation for seed potatoes or propagative materials.
2. The note on page 26 (lines 3-6) which refers to application forms should be changed to refer to sub. (6) rather than sub. (7).
3. To allow testing by reliable commercial laboratories, the section on post-harvest testing on page 31 (lines 1-3) should be changed to "The college receives reliable laboratory test results on a representative sample of potatoes from the lot, and the laboratory tests show that the lot complies with the post-harvest test standard sin par. (a)."
4. On page 33 (lines 23-26), we would like to retain multiple samples for very large lots, but define the size limit of the samples. We would also like to clarify that growers need not submit samples from very small lots where the sample would be a sizable percentage of the lot, leaving the grower with very little to plant the following year. Therefore, this should be changed to "(b) For a post-harvest test under par. (a), the grower shall deliver to a location specified by the college a representative sample of 400 tubers per 50 acres from each lot to be certified, with a maximum of 4 samples per lot. No samples need be tested from lots under 0.25 acres if the seed potatoes will be planted on the growers own farm the following season. Each tuber shall be 1 ¾ to 2 ¼ inches in diameter..."
5. We noted that there is no section 156.09
6. on page 34, line 14, the text should be changed to "1. "FY" means field year"

Sincerely,



Dr. Amy Charkowski  
Assistant Professor



# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Business Impact Analysis<sup>1</sup>

**Rule Subject:** Seed Potato Certification and Grading  
**Adm. Code Reference:** ATCP 156  
**Rules Clearinghouse #:** 06-085  
**DATCP Docket #:** 04-R-08

This rule repeals and recreates current rules related to Wisconsin's certified seed potato program, a voluntary program for the certification and grading of seed potatoes in this state. The program is jointly administered by the Wisconsin department of agriculture, trade and consumer protection ("DATCP") and the university of Wisconsin college of agricultural and life sciences (the "college"). This rule updates and clarifies current certification standards and procedures.

### Participation is Voluntary

Seed potato certification and grading is voluntary, and is done at the request of the seed potato grower. The college inspects seed potatoes for disease pathogens, and certifies seed potatoes in appropriate categories based on predicted disease-free reliability. DATCP inspects and grades college-certified seed potatoes for other measures of quality.

Seed potatoes are labeled with their certification and grade classifications, so that buyers know what they are getting. Certification and grade classifications affect purchase decisions and sale prices. DATCP and the college charge fees to cover the cost of requested grading and certification services.

Although participation is voluntary, the program is important for seed potato growers and commercial potato growers alike. Certification and grading adds value to seed potatoes, and makes it easier for seed potato growers to sell their seed potatoes to commercial growers. The program also allows commercial growers to buy seed potatoes with confidence, and reduces the risk of catastrophic disease and financial loss. Most, if not all, Wisconsin potatoes are grown from certified seed.

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<sup>1</sup> This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under s. 227.114, Stats..

## **Businesses Affected**

This rule applies to seed potato growers who wish to produce and sell *certified* seed potatoes (participation is voluntary, and there is nothing to prohibit the sale or use of uncertified seed potatoes). It also applies to laboratories and greenhouses that provide propagative material used to grow certified seed potatoes. Many of these businesses may qualify as “small businesses.”

This rule does *not* apply to any of the following:

- Producers who grow potatoes only for processing or fresh market use, and not for seed.
- Producers who grow potatoes for seed, but do not wish to have their seed potatoes certified and graded (participation is voluntary).
- Home gardens.

## **Key Rule Provisions**

This rule creates a clearer, more up-to-date framework for the seed potato certification program administered by the college. This rule modernizes Wisconsin’s certified seed potato rule to address changing industry practices and standards. Among other things, this rule:

- Clarifies and updates certification standards and procedures. This rule reflects **current** national and international standards. The college may grant limited written variances in some cases, if special conditions warrant.
- Modernizes the system for classifying certified seed potatoes.
- Expands the number of sources from which growers may obtain propagative material for certified seed potatoes, while minimizing disease risk.
- Clarifies approval of laboratories and greenhouses that provide propagative material used to produce certified seed potatoes.
- Recognizes new laboratory testing capabilities.
- Clarifies responses to findings of bacterial ring rot.
- Provides for certification reciprocity between states, provided that other states apply equivalent standards. Seed potatoes certified in another state must be labeled accordingly.
- Modernizes requirements for certified seed potato labeling, shipping and handling, based on current industry needs.

