

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Department of Agriculture

Adopted Permanent Rules Relating to Seed Potato Certification

Rules as Adopted

1555.6950 MINNESOTA CERTIFIED SEED POTATO GRADES AND TOLERANCES.

Subpart 1. [Unchanged.]

Subp. 2. **Minnesota blue tag certified seed potato grade.** To be graded as Minnesota blue tag certified seed potatoes, the potatoes must meet the following requirements:

A. The potatoes must be, at the time of final inspection, of one variety, fairly well-shaped, free from bacterial ring rot, powdery scab, late blight, freezing, black heart, and soft rot or wet breakdown, and free from injury by surface or pitted scab, and from damage caused by dirt or other foreign matter, second growth, growth cracks, air cracks, cuts, shriveling, sprouts, pitted scab, surface scab, russet scab, dry rot, other diseases, insects or worms, external discoloration caused from loss of skin, mechanical or other means, and from serious damage caused by hollow heart or internal discoloration other than hollow heart. Sunburn is not a factor.

B. [Unchanged.]

C. Lot tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, are provided:

(1) For defects:

(a) 10 percent for potatoes seriously damaged by hollow heart;

(b) 5 percent for potatoes seriously damaged by internal discoloration (other than hollow heart);

(c) 8 percent for potatoes injured by (slight) scab;

(d) 10 percent for potatoes damaged by dirt or other foreign matter;

(e) 10 percent for potatoes damaged by

sprouts; and

(f) 6 percent for potatoes which fail to meet the remaining requirements of the grade, provided that included in that amount not more than the following percentages are allowed for the following defects:

i. Soft rot, frozen, or wet breakdown, 0.5 percent;

ii. Damage by surface or pitted scab, 2.0 percent;

iii. Damage by dry rot, 2.0 percent;

iv. Bacterial ring rot, 0.0 percent; and

v. Powdery scab, 0.0 percent.

(2) For offsize:

(a) 5 percent for potatoes which fail to meet the required or specified minimum size,

(b) 10 percent for potatoes which fail to meet the required maximum size.

Subp. 3. **Minnesota yellow tag certified seed potato grade.** To be graded as Minnesota yellow tag certified seed potatoes, the potatoes must meet the following requirements.

A. The potatoes must be, at the time of final inspection, of one variety, fairly well-shaped, and free from bacterial ring rot, powdery scab, late blight, freezing, black heart, and soft rot or wet breakdown, and from damage caused by second growth, growth cracks, air cracks, cuts, shriveling, sprouts (after April 15, sprouts are not a factor), pitted scab, surface scab, dry rot, other diseases, insects or worms, external discoloration caused from loss of skin, mechanical or other means, and from serious damage caused by dirt or other foreign matter, russet scab, hollow heart, or internal discoloration other than hollow heart. Pressure bruising, or flattened or depressed areas with or without underlying flesh discoloration, and sunburn are not factors.

B. and C. [Unchanged.]

Subp. 4. to 7. [Unchanged.]

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 14 1987
Joan Anderson Growe
Secretary of State
9:22 AM

APPROVED AS TO FORM AND LEGALITY
1/12 1987
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY _____
ASSISTANT ATTORNEY GENERAL

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

ATTORNEY GENERAL

TO: JIM NICHOLS, Commissioner
Department of Agriculture

DATE: 1/14/87

ATTN: Carol Milligan, Management Analyst

FROM: Planning Division

PHONE: 296-6555

J. MICHAEL MILES
Assistant Attorney General

SUBJECT:

Rule Relating to Seed Potato Certification

The above-referenced rule has been approved as to its legality by the Attorney General on 1/12/87.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JMM/rmk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR#1340

RULE REVIEW CHECKLIST

File No. 1340

Docket No. 05.0009.0075

DATE RECEIVED 12-29-86
REVIEW DATE 1-7-87
DUE DATE 1-12-87

APPROVED 1/12/87
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING X
EMERGENCY RULE

REVISOR APPROVED 12-30-86
REVISOR DISAPPROVED
FILED W/SEC. STATE 1/14/87
RETURNED TO AGENCY I/O 1/15/87

X Rule as adopted (4 copies)

___ ~~Notice to Solicit Outside Information/Opinion~~
Date published in State Register
Comments

___ ~~Petition for Adoption of a Rule~~

___ ~~Board's Authorizing Resolution~~

X Proposed rule
yes Revisor's Certificate

X Notice of Intent to Adopt Rule
21.113 + 21.118 Statutory Authority
yes Small business statement
NONE Expenditure of public money statement
yes Signature

X Statement of Need and Reasonableness

X Affidavit of Mailing Notice of Intent to Adopt Rule
11-19-86 Date (30)/25 days before adoption

X Publication in State Register
11-24-86 Date (30)/25 days before adoption

___ ~~Resolution Adopting~~

X Findings of Fact, Conclusions & Order Adopting
12-26-86 Date

___ ~~Written requests, submissions or comments~~

X Declaration of attorney
Jon Murphy Name of SAAG representing agency

___ ~~Notice of Submission to Attorney General~~

___ ~~Affidavit of Mailing Notice to Attorney General~~

Department of Agriculture

Proposed Permanent Rules Relating to Seed Potato Certification

Rules as Proposed

1555.6950 MINNESOTA CERTIFIED SEED POTATO GRADES AND TOLERANCES.

Subpart 1. [Unchanged.]

