

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 480

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 11-29-83
DATE FOR REVIEW 12-8-83
DATE DUE 12-13-83

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 12-13-83 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 11.30.83 disapproved _____

___✓___ Rule as Adopted

___✓___ Rule as Proposed see SR.

___✓___ Order Adopting 11.18.83 Date

___✓___ Notice of Intent to Solicit Outside Opinion + comments rec'd. ER. 8.8.83.

___✓___ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

___✓___ Notice of rulemaking
✓ Sufficiency

___✓___ Affidavit of Mailing Notice or rulemaking
10.14.83 At least 30 days prior to ~~hearing~~/adoption

___✓___ Mailing list Certificate

___✓___ Publication in State Register
10.17.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

___✓___ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

N/A Agency's Findings of Fact no changes from rules as proposed

___✓___ LCRAR Report or agency Affidavit

___✓___ Certificate of Board's Resolution Adopting Rules

___✓___ Order Approving Incorporation by Reference

___✓___ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

___✓___ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

___✓___ Notice of Submission to the Attorney General

___✓___ Laws 83, Ch. 188 requirement — see transmittal memo + SONR.

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT OF AGRICULTURE

TO : Judith Wehrwein
Administration - Finance Division
Office of the Attorney General

DATE: 11/23/83

RECEIVED
NOV 29 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

FROM : Gerald Heil, Director GJH
Planning Division

PHONE: 296-1486

SUBJECT: Review of Rules Adopted Without a Public Hearing

The Department of Agriculture has adopted amendments to Rules Governing Seed Potato Certification (3 MCAR SS 1.0127-1.0135) without a public hearing pursuant to Minnesota Statutes sections 14.21-14.28 (1982).

Accompanying this memorandum you will find the documents which are required to be submitted for review. A list of these documents is attached.

The Department fulfilled the requirements of Laws of Minnesota 1983, chapter 188, subdivision 4, by providing notice to small businesses of the expected impact of the rule changes. Such information was given in the "Notice of Intent to Adopt Rules Without Public Hearing." In addition, the Department notified seed potato growers directly; the material received (attached to "Notice to Solicit Outside Opinion") was in response to such discussions. The requirement of subdivision 2 is dealt with in the Statement of Need and Reasonableness.

Since no person requested to be notified when these documents were submitted to the Office of the Attorney General, no Notice of Submission nor Affidavit of Mailing such Notice are part of this record. The written comments that were received during the solicitation of outside opinion are included in this record. No written comments on the proposed rules were received during the thirty day comment period following the publication of the Rules as Proposed in the State Register, nor were any requests for a public hearing on the proposed rules received during this period. The rules as adopted do not differ from the rules as proposed; no changes were made.

It is my understanding that your office will submit one copy of these Rules as Adopted to the Revisor of Statutes for approval as to form in accordance with Laws of Minnesota 1983, chapter 210, section 2.

If you have any questions, please call me.

GH:dw

Enclosures

cc: Craig Lindeke, Office of Revisor of Statutes
Anne Kanten, Assistant Commissioner
Darryl L. Anderson, Assistant Commissioner
Jon Murphy, Special Assistant Attorney General
Robert Flaskerd, Plant Industry Division Director
Ronald Sushak, Plant Industry Division

Department of Agriculture
Planning Division
November 18, 1983

Seed Potato Certification Rules
(3 MCAR SS 1.0127-1.0135)

LIST OF ENCLOSED DOCUMENTS

A. Rules as Adopted (original and 3 copies).

B. Order Adopting Rules (two copies).

C. Notice of Intent to Solicit Outside Opinion (plus written material received) (one copy).

D. Order for Notice of Intent to Adopt Rules Without Public Hearing (one copy).

E. Notice of Intent to Adopt Rules Without Public Hearing (one copy).

F. Affidavit of Mailing Notice of Intent to Adopt Rules Without Public Hearing (one copy).

G. Mailing List Certificate (one copy).

H. Rule as Proposed (one copy).

I. Statement of Need and Reasonableness (one copy).

J. Certificate of Compliance (one copy).

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Jim Nichols, Commissioner

DATE: 12/13/83

Attn: JON K. MURPHY, Special Assistant Attorney General

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General
MJC

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Amendments to Rules of the Department of Agriculture Governing Seed Potato Certification (3 MCAR §§ 1.0127 - 1.0135).