- Provides a mechanism by which a seed potato grower may obtain informal and formal review of an adverse certification decision by the college.
- Prohibits fraudulent sales of uncertified seed as certified seed.
- Provides greater consistency between Wisconsin and other states, while maintaining high Wisconsin standards.

This rule does not substantially alter current standards or procedures for DATCP quality inspection of seed potatoes. However, it clarifies the respective roles of DATCP and the college, and spells out grading standards and procedures with greater clarity.

### **Business Impact**

This rule will assist the Wisconsin potato industry, including seed potato growers. This rule is not expected to have a significant adverse impact on seed potato growers or other sectors of the Wisconsin potato industry. *Participation is voluntary.*

This rule will harmonize Wisconsin certified seed potato rules with rules in other states, so that Wisconsin seed potato growers can continue to export certified seed potatoes. This rule will also make it easier for Wisconsin seed potato growers to acquire propagative material from reliable sources outside this state.

This rule makes minor changes related to certification application, certification procedure, recordkeeping, and certified seed potato handling and labeling. However, none of these changes will have a significant adverse impact on seed potato growers.

This rule generally provides more workable certification standards for seed potato growers. In a very small number of cases, this rule may prevent certification of seed potato lots that are currently eligible for certification. However, the new standards are designed to prevent the introduction and spread of potato diseases. Effective disease control is important for the entire potato industry.

### **Small Business Impact**

Some of the businesses affected by this rule are "small businesses." This rule will not have a significant adverse impact on small business. Participation is voluntary, and this rule will not increase the cost or difficulty of participation. This rule will, in various ways, facilitate participation.

## Steps to Assist Small Business

This rule is designed to benefit seed potato growers and other participants in Wisconsin's potato industry, including small businesses. This rule does not establish separate standards or procedures for small business, because disease risk is the same for large and small businesses.

## Conclusion

This rule will benefit seed potato growers and other participants in Wisconsin's potato industry. This rule will not impose additional costs on seed potato growers and may reduce some of their costs. This rule will accommodate changes in the potato industry, and will not have any significant adverse effect on seed potato growers or other businesses.

Dated this 23rd day of October, 2006

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By J. Jenkins  
Janet Jenkins, Administrator  
Trade and Consumer Protection Division



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Ronald Sklansky**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE **06-085**

AN ORDER to repeal and recreate ch ATCP 156, relating to seed potato certification and grading.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

06-30-2006 RECEIVED BY LEGISLATIVE COUNCIL.

07-31-2006 REPORT SENT TO AGENCY.

RS:DLL

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached            YES             NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached            YES             NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached            YES             NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached            YES             NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached            YES             NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached            YES             NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached            YES             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
*Clearinghouse Director*

Richard Sweet  
*Clearinghouse Assistant Director*

Terry C. Anderson  
*Legislative Council Director*

Laura D. Rose  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 06-085

#### Comments

**[NOTE:** All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

#### 2. Form, Style and Placement in Administrative Code

- a. The rule should provide a table of contents for ch. ATPC 156.
- b. The use of the term “stem (rhizome)” in s. ATPC 156.01 (6) is inappropriate, as only one term should be used; however, “tuber” is the more precise term. But why not simply say “potato”?
- c. The definition of “fairly well shaped” is difficult. “Otherwise ill-formed” is as ambiguous and subjective as “fairly well shaped,” resulting in a definition that says, in essence: “‘Pretty good’ means not too bad.” However, the term is used only twice, and then alongside other equally subjective but undefined terms (e.g., “materially detracts”). It would be appropriate to omit the definition and replace the term where it appears in the rule with language parallel to other language in the rule. For example, s. ATPC 156.12 (1) (d) could be rewritten as follows: “No potatoes in the lot are ill-formed to a degree that materially detracts from the appearance of the potatoes.”
- d. To avoid circularity, definitions should not use the term being defined. In s. ATPC 156.01 (9) (a) and (b), references to “farm” should be replaced with references to “non-contiguous tract of land.”
- e. The definition of “foundation seed potatoes” is substantive, in that it explains the significance of the classification and seems to establish the requirement that only foundation seed potatoes may be used to produce certified seed potatoes. The definition, if one is needed,

should simply state that foundation seed potatoes are potatoes that the college has certified as meeting the applicable standards; the substance should be moved to the text of the rule.

f. The definition of “tuber” should be omitted. At best, the definition is unnecessary, as a standard dictionary definition is sufficient. At worst, it could be confusing or simply incorrect; for example, the tuber moth is not the potato moth, it is the tuber moth. Where “tuber” is meant to mean potato and no other tuber, “potato” should be used.

g. The note that precedes s. ATCP 156.02 (5) should be placed at the end of that subsection.

h. In s. ATCP 156.02 (6) (c), the second sentence is substantive and not an application requirement. Thus, the sentence should be moved to another place in the text of the rule.

i. The second sentence of s. ATCP 156.03 (3) (b) 1. should be placed in a note.

j. Section ATCP 156.05 (1) (b) should not include the definition of “field propagation” as the definition of that term in s. ATCP 156.01 (10) applies to the entire chapter. However, should that paragraph include a definition of “Y”?

k. Some provisions of the rule could be combined, making the overall rule shorter and clearer. In particular, the provisions regarding review of the college’s actions could be combined and placed in a subch. IV, as could the provisions regarding misrepresentations. Similarly, the provisions in subch. III regarding bulk sales and sales in bags or totes could be combined. It appears that the minor differences between the current provisions could be accommodated within combined provisions. Note that, if the department chooses not to do this, the reference in s. ATCP 156.08 (3) (b) to “this chapter” should be replaced with “this subchapter.”

l. Section ATCP 156.10 (3) (a) to (d) could be rewritten in the active voice to say, for example, “The department shall grade potatoes that meet the standards in s. ATCP 156.12 as badger state brand (or “grade”?) potatoes.” If the Department makes this change, s. ATCP 156.10 (3) (intro.) becomes unnecessary.

m. In s. ATCP 156.10 (6) (c) 2., as written with the word “and,” it is acceptable for there to be any number of off-size potatoes in a sample or for there to be any number of defective potatoes in a sample, but not more than one of each in a sample. If this is not what the department intends, it should replace “and” with “or.” Similarly, should “and” be replaced with “or” in s. ATCP 156.11 (2) (b) 1.?

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. Section ATCP 156.03 (1) (f) 2. should refer to “subs. (3) to (5).” Also, should this reference include sub. (6)?

b. Section ATCP 156.10 (4) refers to a form. The requirements of s. 227.14 (3), Stats., should be met.

c. It appears that s. ATCP 156.12 (1) (c) 4. should refer to sub. (5), rather than sub. (4).



d. In ss. ATCP 156.14 (2) (d) and 156.15 (2) (d), each occurrence of the notation "ss." should be replaced by the notation "s."

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. ACTP 156.01 (34), should the definition of the term "state" include a United States territory?

b. Section ATCP 156.02 (3) (j) does not make clear what specific information relating to a variance under s. ATCP 156.03 (7) the college must include in certification documents. Does this require just a statement that there is a variance or documentation that the necessary conditions for a variance are met?

c. Section ATCP 156.02 (7) (b) should refer to "the number of planted acres from which the lot was produced." The lot is potatoes, not acres of land. Sections ATCP 156.04 (1) and (2) are similarly imprecise.

d. In s. ATCP 156.03 (1) (f), by whom is the breeding program recognized?

e. In s. ATCP 156.03 (7) (b), "a variance" or "certification" would be more precise than "action."

f. Section ATCP 156.06 (1), (4), and (5) should be written in the active voice, to clearly indicate to whom those requirements apply. Subsection (2) clearly applies to any person while sub. (3) applies to seed potato growers.

g. In subch. III of ch. ATCP 156, the terms "brand" and "grade" appear to be used inconsistently.

h. In ss. ATCP 156.12 (5) (b) and 156.13 (5) (b), "serious damage" should be omitted, as it is a subset of "damage."

i. Section ATCP 156.17 reproduces all of s. ATCP 156.08, except for s. ATCP 156.08 (3) (b). Is this difference intentional?