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B. [Unchanged.]

C. Lot tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, are provided:

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(b) ~~10 percent for potatoes seriously damaged by sunburn;~~

~~(c)~~ 5 percent for potatoes seriously damaged by internal discoloration (other than hollow heart);

~~(d)~~ (c) 8 percent for potatoes injured by (slight) scab;

~~(e)~~ (d) 10 percent for potatoes damaged by

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

dirt or other foreign matter;

~~(f)~~ (e) 10 percent for potatoes damaged by sprouts; and

~~(g)~~ (f) 6 percent for potatoes which fail to meet the remaining requirements of the grade, provided that included in that amount not more than the following percentages are allowed for the following defects:

i. Soft rot, frozen, or wet breakdown, 0.5 percent;

ii. Damage by surface or pitted scab, 2.0 percent;

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APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

B. and C. [Unchanged.]

Subp. 4. to 7. [Unchanged.]

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Seed Potato Certification

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1555

APPROVED AS TO FORM AND LEGALITY
1/12 1987
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY _____
ASSISTANT ATTORNEY GENERAL

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

Department of Agriculture
Plant Industry Division

In the Matter of the Proposed Amendments to the Rules of the Department of Agriculture Governing Seed Potato Certification

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Minnesota Department of Agriculture intends to amend the above-entitled rules without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22-14.28.[1] The statutory authority to adopt these rules is Minnesota Statutes, Sections 21.113 and 21.118.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed amendments or any part or subpart of the amendment. Comment is encouraged.[2] Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed.[3]

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing.[4] Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any proposed change.[6] If a public hearing is required, the department will proceed according to Minnesota Statutes, Sections 14.131 to 14.20.[7]

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.[5]

The proposed amendments 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 rule as noticed.

A copy of the proposed amendments is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available upon request from Ms. Milligan.

The proposed amendments will not have a negative impact upon small business as defined in Minnesota Statutes, Section 14.115, because these rules will place no additional economic restraints or demands on producers or any other businesses.

If no hearing is required, upon adoption of the final rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rules must submit a written request to Ms. Milligan.

STATE OF MINNESOTA

Date: 10/31/86

Jim Nichols
Commissioner, Department of Agriculture

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF PROPOSED AMENDMENTS TO THE RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING SEED POTATO CERTIFICATION MINNESOTA RULE 1555.6950	))))	STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of amendments to the rules governing requirements for certification of seed potatoes. Minnesota Statutes sections 21.113 to 21.118, authorize the Minnesota Department of Agriculture to adopt rules for the efficient administration and enforcement of the Minnesota Seed Potato Certification Law.

The department has determined that the proposed amendments are noncontroversial in nature because they are supported by the industry as an acceptable tolerance, and will bring Minnesota's requirements for certified seed potato production into conformity with other states. Because of the noncontroversial nature of these amendments, the department has directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statues, section 14.22 to 14.28. Accordingly the rulemaking proceedings on the proposed amendments are governed by that statute and no hearing will be conducted on the proposed amendments unless, on or before 12/24/86, 25 or more persons submit to the department a written request for such hearing. In accordance with the requirements of Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was prepared and completed prior to the date that the proposed rule was published by the State Register.

II. GENERAL OVERVIEW

In 1951 the State of Minnesota adopted rule 1555.6950, Minnesota Certified Seed Potato Grades and Tolerances. Subpart 2.A. of this rule states that blue tag grade certified seed potatoes must be free from serious damage caused by sunburn. Like wise, Subpart 3.A. places the same restriction on yellow tag grade certified seed potatoes.

Minnesota's tolerance for sunburn is unfounded and inconsistent with other states. Sunburn is strictly an appearance factor and does not effect seed potato quality. Other states which certify seed potatoes, such as North Dakota, base their grades on the United States Standards for Seed Potatoes (37 F.R. 8667, sec. 51.3007) which specificaly excludes sunburn as a factor. As a result, Minnesota's present tolerance for sunburn in seed potatoes places unjustified limitations on seed potato producers and restricts their ability to compete with neighboring states. The proposed amendment would eliminate sunburn as a factor in blue tag grade and yellow tag grade certified seed potatoes. This change would bring Minnesota into conformity with other states and USDA standards.

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

1555.6950 Minnesota Certified Seed Potato Grades and Tolerances.

The proposed amendment to the rules is reasonable because it will not diminish the quality of Minnesota blue tag or yellow tag grade seed potatoes or place additional restrictions on producers. The current rule prohibits serious damage caused by sunburn. This rule is inconsistant with the United States Standards For Seed Potatoes as well as the standards of several other states. This amendment would eliminate these contradictions.

