

Report From Agency

ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
REPEALING AND RECREATING RULES

- 1 The state of Wisconsin department of agriculture, trade and consumer protection adopts
- 2 the following order to repeal and recreate ch. ATCP 156, relating to seed potato
- 3 certification and grading.

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

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.

Statutory Authority

Statutory authority: ss. 93.07(1), 93.09, 100.14(1) and 100.20(2), Stats.

Statutes interpreted: ss. 93.06(1), (1m), (1p), (1q) and (11), 93.09, 100.14(1) and 100.20, Stats.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules to implement laws under its jurisdiction. DATCP also has authority, under the above statutes, to adopt grading and certification standards for commodities, to provide grading and certification services upon request, and to recover the cost of the requested services. DATCP has authority, under s. 100.20, Stats., to prohibit unfair and deceptive business practices.

Under s. 93.06(11), Stats., DATCP may cooperate with other entities and appoint agents for the administration of programs under its jurisdiction. DATCP administers the certified seed potato program pursuant to this rule and a memorandum of understanding with the college.

DATCP has delegated authority to the college to inspect and certify seed potatoes for disease risk. The college may charge fees to cover the college's costs of inspection and certification. Certification decisions by the college may be subject to administrative review by DATCP, as provided in this rule.

DATCP grades seed potatoes, once they are certified by the college. A person may not sell potatoes as Wisconsin certified seed potatoes unless the potatoes are certified by the college *and* graded by DATCP.

Background

Wisconsin is one of the nation's largest potato producing states. Wisconsin's certified seed potato program helps Wisconsin's potato industry, by maintaining the quality and disease-free reliability of seed potatoes. Commercial potato growers can rely on the seed potatoes they purchase. Seed potato growers can market their seed potatoes more effectively, because buyers can purchase with confidence. Certification helps prevent the spread of serious and potentially devastating potato diseases, and facilitates the movement of seed potatoes in interstate and international commerce.

Participation is Voluntary

Seed potato certification and grading is voluntary, and is done at the request of the seed potato grower. Yet most Wisconsin potatoes are grown from certified seed, because certification helps buyers and sellers alike.

At the request of a seed potato grower, the college inspects seed potatoes for diseases and other conditions. The college then certifies the seed potatoes in appropriate categories based on predicted disease-free reliability. DATCP inspects and grades college-certified seed potatoes for other measures of quality. A grower may not sell potatoes as certified seed potatoes unless the potatoes have been certified by the college *and* graded by DATCP.

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.

The Certification Process

DATCP rules specify standards and procedures for seed potato certification and grading. Current rules are contained in ch. ATCP 156, Wis. Adm. Code. Historically, the college has provided disease-free propagative material used to grow multi-generational lines of certified seed potatoes in this state.

Seed potato growers plant propagative material provided by the college, and harvest the seed potatoes. Harvested seed potatoes may be sold to commercial growers, or replanted to produce subsequent generations of seed potatoes. If the seed potatoes are certified by the college (and graded by DATCP), they may be sold as *certified seed potatoes* (normally at a higher price). If they are certified as “foundation” seed potatoes, they may be replanted to produce subsequent generations of *certified seed potatoes*.

With each generation of planting in the field, the disease-free reliability of the seed potatoes (and hence their certification classification) is reduced. After a certain number of generations, seed potatoes may no longer be used as “foundation” seed potatoes to produce other certified seed potatoes. However, a seed potato grower may start a new line of certified seed potatoes, using new disease-free propagative material provided by the college or a comparable source.

As part of the certification process, the college samples and inspects growing and harvested seed potatoes. The college also conducts follow-up evaluations of potatoes grown from the certified “lot.” The college looks for diseases of concern. The college may not certify a seed potato “lot” if samples from that “lot” fail to meet minimum disease standards.

If a “lot” meets minimum disease standards, the college assigns a classification code based on generation (with each year of field planting the classification drops one level, reflecting increased disease risk). Each “lot” is labeled with its assigned classification code.

Once the college has certified seed potatoes, and assigned a disease-risk classification, DATCP may grade the potatoes based on various quality factors. DATCP visually inspects samples of potatoes drawn from the graded “lot,” and grades the “lot” according to DATCP rules. Each graded “lot” is labeled with its assigned grade.

Rule Changes Needed

In recent years, there has been increased demand for rapid introduction of new potato varieties, often from out-of-state sources. Biotechnology has expanded disease-testing options, and has facilitated the creation of new potato varieties and new forms of propagative material. There has been increased cooperation between states, aimed at standardizing seed potato certification.

These developments have not replaced the traditional certification program based on college propagative material, field inspection and “limited-generation” plantings. However, they do require some program changes and adaptations.

This rule provides a clearer, more up-to-date framework for the seed potato certification program administered by the college. Among other things, this rule:

- Clarifies and, in some cases, changes current certification standards and procedures.
- Eliminates some outdated requirements, and strengthens some disease-control standards.
- Recognizes new laboratory testing capabilities.
- Expands the number of sources from which growers may obtain propagative material for certified seed potatoes, while minimizing disease risk.
- Allows for variances in certification standards to accommodate unusual situations.
- Clarifies how propagative material is regulated.

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.

Rule Coverage

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 sales of uncertified seed potatoes). It also applies to laboratories and greenhouses that provide propagative material used to grow certified seed potatoes. This rule does *not* apply to any of the following:

- Producers who grow potatoes only for consumption, 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.

Rule Contents

Rule Reorganization

This rule reorganizes current rules into subchapters. This clarifies the distinction between certification by the college and grading by DATCP. This rule also redrafts the current rules, so they will be easier to read and understand.

Certification Procedure

This rule clarifies the procedure by which a seed potato grower may apply for and obtain certification of seed potatoes. Among other things, it clarifies the information that the grower must include on the application form, and the information that the college must include in the certification. This will make it easier for the college to process certification requests, and document certifications. It will also provide a better certification history and record, which is important for certification credibility, disease control and future certification.

Under this rule, if an applicant seeks certification of a protected (patented) variety of seed potatoes, the application must document that the applicant has permission to grow the protected variety. This is consistent with requirements under federal law.

Under this rule, as under current rules, the college may certify a “lot” of seed potatoes at the request of the seed potato grower. This rule clarifies that a “lot” includes all potatoes of the same variety and line that are grown from the same source seed on the same farm in the same year. Certification does not constitute a warranty by the college, and does not extend to any disease or condition that cannot be observed by visual inspection.