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.
MJC/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

AE copy

N.B. underlinings + strikeouts do not indicate changes from rules as proposed - do indicate changes from existing rules

Rules as Adopted

3 MCAR S 1.0129 General guidance.

The provisions of this section govern the production of potatoes for use as certified seed potatoes.

A. [Unchanged.]

B. Winter testing. In order to detect certain virus diseases, samples from all Primary Foundation certified and ~~Approved~~ Foundation certified seed potato lots shall be winter-tested. In the event of serious malfunctions of the winter test, classification of lots as Primary Foundation certified or ~~Approved~~ Foundation certified shall be based on the previous summer field readings.

C. Certified seed potato classes. There are three classes of Minnesota certified seed potatoes, differentiated by their tolerances for virus diseases.

1. The first class, Primary Foundation certified seed potatoes, has stricter tolerances for virus diseases than do the other classes. This class shall be winter-tested.

2. The ~~Approved~~ Foundation certified seed potato class is the second class. Virus disease tolerances for these seed potatoes are less strict than those for Primary Foundation certified seed potatoes. ~~Approved~~ Foundation certified seed potatoes shall also be winter-tested.

3. [Unchanged.]

D. Certified seed potato grades. Grades of certified seed potatoes are established according to the physical defects of the tubers. There are three grades used for shipping Minnesota certified seed potatoes.

1. The blue tag certified seed potato grade, the first grade, has tolerances for physical defects of the tubers stricter than the other grades. This grade may be used by growers of Primary Foundation certified, ~~Approved~~ Foundation certified, and Certified seed potatoes. The blue tag grade may be used for intrastate and interstate shipments of certified seed potatoes.

2. The yellow tag certified seed potato grade is the

second grade. This grade allows more physical defects of the tubers than the blue tag certified seed potato grade. It may be used by growers of Primary Foundation certified, ~~Approved~~ Foundation certified, and Certified seed potatoes. The yellow tag grade may also be used for intrastate and interstate shipments of certified seed potatoes.

3. The white tag certified seed potato grade is the third grade. The tolerances for physical defects of the tubers are determined by agreement between purchaser and seller of the certified seed potatoes. This grade may only be used by growers of Primary Foundation certified and ~~Approved~~ Foundation certified seed potatoes. It may only be used for intrastate shipments of certified seed potatoes.

E.-F. [Unchanged.]

3 MCAR S 1.0130 Application and eligibility for inspection and certification.

~~The following procedures shall govern:~~

A. [Unchanged.]

B. Seed potatoes eligible for Minnesota certification planting. A field ~~shall~~ may not be inspected for certification unless both the seed potato variety and the particular lot planted have the authorization of the commissioner. In considering seed potato varieties for authorization for certification planting, the commissioner shall consider scientific evidence and expert opinion. To be eligible for certification planting, seed potatoes ~~shall~~ must be one of the following:

1. From Minnesota growers:

a. Primary Foundation certified seed potatoes;

b. ~~Approved~~ Foundation certified seed potatoes; or

c. Certified seed potatoes. A grower may replant his own certified seed potatoes. The commissioner may authorize the planting of purchased certified seed potatoes if there is no source of Primary Foundation certified or ~~Approved~~ Foundation certified seed potatoes available to the grower.

2. From non-Minnesota growers: Seed potatoes approved

for certification planting by the certifying agency in another state or a Canadian province may be planted if tolerances for certification meet Minnesota tolerances for ~~Approved~~ Foundation or Primary Foundation certified seed potatoes.

3. [Unchanged.]

