

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED AMENDMENTS }
TO RULES OF THE DEPARTMENT OF AGRICULTURE }
GOVERNING SEED POTATO CERTIFICATION }
(3 MCAR SS 1.0127-1.0135) }

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of amendments to rules governing seed potato certification. These amendments are proposed for adoption pursuant to Minnesota Statutes section 21.118, which requires the commissioner to promulgate rules to carry out the purposes and enforce the provisions of the Seed Potato Certification Law. This includes establishing standards for inspection, certification, production, and marketing of certified seed potatoes in Minnesota, which are the subjects of these amendments.

Rulemaking on the proposed amendments was authorized by the Department on October 3, 1983. Prior to the authorization of rulemaking, the Department determined that the proposed adoption of these amendments would be noncontroversial because the changes are only technical in nature. The changes in name only, from "Foundation" certified to "Primary Foundation" certified, and from "Approved" certified to "Foundation" certified, will bring Minnesota certified seed potato class names into conformity with competing states.

Because the proposed changes are thus only technical in nature, the Department directed that the proceedings on the proposed amendments be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, sections 14.21-14.28 (1982). Thus, no hearing will be conducted on the proposed amendments to the rules unless on or before November 16, 1983 seven or more persons submit to the Department a written request for a hearing.

In accordance with the requirements of Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was completed prior to October 17, 1983, when the proposed amendments to the rules were noticed in the State Register. Because these rules were recently amended (June 1983), a copy of the Statement of Need and Reasonableness prepared for that record is attached as Exhibit A. That document outlines the history of the industry in Minnesota, including the regulatory history, and is attached for reference.

II. NEED AND REASONABLENESS

This Statement of Need and Reasonableness addresses the proposed amendments and the impact the changes will have on small businesses.

A. Change from "Foundation" certified to "Primary Foundation" certified and from "Approved" certified to "Foundation" certified.

3 MCAR S 1.0129
3 MCAR S 1.0130
3 MCAR S 1.0132
3 MCAR S 1.0133
3 MCAR S 1.0135

Minnesota ranks fourth in the production of seed potatoes. An estimated 75 percent of the seed potatoes grown in Minnesota are for export to national and foreign markets. The changes in class names proposed as amendments to above five rules are essential to the identification and acceptance of Minnesota seed potatoes in these markets.

Minnesota currently uses "Foundation" certified to designate the seed potatoes with the highest quality, and "Approved" certified for the second highest quality. Seed potatoes shipped under the "Foundation" certified name are equal to if not better than the highest quality seed potatoes grown in competing states. Despite this fact, the name "Foundation" certified represents the second highest quality of seed potatoes in those states; thus preventing Minnesota certified seed potato growers from receiving full market value (based on comparable quality) for their seed potatoes. Therefore, a new class name of "Primary Foundation" certified is being proposed, and the old designation, "Foundation" certified, will replace "Approved" certified as the name of the second highest quality seed potato. The changes in the proposed rule have only to do with names. No tolerances or standards for the production of certified seed potatoes are proposed to be changed.

The changes in names are reasonable because they will enable the state's certified seed producers to maintain their competitive position and expand their markets. In the present situation, other states designate their highest quality potatoes with names that include the word "Foundation" preceded with adjectives such as "Premier", "First", or "Elite." For these other states, the name "Foundation" alone designates the second quality certified seed potatoes. In contrast, the word "Foundation" by itself designates Minnesota's highest quality certified seed potatoes, while "Approved" names the second class of certified seed potatoes. This results in incorrect evaluations of Minnesota's certified seed potato grades by purchasers such as the nations of Brazil and Argentina that are interested in purchasing only classes of certified seed potatoes that carry the word "Foundation" somewhere in their name. Thus, the names of the grades have serious economic consequences for Minnesota's certified seed potato producers. It would be unreasonable for Minnesota to keep its producers at an unfair disadvantage simply because of a difference in name that implies a difference in quality which does not in fact exist.

B. Small business impact of the proposed amendments.

As prescribed by Laws of Minnesota 1983, chapter 188, section 1, subs. 1 and 2, the department has considered the degree of impact the proposed changes will have on small certified seed potato growers. The department has determined that all of Minnesota's certified seed potato growers are small businesses within the statutory definition of section 1, subd. 1 and will be affected. The effect, however, is beneficial because producers will be able to compete fairly since Minnesota's names will be comparable to the names in other states for certified seed potatoes grown in accordance with comparable standards. No additional costs of production will be borne by the producer. The department will supply the tags or stamps with the new class names, the cost of which will be covered by existing fees set by the commissioner under Minnesota Statutes section 21.53, subd. 3.

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I. INTRODUCTION

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Rulemaking on the proposed amendments was authorized by the Department on February 28, 1983. Prior to the authorization of rulemaking, the Department determined that the proposed adoption of these amendments would be noncontroversial because the changes are only technical in nature. The change from "red" tag to "yellow" tag designation for the second grade will bring Minnesota certified seed potato grade designations into conformity with practices in other states; the clarification resulting from adding "late blight" to the grade statements will eliminate confusion in shipping point inspection operations; and changes in the "yellow" tag grade specifications relate only to the appearance rather than to the performance of certified seed potatoes so graded.

Because the proposed changes are thus only technical in nature, the Department directed that the proceedings on the proposed amendments be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, sections 14.21-14.28 (1982). Thus, no hearing will be conducted on the proposed amendments to the rules unless on or before April 13, 1983, seven or more persons submit to the Department a written request for a hearing.

In accordance with the requirements of Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was completed prior to March 14, 1983, when the proposed amendments to the rules were noticed in the State Register.

The discussion provided in this statement is divided into the following parts:

Part II. General overview

Part III. Need for and reasonableness of the proposed amendments to the rules

II. GENERAL OVERVIEW

A. Regulatory History of the Seed Potato Certification Program in Minnesota:

The history of seed potato certification in Minnesota dates back to the beginning of the Minnesota Department of Agriculture itself. As part of the organization of the Department in 1919, a Seed Potato Certification Program was set up to operate through the State Board

of Seed Potato Certification and Inspection. This action in Minnesota followed by two years the formation of the Potato Association of America, a national organization which is composed of potato researchers, Extension personnel, regulatory officials and growers, whose purpose is to promote the use of potatoes and improve their production. In 1921, potato inspection services began in Minnesota, and by 1927 the Department had received authority to regulate the inspection and certification of seed potatoes.

By 1951, major changes had occurred in the industry, and in that year, the state's seed potato certification law was passed, and the rules currently proposed to be amended, 3 MCAR SS 1.0121-1.0135, were first adopted. That same year, the Minnesota Advisory Seed Potato Certification Committee was established as required under Minnesota Statutes, section 21.112, subd. 2. The membership is composed of six certified seed potato growers, each representing one of Minnesota's production areas. The purpose of this state certification committee was and is to relay growers' concerns and opinions to the Department and the Department's to the growers, to serve as a buffer between the regulatory agency and the regulated industry, and to review proposed and existing rules and standards that relate to certified seed potato quality.

Between 1951 and 1971, there were few changes at the state level in the seed potato certification process. The rules were changed over time to increase fees, change the size of certified seed potatoes in relation to their grade, and set forth stricter disease tolerances for certified seed potatoes. In 1970, there was, however, one

significant change at the national level, which was the formation of the Certification Section of the Potato Association of America. The purpose of the section was to promote uniformity of terms and standards, and suggest methods to facilitate the interstate movement of certified seed potatoes.

The following year in Minnesota, the rules governing certified seed potatoes were changed to include a requirement that all potatoes were to be certified on the farm. Ten years later in 1981, the rules governing certified seed potatoes underwent a major reorganization in format, although they were not substantially changed in content.

B. Minnesota's Certified Seed Potato Industry

Seventeen states produce certified seed potatoes. Minnesota is the fourth largest producer of certified seed potatoes, following Idaho, Maine and North Dakota. Annually, Minnesota growers enter 24,000 acres of seed potatoes for certification and produce 3.5 million hundred weight of certified seed potatoes. Of this production, one-third is needed to supply Minnesota growers' planting needs. The balance of this production must be exported to other states and countries.

In order for Minnesota certified seed potatoes to be able to move in interstate commerce, Minnesota's certified seed potatoes must meet or exceed the standards of other states' certification requirements. In an effort to standardize certification requirements and marketing terminology, the Potato Association of America created a

Certification Section in 1970, consisting of certification personnel from each state's certification agency, as noted earlier. The goal of this Section is to facilitate the orderly marketing and free movement of certified seed potatoes in interstate commerce.

These proposed amendments to the current rules are the results of suggestions from the Certification Section of the Potato Association of America, the Minnesota Advisory Seed Potato Certification Committee and Minnesota certified seed potato growers and brokers.

C. Format of the Proposed Amendments to the Rules:

The proposed amendments to the rules are set forth in the following sections of the rules: general guidance; requirements for certified seed potato production, requirements for foundation certified seed potato production; and requirements for Minnesota certified seed potato grades and tolerances.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE RULES

The need for and reasonableness of the provisions of the proposed amendments to the rules governing the inspection, certification, production, and marketing of certified seed potatoes in Minnesota follows. The proposed amendments have been divided into the following four categories: change from "red" to "yellow" tag designation; change in "late blight" provisions in the grade and tolerance statements; changes in the "yellow" tag grade; and revisions in form and language made by the Revisor's Office.

A. Change from "Red" to "Yellow" Tag Designation

- 3 MCAR S 1.0129 D.2.
- 3 MCAR S 1.0131 D.1.
- 3 MCAR S 1.0132 G.
- 3 MCAR S 1.0135 A.2.

The change in tag color designation proposed in these four parts of the rules from "red" to "yellow" is a necessary change because the current designation is not correctly understood in other states where Minnesota certified seed potatoes are put at a competitive disadvantage. In the past, some states used the color of the tag to indicate the disease content of certified seed potatoes as well as to indicate the grade or quality of certified seed potatoes for germination purposes. In these states, the "red" tag indicated certified seed potatoes with higher disease content and lower grade standards. In contrast, Minnesota used the color of the tag to indicate the grade of the certified seed potatoes only and not to indicate disease content. The result has been that Minnesota "red" tag certified seed potatoes are perceived in other states as being of lesser quality than they actually are. This has meant that Minnesota certified seed potato growers are at a competitive disadvantage when marketing their products in interstate trade. Because Minnesota is one of the few states producing certified seed potatoes for export from the state, the perception of the state's certified seed potatoes in other states is important. To be at a disadvantage in these markets, therefore, results not only in a loss of income to certified seed potato growers, but also impacts the overall Minnesota economy.

To alleviate this problem, the certifying agencies have agreed to use "blue" tag and "yellow" tag to indicate the first and second grades, respectively. These colors will be used only to indicate the grade of the certified seed potatoes and will not be at all related to disease content. The result is that disease content will only be reflected through the tolerances, and use of the "red" tag will be discontinued in Minnesota.

The proposed amendments regarding the change in tag color are reasonable for two reasons. The first is that they have been recommended by both the Certification Section of the Potato Association of America and the Minnesota Advisory Seed Potato Certification Committee. The certified seed potato growers and brokers concur in the recommendation of these two groups. Thus, the proposed amendments are viewed as reasonable by all relevant interest groups. The second reason the proposed amendments are reasonable is that they will permit Minnesota certified seed potatoes to compete with the seed potatoes of other states on an equal footing, and will not result in an unfair advantage to certified seed potato producers in other states.

B. Change in "Late Blight" Provisions in Grade and Tolerance Statements

3 MCAR S 1.0135 A.1.a.
3 MCAR S 1.0135 A.2.a.

3 MCAR S 1.0135 A.1.c.(1)(g)(iv)
3 MCAR S 1.0135 A.2.c.(1)(e)(iii)(aa)

In the first two parts of the rule noted above, "late blight," a serious potato disease, is added to the grade statement for both the first (blue) and second (red, proposed "yellow") tag grades. In the second two parts of the rules noted above, the current tolerance for the disease in the two grades is eliminated.

The changes are necessary because "late blight" or "late blight tuber rot" is a type of "soft rot," which is already included in the blue and yellow tag grade statements and tolerances. It is not always possible for an inspector to identify the type of soft rot present during an inspection, because manifestations of different types are so similar. A laboratory test requiring 3-5 days may be necessary to properly identify the type of soft rot. In the meantime, the shipping point inspector is presently faced with two different tolerances -- .5% and 2% -- for very similar conditions. Thus, the change is necessary so that inspectors can treat all soft rot diseases in a consistent manner and use the stricter -- .5% for soft rot -- tolerance.

The changes are reasonable ones because they will permit the inspector to use the same tolerance for very similar diseases. "Late blight" is a serious potato disease not desired by producers, thus its tolerance should be the same as for other "soft rot" diseases. This change is further reasonable because it protects consumers by having the same standard for all "soft rot" diseases and because the change has been agreed to by Minnesota growers and brokers as well as by the Minnesota Advisory Seed Potato Certification Committee.

C. Changes in the "Yellow" Tag Grade

3 MCAR S 1.0135 A.2.a.
3 MCAR S 1.0135 A.2.c.(1)(a)
3 MCAR S 1.0135 A.2.c.(1)(b)
3 MCAR S 1.0135 A.2.c.(1)(e)(iii)

The amendments proposed for the parts of the rule noted above are necessary to permit growers to market more of their crop without adversely affecting the buyer's perception of the certified seed potatoes purchased. The changes proposed herein are changes proposed for the yellow tag grade, which will be the second certified seed potato grade. The purpose of the yellow tag grade is to allow for the marketing of certified seed potatoes that have more grade defects than are allowed in the first, or blue tag, grade. These grade defects permitted in the yellow tag grade are appearance defects

which usually do not affect seed quality. The yellow tag certified seed potato must meet the same disease tolerances as blue tag certified seed potatoes.

The proposed changes to the yellow tag grade cover factors that are largely affected by growing conditions. Thus, the proposed changes include removing sprouts as a grade factor after April 15 of each year, removing sunburn as a grade factor, and removing pressure bruising as a grade factor. Tolerance changes include increasing the tolerance for serious damage by hollow heart from 10% to 20%, and removing the tolerance for sunburn to coincide with its elimination as a grade factor.

These proposed changes are reasonable because the state's standards will then remain consistent with the intent of the yellow tag grade -- which is to permit the marketing of more certified seed potatoes that are of poor appearance but which will still perform well as seed. In years of adverse growing conditions, many lots cannot meet the requirements for the current yellow tag grade without an excessive number of pick outs which requires additional manual labor. It is unreasonable to retain standards which have little to do with performance, which is the intent of certification, and which penalizes growers with additional costs to meet these unnecessary standards.

D. Changes in Language and Form by the Office of the Revisor of Statutes

Strike outs and additions in the proposed amendments to the rules which appear in 3 MCAR SS 1.1031, 1.0132 and 1.0135 which are not specifically addressed in this statement are changes in language and in form made by the Office of the Revisor of Statutes.