Certification Standards; General

This rule clarifies minimum standards for the certification of seed potatoes, including standards for all of the following:

- Propagative material used to grow the certified seed potatoes.
- Field planting.
- Field and harvest inspections.
- Post-harvest testing.

Propagative Material

This rule expands the number of sources from which growers may obtain propagative material for certified seed potatoes, while minimizing disease risk. Under this rule, certified seed potatoes must be grown from one of the following (no other propagative materials may be planted on a farm producing certified seed potatoes):

- Certified “foundation” seed potatoes produced, on the same farm, by the producer requesting certification.
- Certified “foundation” seed potatoes produced on another farm, if pre-approved by the college.
- Propagative material produced by the college.
- “Foundation” seed potatoes certified by another state, under standards equivalent to the standards in this rule, if pre-approved by the college.

- Propagative material produced in an approved laboratory or greenhouse (see below), if pre-approved by the college.
- Propagative material produced by a recognized breeding program and pre-approved by the college.

Field and Harvest Inspection

Under this rule, as under the current rules, the college must conduct *field and harvest inspections* of certified seed potatoes. The college must visually inspect a representative sample of growing potato plants, and a representative sample of harvested potatoes. The college must inspect for specified diseases and conditions, including leafroll, mosaics, spindle tuber, bacterial ring rot and variety mixture.

Under this rule, as under the current rules, the college must reject an entire “lot” of potatoes for certification if inspection samples exceed specified tolerances for the relevant diseases or conditions. This rule makes the following key changes to current tolerances, to make them more consistent with tolerances in other states:

- It specifies a *zero tolerance* for spindle tuber (which currently has a positive tolerance, but has not been detected for several decades).
- It increases (slightly) the current tolerance for variety mixture.

Field and harvest inspection tolerances, as revised by this rule, are shown in *Table 1*:

Table 1.
FIELD AND HARVEST INSPECTION STANDARDS

CONDITION	1 ST FIELD INSPECTION	SUBSEQUENT FIELD OR HARVEST INSPECTIONS	
		Foundation Seed Potatoes	Other Seed Potatoes
Leafroll	1.5%	0.25%	1.0%
Mosaics	2.0%	0.25%	1.0%
Spindle tuber	0.0%	0.0%	0.0%
Total leafroll and mosaics	3.0%	0.25%	2.0%
Bacterial ring rot	0.0%	0.0%	0.0%
Variety mixture	1.0%	0.1%	0.1%

“Foundation” Seed Potatoes; Supplementary Standards

This rule, like the current rules, specifies higher standards for the certification of “foundation” seed potatoes (which may be used to grow other *certified* seed potatoes, not just commercial potatoes or uncertified seed potatoes). “Foundation” seed potatoes are subject to more rigorous disease tolerances (see *Table 1* above and *Table 2* below), and more rigorous inspection and control for bacterial ring rot (see below). The college may not certify “foundation” seed potatoes until it has completed its post-harvest testing of the potatoes (see below).

Bacterial Ring Rot

The current rules and this rule specify a *zero tolerance* for bacterial ring rot. Under the current rules and this rule, the college must reject for certification any “lot” of seed potatoes in which bacterial ring rot is found. The college may certify other lots on the same farm, but not as “foundation” class seed. The farm must produce 2 annual crops free of bacterial ring rot before the college can again certify “foundation” class seed from that farm. There is no exception to this requirement.

Under current rules, if bacterial ring rot is found in 2 “lots” from the same farm within 3 years, the college may not certify any other “lots” from that farm (regardless of whether bacterial ring rot is actually found in those “lots”). This rule allows the college to certify the other “lots,” but not as “foundation” seed (until the farm produces 2 annual crops free of bacterial ring rot).

Post-Harvest Test

Under current rules and this rule, the college must conduct a *post-harvest test* on every “lot” of certified seed potatoes. The college may not certify a “lot” that fails a post-harvest test, except that in some cases this rule allows certification based on lab testing (see below).

To conduct a post-harvest test, the college collects a sample of potatoes from the “lot” to be certified, and plants those potatoes in a winter growing location. The college then inspects the potatoes grown in the winter location for disease and variety mixture. The inspection must show compliance with specified tolerances (this rule revises some of the current tolerances). The tolerances (as revised by this rule) are shown in *Table 2*:

Table 2.
POST-HARVEST TEST STANDARDS

CONDITION	FOUNDATION SEED POTATOES	OTHER CERTIFIED SEED POTATOES
Leafroll	0.5%	5.0%
Mosaics	0.5%	5.0%
Spindle tuber	0.0%	0.0%
Total leafroll and mosaics	0.5%	5.0%
Bacterial ring rot	0.0%	0.0%
Variety mixture	0.25%	2.0%

This rule allows for greater use of laboratory testing in lieu of traditional post-harvest testing. Under this rule, the college may certify a “lot” of seed potatoes that passes field and harvest inspection, regardless of any post-harvest testing, if laboratory testing by the college shows that the “lot” meets the post-harvest test standards in *Table 2*.

Variance Allowed by the College

Under this rule, the college may certify a “lot” of seed potatoes that fails to comply with applicable tolerances in *Table 1* or *Table 2*, if the college documents all of the following:

- Special conditions justify the certification, and there is a reasonable likelihood that the next generation of seed potatoes grown from the non-complying lot will meet applicable tolerances.
- No bacterial ring rot has been found in the lot.
- The certification will not jeopardize seed potato quality, or pose a significant risk of harm to the potato industry or consumers.
- The certified seed potatoes will not be planted on any farm other than the farm where they are produced.

Classifying Certified Seed Potatoes

Under current rules and this rule, the college gives each “lot” of certified seed potatoes a classification number based on generation (with each year of field planting the classification drops one level, reflecting increased disease risk). Under current rules, seed potatoes may be certified for 5 generations (4 generations as “foundation” seed), except that “Elite” seed potatoes produced by the college may be certified for up to 7 generations (6 generations as “foundation” seed).

This rule allows certification for up to 7 generations (6 generations as “foundation” seed), and eliminates the separate classification of “Elite” seed. This will make Wisconsin’s classification system more consistent with the system in other states. The new classification system is shown below (FY1 is the highest classification):

Under this rule, the college may authorize a seed potato grower to use experimental propagative material from a breeding farm. This makes it possible for growers to experiment with new varieties. However, seed potatoes grown from the experimental material may be certified for only 3 generations (“Ex5 Foundation,” “Ex6 Foundation” and “Certified”), not 7 generations.