3 MCAR S 1.0132 Requirements for Primary Foundation certified seed potato production.

Primary Foundation certified seed potatoes consist of potatoes which meet all the requirements of 3 MCAR SS 1.0130 and 1.0131 as well as the additional requirements in this rule.

A. A lot grown as and intended to be Primary Foundation certified seed potatoes must remain under direct control of the grower for three years prior to being certified as Primary Foundation certified seed potatoes.

B. Primary Foundation certified seed potatoes shall be the only potatoes grown on the farm. They shall be grown from potatoes produced on a tuber unit seed plot.

C.-D. [Unchanged.]

E. A sample of each lot meeting the requirements of this rule ~~shall~~ must be submitted for winter testing. Seed potato lots with winter test readings more than one-half percent of any or all virus diseases ~~shall~~ must be removed from the Primary Foundation certified seed potato class. Presence of spindle tuber, bacterial ring rot, or chemical damage ~~shall~~ must also remove the lot from the Primary Foundation certified seed potato class.

F. [Unchanged.]

G. Blue, yellow, or white tags with the word "Primary Foundation" stamped across the front of the tag shall be issued only after all requirements of 3 MCAR S 1.0132 are met. In addition, the crop must be at least the third crop grown following the year in which bacterial ring rot was found before becoming eligible to be tagged with Primary Foundation tags.

3 MCAR S 1.0133 Requirements for ~~Approved~~ Foundation certified seed potato production.

~~Approved~~ Foundation certified seed potatoes ~~shall~~ consist of potatoes which meet all the requirements of 3 MCAR S 1.0130 and 3 MCAR S 1.0131 as well as the following additional requirements:

A. [Unchanged.]

B. A sample of the lot must meet the same winter test requirements as prescribed for Primary Foundation certified seed potatoes in 3 MCAR S 1.0132 E.

1. In selecting lots for winter testing, the commissioner shall consider factors such as lots more than two years removed from the Primary Foundation certified seed potato class, amount of disease found during field inspections, amount of varietal mixture rogued, proximity to fields having excessive amounts of disease, and other conditions which may jeopardize the value of the lots for certification planting.

2. If bacterial ring rot is found on the farm, before becoming eligible to submit a sample from future crops for winter testing, the grower ~~shall~~ must either:

a. Dispose of the crop from the year bacterial ring rot was found and purchase all new Primary Foundation certified or ~~Approved~~ Foundation certified seed potatoes; or

b. Produce at least two crops free from bacterial ring rot.

3 MCAR S 1.0135 Minnesota certified seed potato grades and tolerances.

A. Minnesota certified seed potato grades. Before potatoes are eligible for grading as certified seed potatoes, the requirements of 3 MCAR SS 1.0130 and 1.0131 must be met. In addition, Primary Foundation certified seed potatoes must meet the requirements of 3 MCAR S 1.0132. ~~Approved~~ Foundation certified seed potatoes must meet the requirements of 3 MCAR S 1.0133. Grading and tagging or issuance of a bulk certificate are the final steps in the certification process.

1.-2. [Unchanged.]

3. Minnesota white tag certified seed potato grade.

a. Minnesota white tag certified seed potato grade

~~shall consist~~ consists of Primary Foundation certified or ~~Approved~~ Foundation certified seed potatoes which are graded according to agreement between the seller and the purchaser as to size and defects, except that not more than one-half percent of soft rot, frozen, or wet breakdown and two percent dry rot ~~shall be~~ is allowed.

b. [Unchanged.]

B.-D. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 14 1983
Joan Anderson Growe
Secretary of State

2:00 PM

APPROVED AS TO FORM AND LEGALITY
December 13 1983
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassuly
SPECIAL ASSISTANT ATTORNEY GENERAL

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 §§ 1.0127 - 1.0135)

ORDER ADOPTING
RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on October 17, 1983, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.22 on October 14, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Rules Governing Seed Potato Certification are adopted this 18th day of November, 1983, pursuant to authority vested in me by Minnesota Statutes, section 21.118.