IV. SMALL BUSINESS IMPACT OF THE PROPOSED AMENDMENT.

As prescribed by Minnesota Statues, section 14.115, subdivision 1 and 2, the Department of Agriculture has considered the degree of impact the proposed rule change will have on the certified seed potato industry.

The Department has determined that the proposed change would simplify the present rules regarding seed potato grades and places no additional economic restraints or demands on producers. This ammendment would be a positive benefit to Minnesota Certified Seed Potato Producers.

In the Matter of the proposed
Adoption of Amendments to the
Rules of the Department of Agriculture
Governing Seed Potato Certification

AFFIDAVIT OF MAILING
THE NOTICE OF INTENT
TO ADOPT A RULE
WITHOUT A PUBLIC
HEARING AND
CERTIFICATE OF
MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. State § 14.14, subd. 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 19th day of November, 1986.

That on the 19th day of November, 1986, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed 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 a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Carol Milligan
(Name)

Management Analyst
(Title)

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me
this 19th day of November, 1986.

Diane M. Windham

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Permanent Rules Relating to Seed Potato Certification

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture intends to amend the above-entitled rules without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22-14.28. The statutory authority to adopt these rules is Minnesota Statutes, Sections 21.113 and 21.118.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed amendments or any part or subpart of the amendment. Comment is encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to Minnesota Statutes, Sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed amendments 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 rule as noticed.

A copy of the proposed amendments is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available upon request from Ms. Milligan.

The proposed amendments will not have a negative impact upon small business as defined in Minnesota Statutes, Section 14.115, because these rules will place no additional economic restraints or demands on producers or any other businesses.

If no hearing is required, upon adoption of the final rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rules must submit a written request to Ms. Milligan.

Dated: 31 October 1986

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed

1555.6950 MINNESOTA CERTIFIED SEED POTATO GRADES AND TOLERANCES.

Subpart 1. [Unchanged.]

Subp. 2. **Minnesota blue tag certified seed potato grade.** To be graded as Minnesota blue tag certified seed potatoes, the potatoes must meet the following requirements:

A. The potatoes must be, at the time of final inspection, of one variety, fairly well-shaped, free from bacterial ring rot, powdery scab, late blight, freezing, black heart, and soft rot or wet breakdown, and free from injury by surface or pitted scab, and from damage caused by dirt or other foreign matter, second growth, growth cracks, air cracks, cuts, shriveling, sprouts, pitted scab, surface scab, russet scab, dry rot, other diseases, insects or worms, external discoloration caused from loss of skin, mechanical or other means, and from serious damage caused by ~~sunburn,~~ hollow heart~~,~~ or internal discoloration other than hollow heart. Sunburn is not a factor.

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C. Lot tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, are provided:

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v. Powdery scab, 0.0 percent.

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B. and C. [Unchanged.]

Subp. 4. to 7. [Unchanged.]

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.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO RULES OF THE MINNESOTA DEPARTMENT OF AGRICULTURE GOVERNING SEED POTATO CERTIFICATION

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on November 24, 1986, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.14, subd. 1a and 14.22 on November 19, 1986. The Statement of Need and Reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the pbulic.

All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the department.

No submissions or comments on the rule were received by the department. No requests for notice of submission to the Attorney General were received by the department.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that this rule identified as the Rule Governing Seed Potato Certification is adopted this 26th day of December, 1986, pursuant to authority vested in me by Minnesota Statutes, sections 21.113 and 21.118.

STATE OF MINNESOTA

Jim Nichols

JIM NICHOLS
COMMISSIONER OF AGRICULTURE

In the Matter of the Adoption of Amendments to
Rules of the Minnesota Department of
Agriculture Governing Seed Potato Certification

DECLARATION
OF COUNSEL

I, Jon Murphy, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, Chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 85 W234 0976

Jon Murphy
Special Assistant Attorney General

Date: 12/26/85

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (Original and three copies).

B. Findings of Fact and Conclusions, and Order Adopting.

C. Notice of Intent to Adopt a Rule Without Public Hearing.

D. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing.

E. Rule as Proposed.

F. Statement of Need and Reasonableness.

G. Declaration of Counsel.

Notice of Intent OK

Rule OK

21.113 ✓
21.118 OK

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : OF AGRICULTURE

DATE : December 26, 1986

TO : Rita Desmond
Administration - Finance Division
Office of the Attorney General

FROM : Carol Milligan, Management Analyst
Planning Division

PHONE : 296-6909

SUBJECT : Review of Amendments to Rules Governing Seed Potato Certification

The Department of Agriculture adopted the above-mentioned rules pursuant to Minnesota Statutes, sections 14.22-14.28. Enclosed with this memorandum are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

The Department has fulfilled the requirements of Minnesota Statutes, section 14.115, subd. 4, by notifying small businesses of the expected impact of the rule in the Notice of Intent to Adopt Rules Without a Public Hearing.

The Department did not receive any comments or requests for a public hearing.

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Anne Kanten, Assistant Commissioner
Jon Murphy, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Director, Planning Division
Art Mason, Director, Plant Industry Division
Richard Zink, Seed Potato Certification

RECEIVED
DEC 29 1986
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES