

Chapter ATCP 156

CERTIFIED SEED POTATOES

Subchapter I – Definitions

ATCP 156.01 Definitions.

Subchapter II – Certification

ATCP 156.02 Seed potato certification; general.
 ATCP 156.03 Certification standards.
 ATCP 156.04 Certification inspections.
 ATCP 156.05 Classifying certified seed potatoes.
 ATCP 156.06 Storage and handling of certified seed potatoes.
 ATCP 156.07 Approved laboratory or greenhouse.

ATCP 156.08 Review of college actions.

Subchapter III – Grading

ATCP 156.10 Grading certified seed potatoes; general.
 ATCP 156.11 Defects.
 ATCP 156.12 Badger state brand.
 ATCP 156.13 Yellow tag grade.
 ATCP 156.14 Badger state foundation brand.
 ATCP 156.15 Yellow tag foundation grade.
 ATCP 156.16 Misrepresentations.
 ATCP 156.17 Review of grading decisions.

Note: Chapter Ag 91 was renumbered chapter ATCP 156 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 156 was renumbered sections ATCP 157.01 to 157.08, Register, February, 1996, No. 482. Ch. ATCP 156 as it existed on 04–30–07 was repealed and a new Ch. ATCP 156 was created, Register April 2007 No. 616, eff. 5–1–07.

Note: This chapter establishes a cooperative program, between the Wisconsin department of agriculture, trade and consumer protection (the “department”) and the university of Wisconsin college of agricultural and life sciences (the “college”), for the voluntary certification and grading of seed potatoes in this state.

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

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

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

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

Subchapter I – Definitions**ATCP 156.01 Definitions.** In this chapter:

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

(a) For purposes of visual inspection under this chapter, the condition caused by *Clavibacter michiganensis* subsp. *Sepedonicus*.

(b) For purposes of laboratory testing under this chapter, *Clavibacter michiganensis* subsp. *Sepedonicus*.

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

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

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

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

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

(4) “Damage” means any defects, except sunburn, greening or hollow heart, which materially detract from the internal or external appearance of a potato, or which cannot be removed without removing more than 5% of the total weight of the potato. “Damage” includes any of the defects identified in s. ATCP 156.11 (1) or (2).

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

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

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

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

(9) “Farm” means land in this state on which a seed potato grower produces seed potatoes. “Farm” includes all land, equipment, and storage facilities used to plant, grow, harvest, handle or store potatoes grown on the farm. A “farm” includes all land that the seed potato grower uses to produce potatoes of any kind, except that the seed potato grower and the college may agree to treat non-contiguous tracts of land as separate “farms” if the seed potato grower refrains from doing any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(30) “Sell” means to contract for sale, offer for sale, hold for sale, transport or distribute for sale, or advertise or label for sale.

(31) “Serious damage” means any defects, except sunburn, greening or hollow heart, which seriously detract from the internal or external appearance of a potato, or which cannot be removed without removing more than 10% of the total weight of the potato. “Serious damage” includes any of the defects identified in s. ATCP 156.11 (3).

(32) “Soft rot or wet breakdown” means any soft, mushy, or leaky condition of seed potato tissue.

(33) “Spindle tuber” means the condition caused by potato spindle tuber viroid (PSTVd).

(34) “State” means any of the following:

- (a) A state in the United States.
- (b) A United States territory.
- (c) A nation other than the United States.

(35) “Tissue culture plantlet” means a pathogen-free potato plant grown aseptically, from a tissue sample, in an aseptic artificial medium.

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

Subchapter II – Certification

ATCP 156.02 Seed potato certification; general.

(1) CERTIFICATION BY COLLEGE. The college may certify a lot of seed potatoes at the request of the seed potato grower if the college finds that the lot meets applicable standards under s. ATCP 156.03. Certification does not constitute a warranty by the college, and does not extend to any disease or condition that cannot be observed by visual inspection of potato plants or tubers.

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

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

- (a) A unique identification number for the certified lot.
- (b) The name and address of the seed potato grower.
- (c) The certification date and the year to which the certification applies.
- (d) The location of the farm on which the certified seed potatoes are grown.
- (e) The number of acres of seed potatoes in the certified lot.
- (f) The variety of seed potatoes in the certified lot.
- (g) The classification assigned to the certified seed potatoes under sub. (2) and the basis for that classification.
- (h) The nature and source of the propagative material used to produce the certified lot.

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

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

1. Each field inspection under s. ATCP 156.04 (1).
2. Each harvest inspection under s. ATCP 156.04 (2).
3. Each post-harvest test under s. ATCP 156.04 (3). If the college certifies a lot of seed potatoes before completing the post-harvest test under s. ATCP 156.04 (3), the college shall issue the result of the post-harvest test in writing when the test is complete.

Note: The college must perform a post-harvest test before certifying foundation seed potatoes (see s. ATCP 156.04 (3) (a)). The college may certify other seed potatoes before completing a post-harvest test, but must withdraw the certification if the post-harvest test shows a violation of certification standards.

4. Any laboratory tests conducted on the certified lot.
- (j) A statement that the certification applies only if the certified lot is also graded under subch. III.
- (k) Documentation related to any variance granted by the college under s. ATCP 156.03 (7).

(L) Any conditions or limitations on certification, including any conditions or limitations under s. ATCP 156.03 (7).

(m) Other information that the college chooses to include.

(3m) CERTIFICATION TAGS. Whenever the college certifies a lot of seed potatoes, the college shall provide the seed potato grower with an appropriate number of certification tags. The seed potato grower may attach the tags to shipments of seed potatoes from the certified lot, once the department has graded the seed potatoes under subch. III.

(4) MISREPRESENTATION. (a) No person may sell or represent potatoes as Wisconsin certified seed potatoes unless the potatoes are all of the following:

1. Certified under sub. (1).
2. Graded under subch. III.

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

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

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

Note: Subsection (4) is adopted under s. 100.20 (1), Stats. The college may withdraw a violator's certification, pursuant to sub. (9). The department may also prosecute fraudulent claims pursuant to s. 100.20 (6) or 100.26, Stats. A buyer who suffers a monetary loss because of a fraudulent claim may bring a private court action for double damages, costs and attorney fees, pursuant to s. 100.20 (5), Stats.

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

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

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

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

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

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

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

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

(a) The name of the seed potato grower.

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

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

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

(d) A description of each separate lot of seed potatoes proposed for certification. The description of each lot shall comply with sub. (7).

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

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

1. Inspections required under s. ATCP 156.04.
2. Laboratory testing, if required.
3. Issuing certification documents under sub. (3).

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

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

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

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

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

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

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

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

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

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

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

1. Certification standards under this subchapter are not met.

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

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

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

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

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

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

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

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

(c) Propagative material produced by the college.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) **POST-HARVEST TEST STANDARDS.** (a) Except as provided in par. (b), the college shall deny or withdraw certification of a seed potato lot if a post-harvest test under s. ATCP 156.04 (3) finds any disease or variety mixture in excess of the rate specified in *Table 2*.

| Condition | Foundation seed potatoes | Other certified seed potatoes |
|---------------------|--------------------------|-------------------------------|
| Leafroll | 0.5% | 5.0% |
| Mosaics | 0.5% | 5.0% |
| Spindle tuber | 0.0% | 0.0% |
| Total virus allowed | 0.5% | 5.0% |
| Bacterial ring rot | 0.0% | 0.0% |
| Variety mixture | 0.25% | 2.0% |

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

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

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

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

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

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

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

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

1. Certify the infected lot.

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

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

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

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

1. Removes all of the infected lots from storage.

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

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

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

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

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

(b) A seed potato grower may submit a written request for certification under par. (a). The requester shall provide information to show that the requested action would comply with par. (a).

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

History: CR 06-085; cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.04 Certification inspections. (1) **FIELD INSPECTION.** Before the college certifies a lot of seed potatoes, the college shall conduct at least 2 field inspections of the farm on which that lot is being grown. The college shall visually inspect at least 100 potato plants per acre of plants from which the lot is produced, and may inspect any other potato plants growing on the farm. The inspection of a potato plant may include a visual inspection of the plant and any tubers from the plant. The college shall inspect potato plants for compliance with the standards in s. ATCP 156.03 (2) and (3).

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

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

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

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

(c) For a post-harvest test under par. (a), the grower shall deliver to a location specified by the college a representative sample of 400 tubers for every 50 acres from each lot to be certified, with a maximum of 4 samples per lot. Each tuber shall be 1¾ to 2¼ inches in diameter and no more than 2½ inches long. The college shall plant the tubers in a winter growing location chosen by the college. The college shall inspect the potato plants and potatoes grown from those tubers for compliance with the standards under s. ATCP 156.03 (4) (a).

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

History: CR 06-085; cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.05 Classifying certified seed potatoes.

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

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

(b) In Table 3:

1. "F" means foundation seed potatoes.
2. "Ex" means experimental foundation seed potatoes.
3. "Certified" means certified seed potatoes other than foundation seed potatoes.

4. In each column, classifications are listed from highest (top) to lowest (bottom).

(2) **CLASSIFICATION BASED ON YEARS OF FIELD PROPAGATION.** (a) Except as provided in sub. (3), the college may not do any of the following:

1. Certify, under the standard classification, seed potatoes from a line with more than 7 generations of field propagation.

2. Certify, under the experimental classification, seed potatoes from a line with more than 3 generations of field propagation. The college shall classify the first field-propagated generation as "Ex5."

Note: "Field propagation" does not include outdoor production of propagative material at a breeding farm, prior to time that the college approves that propagative material under s. ATCP 156.03 (1) (f) for use at a seed potato farm. See s. ATCP 156.01 (10) (b).

(b) The college shall downgrade the classification of certified seed potatoes by one step for each year of field propagation, except that no potatoes may be certified as foundation seed potatoes unless they meet the standards under s. ATCP 156.03.

Note: Pathogen populations in seed potatoes normally increase with each year (generation) of field propagation. Under the standard classification system, seed potatoes may be certified for up to 6 generations as "foundation" seed potatoes (for use as seed for other certified seed potatoes). The 7th generation may be certified as seed for commercial potatoes, but not for growing other certified seed potatoes.

Seed potatoes are normally downgraded by one step for each year of field propagation. But if they fail to meet standards under s. ATCP 156.03 (5) for "foundation" seed potatoes, they must be downgraded to "certified" class even if they have been propagated in the field for fewer than 7 years. If they fail to meet the basic standards for certification under s. ATCP 156.03, they may not be certified at all.

(c) Foundation seed potatoes certified by another state shall be treated as having an equivalent classification under Table 3 based on years of field propagation. If the seed potatoes do not bear a classification showing the year of field propagation, they shall be treated as FY5.

Note: Under s. ATCP 156.03 (1) (e), foundation seed potatoes certified by another state may be used to grow certified seed potatoes in this state if the other state uses equivalent certification standards and the college pre-approves the use.

(3) **CLASSIFICATION RENEWAL.** (a) The college may grant one of the following classification renewals one time for any line of certified seed potatoes:

1. The college may classify, as "FY5" rather than "certified," certified seed potatoes produced from seed potatoes classified as "FY6."

2. The college may classify, as "Ex5" rather than "certified," certified seed potatoes produced from seed potatoes classified as "Ex6."

Note: Among other things, a classification renewal under par. (a) may allow continued production of a minor or experimental variety for which there may be a limited seed supply. A renewal gives seed potato growers another 3 years to find a new seed source for that variety.

(b) The college may grant a classification renewal under par. (a) if all of the following apply:

1. The seed potato grower requests the renewal in writing, and submits information to justify the renewal.

Note: For example, the seed potato grower may document favorable test results, "tuber unit planting," a limited supply of a special variety, or other conditions that may warrant the renewal. "Tuber unit planting" means cutting seed potatoes into pieces and planting the pieces together in the field in such a way that if any progeny plants from any tuber are diseased or off-variety, all progeny from that tuber will be identified and discarded.

2. The college finds that the seed potatoes affected by the renewal meet all of the certification standards under s. ATCP 156.03.

3. The college finds that the renewal will not jeopardize seed potato quality, or pose a significant risk of harm to the potato industry or consumers.

(c) The college may require laboratory tests on a representative sample of any seed potatoes for which a seed potato grower requests a classification renewal under par. (a).

History: CR 06-085; cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.06 Storage and handling of certified seed potatoes. (1) STORAGE WITH OTHER POTATOES PROHIBITED. No

person may store certified seed potatoes in the same storage facility with uncertified seed potatoes, except that a person may store lots of certified seed potatoes in the same facility with any of the following:

(a) Lots of seed potatoes that have been proposed for certification.

(b) Lots of seed potatoes that have been rejected for certification solely because of unacceptable virus levels.

Note: Viruses, unlike bacteria or nematodes, cannot spread from tuber to tuber in storage.

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

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

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

(b) The college inspects the storage facility, and posts in the facility a dated written notice certifying that the storage facility has been cleaned and disinfected to college specifications.

(4) LABELING STORAGE BINS. A person storing certified seed potatoes shall clearly label each storage bin with the bin measurements, the name of the seed potato grower, the potato variety, and the source of the foundation seed potatoes or other propagative material used to produce the certified seed potatoes.

(5) SHIPMENTS PROTECTED. Certified seed potatoes and other propagative material shall be protected from deterioration and contamination during shipment. The college may disqualify propagative material from use under s. ATCP 156.03 (1) if the college finds that shipping methods do not comply with this subsection.

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.07 Approved laboratory or greenhouse.

(1) LABORATORY OR GREENHOUSE IN THIS STATE. The college may approve a laboratory or greenhouse in this state, for purposes of s. ATCP 156.03 (1) (d), if all of the following apply:

(a) The college first inspects the laboratory or greenhouse facilities, equipment, procedures and records before granting approval for production of propagative material.

(b) The college inspects all greenhouse-produced minitubers at least once during their growth, and at least once at harvest or in storage, prior to shipment and field planting.

(c) In the preparation and distribution of propagative material, the laboratory or greenhouse uses testing, propagation, isolation and sanitation procedures approved by the college.

(d) The initial tissue culture plantlets or other propagative material used for laboratory propagation is tested for all pathogens of concern using methods approved by the college.

(e) The operator of the laboratory or greenhouse does all of the following:

1. Applies to the college for approval, and provides information reasonably required by the college for purposes of evaluation and approval under this subsection.

2. Agrees to pay the college's reasonable costs to inspect, evaluate and approve the laboratory or greenhouse under this subsection.

3. Keeps complete records of laboratory or greenhouse operations, and makes the records available to the college for inspection upon request.

4. Keeps complete and accurate records of all propagative materials distributed for use in the production of certified seed potatoes. Records shall include the applicable college approval under s. ATCP 156.03 (1) (d), the potato variety, the type of propagative material, the amount of propagative material produced and

distributed, the date of each shipment, the name and address of the person receiving each shipment, and a complete record of all disease tests on the propagative material.

5. Labels propagative material as directed by the college, consistent with this chapter.

(2) LABORATORY OR GREENHOUSE OUTSIDE THIS STATE. The college may approve a laboratory or greenhouse in another state, for purposes of s. ATCP 156.03, if the seed potato certification agency in the other state approves that laboratory or greenhouse based on standards and procedures equivalent to the standards and procedures in sub. (1).

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.08 Review of college actions. (1) REQUEST FOR MEETING TO REVIEW ACTION. A person adversely affected by an action of the college under this subchapter, including an action denying or withdrawing any certification or approval under this subchapter, may make a written request for an informal meeting with the college to discuss the action.

(2) MEETING TO REVIEW ACTION. (a) If the college receives a written request under sub. (1), a representative designated by the college shall hold an informal meeting with the requester. The college shall hold the informal meeting within 30 days after it receives the written request, unless the requester agrees to a later meeting date. The meeting may be held in person or by telephone.

(b) At the informal meeting under par. (a), the college may explain the basis for its action. A requester may also present information or arguments related to the action.

(3) REVIEW BY THE DEPARTMENT. (a) If a disputed matter under sub. (1) is not resolved after a meeting under sub. (2), the person who requested the meeting may request a contested case hearing before the department, pursuant to s. 227.42, Stats., and ch. ATCP 1. The person shall make the request under s. ATCP 1.06, as if the person were requesting a hearing on a department action. The department shall grant or deny the hearing request as provided in s. ATCP 1.06 (3).

(b) Following a contested case hearing under ch. 227, Stats., and ch. ATCP 1, the department may reverse, modify or remand an action of the college under this subchapter if the department finds that the action is contrary to this subchapter. The department may not reverse, modify or remand an action of the college if the college has acted within the scope of its discretion under this subchapter.

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

Subchapter III – Grading

ATCP 156.10 Grading certified seed potatoes; general. (1) GRADING BY DEPARTMENT. At the request of a seed potato grower, the department may grade a lot of seed potatoes that the college has certified under s. ATCP 156.02 (1). The department shall grade the lot according to this subchapter, based on a grading inspection under sub. (5). The department may not grade the lot until the college issues its certification in writing under s. ATCP 156.02 (3).

(2) GRADE ASSIGNMENT. Whenever the department grades a lot of certified seed potatoes under sub. (1), the department shall assign that lot a grade under sub. (3). The department may refuse to assign a grade if the lot fails to comply with any of the grade standards under sub. (3). The department shall do all of the following whenever the department assigns a grade to a lot:

(a) Issue to the seed potato grower a grade certificate that includes all of the following:

1. A unique identification number for the graded lot.

Note: A graded lot may be a subset of a lot certified by the college under subch. II.

2. The identity of the seed potato grower.

3. A description of the graded lot. The description shall include the potato variety and shall identify the storage bin, con-

tainer or conveyance in which the potatoes were held when graded.

4. A copy of the tag issued by the college under s. ATCP 156.02 (3m).

5. The identification numbers of the department seals issued for the graded lot under par. (b).

(b) Issue an appropriate number of seals for the graded lot. Each seal shall bear an identification number that is unique to that seal. The seed potato grower may use the seals to attach certification tags, issued by the college under s. ATCP 156.02 (3) (a), to seed potato shipments from the graded lot. Certification tags shall be those issued for the certification lot from which the graded lot originates.

Note: The issuance of the seal does not necessarily mean the department actually seals the bag, tote, bin, truck or other container of inspected potatoes. In many cases, the potatoes are handled by other persons after the department inspects the potatoes and before they are delivered to the customer.

(3) GRADES AND GRADE STANDARDS. The following grades of certified seed potatoes shall meet the following grade standards:

(a) *Badger state brand.* Badger state brand potatoes shall meet the grade standards in s. ATCP 156.12.

(b) *Yellow tag brand [grade].* Yellow tag brand [grade] potatoes shall meet the grade standards in s. ATCP 156.13.

(c) *Badger state foundation brand.* Badger state foundation brand potatoes shall meet the grade standards in s. ATCP 156.14.

(d) *Yellow tag foundation grade.* Yellow tag foundation grade potatoes shall meet the grade standards in s. ATCP 156.15.

(4) REQUEST FOR GRADING. A seed potato grower shall make a grading request under sub. (1) in writing, on a form provided by the department. The requester shall agree to pay the department's reasonable grading costs, as determined by the department. A grading request may cover 2 or more lots of seed potatoes.

Note: To obtain the form required under sub. (4), a seed potato grower may do any of the following:

- Visit the department's website at www.datcp.state.wi.us.
- Call the department's fruit and vegetable inspection office at 715/345-5212.
- Call the department's Bureau of Business Trade Practices at 608/224-4998.

(5) GRADING INSPECTION. The department shall grade a lot of certified seed potatoes based on visual inspection of one or more samples of potatoes selected from that lot. The department shall select samples that appear to be visually representative of the lot. Each sample shall include at least 20 pounds of potatoes and the number of individual samples from each lot may vary with the size of the lot. Tolerances for size and defects shall be calculated on the basis of weight. The department shall inspect enough samples to obtain a reliable representation of the lot.

(6) APPLYING TOLERANCES. (a) The occurrence rate for a defect or size violation in a graded lot, determined as an average of the occurrence rates for each of the samples selected under sub. (5) from the graded lot, may not exceed the applicable tolerance specified under s. ATCP 156.12 or 156.13.

(b) Within an individual sample selected under sub. (5) from a graded lot, except as provided in par. (c) or (d):

1. No defect or size violation may occur at a rate that is more than 1.5 times the applicable tolerance specified in s. ATCP 156.12 or 156.13 if that tolerance is more than 10%.

2. No defect or size violation may occur at a rate that is more than twice the applicable tolerance specified in s. ATCP 156.12 or 156.13 if that tolerance is 10% or less.

(c) Within an individual sample selected under sub. (5) from a graded lot:

1. The rate of sprout damage may not exceed the applicable sprout damage tolerance specified in s. ATCP 156.12 or 156.13.

2. There may be no more than one off-size potato and one defective potato.

(d) Potatoes damaged by freezing, soft rot or wet breakdown may not occur, at more than 3 times the applicable tolerance speci-

fied in s. ATCP 156.12 or 156.13, in more than one-tenth of the samples selected under sub. (5) from a graded lot.

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.11 Defects. (1) **EXTERNAL DEFECTS.** External defects in a certified seed potato include the following:

(a) Deep air cracks that penetrate beyond the vascular ring.

(b) Shallow air cracks that materially detract from the appearance of the potato.

(c) Second growth or growth cracks that materially detract from the appearance of the potato.

(d) Brown or dark skin discoloration that materially detracts from the appearance of the potato.

(e) Shriveling, sponginess or flabbiness, except minor shriveling.

(f) A sprout over one inch long.

(g) One or more scabs that together cover more than 5% of the potato surface. Scabs may include pitted scabs.

(h) Pitted scab that causes a loss of more than 5% of the weight of the potato.

(i) Rhizoctonia that materially detracts from the appearance of the potato.

(j) Wireworm or grass damage that includes any of the following:

1. In a potato that is at approximately 2½ inches wide or weighs approximately 6 ounces, a hole more than ¾ inch long or multiple holes with an aggregate length of more than 1¼ inch.

2. Proportionately smaller or larger holes in a smaller or larger potato.

(k) A more than slight amount of dirt or foreign matter adhering to the potato, or present in the sample of potatoes.

(2) INTERNAL DEFECTS. Internal defects in a certified seed potato include the following:

(a) Ingrown sprouts, if removal causes a loss of more than 5% of the weight of the potato.

(b) Internal discoloration, occurring entirely within the vascular ring, which includes any of the following:

1. In a potato that is at approximately 2½ inches wide or weighs approximately 6 ounces, the equivalent of 3 scattered light brown spots 1/8 inch in diameter.

2. A proportionately smaller or larger number or size of spots in a smaller or larger potato.

(c) Internal discoloration located or extending outside of the vascular ring, if removal causes a loss of more than 5% of the weight of the potato.

(3) DEFECTS CONSTITUTING SERIOUS DAMAGE. The following defects constitute serious damage:

(a) Caked dirt covering more than ½ of the potato.

(b) Brown or dark skin discoloration that seriously detracts from the appearance of the potato.

(c) Excessive shriveling, sponginess or flabbiness.

(d) One or more scabs that together cover more than 50% of the potato surface. Scabs may include pitted scabs.

(e) Pitted scab that causes a loss of more than 10% of the weight of the potato.

(f) Wireworm or grass damage that includes any of the following:

1. In a potato that is at approximately 2½ inches wide or weighs approximately 6 ounces, a hole more than 1¼ inches long or multiple holes with an aggregate length of more than 2 inches.

2. Proportionately smaller or larger holes in a smaller or larger potato.

(g) Ingrown sprouts, if removal causes a loss of more than 10% of the weight of the potato.

(h) Internal discoloration, occurring entirely within the vascular ring, which includes any of the following:

1. In a potato that is at approximately 2½ inches wide or weighs approximately 6 ounces, the equivalent of 6 scattered light brown spots 1/8 inch in diameter.

2. A proportionately smaller or larger number or size of spots in a smaller or larger potato.

(i) Internal discoloration located or extending outside of the vascular ring, if removal causes a loss of more than 10% of the weight of the potato.

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.12 Badger state brand. (1) GRADE REQUIREMENTS. To qualify for the badger state brand, a lot of certified seed potatoes shall meet all of the following requirements:

(a) The college shall certify the lot under subchapter II.

(b) All potatoes in the lot shall be of the same variety, subject to a tolerance of 0.25% for varietal mixture. The tolerance shall be applied according to s. ATCP 156.10 (6).

(c) All potatoes in the lot shall comply with size standards in subs. (2) to (4), subject to tolerances specified in subs. (2) to (4). Tolerances shall be applied according to s. ATCP 156.10 (6).

(d) All potatoes in the lot shall be fairly well shaped.

(e) No potatoes in the lot may be frozen at the time of inspection.

(f) The lot shall be free of all the following:

1. Blackheart.

2. Bacterial ring rot.

3. Nematode or tuber moth injury.

4. Defects in excess of tolerances specified in sub. (5). Tolerances shall be applied according to s. ATCP 156.10 (6).

5. Other damage.

Note: See definition of “damage” in s. ATCP 156.01 (4). “Damage” includes, but is not limited to, “serious damage” as defined in s. ATCP 156.01 (31).

(2) MINIMUM DIAMETER. (a) Except as provided in par. (b), not more than 3% of the potatoes in any lot of badger state brand certified seed potatoes may have a diameter smaller than 1½ inches or, if the seller guarantees a different minimum diameter, the minimum diameter guaranteed.

(b) If a seller guarantees a minimum diameter under par. (a) of at least 2¼ inches, not more than 5% of the potatoes in the lot may have a diameter that is smaller than the guarantee.

(3) MINIMUM WEIGHT. (a) Except as provided in par. (b), not more than 3% of the potatoes in any lot of badger state brand certified seed potatoes may have a weight less than the minimum weight, if any, guaranteed by the seller.

(b) If a seller guarantees a minimum weight under par. (a) of at least 5 ounces, not more than 5% of the potatoes in the graded lot may have a weight that is less than the guaranteed minimum.

(4) MAXIMUM SIZE. Not more than 10% of the potatoes in any lot of badger state brand certified seed potatoes may have any of the following:

(a) A weight of more than 12 ounces or, if the seller guarantees a different maximum weight, the guaranteed maximum.

(b) A diameter that exceeds the maximum guaranteed by the seller, if the seller guarantees a maximum diameter.

(5) DEFECT TOLERANCES. A lot of badger state brand certified seed potatoes may not contain any of the following defects in excess of the following tolerances, specified as a percentage by weight of affected potatoes compared to weight of potatoes in the lot:

(a) Serious damage from hollow heart: 10%.

(b) Damage from defects listed in s. ATCP 156.11 (1) or (2), other than sprout damage: 5%.

(c) Sprout damage: 10%.

(d) Late blight tuber rot: 1%.

(e) Serious damage from dry- or moist-type fusarium tuber rot: 2%.

(f) Damage from freezing, soft rot or wet breakdown: 0.5%, except that the tolerance is 1% if the potatoes are inspected en route to or at the point of receipt by the potato buyer.

(6) SALE IN BAGS OR TOTES. The following requirements apply whenever badger state brand certified seed potatoes are sold in bags or totes, as certified seed potatoes:

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

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

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

1. The words “Wisconsin Certified Seed Potatoes Badger State Brand.”

2. The potato variety.

3. The year in which the potatoes were grown.

4. The name and address of the seed potato grower.

5. The classification assigned by the college under s. ATCP 156.05.

(d) Each bag or tote shall bear a net weight statement, and any potato size guarantees under subs. (2) to (4) that differ from standard sizes specified in subs. (2) to (4).

(e) Each bag, if hand sewn, shall be sealed with a seal issued by the department.

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

(7) SALE IN BULK. The following requirements apply whenever badger state brand certified seed potatoes are sold in bulk, as certified seed potatoes:

(a) The potatoes shall be sold in a sealed container or conveyance that is thoroughly cleaned and disinfected before each use as a seed potato container or conveyance.

(b) Each container or conveyance shall bear all of the following:

1. A blue tag, issued by the college, that complies with sub. (6) (c).

2. A seal issued by the department under s. ATCP 156.10 (2) (b).

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

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.13 Yellow tag grade. (1) GRADE REQUIREMENTS. To qualify for the yellow tag grade, a lot of certified seed potatoes shall meet all of the following requirements:

(a) The college shall certify the lot under subchapter II.

(b) All potatoes in the lot shall be of the same variety, subject to a tolerance of 0.25% for varietal mixture. The tolerance shall be applied according to s. ATCP 156.10 (6).