STATE OF MINNESOTA

Jim Nichols

JIM NICHOLS
COMMISSIONER OF AGRICULTURE

Department of Agriculture

Plant Industry Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing Seed Potato Certification

Notice is hereby given that the Minnesota Department of Agriculture has begun to consider amendments to rules governing the Seed Potato Certification program. Rules 3 MCAR SS 1.0127-1.0135 presently govern this matter. The proposed amendments, if adopted, would include the following changes: change the name "Foundation" to "Primary Foundation" and change the name "Approved" to "Foundation". The changes would facilitate the inter-state trade of Minnesota seed potatoes.

In order to adequately determine the nature and utility of such rules, the Department of Agriculture hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed amendments to the rules.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing.

Written statements of information and comment may be addressed to:

Gerald Heil, Director

Planning Division

Minnesota Department of Agriculture

90 West Plato Blvd.

St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by August 26, 1983. Any written material received by the Department shall become part of the record submitted to the Attorney General.

August 1, 1983

Daryl McAdams, Assistant Commissione
for Jim Nichols
Commissioner of Agriculture

B. E. McCarthy
Consultant Services Engineer
Transportation Building
Room 612B
St. Paul, Minnesota 55155

To be considered, your proposal must be postmarked not later than twelve o'clock midnight August 29, 1983.

Questions regarding content of the study may be directed to Mr. Don Flemming at 612-545-3761. Questions regarding submission of the proposal may be directed to Mr. B. E. McCarthy at 612-296-3051.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture
Plant Industry Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Governing Seed Potato Certification

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All statements of information and comment must be received by August 26, 1983. Any written material received by the department shall become part of the record submitted to the Attorney General.

August 1, 1983

Jim Nichols
Commissioner of Agriculture

We, the undersigned Certified Seed Potato Growers favor the proposed Certified Seed classification changes from Foundation and Approved to Primary Foundation and Foundation as proposed at the Certified Seed Task Force meeting on July 22, 1983. We would like to see theses proposed changes implemented for the 1983 Crop.

Larry Bogestad
Roger Bogestad
Gary D Dagen - Karlstad
Troy Dagen - Kennedy -
James Pickenberg - Kennedy
Harold Hilde Lake Bronson
Michael Hilde Lake Bronson
Lamar C Johnson - Kennedy
Russell M Swenson Lake Bronson
Thomas H. Thompson
Lester Amundson
Elmer L. Sorrels
John Thompson
Peter Thompson
Dale Jeffrey

Proposed Foundation Seed Classification Change:

Earl Mallinger

Ray Borowicz Stephen, Minn

Rodney Schmidt

Kenneth Christensen

Dennis Betenkamp

Dave Betenkamp

Harvey Christensen

Howard Peterson

NOTE-O-GRAM®

© THE DRAWING BOARD • BOX 505 • DALLAS, TEXAS

ELMO L. SORRELS

ST. RT. • WILLIAM, MINNESOTA 56686 • PHONE 281-783-6165

MESSAGE	REPLY
TO Minnesa Dept. of Agriculture Seed Potatoe Inspection & Cert. 670 State office Bldg. St. Paul, Minn. 55155	DATE
DATE Aug. 30, 83	

Dear Sirs;

With regard for the proposed class changes for Minnesota seed potatoe growers. Would very much like to see the approved class droped and changed to foundation and foundation changed to primary foundation.

Please make note!

Sincerely

BY

SIGNED Elmo L. Sorrels

Form N-R73 ® The Drawing Board, Inc., Box 505, Dallas, Texas

INSTRUCTIONS TO SENDER:

1. KEEP YELLOW COPY. 2. SEND WHITE AND PINK COPIES WITH CARBON INTACT.

INSTRUCTIONS TO RECEIVER:

1. WRITE REPLY. 2. DETACH STUB, KEEP PINK COPY, RETURN WHITE COPY TO SENDER.

ELMO SORRELS
WILLIAMS MN 56686

August 23, 1983

We, as potato growers, approve of the proposed class changes for Minnesota seed potatoes:

Changes: Approved changed to Foundation

Foundation changed to Primary Foundation

Jerry Pieper Jr
Wallace Mason
Roger Knutson
John Welberg
Marty Brown
Elmo L. Sorrels
Henry Welberg
John T. Knutson

CLASSIFICATION PROPOSAL

WE THE UNDERSIGNED, ALL BEING PRODUCERS OF CERTIFIED SEED POTATOES IN MARSHALL COUNTY MINNESOTA, WISH TO EXPRESS OUR SUPPORT FOR THE PROPOSED CERTIFIED SEED CLASSIFICATION CHANGES FROM THE PRESENT FOUNDATION AND APPROVED TO PRIMARY FOUNDATION AND FOUNDATION AS PROPOSED AT THE JULY 22ND MEETING OF THE CERTIFIED SEED TASK FORCE. WE FEEL IT IS VERY IMPORTANT THAT THIS CHANGE BE MADE BEFORE THE 1983 MARKETING SEASON.

Ronald Carlson

Kenneth Borowicz

Allen Borowicz

David C. Carlson

John Wotczynski

Shaun Carlson

Bruce Dillistad

July 27, 1983

Minnesota Department of Agriculture
Division of Plant Industry
Inspection and Certification Services
90 W. Plato Boulevard
St Paul, Mn. 55107

We the undersigned seed growers are in favor of the changing of classifications for seed potatoes to Premier Foundation for 2nd generation and Foundation for 3rd & 4th generations. With this change to take affect for the 1983 crop.

Jerry Larson	Climax, Mn.
R C Barstad	Halstad, Mn.
Spotkely Farms Inc.	Nielsville, Mn
Lonny Spotkely	
Joseph Larson	Climax, Mn.
Leonard Hapka	Argyle, Mn.
Justin D Dayz	Karlstad, Mn.
Ardell Jeffrey	E. Grand Forks, Mn.

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 §§ 1.0127-1.0135)

ORDER FOR NOTICE
OF INTENT TO ADOPT
RULES WITHOUT
PUBLIC HEARING

IT IS ORDERED this 3rd day of October, 1983, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Department of Agriculture for that purpose and be published in the State Register.

STATE OF MINNESOTA

Jim Nichols

COMMISSIONER OF AGRICULTURE

Department of Agriculture

Plant Industry Division

In the Matter of the Proposed Amendments to Rules Governing Seed Potato Certification (3 MCAR §§ 1.0127 - 1.0135)

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Section 21.118. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner is authorized by Minnesota Statutes section 21.118 to provide standards for the inspection, certification, production, and marketing of certified seed potatoes in the State of Minnesota. The proposed amendments are of two types: (1) changing the name of the first class of certified seed potatoes from "Foundation" certified seed potatoes to "Primary Foundation" certified seed potatoes, and (2) changing the name of the second class of certified seed potatoes from "Approved" certified seed potatoes to "Foundation" certified seed potatoes.

Changing the name of these two classes will permit Minnesota certified seed potatoes to move more competitively in interstate commerce, since these names will be consistent with names currently used for grades of certified seed potatoes nationally. At the present time, the best certified seed potatoes produced within the strictest disease and injury tolerances are named by most states in accordance with the changes proposed in these rules. This

means that Minnesota's best certified seed potatoes are currently named by the name of the second class nationally, which is a disadvantage to Minnesota producers of certified seed potatoes.

The proposed changes will benefit Minnesota's certified seed potato producers, virtually all of whom meet the definition of small business as stated in Laws of Minnesota 1983, chapter 188, section 1, because their potatoes that are grown within the same tolerances as other states will now be properly named to compete accordingly. The proposed rules will not result in any additional costs of production for small producers. The certified seed potato producers will be able to receive the top market value for their first and second classes of certified seed potatoes and compete fairly in all certified seed potato markets if the proposed rules are adopted.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, Section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

One free copy of this Notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

STATE OF MINNESOTA

Date: October 3, 1983

Jim Nichols

Commissioner of Agriculture

E. Final report. Grantees must return all unexpended grant funds and submit a final written report on their project within 60 days of the termination date of the contract. Grantees may submit additional information in the final report if they desire, but the final report must include the following information:

1. an assessment regarding the completion of project objectives and work tasks as well as the results achieved. To the extent possible, the assessment must be written in measurable and quantifiable terms;

2. an assessment of further work that may be necessary with respect to the objectives of the project, based on the experience gained through implementing the project;

3. an evaluation of the project stating both its immediate and long-term impact regarding the expansion, improvement, or development of markets for products of Minnesota agriculture; and

4. a complete financial statement accounting for all receipts and expenditures of grant funds and for all the grantee's contributions of money, goods, and services.

3 MCAR § 1.4069 [Temporary] Termination of contract.

The contract will terminate on the termination date specified in the contract unless extended under 3 MCAR § 1.4067 [Temporary] or terminated by the commissioner under 3 MCAR § 1.4070 [Temporary]. Upon termination of the contract at any time, any unused supplies or materials and all unexpended grant funds must immediately be returned to the commissioner.

3 MCAR § 1.4070 [Temporary] Misrepresentation by applicant or grantee.

If any grant application, progress report, or final report contains material false or misleading statements or information, the commissioner may take one or more of the following actions, as appropriate: reject the grant application; conduct an examination of the use of grant funds; unilaterally modify the terms of the grant contract; terminate the grant contract; or recover grant funds through available legal remedies.

Department of Agriculture
Plant Industry Division

Proposed Amendments to Rules Governing Seed Potato Certification (3 MCAR §§ 1.0127-1.0135)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, section 21.118. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The commissioner is authorized by Minnesota Statutes section 21.118 to provide standards for the inspection, certification,

production, and marketing of certified seed potatoes in the State of Minnesota. The proposed amendments are of two types: (1) changing the name of the first class of certified seed potatoes from "Foundation" certified seed potatoes to "Primary Foundation" certified seed potatoes, and (2) changing the name of the second class of certified seed potatoes from "Approved" certified seed potatoes to "Foundation" certified seed potatoes.

Changing the name of these two classes will permit Minnesota certified seed potatoes to move more competitively in interstate commerce, since these names will be consistent with names currently used for grades of certified seed potatoes nationally. At the present time, the best certified seed potatoes produced within the strictest disease and injury tolerances are named by most states in accordance with the changes proposed in these rules. This means that Minnesota's best certified seed potatoes are currently named by the name of the second class nationally, which is a disadvantage to Minnesota producers of certified seed potatoes.

The proposed changes will benefit Minnesota's certified seed potato producers, virtually all of whom meet the definition of small business as stated in Laws of Minnesota 1983, chapter 188, section 1, because their potatoes that are grown within the same tolerances as other states will now be properly named to compete accordingly. The proposed rules will not result in any additional costs of production for small producers. The certified seed potato producers will be able to receive the top market value for their first and second classes of certified seed potatoes and compete fairly in all certified seed potato markets if the proposed rules are adopted.

Please be advised that Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11 (Supp. 1979) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250.00, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, St. Paul, MN 55155, (612) 296-5615.

One free copy of this notice and the proposed rules are available and may be obtained by contacting Mr. Heil.

October 3, 1983

Jim Nichols
Commissioner of Agriculture

Rules as Proposed

3 MCAR § 1.0129 General guidance.

The provisions of this section govern the production of potatoes for use as certified seed potatoes.

A. [Unchanged.]

B. Winter testing. In order to detect certain virus diseases, samples from all Primary Foundation certified and ~~Approved~~ Foundation certified seed potato lots shall be winter-tested. In the event of serious malfunctions of the winter test, classification of lots as Primary Foundation certified or ~~Approved~~ Foundation certified shall be based on the previous summer field readings.

C. Certified seed potato classes. There are three classes of Minnesota certified seed potatoes, differentiated by their tolerances for virus diseases.

1. The first class, Primary Foundation certified seed potatoes, has stricter tolerances for virus diseases than do the other classes. This class shall be winter-tested.

2. The ~~Approved~~ Foundation certified seed potato class is the second class. Virus disease tolerances for these seed

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

potatoes are less strict than those for Primary Foundation certified seed potatoes. ~~Approved~~ Foundation certified seed potatoes shall also be winter-tested.

3. [Unchanged.]

D. Certified seed potato grades. Grades of certified seed potatoes are established according to the physical defects of the tubers. There are three grades used for shipping Minnesota certified seed potatoes.

1. The blue tag certified seed potato grade, the first grade, has tolerances for physical defects of the tubers stricter than the other grades. This grade may be used by growers of Primary Foundation certified, ~~Approved~~ Foundation certified, and Certified seed potatoes. The blue tag grade may be used for intrastate and interstate shipments of certified seed potatoes.

2. The yellow tag certified seed potato grade is the second grade. This grade allows more physical defects of the tubers than the blue tag certified seed potato grade. It may be used by growers of Primary Foundation certified, ~~Approved~~ Foundation certified, and Certified seed potatoes. The yellow tag grade may also be used for intrastate and interstate shipments of certified seed potatoes.

3. The white tag certified seed potato grade is the third grade. The tolerances for physical defects of the tubers are determined by agreement between purchaser and seller of the certified seed potatoes. This grade may only be used by growers of Primary Foundation certified and ~~Approved~~ Foundation certified seed potatoes. It may only be used for intrastate shipments of certified seed potatoes.

E.-F. [Unchanged.]

3 MCAR § 1.0130 Application and eligibility for inspection and certification.

~~The following procedures shall govern:~~

A. [Unchanged.]

B. Seed potatoes eligible for Minnesota certification planting. A field ~~shall~~ may not be inspected for certification unless both the seed potato variety and the particular lot planted have the authorization of the commissioner. In considering seed potato varieties for authorization for certification planting, the commissioner shall consider scientific evidence and expert opinion. To be eligible for certification planting, seed potatoes ~~shall~~ must be one of the following:

1. From Minnesota growers:

a. Primary Foundation certified seed potatoes;

b. ~~Approved~~ Foundation certified seed potatoes; or

c. Certified seed potatoes. A grower may replant his own certified seed potatoes. The commissioner may authorize the planting of purchased certified seed potatoes if there is no source of Primary Foundation certified or ~~Approved~~ Foundation certified seed potatoes available to the grower.

2. From non-Minnesota growers: Seed potatoes approved for certification planting by the certifying agency in another state or a Canadian province may be planted if tolerances for certification meet Minnesota tolerances for ~~Approved~~ Foundation or Primary Foundation certified seed potatoes.

3. [Unchanged.]

3 MCAR § 1.0132 Requirements for Primary Foundation certified seed potato production.

Primary Foundation certified seed potatoes consist of potatoes which meet all the requirements of 3 MCAR §§ 1.0130 and 1.0131 as well as the additional requirements in this rule.

A. A lot grown as and intended to be Primary Foundation certified seed potatoes must remain under direct control of the grower for three years prior to being certified as Primary Foundation certified seed potatoes.

B. Primary Foundation certified seed potatoes shall be the only potatoes grown on the farm. They shall be grown from potatoes produced on a tuber unit seed plot.

C.-D. [Unchanged.]

E. A sample of each lot meeting the requirements of this rule ~~shall~~ must be submitted for winter testing. Seed potato lots with winter test readings more than one-half percent of any or all virus diseases ~~shall~~ must be removed from the Primary Foundation certified seed potato class. Presence of spindle tuber, bacterial ring rot, or chemical damage ~~shall~~ must also remove the lot from the Primary Foundation certified seed potato class.

