

## Chapter ATCP 155

### VEGETABLE GRADING PROCEDURES AND GRADE STANDARDS

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**Note:** Chapter Ag 99 was renumbered chapter ATCP 155 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

#### Subchapter I — Definitions and General Requirements

**ATCP 155.01 Definitions.** As used in this chapter:

(1) “Contractor” means a vegetable contractor as defined in s. 126.55 (14), Stats.

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

(3) “Procurement contract” means a vegetable procurement contract as defined in s. 126.55 (15), Stats.

(4) “Producer” means a vegetable producer as defined in s. 126.55 (16), Stats.

(5) “Tare” means the weight of extraneous or foreign material in a load of vegetables which is deducted from the gross weight to obtain net weight. “Tare” does not include culled, substandard or undergrade vegetables.

(6) “Vegetables” means sweet corn, snap beans or peas which are grown or sold for use in food processing, whether or not they are actually processed as food.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; CR 06-028: am. (1), (3) and (4) Register November 2006 No. 611, eff. 12-1-06.

**ATCP 155.02 Grade standards.** A determination of the condition or qualitative classification of vegetables is a determination of grade. If the amount of payment received by a producer under a vegetable procurement contract depends on the grade of the vegetables, the grade of the vegetables shall be determined according to one of the following:

(1) Applicable grade standards adopted by the federal department of agriculture under 7 USC 1621 et seq.

(2) Alternative grade standards which are clearly specified in writing in the procurement contract.

**Note:** Copies of USDA grade standards for snap beans for processing, fresh shelled peas for canning or freezing, and sweet corn for processing are on file with the department, the secretary of state, and the legislative reference bureau. Copies may be obtained from the department.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**ATCP 155.03 Grading procedures.** (1) **GENERAL.** Vegetables grown under a procurement contract, if graded for payment purposes, shall be received, handled and graded in compliance with this subchapter and crop-specific requirements under subchs. II to IV.

(2) **LOADING RECEIPT.** When a contractor receives vegetables under a procurement contract, the contractor shall immediately provide the producer with a signed receipt for the vegetables. If

the contractor harvests the vegetables, or receives the vegetables at the harvest site, the contractor shall provide the producer with a receipt for each load of vegetables before that load leaves the harvest field. The contractor may leave the loading receipt in a receptacle provided by the producer at the harvest field. The receipt shall include all of the following information:

(a) The name and address of the contractor and carrier.

(b) The identity of the producer.

(c) The location of the harvest field.

(d) The date and beginning time of harvest.

(e) Identification of the load of vegetables, including the license number of the transport vehicle used to haul the load of vegetables.

(f) Signature of the contractor or agent of the contractor.

(3) **EVERY LOAD SAMPLED; IDENTIFICATION OF SAMPLES.** If vegetables are graded for payment purposes, the contractor shall collect a grading sample from every load of vegetables, according to sampling procedures prescribed under this chapter. The sample may be collected from the transport vehicle at the harvest location or when the vegetables are delivered or unloaded at the processing plant. Each sample shall be identified with all of the following information:

(a) The name and address of the contractor.

(b) The identity of the producer.

(c) The location of the harvest field.

(d) Identification of the load of vegetables from which the sample was drawn, including the license number of the transport vehicle used to haul the vegetables.

(e) The date and time when the sample was collected.

(f) The date and time the vegetables were harvested.

(4) **LOAD WEIGHT STATEMENT.** Within 7 days after a load of vegetables is harvested, the contractor shall mail or deliver to the producer a written statement of load weight. A contractor shall orally provide load weight information on request of the producer made prior to delivery of the written load weight statement. The statement shall identify the load of vegetables, and shall state the weight of the load of vegetables, as determined by the person who weighs the load. The weight statement shall be signed by the weigher when the load is weighed, and may be incorporated with a grade statement under sub. (5). If tare is deducted from the weight, tare shall be determined in compliance with sub. (6) and shall be recorded with the weight statement.

(5) **GRADE STATEMENT.** Within 7 days after a load of vegetables is harvested, the contractor shall mail or deliver to the producer a written grade statement for that load. A contractor shall orally provide grade information on request of the producer made

prior to delivery of the written grade statement. The grade statement shall indicate the grade of the load, as determined by the grader and shall be signed by the grader when the load is graded. Grade shall be determined by analyzing the grading sample collected under sub. (3), according to standards and procedures prescribed under this chapter. The grade statement shall include all of the following:

- (a) The name and address of the contractor.
- (b) The identity of the producer.
- (c) The location, date and time at which the grading sample was collected and the location at which it was graded.
- (d) Identification of the load of vegetables to which the grade statement pertains, including the license number of the transport vehicle used to haul the vegetables.
- (e) The date and time of grading.
- (f) The weight of the samples used for grading.
- (g) The weight of tare in the grading sample, and the percentage of tare calculated on the gross weight of the sample.
- (h) The grade information required under s. ATCP 155.14 for snap beans, s. ATCP 155.23 for peas, and s. ATCP 155.33 for sweet corn.
- (i) Space for comments or remarks of the grader.
- (j) The grader's signature.