Table 3.
CLASSIFICATION

Year of Field Propagation on Seed Potato Farm (Generation)	Standard Classification	Experimental* Classification
1	FY1 Foundation	Ex5 Foundation
2	FY2 Foundation	Ex6 Foundation
3	FY3 Foundation	Certified**
4	FY4 Foundation	
5	FY5 Foundation	
6	FY6 Foundation	
7	Certified**	

* Applies to lines of seed potatoes grown from experimental field-grown propagative material from recognized breeding programs.

** “Certified” (non-foundation) class seed may not be replanted to produce other certified seed potatoes, but may be used to produce commercial potatoes or uncertified seed potatoes.

Under this rule, foundation” seed potatoes certified by another state have the same classification assigned by that state, provided that the other state certifies seed potatoes under standards equivalent to the standards in this rule. If the other state does not provide field year information, the seed will be classified as FY5.

Once for each line of certified seed potatoes, the college may renew a classification by doing one of the following (contrary to the normal classification progression):

- The college may classify, as “FY5” rather than “certified,” certified seed potatoes produced from seed potatoes classified as “FY6.”
- The college may classify, as “Ex5” rather than “certified,” certified seed potatoes produced from seed potatoes classified as “Ex6.”

A seed potato grower seeking such a renewal must show that the seed potatoes meet the standards for the renewed classification. The college may require verification in the form of laboratory testing. “Tuber unit planting” is no longer required, in order to qualify for a renewal classification, because most seed potato growers no longer have the necessary equipment.

Approved Laboratories and Greenhouses

Historically, the college has provided disease-free propagative material used to grow lines of certified seed potatoes in this state. But in recent years, there has been increased demand for new potato varieties, often from out-of-state sources.

This rule expands the sources from which a seed potato grower may obtain propagative material used to start a line of certified seed potatoes. However, this rule includes safeguards to prevent the introduction of disease, and to maintain the credibility of the certification process.

This rule allows a seed potato grower to obtain propagative material from, among other places, a laboratory or greenhouse approved by the college. “Propagative material” may include tissue culture plantlets, microtubers, minitubers or tubers that are produced under rigorous laboratory or greenhouse conditions to ensure that they are free of disease.

The college may approve a laboratory or greenhouse in this state if all of the following apply:

- The college inspects the laboratory or greenhouse before granting approval, and at least annually after granting approval. The college must also inspect minitubers, if any, produced by a greenhouse.
- The laboratory or greenhouse uses testing, propagation, isolation and sanitation procedures equivalent to those used by the college.

- The laboratory or greenhouse operator does all of the following:
 - Applies to the college for approval, and provides information reasonably required by the college for purposes of evaluation and approval.
 - Agrees to pay the college's reasonable costs to inspect, evaluate and approve the laboratory or greenhouse.
 - Keeps complete records of laboratory or greenhouse operations, and of propagative material produced by the laboratory or greenhouse. The operator must make the records available to the college upon request.
 - Labels propagative material as directed by the college, consistent with this rule.

The college may approve a laboratory or greenhouse in another state if the seed potato certification agency in the other state approves that laboratory or greenhouse for the same purpose, using standards and procedures that are equivalent to the standards and procedures that the college uses to approve in-state laboratories and greenhouses under this rule.

Storing, Shipping and Handling Certified Seed Potatoes

This rule spells out basic standards for storing, shipping and handling certified seed potatoes, to prevent disease contamination. This rule modernizes current standards. For example, this rule eliminates the current requirement that "foundation" seed potatoes be shipped in bags (it allows bulk shipments) and addresses shipment in totes. This rule also eliminates the current requirement that bags or trucks be sealed with a metal seal.

Misrepresentation

Under this rule, no person may do any of the following:

- Sell or represent potatoes as certified seed potatoes unless they are certified, graded and labeled under this rule, or by another state under standards equivalent to those in this rule.
- Sell or represent potatoes as Wisconsin certified seed potatoes unless they are certified by the college and graded by DATCP under this rule.
- Misrepresent the terms, conditions or basis for any seed potato certification.

The college may withdraw certification if a seed potato seller misrepresents the terms of the certification. DATCP may also prosecute fraudulent misrepresentations in court. Buyers who suffer monetary loss because of fraudulent misrepresentations have a private remedy for double damages, court costs and attorney fees.

Review of College Actions

Current rules provide no mechanism by which a seed potato grower may seek review of an adverse certification decision by the college. Under this rule, a seed potato grower may request an informal meeting with the college to review an adverse decision. The college must hold the informal meeting within 30 days, unless the requester agrees to a later date. The meeting may be held by telephone.

If the matter is not resolved after the informal meeting with the college, the seed potato grower may request a contested case hearing before DATCP. DATCP may reverse, modify or remand a decision of the college if DATCP finds that the decision is contrary to this rule. However, DATCP may not reverse, modify or remand a matter that this rule leaves to the discretion of the college.

Seed Potato Grading by DATCP

This rule clarifies, but does not substantially alter, the standards for DATCP grading of seed potatoes certified by the college. This rule prohibits misrepresentations of grade. This rule describes the current mechanism by which a person adversely affected by a DATCP grading decision may request a contested case hearing.

Fiscal Estimate

This rule will not have a significant fiscal impact on DATCP or the college. This rule will not affect local units of government. A complete fiscal estimate is attached.

Business Impact

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 sales 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 consumption, 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.

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

This rule modernizes Wisconsin's certified seed potato rule to address changing industry practices and standards. Among other things, this rule:

- Clarifies current certification standards and procedures.
- Allows seed potato growers to obtain propagative material from a wider array of sources. This will help satisfy emerging demands for rapid introduction of new potato varieties, often from out-of-state sources. This rule includes safeguards to ensure that seed potatoes from these sources are not diseased. Laboratories and greenhouses producing propagative material must be approved by the college, and the college must pre-approve propagative material before growers in this state plant the propagative material to produce certified seed potatoes.
- Provides for more targeted response to findings of bacterial ring rot. This rule provides continued strong protection against bacterial ring rot, but reduces the threat of devastating business losses to seed potato growers.
- Updates current disease tolerances, to reflect current interstate and international standards. The college may also grant written variances for individual lots if special conditions justify the variance, and if the college finds that the variance does not create a risk of harm to other potato producers, to the potato industry, or to consumers.
- Provides for certification reciprocity between states. Seed potatoes certified in another state may be sold as certified seed potatoes in Wisconsin, provided that the other state reciprocates, and provided that the other state applies certification standards and procedures that are equivalent to those applied in Wisconsin. Seed potatoes certified in another state may not be represented as Wisconsin certified seed potatoes, and must be labeled to show certification in another state.
- Modernizes requirements for certified seed potato labeling, shipping and handling.
- 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.

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 potato growers.

Because this rule has no significant adverse impact on small business, it is not subject to the delayed small business effective date provided in s. ATCP 227.22(2)(e), Stats. DATCP has not incorporated a small business enforcement policy in this rule, pursuant to 2003 Wis. Act 145, because participation in the seed potato certification program is voluntary. DATCP has adopted a separate rule (subch. VII of ch. ATCP 1) related to the exercise of enforcement discretion under all of its rules.

Environmental Impact

This rule will have no significant environmental impact, compared to current rules. This rule, like the current rules, will help to prevent the introduction and spread of serious potato diseases in this state. No environmental impact statement is required.

Federal and Surrounding State Programs

Federal Programs

There are no comparable federal programs related to the health certification of seed potatoes. The United States department of agriculture (animal and plant health inspection service) is currently developing a proposed memorandum of understanding with states to standardize seed potato certification between states, and to ensure that certification meets minimum standards. This rule is consistent with the proposed memorandum of understanding.

The United States department of agriculture (agricultural marketing service) has developed standards for grading potatoes. The grading standards in this rule are very similar to the federal standards.

Surrounding States

Michigan

Michigan recently changed its seed potato certification rules. The changes make the Michigan rules more consistent with Wisconsin rules. Conversely, this rule will also make Wisconsin rules more consistent with Michigan rules. For example:

- Michigan's rule allows variances from certification standards for good cause (such as a statewide shortage of certified seed potatoes). This rule will allow the college to grant similar variances.
- Michigan's rule has a zero tolerance for potato spindle tuber. This rule also specifies a zero tolerance for spindle tuber.
- Michigan's rule does not require certified "foundation" seed to be shipped in bags (it allows bulk shipments). This rule also allows bulk shipments, and eliminates the current bagging requirement in Wisconsin.

Minnesota

Minnesota's seed potato certification rule is similar to Wisconsin's. But unlike Wisconsin, Minnesota also restricts the planting of *uncertified* seed potatoes. The Minnesota rules prohibit a person from planting more than 10 acres of uncertified seed potatoes unless those seed potatoes have passed a field inspection. The field inspection must show compliance with disease standards similar to those that apply to certified seed potatoes (among other things, the potatoes must be free of ring rot).

This rule will make Wisconsin rules more consistent, in certain areas, with Minnesota rules. For example:

- Minnesota's rule allows variances from certification standards for good cause (such as a statewide shortage of certified seed potatoes). This rule will allow the college to grant similar variances.
- Minnesota's rule has a zero tolerance for potato spindle tuber. This rule also specifies a zero tolerance for spindle tuber.
- Minnesota's rule does not require certified "foundation" seed to be shipped in bags (it allows bulk shipments). This rule also allows bulk shipments, and eliminates the current bagging requirement in Wisconsin.
- Minnesota's rule provides for a more targeted response to bacterial ring rot findings. This rule adopts a similar approach in Wisconsin.
- Minnesota's rule allows growers to apply for certification of protected varieties, if they have permission to grow those varieties (the rule does not otherwise regulate the planting of protected varieties). This rule takes a similar approach.

Indiana, Illinois & Iowa

Indiana, Illinois and Iowa do not produce seed potatoes and do not have seed potato certification rules.

DATCP and UW Contacts

Questions and comments related to this rule may be directed to the following persons:

Comments for the Hearing Record:

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1 **SECTION 1.** Chapter ATCP 156 is repealed and recreated to read:

2 **CHAPTER ATCP 156**

3 **SEED POTATO CERTIFICATION AND GRADING**

4 **Subchapter I – Definitions**

5
6 ATCP 156.01 Definitions

7
8 **Subchapter II – Certification**

- 9
10 ATCP 156.02 – Seed potato certification; general
11 ATCP 156.03 – Certification standards
12 ATCP 156.04 – Certification inspections
13 ATCP 156.05 – Classifying certified seed potatoes
14 ATCP 156.06 – Storage and handling of certified seed potatoes
15 ATCP 156.07 – Approved laboratory or greenhouse
16 ATCP 156.08 – Review of college actions

17
18 **Subchapter III – Grading**

- 19
20 ATCP 156.10 – Grading certified seed potatoes; general
21 ATCP 156.11 – Defects
22 ATCP 156.12 – Badger state brand
23 ATCP 156.13 – Yellow tag grade
24 ATCP 156.14 – Badger state foundation brand
25 ATCP 156.15 – Yellow tag foundation grade
26 ATCP 156.16 – Misrepresentations
27 ATCP 156.17 – Review of grading decisions

28
29
30 **NOTE:** This chapter establishes a cooperative program, between the Wisconsin
31 department of agriculture, trade and consumer protection (the
32 “department”) and the university of Wisconsin college of agricultural and

1 life sciences (the “college”), for the voluntary certification and grading of
2 seed potatoes in this state.

3
4 Under this cooperative program, the college inspects seed potatoes for
5 pathogens, and certifies seed potatoes in appropriate categories based on
6 predicted disease-free reliability. The department inspects and grades
7 college-certified seed potatoes for other measures of quality.

8
9 Grading and certification are based on standards and procedures spelled
10 out in this rule. Grading and certification are voluntary (at the request of
11 the seed potato grower). The department and the college charge fees to
12 cover the costs of grading and certification.

13
14 The department has adopted this rule pursuant to ss. 93.06(1), (1m), (1p)
15 and (11), 93.07(1), 93.09 and 100.14, Stats., and pursuant to a
16 memorandum of understanding with the college. Sections ATCP
17 156.02(5) and 156.16 are adopted under s. 100.20(2), Stats. Violations of
18 those sections are subject to applicable penalties and remedies provided in
19 ss. 100.20(5) and (6) and 100.26, Stats.

20
21 Under this rule and the memorandum of understanding with the college,
22 the department has delegated authority to the college to inspect and certify
23 seed potatoes, and charge fees to cover the college’s costs of inspection
24 and certification. Certification decisions by the college may be subject to
25 administrative review by the department, as provided by this chapter.

26
27 **SUBCHAPTER I**
28 **DEFINITIONS**

29
30 **ATCP 156.01 Definitions.** In this chapter:

31 (1) “Bacterial ring rot” means one of the following:

32 (a) For purposes of visual inspection under this chapter, the condition caused by

33 *Clavibacter michiganensis* subsp. *Sepedonicus*.

34 (b) For purposes of laboratory testing under this chapter, *Clavibacter*

35 *michiganensis* subsp. *Sepedonicus*.

36 (2) “Certified seed potatoes” means seed potatoes certified and graded by any of
37 the following:

38 (a) The college under subchapter II and the department under subchapter III.

1 (b) The seed certification agency in another state, under standards equivalent to
2 those under subchapters II and III as determined by the college.

3 **NOTE:** To obtain a list of states whose certification is recognized in this state,
4 visit the college website at: <http://www.plantpath.wisc.edu/wspcp/>.

5
6 (3) “College” means the college of agricultural and life sciences of the university
7 of Wisconsin-Madison, department of plant pathology.

8 (4) “Damage” means any defects, except sunburn, greening or hollow heart,
9 which materially detract from the internal or external appearance of a potato, or which
10 cannot be removed without removing more than 5% of the total weight of the potato.

11 “Damage” includes any of the defects identified in s. ATCP 156.11(1) or (2).

12 (5) “Department” means the Wisconsin department of agriculture, trade and
13 consumer protection.

14 (6) “Diameter” means the greatest dimension at right angles to the longitudinal
15 axis of a potato, where the longitudinal axis is determined without regard to the position
16 of the stem (rhizome).

17 (7) “External defect” means a defect that can be detected by inspecting the outer
18 surface of a potato, regardless of whether cutting is needed to determine the extent of
19 internal injury related to the external defect. “External defect” includes any of the defects
20 listed in s. ATCP 156.11(1).

21 (8) “Fairly well shaped” means not pointed, dumbbell-shaped or otherwise ill-
22 formed to a material degree.

23 (9) “Farm” means land in this state on which a seed potato grower produces seed
24 potatoes. “Farm” includes all land, equipment, and storage facilities used to plant, grow,
25 harvest, handle or store potatoes grown on the farm. A “farm” includes all land that the

1 seed potato grower uses to produce potatoes of any kind, except that the seed potato
2 grower and the college may agree to treat non-contiguous tracts of land as separate
3 “farms” if the seed potato grower refrains from doing any of the following:

4 (a) Storing potatoes from non-contiguous tracts of land in the same storage
5 facility.

6 (b) Using the same planting, cultivation or harvesting equipment on more than
7 one non-contiguous tract of land, unless the grower cleans and disinfects the equipment
8 according to college specifications between uses on different non-contiguous tracts of
9 land.

(10) “Field propagation” means the outdoor production of potatoes in this state or
another state. “Field propagation” does not include any of the following:

(a) Production of propagative material in a laboratory or greenhouse.

(b) Outdoor production, under a recognized breeding program, of propagative
material that is subsequently approved under s. ATCP 156.03(1)(f).

10 (11) “Field inspection” means inspection of growing potato plants on a farm
11 where seed potatoes are produced.

12 (12) “Foundation seed potatoes” means seed potatoes that are certified for use in
13 the production of other certified seed potatoes. “Foundation seed potatoes” includes all
14 of the following:

15 (a) Foundation seed potatoes certified, classified and graded as foundation seed
16 potatoes under this chapter, including Badger State Brand Foundation seed potatoes and
17 Yellow Tag Grade Foundation seed potatoes.

18 **NOTE:** Foundation seed potatoes may be produced from, among other things,
19 “Elite Source” potatoes produced by the college. See s. ATCP 156.03(1).

1
2 (b) Seed potatoes that the seed certification agency in another state has certified,
3 classified and graded as foundation seed potatoes for use as seed for certified seed
4 potatoes, under standards equivalent to those in this chapter as determined by the college.

5 **NOTE:** To obtain a list of states whose certification is recognized in this state,
6 visit the college website at: <http://www.plantpath.wisc.edu/wspcp/>.

7
8 (13) “Internal defect” means any defect that cannot be detected without cutting
9 the potato. “Internal defect” includes any of the defects listed in s. ATCP 156.11(2).

10 (14) “Internal discoloration” means discoloration on the inside of a potato,
11 including discoloration caused by necrosis, stem-end browning or internal brown spot.

12 (15) “Laboratory test” means a laboratory test by the college, or by a laboratory
13 approved under s. ATCP 156.07.

14 (16) “Leafroll” means the condition caused by leafroll virus.

15 (17) “Line” means all generations of propagative material descended from a
16 single tissue culture plantlet, or from a single set of tissue culture plantlets of the same
17 potato variety or selection. “Line” does not include other tissue culture plantlets
18 subsequently produced from tubers or plants in the line, or any propagative material
19 descended from those other tissue culture plantlets.

20 (18) “Lot” means potatoes of the same variety and line that are produced from
21 the same type of propagative material from the same source, and are grown on the same
22 farm in the same year.

23 (19) “Microtubers” means pathogen-free tubers produced aseptically in tissue
24 culture.

1 (20) “Minitubers” means tubers produced from plants grown in pots, or in a
2 hydroponic system, in a controlled environment such as a greenhouse.

3 (21) “Mosaics” means symptoms caused by potato virus Y, X or A. “Mosaics”
4 includes symptoms, produced by other viruses, which are similar to those produced by
5 virus Y, X or A.

6 (22) “Nematode or tuber moth injury” means the presence of nematode or tuber
7 moth, or the evidence of nematode or tuber moth activity.

8 (23) “Person” means an individual, corporation, partnership, cooperative, limited
9 liability company, or other legal entity.

10 (24) “Plant variety protection act” means the United States plant variety
11 protection act, 7 USC 2321 et seq., as amended.

12 (25) “Pre-approved” means approved by the college, in writing, prior to being
13 planted in the field.

14 (26) “Propagative material” means tubers, tuber portions, microtubers,
15 minitubers, tissue-culture plantlets, or potato plants used to produce seed potatoes.

16 “Propagative material” includes foundation seed potatoes.

17 (27) “Seed certification agency” means a state agency, state academic institution,
18 or state grower organization that is responsible for certifying seed potatoes and issuing
19 certification documentation for seed potatoes or propagative materials.

20 (28) “Seed potato” means a tuber, minituber or microtuber that is used, or that is
21 held, offered, sold or distributed for use, for the field propagation of potatoes.

22 (29) “Seed potato grower” means a person, other than the college, who produces
23 seed potatoes on land in this state that the person owns or controls.

1 (2) CLASSIFYING CERTIFIED SEED POTATOES. The college shall classify, according
2 to s. ATCP 156.05, each lot of seed potatoes that it certifies under sub. (1). Classification
3 does not constitute a warranty by the college.

4 (3) CERTIFICATION DOCUMENTS. The college shall issue a certification under sub.
5 (1) in writing, and shall provide copies of the certification documents to the seed potato
6 grower. The certification documents shall include all of the following:

7 (a) A unique identification number for the certified lot.

8 (b) The name and address of the seed potato grower.

9 (c) The certification date and the year to which the certification applies.

10 (d) The location of the farm on which the certified seed potatoes are grown.

11 (e) The number of acres of seed potatoes in the certified lot.

12 (f) The variety of seed potatoes in the certified lot.

13 (g) The classification assigned to the certified seed potatoes under sub. (2) and
14 the basis for that classification.

15 (h) The nature and source of the propagative material used to produce the
16 certified lot.

17 **NOTE:** Certified seed potatoes must be produced from propagative material that
18 complies with s. ATCP 156.03(1).

19 (i) The result of each of the following inspections or tests conducted on the
20 certified lot:
21

22 1. Each field inspection under s. ATCP 156.04(1).

23 2. Each harvest inspection under s. ATCP 156.04(2).

1 3. Labeled according to this subchapter and subch. III. Labeling shall include the
2 classification assigned under sub. (2) and the grade assigned under subch. III.

3 (b) No person may represent seed potatoes, certified in another state, as
4 Wisconsin certified seed potatoes.

5 (c) No person may misrepresent the terms, conditions or basis for any seed potato
6 certification, including any information related to seed potato classification, inspection
7 findings, lab test findings, line or source.

8 **NOTE:** Subsection (5) is adopted under s. 100.20(1), Stats. The college may
9 withdraw a violator's certification, pursuant to sub. (9). The department
10 may also prosecute fraudulent claims pursuant to s. 100.20(6) or 100.26,
11 Stats. A buyer who suffers a monetary loss because of a fraudulent claim
12 may bring a private court action for double damages, costs and attorney
13 fees, pursuant to s. 100.20(5), Stats.

14
15 **(5) CERTIFICATION BY ANOTHER STATE.** No person may sell or represent potatoes
16 as seed potatoes certified by another state unless all of the following apply:

17 (a) The seed certification agency in the other state has certified, classified and
18 graded the seed potatoes according to standards that are equivalent to the standards in this
19 chapter as determined by the college.

20 (b) The potatoes are labeled to show their state of origin, and their certification,
21 classification and grade under par. (a).

22 (c) The potatoes are accompanied by certification documentation, issued by the
23 seed certification agency in the other state, which is equivalent to the certification
24 documentation under sub. (3) as determined by the college. The seller shall make the
25 certification documentation available to the college and the department, for inspection
26 and copying, upon request.

1 (d) The other state acknowledges Wisconsin seed potato certification, subject to
2 terms that are no more restrictive than the terms in this subsection.

3 **NOTE:** To obtain a list of states whose certification is recognized in this state,
4 visit the college website at: <http://www.plantpath.wisc.edu/wspcp/>.

5
6 **(6) APPLYING FOR CERTIFICATION.** A seed potato grower shall apply for
7 certification under sub. (1) by June 15 of the year in which the grower produces the seed
8 potatoes. The grower shall apply to the college on a form provided by the college. The
9 application shall include all of the following:

10 (a) The name of the seed potato grower.

11 (b) The location of the farm on which the seed potatoes are grown.

12 (c) The total acreage of potatoes planted on the farm, and the total acreage
13 proposed for certification.

14 **NOTE:** A grower who applies for certification of seed potatoes may not plant,
15 on the same farm in the same year, any potatoes or propagative materials
16 except those listed in s. ATCP 156.03(1). See s. ATCP 156.03(2)(c).

17
18 (d) A description of each separate lot of seed potatoes proposed for certification.

19 The description of each lot shall comply with sub. (7).

20 (e) An agreement to permit inspections required under s. ATCP 156.04.

21 (f) An agreement to pay the college's reasonable certification costs, as
22 determined by the college, including costs for all of the following:

23 1. Inspections required under s. ATCP 156.04.

24 2. Laboratory testing, if required.

25 3. Issuing certification documents under sub. (3).

26 (g) Other relevant information requested by the college, for purposes of
27 certification.

1 **NOTE:** A seed potato grower may obtain an application form under sub. (6) by
2 contacting the college. The college maintains a certification field office in
3 Antigo, Wisconsin. A grower may also obtain application information by
4 visiting the college website at: <http://www.plantpath.wisc.edu/wscep/>.

5
6 **(7) LOT DESCRIPTION.** A lot description under sub. (6)(d) shall include all of the
7 following:

8 (a) The potato variety. If the variety is protected under the plant variety
9 protection act, the application shall document that the seed potato grower has the right to
10 grow and sell the protected variety.

11 (b) The number of planted acres from which the lot was produced.

12 (c) A description of the propagative material used to produce the lot. The
13 description shall do all of the following:

14 1. Identify the nature and source of the propagative material.

15 2. Document that the propagative material complies with s. ATCP 156.03(1).

16 3. Include a certification document under sub. (3) or (5)(c) if the propagative
17 material consists of certified seed potatoes.

18 **(8) FRAUDULENT APPLICATION.** No person may submit any false or fraudulent
19 information in connection with a certification application under sub. (6).

20 **(9) DENYING OR WITHDRAWING CERTIFICATION.** (a) The college may, by written
21 notice, deny or withdraw a certification under sub. (1) if the college finds any of the
22 following:

23 1. Certification standards under this subchapter are not met.

24 2. The college issued the certification based on false or fraudulent information.

25 3. The seed potato grower has materially violated this section.

26 (b) A notice under par. (a) shall state the reasons for the denial or withdrawal.

1 **NOTE:** A seed potato grower may request a meeting with college staff to discuss
2 a certification denial or withdrawal under sub. (9). If the matter cannot be
3 resolved by the grower and the college, the grower may request a
4 contested case hearing before the department, pursuant to s. 227.42, Stats.
5 and ch. ATCP 1. See s. ATCP 156.08.
6

7 **ATCP 156.03 Certification standards. (1) PROPAGATIVE MATERIAL USED TO**
8 **GROW THE CERTIFIED SEED POTATOES.** Certified seed potatoes shall be grown from one of
9 the following:

10 (a) Foundation seed potatoes produced, on the same farm, by the seed potato
11 grower requesting certification.

12 (b) Foundation seed potatoes produced on another farm in this state, if pre-
13 approved by the college.

14 (c) Propagative material produced by the college.

15 **NOTE:** The college produces “Elite Source” potatoes that may be used under
16 par. (c) to grow foundation seed potatoes. “Elite Source” potatoes comply
17 with all of the standards in this subchapter, and are labeled to show the
18 number of years of field propagation on the college farm. The college
19 rigidly screens the potatoes for disease, using accepted indexing methods.
20

21 (d) Propagative material that is pre-approved by the college and produced in a
22 laboratory or greenhouse approved under s. ATCP 156.07.

23 (e) Foundation seed potatoes certified by another state, under standards
24 equivalent to those in this chapter, and pre-approved by the college.

25 (f) Propagative material produced by a breeding program that is pre-approved by
26 the college. The college may approve the propagative material if the college does all of
27 the following:

28 1. Finds that the material was produced under conditions that reasonably limit the
29 threat of disease or variety mixture.

1 2. Conducts field and harvest inspections of the propagative material, equivalent
2 to the inspections under ss. ATCP 156.04(1) and (2), and finds that the propagative
3 material meets standards equivalent to the certification standards under s. ATCP
4 156.03(3) to (5).

5 **NOTE:** The college may pre-approve propagative material from a recognized
6 breeding program, even though the program does not employ a limited-
7 generation scheme. Recognized breeding programs evaluate potato lines
8 for agronomic characteristics, and most of the lines are derived from true
9 seed rather than tissue culture. Seed potatoes descended from the
10 propagative material may be certified for a maximum of 3 years. *See s.*
11 *ATCP 156.05(2).*

12
13 (g) Certified seed potatoes when specifically authorized under sub. (6)(a)3.

14
15 **NOTE:** Sub. (6)(a)3. allows a grower to produce foundation seed potatoes from
16 non-foundation certified seed potatoes under special circumstances, when
17 the grower is recovering from a bacterial ring rot finding 2 seasons earlier.
18

19 **(2) PLANTING STANDARDS.** Seed potato lots proposed for certification shall
20 comply with the following planting standards:

21 (a) Each lot shall be separated from every other lot by at least one planting row.

22 (b) Each lot shall be separated by at least 50 feet from other potatoes that are not
23 a part of a lot proposed for certification. The college may approve a shorter separation
24 distance if there is adequate alternative protection against transmission of viral disease.

25 (c) Lots may not be planted on the same farm, in the same year, with any
26 potatoes or propagative materials except those listed in sub. (1).

27
28 **(3) FIELD AND HARVEST INSPECTION STANDARDS.** (a) The college may not certify
29 a lot of seed potatoes if an inspection under s. ATCP 156.04(1) or (2) finds any disease or
30 variety mixture in excess of the rate specified in *Table 1*.

Table 1.
FIELD AND HARVEST INSPECTION STANDARDS

CONDITION	1 ST FIELD INSPECTION	SUBSEQUENT FIELD OR HARVEST INSPECTIONS	
		Foundation Seed Potatoes	Other Seed Potatoes
Leafroll	1.5%	0.25%	1.0%
Mosaics	2.0%	0.25%	1.0%
Spindle tuber	0.0%	0.0%	0.0%
Total virus allowed	3.0%	0.25%	2.0%
Bacterial ring rot	0.0%	0.0%	0.0%
Variety mixture	1.0%	0.1%	0.1%

1 (b) The college may decline to certify a lot of seed potatoes if any of the
2 following apply:

3 1. The planted or harvested lot is materially affected by a disease, pest infestation
4 or condition, not identified in *Table 1*, which adversely affects the growth, quality or
5 value of the seed potatoes.

6 **NOTE:** For example, par. (b)1. may include diseases, pest infestations and
7 conditions such as late blight, soft rot, frostbite, slow emergence, missing
8 hills or excessive weed growth.

9
10 2. The seed potato grower fails or refuses to permit an inspection under s. ATCP
11 156.04(1) or (2).

12 3. Conditions on the farm prevent a complete inspection under s. ATCP
13 156.04(1) or (2).

14 **(4) POST-HARVEST TEST STANDARDS.** (a) Except as provided in par. (b), the
15 college shall deny or withdraw certification of a seed potato lot if a post-harvest test

1 under s. ATCP 156.04(3) finds any disease or variety mixture in excess of the rate
2 specified in *Table 2*.

Table 2.
POST-HARVEST TEST STANDARDS

CONDITION	FOUNDATION SEED POTATOES	OTHER CERTIFIED SEED POTATOES
Leafroll	0.5%	5.0%
Mosaics	0.5%	5.0%
Spindle tuber	0.0%	0.0%
Total virus allowed	0.5%	5.0%
Bacterial ring rot	0.0%	0.0%
Variety mixture	0.25%	2.0%

3 **NOTE:** The college must complete a post-harvest test *before* certifying
4 *foundation* seed potatoes. See s. ATCP 156.04(3)(a). The college may
5 certify *other* seed potatoes before completing a post-harvest test, but must
6 withdraw the certification if the post-harvest test shows a violation of
7 standards under sub. (4)(a).

8 (b) The college may certify a lot of seed potatoes, regardless of the existence or
9 results of any post-harvest test under ss. ATCP 156.04(3), if all of the following apply:

10 1. The lot has met the standards under sub. (3)(a) based on field and harvest
11 inspections under s. ATCP 156.04(1) and (2).

12 2. The college conducts reliable laboratory tests on a representative sample of
13 potatoes from the lot; or receives results from equivalent tests conducted by a reliable
14 commercial laboratory, and the laboratory tests show that the lot complies with the post-
15 harvest test standards in par. (a).

1 **(5) FOUNDATION SEED POTATOES; ADDITIONAL STANDARDS.** The college may not
2 certify foundation seed potatoes from any farm unless all of the following apply:

3 (a) The college has conducted field and harvest inspections, under ss. ATCP
4 156.04(1) and (2), of all potatoes grown on the farm in the 2 preceding years.

5 (b) The college has conducted a post-harvest test of the previous year's seed
6 potato production from that farm under s. ATCP 156.04(3), or has conducted equivalent
7 laboratory tests of that production under sub. (4)(b).

8 **(6) BACTERIAL RING ROT; ADDITIONAL STANDARDS.** (a) The college may not do
9 any of the following if the college finds that any lot of potatoes from a farm is infected
10 with bacterial ring rot:

11 1. Certify the infected lot.

12 2. Certify as foundation seed potatoes any potatoes descended from potatoes
13 grown on the same farm, in the same year, as the infected lot.

14 3. Certify as foundation seed potatoes any potatoes grown on the same farm in
15 the same year or the following year, except that certified seed potatoes grown in the
16 second year may be used to grow foundation seed potatoes in the third year if there is no
17 further finding of bacterial ring rot.

18 (b) If the college finds any lot of potatoes infected with bacterial ring rot, no
19 potatoes from that lot may be stored in a warehouse used to store certified seed potatoes.

20 (c) If the college finds bacterial ring rot in stored potatoes, the college may not
21 certify any lot of potatoes from the same farm until the seed potato grower does all of the
22 following:

23 1. Removes all of the infected lots from storage.

1 2. Cleans and disinfects relevant potato equipment and facilities in a manner
2 approved by the college.

3 **(7) VARIANCE ALLOWED BY COLLEGE.** (a) Notwithstanding subs. (3) and (4), the
4 college may certify a lot of seed potatoes that fails to comply with one or more standards
5 under sub. (3) or (4) if the college documents all of the following in the certification
6 document under s. ATCP 156.02(3):

7 1. Special conditions justify the certification, and there is a reasonable likelihood
8 that the next generation of seed potatoes grown from the non-complying lot will comply
9 with the standards under subs. (3) and (4).

10 2. No bacterial ring rot has been found in the lot.

11 3. The certification will not jeopardize seed potato quality, or pose a significant
12 risk of harm to the potato industry or consumers.

13 (b) A seed potato grower may submit a written request for certification under par.

14 (a). The requester shall provide information to show that the requested action would
15 comply with par. (a).

16 (c) The college may require laboratory tests of a representative sample of the seed
17 potato lot for which the variance is requested.

18 **ATCP 156.04 Certification inspections.** **(1) FIELD INSPECTION.** Before the
19 college certifies a lot of seed potatoes, the college shall conduct at least 2 field
20 inspections of the farm on which that lot is being grown. The college shall visually
21 inspect at least 100 potato plants per acre of plants from which the lot is produced, and
22 may inspect any other potato plants growing on the farm. The inspection of a potato
23 plant may include a visual inspection of the plant and any tubers from the plant. The

1 college shall inspect potato plants for compliance with the standards in ss. ATCP
2 156.03(2) and (3).

3 (2) HARVEST INSPECTION. Before the college certifies a lot of seed potatoes, the
4 college shall visually inspect a representative sample of harvested tubers chosen from that
5 lot. The college shall choose the tubers at harvest, or after the tubers have been harvested
6 and stored. The college shall visually inspect at least 100 tubers for each harvested acre
7 of tubers comprising the lot, and may inspect any other tubers harvested from the farm.
8 The college shall inspect tubers for compliance with the standards under s. ATCP
9 156.03(3).

10 (3) POST-HARVEST TEST. (a) Except as provided in par. (b) or s. ATCP
11 156.03(4)(b), the college shall conduct a post-harvest test on each lot of certified seed
12 potatoes. The college shall conduct the post-harvest test according to par. (c). The
13 college may not certify foundation seed potatoes until it completes the post-harvest test,
14 but may certify other seed potatoes before completing the post-harvest test.

15 **NOTE:** The college must perform a post-harvest test before certifying *foundation*
16 seed potatoes. The college may certify *other* seed potatoes *before*
17 completing a post-harvest test, but must withdraw the certification if the
18 post-harvest test shows a violation of standards under s. ATCP 156.03(4).
19

20 (b) No post-harvest test is required under par. (a) if the certified lot will be
21 planted in the following season on fewer than 0.25 acres and only on the grower's own
22 farm.

23 (c) For a post-harvest test under par. (a), the grower shall deliver to a location
24 specified by the college a representative sample of 400 tubers for every 50 acres from
25 each lot to be certified, with a maximum of 4 samples per lot. Each tuber shall be $1\frac{3}{4}$ to
26 $2\frac{1}{4}$ inches in diameter and no more than $2\frac{1}{2}$ inches long. The college shall plant the

1 tubers in a winter growing location chosen by the college. The college shall inspect the
 2 potato plants and potatoes grown from those tubers for compliance with the standards
 3 under s. ATCP 156.03(4)(a).

4 (d) The college shall deny or withdraw its certification of a seed potato lot if the
 5 seed potato grower impedes or fails to permit a post-harvest test under this subsection. If
 6 the college is unable to perform a post-harvest test because of conditions outside the
 7 control of the seed potato grower or the college, the lack of a post-harvest test does not
 8 affect the validity of a certification under s. ATCP 156.02(1).

9 **ATCP 156.05 Classifying certified seed potatoes. (1) GENERAL.** (a) The
 10 college shall classify certified seed potatoes according to *Table 3*. The college shall use
 11 the *standard classification* except that, if the seed potatoes are descended from
 12 propagative material approved under s. ATCP 156.03(1)(f), the college shall use the
 13 *experimental classification*.

Table 3.
CLASSIFICATION

Year of Field Propagation (Generation)	Standard Classification	Experimental Classification
1	FY1	Ex5
2	FY2	Ex6
3	FY3	Certified
4	FY4	
5	FY5	
6	FY6	
7	Certified	

14 (b) In *Table 3*:

- 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 7th 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 **(2) VARIETIES MAY NOT BE COMMINGLED.** No person may store, in the same bin
18 or container, certified seed potatoes from more than one variety.

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

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

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.

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.
- 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 1½ 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 1. A yellow tag, issued by the college, that complies with sub. (6)(c).
- 2 2. A seal issued by the department under s. ATCP 156.10(2)(b).

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

6
7 **ATCP 156.14 Badger state foundation brand. (1) GRADE REQUIREMENTS.** To
8 qualify for the badger state foundation brand, a lot of certified seed potatoes shall meet all
9 of the following requirements:

10 (a) The college shall certify the lot under subchapter II as foundation seed
11 potatoes.

12 (b) The lot shall comply with all requirements applicable to badger state brand
13 certified seed potatoes under s. ATCP 156.12.

14 **(2) SALE IN BAGS.** The following requirements apply whenever badger state
15 foundation brand seed potatoes are sold in bags or totes, as certified foundation seed
16 potatoes:

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

19 (b) Each bag or tote may be labeled with the words “Badger State Brand.” No
20 other brand, other than the seller’s trademark, may appear on the bag without the
21 department’s approval.

22 (c) Each bag or tote shall bear a blue tag issued by the college under s. ATCP
23 156.02(3)(a). The blue tag shall clearly disclose all of the following:

- 24 1. The words “Wisconsin Certified Seed Potatoes Badger State Brand.”
- 25 2. The word “Foundation” overprinted on the face of the tag.

- 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).

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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