(c) All potatoes in the lot shall comply with size standards in subs. (2) to (4), subject to tolerances specified in subs. (2) to (4). Tolerances shall be applied according to s. ATCP 156.10 (6).

(d) The lot may not include any seriously misshapen potatoes, except that a lot containing seriously misshapen potatoes may qualify for the yellow tag grade if the buyer states in writing that the seriously misshapen potatoes are acceptable. The department shall review the buyer’s statement before making the grade assignment.

(e) No potatoes in the lot may be frozen at the time of inspection.

(f) The lot shall be free of all the following:

1. Blackheart.

2. Bacterial ring rot.
3. Nematode or tuber moth injury.
4. Defects in excess of tolerances specified in sub. (5). Tolerances shall be applied according to s. ATCP 156.10 (6).

(2) MINIMUM DIAMETER. (a) Except as provided in par. (b), not more than 3% of the potatoes in any lot of yellow tag grade certified seed potatoes may have a diameter smaller than 1½ inches or, if the seller guarantees a different minimum diameter, the minimum diameter guaranteed.

(b) If a seller guarantees a minimum diameter under par. (a) of at least 2¼ inches, not more than 5% of the potatoes in the lot may have a diameter that is smaller than the guarantee.

(3) MINIMUM WEIGHT. (a) Except as provided in par. (b), not more than 3% of the potatoes in any lot of yellow tag grade certified seed potatoes may have a weight less than the minimum weight, if any, guaranteed by the seller.

(b) If a seller guarantees a minimum weight under par. (a) of at least 5 ounces, not more than 5% of the potatoes in the graded lot may have a weight that is less than the guaranteed minimum.

(4) MAXIMUM SIZE. Not more than 15% of the potatoes in any lot of yellow tag grade certified seed potatoes may have any of the following:

(a) A weight of more than 12 ounces or, if the seller guarantees a different maximum weight, the guaranteed maximum. If the maximum weight under this paragraph is not more than 12 ounces, not more than 5% by weight of potatoes in the lot may exceed 16 ounces.

(b) A diameter that exceeds the maximum guaranteed by the seller, if the seller guarantees a maximum diameter.

(5) DEFECT TOLERANCES. A lot of yellow tag grade certified seed potatoes may not contain any of the following defects in excess of the following tolerances, specified as a percentage by weight of affected potatoes compared to weight of potatoes in the lot:

(a) Damage from defects listed in s. ATCP 156.11 (1) or (2): 20%, except as provided in pars. (c) and (d).

(b) Sprout damage: 10%.

(c) Scab damage: 10%.

(d) Late blight tuber rot: 1%.

(e) Damage from freezing, soft rot or wet breakdown: 1%.

(6) SALE IN BAGS OR TOTES. The following requirements apply whenever yellow tag grade certified seed potatoes are sold in bags or totes, as certified seed potatoes:

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

(b) No brand, other than the seller's trademark, may appear on the bag or tote without the department's approval.

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

1. The words "Wisconsin Certified Seed Potatoes Yellow Tag Grade."

2. The potato variety.

3. The year in which the potatoes were grown.

4. The name and address of the seed potato grower.

5. The classification assigned by the college under s. ATCP 156.05.

(d) Each bag or tote shall bear a net weight statement, and any potato size guarantees under subs. (2) to (4) that differ from standard sizes specified in subs. (2) to (4).

(e) Each bag, if hand sewn, shall be sealed with a seal issued by the department.

Note: "Sell," as defined in s. ATCP 156.01 (30), means "to contract or offer for sale, hold for sale, transport or distribute for sale, or advertise or label for sale."

(7) SALE IN BULK. The following requirements apply whenever yellow tag grade certified seed potatoes are sold in bulk, as certified seed potatoes:

(a) The potatoes shall be sold in a sealed container or conveyance that is thoroughly cleaned and disinfected before each use as a seed potato container or conveyance.

(b) Each container or conveyance shall bear all of the following:

1. A yellow tag, issued by the college, that complies with sub. (6) (c).

2. A seal issued by the department under s. ATCP 156.10 (2) (b).

Note: "Sell," as defined in s. ATCP 156.01 (30), means "to contract or offer for sale, hold for sale, transport or distribute for sale, or advertise or label for sale."

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.14 Badger state foundation brand.

(1) GRADE REQUIREMENTS. To qualify for the badger state foundation brand, a lot of certified seed potatoes shall meet all of the following requirements:

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

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

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

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

(b) Each bag or tote may be labeled with the words "Badger State Brand." No other brand, other than the seller's trademark, may appear on the bag without the department's approval.

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

1. The words "Wisconsin Certified Seed Potatoes Badger State Brand."

2. The word "Foundation" overprinted on the face of the tag.

3. The potato variety.

4. The year in which the potatoes were grown.

5. The name and address of the seed potato grower.

6. The classification assigned by the college under s. ATCP 156.05.

(d) Each bag or tote shall bear a net weight statement.