**(6) TARE.** If, under any procurement contract, there is a deduction for tare, tare shall be actual tare as defined under s. ATCP 155.12 (4) for snap beans, s. ATCP 155.21 (3) for peas, or s. ATCP 155.31 (4) for sweet corn. This subsection does not prohibit either of the following:

- (a) A payment deduction under s. ATCP 155.215 for thistle buds, nightshade berries or mustard pod pieces in peas.
- (b) A payment deduction for undergrade, substandard or culled vegetables graded under subchapters II to IV, provided that the undergrade, substandard or culled vegetables are separately identified and graded and are not counted as tare.

**(7) GRADING LOCATION.** Vegetables graded under this chapter shall be sampled and graded in this state. Vegetables may be graded outside this state with prior approval from the department. Approval will only be granted if grading is performed by a grader or inspector licensed by the federal department of agriculture.

**(8) REVIEW BY PRODUCER.** A producer or producer's representative may observe the loading, weighing, sampling and grading of vegetables grown by that producer, and may review any records required to be kept by the contractor under s. ATCP 155.05.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; r. and recr. (6), Register, February, 1995, No. 470, eff. 3-1-95.

**ATCP 155.05 Recordkeeping. (1) RECORDS REQUIRED.** Every contractor shall maintain copies of the following records for each producer with whom the contractor has entered into a procurement contract:

- (a) Procurement contracts.
- (b) Loading receipts under s. ATCP 155.03 (2).
- (c) Sampling information under s. ATCP 155.03 (3).
- (d) Load weight statements under s. ATCP 155.03 (4).
- (e) Grade statements under s. ATCP 155.03 (5).

**(2) RECORDS KEPT FOR 3 YEARS.** Records required under this section shall be kept for 3 years and shall be made available for inspection and copying upon request by the producer, an authorized agent of the producer, or a representative of the department.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; r. (1) (f), Register, December, 1992, No. 444, eff. 1-1-93; reprinted to correct printing error, Register, November, 1999, No. 527.

#### **ATCP 155.06 Weighing and measuring devices.**

**(1) GOOD WORKING ORDER.** Scales and other measuring devices used in weighing, sampling and grading vegetables shall be maintained in good working order.

**(2) ANNUAL INSPECTION AND TESTING.** Every scale and measuring device used in weighing, sampling or grading farm products shall be inspected and tested for accuracy annually by the manufacturer of the equipment or an independent testing or service company. Inspection and testing shall comply with applicable specifications, tolerances, standards and procedures required by the national institute of standards and technology and the department. Test weights shall be approved by the department. Annual tests and inspections shall be at the expense of the owner or operator of the scale or measuring device.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

### **Subchapter II — Grading Procedure for Snap Beans for Processing**

**ATCP 155.11 Grading deadline. (1) GENERAL.** Snap beans for processing shall be weighed, sampled, and graded as soon as reasonably possible after harvest, but not longer than 18 hours after harvest. The contractor shall take necessary and reasonable precautions to preserve the condition of the snap beans at time of harvest until they are graded.

**(2) DELAY DUE TO EXTRAORDINARY CIRCUMSTANCES; NOTICE.** The contractor shall give oral notice to the producer within 18 hours after harvest if, due to extraordinary circumstances, the snap beans cannot be weighed, sampled and graded within the time provided under sub. (1). Within 7 days after harvest, the contractor shall mail or deliver written notice to the producer, describing the extraordinary circumstances which justify the contractor's failure to comply with sub. (1).

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**ATCP 155.12 Sampling procedure. (1) REPRESENTATIVE SAMPLING.** Each load of snap beans shall be graded on the basis of a grading sample collected under s. ATCP 155.03 (3). The grading sample shall be collected in compliance with this section. The composite grading sample shall be representative of the entire load of snap beans and shall reflect all qualitative gradations observed in the load by the person who collects the sample.

**(2) COMPONENT SAMPLES; COMPOSITE SAMPLE.** At least 10 5-lb. samples of snap beans shall be individually collected from each load of snap beans. The 5-lb. samples shall be combined and thoroughly mixed to form a composite sample weighing not less than 50 lbs. The composite sample shall be used to determine tare for a load of snap beans.