F. [Unchanged.]

G. Blue, yellow, or white tags with the word "Primary Foundation" stamped across the front of the tag shall be issued only after all requirements of 3 MCAR § 1.0132 are met. In addition, the crop must be at leaast the third crop grown following the year in which bacterial ring rot was found before becoming eligible to be tagged with Primary Foundation tags.

3 MCAR § 1.0133 Requirements for ~~Approved~~ Foundation certified seed potato production.

~~Approved~~ Foundation certified seed potatoes ~~shall~~ consist of potatoes which meet all the requirements of 3 MCAR § 1.0130 and 3 MCAR § 1.0131 as well as the following additional requirements:

A. [Unchanged.]

B. A sample of the lot must meet the same winter test requirements as prescribed for Primary Foundation certified seed potatoes in 3 MCAR § 1.0132 E.

1. In selecting lots for winter testing, the commissioner shall consider factors such as lots more than two years removed from the Primary Foundation certified seed potato class, amount of disease found during field inspections, amount of varietal mixture rogued, proximity to fields having excessive amounts of disease, and other conditions which may jeopardize the value of the lots for certification planting.

2. If bacterial ring rot is found on the farm, before becoming eligible to submit a sample from future crops for winter testing, the grower ~~shall~~ must either:

a. Dispose of the crop from the year bacterial ring rot was found and purchase all new Primary Foundation certified or ~~Approved~~ Foundation certified seed potatoes; or

b. Produce at least two crops free from bacterial ring rot.

3 MCAR § 1.0135 Minnesota certified seed potato grades and tolerances.

A. Minnesota certified seed potato grades. Before potatoes are eligible for grading as certified seed potatoes, the requirements of 3 MCAR §§ 1.0130 and 1.0131 must be met. In addition, Primary Foundation certified seed potatoes must meet the requirements of 3 MCAR § 1.0132. ~~Approved~~ Foundation certified seed potatoes must meet the requirements of 3 MCAR § 1.0133. Grading and tagging or issuance of a bulk certificate are the final steps in the certification process.

1.-2. [Unchanged.]

3. Minnesota white tag certified seed potato grade.

a. Minnesota white tag certified seed potato grade ~~shall consist~~ consists of Primary Foundation certified or ~~Approved~~ Foundation certified seed potatoes which are graded according to agreement between the seller and the purchaser as to size and defects, except that not more than one-half percent of soft rot, frozen, or wet breakdown and two percent dry rot ~~shall be~~ is allowed.

b. [Unchanged.]

B.-D. [Unchanged.]

Department of Energy and Economic Development Energy Division

Proposed Temporary Rules for the Administration of the Public School Energy Conservation Investment Loan Program

Request for Public Comment

Notice is hereby given that pursuant to Minn. Stat. § 14.30 (1982), the Energy and Economic Development Authority is proposing the following temporary rules for the purpose of administering the public school energy conservation investment loan program. Authority for the adoption of these rules is contained in Minn. Stat. § 116J.37, § 1, subd. 7. A copy of the proposed rules is attached to this notice.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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)

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Diane Windham, being first duly sworn, deposes and says:

That on the 14th day of October, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, he/she served the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department.

Diane Windham

Subscribed and sworn to before me
this 14th day of October, 1983.

Christine Canaday

Christine Canaday
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires June 25, 1986

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

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)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1, that their names be placed on file with and maintained by the Minnesota Department of Agriculture for the purpose of receiving notice of the proposed adoption of rules by this Department is accurate and complete as of 2:00 P.m., this 13th day of October, 1983.

Gerald J Heil

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, subds. 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.

ATTACHMENT A

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 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 Cerfification 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.

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
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, (Special Assistant Attorney General) Jon K. Murphy, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Jon K. Murphy
Special Assistant Attorney General

Date: 11/23/83