(e) Each bag or tote shall bear a statement of potato size guarantees if the guaranteed sizes differ from the sizes specified for yellow tag grade potatoes in s. ATCP 156.12 (2) to (4).

(f) Each bag, if hand sewn, shall be sealed with a seal issued by the department.

Note: "Sell," as defined in s. ATCP 156.01 (30), means "to contract or offer for sale, hold for sale, transport or distribute for sale, or advertise or label for sale."

(3) SALE IN BULK. The following requirements apply whenever badger state foundation brand seed potatoes are sold in bulk, as certified foundation seed potatoes:

(a) The potatoes shall be sold in a sealed container or conveyance that is thoroughly cleaned and disinfected before each use as a seed potato container or conveyance.

(b) Each container or conveyance shall bear all of the following:

1. A blue tag, issued by the college, that complies with sub. (2) (c).

2. A seal issued by the department under s. ATCP 156.10 (2) (b).

Note: "Sell," as defined in s. ATCP 156.01 (30), means "to contract or offer for sale, hold for sale, transport or distribute for sale, or advertise or label for sale."

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.15 Yellow tag foundation grade.

(1) GRADE REQUIREMENTS. To qualify for the yellow tag foundation grade, a lot of certified seed potatoes shall meet all of the following requirements:

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

(b) The lot shall comply with all requirements applicable to yellow tag grade certified seed potatoes under s. ATCP 156.13.

(2) SALE IN BAGS OR TOTES. The following requirements apply whenever yellow tag foundation grade seed potatoes are sold in bags or totes, as certified foundation seed potatoes:

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

(b) Each bag or tote may be labeled with the words "Yellow Tag Grade." No other brand, other than the seller's trademark, may appear on the bag without the department's approval.

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

1. The words "Wisconsin Certified Seed Potatoes Yellow Tag Grade."

2. The word "Foundation" overprinted on the face of the tag.

3. The potato variety.

4. The year in which the potatoes were grown.

5. The name and address of the seed potato grower.

6. The classification assigned by the college under s. ATCP 156.05.

(d) Each bag or tote shall bear a net weight statement, and any potato size guarantees under s. ATCP 156.13 (2) to (4) that differ from standard sizes specified in s. ATCP 156.13 (2) to (4).

(e) Each bag, if hand sewn, shall be sealed with a seal issued by the department under s. ATCP 156.10 (2) (b).

Note: "Sell," as defined in s. ATCP 156.01 (30), means "to contract or offer for sale, hold for sale, transport or distribute for sale, or advertise or label for sale."

(3) SALE IN BULK. The following requirements apply whenever yellow tag grade foundation seed potatoes are sold in bulk, as certified foundation seed potatoes:

(a) The potatoes shall be sold in a sealed container or conveyance that is thoroughly cleaned and disinfected before each use as a seed potato container or conveyance.

(b) Each container or conveyance shall bear all of the following:

1. A yellow tag, issued by the college, that complies with sub.

(2) (c).

2. A seal issued by the department under s. ATCP 156.10 (2) (b).

Note: "Sell," as defined in s. ATCP 156.01 (30), means "to contract or offer for sale, hold for sale, transport or distribute for sale, or advertise or label for sale."

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.16 Misrepresentations. No person may do any of the following in connection with the sale of potatoes:

(1) Represent the potatoes as Wisconsin graded seed potatoes unless the potatoes are graded, handled and accurately labeled according to this subchapter.

(2) Misrepresent the grade of certified seed potatoes, or the basis for that grade.

Note: Section ATCP 156.16 is adopted under authority of s. 100.20(2), Stats. The department may prosecute fraudulent misrepresentations of grade pursuant to s. 100.20(6) or 100.26, Stats. A buyer who suffers a monetary loss because of a fraudulent misrepresentation of grade may bring a private court action for double damages, costs and attorney fees, pursuant to s. 100.20 (5), Stats.

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.

ATCP 156.17 Review of grading decisions.

(1) REQUEST. A person adversely affected by a department grading decision under this subchapter may make a written request for department review of that decision.

(2) MEETING. (a) If the department receives a written request under sub. (1), a department representative shall hold an informal meeting with the requester. The department shall hold the informal meeting within 30 days after it receives the written request, unless the requester agrees to a later meeting date. The meeting may be held in person or by telephone.

(b) At the informal meeting under par. (a), the department may explain the basis for its decision. A requester may also present information or arguments related to the decision.

(3) CONTESTED CASE. If a disputed matter under sub. (1) is not resolved after a meeting under sub. (2), the affected person may request a contested case hearing before the department, pursuant to ch. 227, Stats., and ch. ATCP 1. The person shall make the request under s. ATCP 1.06. The department shall grant or deny the hearing request as provided in s. ATCP 1.06 (3).

History: CR 06-085: cr. Register April 2007 No. 616, eff. 5-1-07.