**(3) GRADING SAMPLE DRAWN FROM COMPOSITE SAMPLE.** A grading sample weighing at least 10 lbs. shall be taken from the thoroughly mixed 50 lb. composite sample under sub. (2). The 10-lb. grading sample shall be used to determine the grade and size of snap beans.

**(4) TARE.** Actual tare shall be used in grading snap beans. Actual tare is the amount deducted from the gross weight of the composite sample for extraneous material only. Extraneous material consists of bean vines and leaves, weeds, stones, sticks, loose dirt or other foreign material. All vines attached to beans shall be detached in determining the grade, and shall be included with the extraneous material.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

#### **ATCP 155.13 Grading and sizing procedure.**

**(1) GRADE STANDARDS.** Snap beans shall be graded for grade characteristics using USDA grade standards or alternative standards specified in writing in the procurement contract.

**(2) SIZE GRADING.** If snap beans are size graded, the grader shall size grade the sample in accordance with USDA size classification standards. When sizing snap beans, the beans shall be fed slowly and evenly through the sizer to avoid crowding. Sieve size No. 5 beans and larger shall be passed through the sizer at least a second time. The largest and smallest looking beans in each size

classification shall be sized with a hand sizer to ensure the beans are identified in the proper size classification.

(3) **SIZING EQUIPMENT.** Mechanical sizing equipment shall be tested, calibrated and certified by the manufacturer of the equipment or an independent certification agency prior to each harvest season and recalibrated as often as necessary. Sizing equipment shall be cleaned daily, or more frequently if required, and shall be maintained in good working condition.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**ATCP 155.14 Grade statement.** Within 7 days after a load of snap beans is harvested, the contractor shall provide the producer with a grade statement for that load, as required by s. ATCP 155.03 (5). A contractor shall orally provide grade information on request of the producer made prior to delivery of the written grade statement. The grade statement shall state the percentage by weight of snap beans in each bean size classification and grade category specified in the contract, as determined by the grader under this subchapter. The grade statement shall also include the information required under s. ATCP 155.03 (5).

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

### Subchapter III — Grading Procedure for Fresh Shelled Peas for Canning or Freezing

**ATCP 155.20 Grading deadline.** (1) **GENERAL.** Fresh shelled peas for canning or freezing shall be weighed, sampled and graded as soon as reasonably possible after harvest, but not longer than 6 hours after harvest. The contractor shall take reasonable and necessary precautions to preserve the condition of the peas at the time of harvest until the peas are graded.

(2) **DELAY DUE TO EXTRAORDINARY CIRCUMSTANCES; NOTICE.** The contractor shall give oral notice to the producer within 6 hours after harvest if, due to extraordinary circumstances, the peas cannot be weighed, sampled and graded within the time provided under sub. (1). Within 7 days after harvest, the contractor shall mail or deliver a written notice to the producer, describing the extraordinary circumstances which justify the contractor's failure to comply with sub. (1).

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**ATCP 155.21 Sampling procedure.** (1) **REPRESENTATIVE SAMPLING.** Each load of peas shall be graded on the basis of a grading sample collected under s. ATCP 155.03 (3). The grading sample shall be collected in compliance with this section. The grading sample shall be representative of the entire load of peas and shall reflect all qualitative gradations observed in the load by the person who collects the sample.

(2) **COMPONENT SAMPLES; COMPOSITE SAMPLE.** The grading sample collected from a load of peas shall weigh not less than 200 ounces. The grading sample shall consist of ten 20-oz. samples individually drawn from throughout the entire load of peas. The 10 component samples shall be combined and thoroughly mixed to form the composite grading sample, which shall be used to determine grade and tare. The composite grading sample shall be accurately weighed, and the weight shall be recorded.

(3) **TARE.** Actual tare shall be used in grading peas. All peas shall be removed from any unshelled pods in the sample, and the pods shall be included as tare. Actual tare is the amount deducted from the gross weight of the sample for foreign material only. Foreign material includes shelled pods, thistle buds, nightshade berries, mustard pod pieces and everything in the sample other than the peas themselves. The presence of thistle buds, nightshade berries, mustard pod pieces or other foreign material in the sample shall not affect the grade of the peas. Except as provided under s. ATCP 155.215, no contractor may deduct for thistle buds, nightshade berries or mustard pod pieces except as tare.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91; am. (3), Register, February, 1995, No. 470, eff. 3-1-95.

### ATCP 155.215 Deductions for thistle buds, nightshade berries and mustard pod pieces.

(1) **GENERAL.** Under a procurement contract for peas, a contractor may deduct for thistle buds, nightshade berries and mustard pod pieces found among the peas. The deduction shall be made from the net amount that would be payable to the producer and may be applied to harvested peas or unharvested pea acreage according to this section. The procurement contract shall specify the terms of the deduction, consistent with this section. Deductions shall comply with the procurement contract and this section.

(2) **HARVESTED PEAS; BASIS FOR DEDUCTION.** For each load of harvested peas, the deduction under sub. (1) shall be based on the actual number of thistle buds, nightshade berries or mustard pod pieces found in a 200-ounce grading sample collected from that load. The sample shall be collected according to ss. ATCP 155.03 (3) and 155.21.

(3) **UNHARVESTED ACREAGE; BASIS FOR DEDUCTION.** For unharvested pea acreage, the deduction under sub. (1) shall be based on the actual number of thistle buds, nightshade berries or mustard pod pieces found in a composite 200-ounce grading sample collected from the unharvested acreage. The composite sample shall be comprised of component samples collected from the unharvested acreage according to s. ATCP 101.03 (5) or equivalent field sampling procedures specified in the procurement contract.

(4) **DEDUCTION AMOUNT.** No contractor may make a deduction under sub. (1) unless the procurement contract specifies the amount of the deduction. Subject to the limits specified under subs. (5) and (6), the amount deducted shall be based on the number of thistle buds, nightshade berries or mustard pod pieces found in sampling under sub. (2) or (3). Deduction amounts shall be expressed as percentages of the net amount that would be payable to the producer in the absence of any deduction under sub. (1).

(5) **DEDUCTION LIMITATIONS.** No contractor may make a deduction under sub. (1) unless the procurement contract specifies a number of thistle buds, nightshade berries or mustard pod pieces which, when found in sampling under sub. (2) or (3), will cause a deduction to be made under the contract. For purposes of making a deduction, the contract may not specify a number less than 4 thistle buds, 2 nightshade berries, or 20 mustard pod pieces.

(6) **DEDUCTION CAP.** (a) The amount of the deduction specified under sub. (4) for each thistle bud in excess of one may not exceed 5% of the net amount payable to the producer absent the deduction.

(b) The amount of the deduction specified under sub. (4) for each nightshade berry, if the deduction threshold is met, may not exceed 10% of the net amount payable to the producer absent the deduction.

(c) The amount of the deduction specified under sub. (4) for each aggregate unit of 20 whole or partial pieces of mustard pods may not exceed 5% of the net amount payable to the producer absent the deduction.

(d) The combined deduction specified under sub. (4) for thistle buds, nightshade berries and mustard pod pieces may not exceed 30% of the net amount that would be payable to the producer absent the deduction.

(7) **UNHARVESTED ACREAGE; AGREEMENT ON DEDUCTION.** Notwithstanding sub. (3), a contractor and producer may, without field sampling, agree to a deduction under sub. (1) for unharvested pea acreage if all of the following apply:

(a) The deduction is determined according to the procurement contract, based on an agreed upon estimate of the number of thistle buds, nightshade berries or mustard pod pieces that would be found by sampling under sub. (3).

(b) The deduction does not exceed the maximum deduction allowed under sub. (6).

(c) The contractor discloses to the producer in writing, before the producer agrees to the deduction, that the producer has the

right to have the field sampled for thistle buds, nightshade berries and mustard pod pieces according to sub. (3).

(d) The agreement is made in writing and signed by the parties during the scheduled harvest period.

(e) The agreement specifies the acreage covered by the agreement.

(f) A copy of the agreement is provided to the producer.

**History:** Cr. Register, February, 1995, No. 470, eff. 3-1-95.

**ATCP 155.22 Grading and tenderness testing procedure.** (1) **GRADE STANDARDS.** Peas shall be inspected for grade characteristics using USDA grade standards or alternative standards specified in writing in the procurement contract.

(2) **TENDERNESS.** If peas are tested for tenderness in a tenderometer or shear press, the peas in the sample shall be washed in running water and cooled to a temperature of 55 to 65° F. prior to testing. A quantity of not less than 48 ounces from the composite sample shall be used to perform the tenderness test. Tenderness tests shall be conducted on 3 separate portions of the 48 ounce quantity set aside from the composite sample. Peas shall be placed in the tenderometer up to, and level with, the top edge of the test receptacle. If the range between the high and low readings on the 3 separate portions is greater than 6 points, 3 additional readings shall be taken on peas from a second 48 ounce quantity removed from the composite sample and all 6 readings averaged to obtain the tenderness of the peas in the sample.

(3) **DEVICES USED TO DETERMINE TENDERNESS.** Tenderometers, shear presses or other devices used to measure the tenderness of peas shall be calibrated and certified by the manufacturer of the equipment or an independent testing agency prior to each harvest season and recalibrated daily or as often as necessary. The equipment shall be cleaned between each tenderness reading and maintained in good working condition.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**ATCP 155.23 Grade statement.** Within 7 days after a load of peas is harvested, the contractor shall provide the producer with a grade statement for that load, as required by s. ATCP 155.03 (5). A contractor shall orally provide grade information on request of the producer made prior to delivery of the written grade statement. The grade statement shall state the percentage by weight of peas in each grade category, as determined by the grader under this subchapter, and the information required under s. ATCP 155.03 (5). If tenderness of the peas is determined under s. ATCP 155.22 (2), the grade statement shall also include the tenderness classification.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

#### Subchapter IV — Grading Procedure for Sweet Corn for Processing

**ATCP 155.30 Grading deadline.** (1) **GENERAL.** Sweet corn for processing shall be weighed, sampled and graded as soon as possible but not longer than 24 hours after harvest. The contractor shall take necessary and reasonable precautions to preserve the condition of sweet corn at the time of harvest until it is graded.

(2) **DELAY DUE TO EXTRAORDINARY CIRCUMSTANCES; NOTICE.** The contractor shall give oral notice to the producer within 24 hours after harvest if, due to extraordinary circumstances, the sweet corn cannot be weighed, sampled and graded within the time provided under sub. (1). Within 7 days after harvest, the contractor shall mail or deliver a written notice to the producer,

describing the extraordinary circumstances which justify the contractor's failure to comply with sub. (1).

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**ATCP 155.31 Sampling procedure.** (1) **REPRESENTATIVE SAMPLING.** Each load of sweet corn shall be graded on the basis of a grading sample collected under s. ATCP 155.03 (3). The grading sample shall be collected and prepared in compliance with this section. The grading sample shall be representative of the entire load of sweet corn and shall consist of all qualitative gradations observed in the load by the person who collects the sample.

(2) **METHOD OF SAMPLING.** Component samples of approximately equal weight shall be collected from at least 5 separate locations which are representative of the load. The component samples shall then be combined to form a composite grading sample weighing at least 50 lbs.

(3) **SAMPLE PREPARATION.** The composite grading sample under sub. (1) shall be prepared for grading as follows:

(a) All ears in the sample shall be completely husked. The shank or stem and any excess tip on the husked ears shall be removed.

(b) If a portion of the shank or stem remaining on any husked ear extends more than one inch from the base of the cob, the shank shall be broken or cut off at a point as close as possible but not more than one inch below the base of the cob.

(c) If the tip of the cob has an area without usable kernels measuring more than 1/4 the length of the entire cob, enough of the tip shall be broken or cut off so that the remaining portion without usable kernels is not greater than 1/4 the length of the trimmed ear.

(4) **TARE.** Actual tare shall be used in grading sweet corn. Actual tare is the amount deducted from the gross weight of the sample for foreign material only. Foreign material consists of shanks, stalks, leaves, weeds, stones, sticks, loose dirt or foreign material other than the ear of corn itself. Foreign material including shanks, stalks and leaves which are collected as part of the sample shall not be removed prior to analysis of the sample.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**ATCP 155.32 Grading procedure.** (1) **GRADE STANDARDS.** Sweet corn shall be inspected for grade using USDA grade standards or alternative standards specified in writing in the procurement contract.

(2) **MATURITY DEFECTS.** If the maturity classification of a load of sweet corn is determined, it shall be classified only according to USDA standards for maturity. Damage to individual ears in the analysis sample shall be described in terms of defects as set forth in USDA grade standards for sweet corn.

(3) **CORN AND TARE WEIGHED SEPARATELY.** The corn in the sample shall be weighed separately from the foreign material or tare, and the weights of each shall be recorded on a grade statement.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.

**ATCP 155.33 Grade statement.** Within 7 days after a load of sweet corn is harvested, the contractor shall provide the producer with a grade statement for that load as required by s. ATCP 155.03 (5). A contractor shall orally provide grade information on request of the producer made prior to delivery of the written grade statement. The grade statement shall state the percentage by weight of sweet corn in each grade category, the damaged portion of ears, as determined by the grader under this subchapter, and the information required under s. ATCP 155.03 (5). If the maturity classification of sweet corn is determined under s. ATCP 155.32 (2), the grade statement shall also include the maturity classification as determined by the grader.

**History:** Cr. Register, December, 1990, No. 420, eff. 1-1-91.