



Office Memorandum

DATE: 11/22/10

TO: Kim Gunderson
Legislative Reference Library

FROM: Carol Milligan 
Commissioner's Office

PHONE: 651-201-6606

SUBJECT: **Submittal of Statement of Need and Reasonableness**

As required by Minnesota Statutes, sections 14.23, enclosed is the Statement of Need and Reasonableness for amendments to rules governing Seed potatoes. The Notice of Intent to Adopt Rules and the rules will be published in the *State Register* on 12/6/10.

Please feel free to call me if you have any questions.

MINNESOTA DEPARTMENT OF AGRICULTURE
Plant Protection Division

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Rules Governing Seed Potato Certification; Minnesota Rules Parts 1510.2310, 1510.2320, 1510.2330 and 1510.2355 and Repeal of Parts 1505.0610-1505.0680; 1505.0730-1505.0750; and 1505.1300-1505.1450

I. INTRODUCTION:

The subject of this rulemaking is the proposed adoption of amendments to the rules governing seed potato certification. The purpose of the amendment is to alter generational descriptions and disease tolerances and to allow for interstate shipment of a third grade of seed potatoes. It is reasonable to allow shipment of White Tag potatoes out of state because the potato industry is evolving into a more individual marketing orientated industry. There are many niche varieties now being raised with limited acreages and sold all across the United States and Canada. The White tag grade was developed for intrastate sale of small early generation seed material that had limited quantities. The "White Tag" grade is the third grade in our system. The parts being repealed are obsolete because the statutory authority for the rule has been repealed, the rules refer to statutes that have been repealed, and the rule governed an activity that has been preempted by the federal government. The statutory authority to amend and repeal these rules is M.S. 14.05, subd. 1; 18.79, subd. 4; 21.113 and 21.118. This statement was made available for public review on November 22, 2010.

II. DESCRIPTION OF CLASSES OF PEOPLE AFFECTED BY THE RULES.

The classes of people affected by the proposed rules are seed potato growers and seed potato brokers. The classes of people who will bear the cost of the proposed rules are seed potato growers and seed potato brokers. The classes of people who will benefit from the proposed rules are seed potato growers and seed potato brokers.

III. PROBABLE COST TO THE AGENCY AND EFFECT ON REVENUE.

There are 33 seed potato growers in Minnesota. It is estimated that the average grower will spend \$60 for white tag certification for a total additional revenue of approximately \$2000. The inspections will take place in conjunction with certification currently taking place and will cost the department little more to conduct.

IV. DETERMINATION OF A LESS COSTLY OR LESS INTRUSIVE METHOD.

It has been determined that there is no less costly or intrusive method of achieving the purpose of the proposed rules.

V. DESCRIPTION OF ALTERNATIVE METHODS.

The department considered no alternative methods.

VI. PROBABLE COST OF COMPLYING.

Seed potato growers may choose the option of marketing their potatoes under the new proposed "white tag" certification. Growers may chose to sell potatoes not previously eligible as certified free from disease. This crop will also now be eligible for federal crop

insurance. Tags are \$.025 each, and the average grower will spend approximately \$60.00 per year.

The proposed rules were submitted to the Department of Management and Budget for consultation on the fiscal impact and benefit of the proposed rule on local units of government. Comments from the Department of Management and Budget are attached.

In accordance with M.S., sec. 14.127 the agency has determined that the cost of complying with the rule will not exceed \$25,000 for a business with less than 50 people or a city with less than 10 full time employees because costs associated with the proposed rule change are not going to change and are only technical in nature.

VII. PROBABLE COSTS OR CONSEQUENCES OF NOT ADOPTING THE RULE.

The probable costs or consequences of not adopting the proposed rule for affected regulated industry, governmental units or individuals will be that Minnesota seed potato growers will not be allowed to sell the same sizes and classes of seed potatoes as other states. This, coupled with the difference in generational descriptions and varying disease tolerance levels, puts them at a competitive disadvantage with other states that currently allow the use of seed potatoes in the category currently prohibited in Minnesota and seed potatoes described differently in other states.

VIII. DIFFERENCES BETWEEN FEDERAL AND STATE REGULATIONS.

There are no applicable federal rules.

IX. PERFORMANCE BASED REGULATORY SYSTEMS.

In developing the rules, the department considered and implemented the legislative policy supporting performance-based regulatory systems by reviewing the existing rules and adapting changes to reflect a harmonized function and description, as used by other state's regulatory programs.

X. EFFORTS TO PROVIDE NOTICE TO PERSONS TO BE AFFECTED BY THE RULE.

The rules and notice of intent to adopt these rules without a public hearing and the proposed rules will be sent to the Seed Potato Growers Association.

XI. EFFECT ON LOCAL GOVERNMENT ORDINANCES

In accordance with M.S., sec. 14.128 the department has determined that the rules will not require any local government to adopt or amend an ordinance or regulation to comply with the proposed rule because there are no local government regulations for seed potato certification.

XII. NEED FOR AND REASONABLENESS FOR THE PROPOSED RULE:

1510.2310

Subp. 1 This change simply clarifies the rule parts being addressed.

1510.2310, Subps. 4 and 5; 1510.2320, Subps. 2 and 3. 1510.2330. Subps. 2-7

The amendments to these parts are necessary to make the terms used for categories of seed potatoes in Minnesota consistent with other states. The new terms are consistent

with the standard terms developed by The National Potato Council, a non-profit trade association, and commercial producers across the country.

The amendment is reasonable because it facilitates interstate sales of the state's seed crop and is supported by industry. The proposed change was unanimously endorsed at the 2010 meeting of the Minnesota Certified Seed Potato Growers Association.

1510.2330, Subps. 1, 11 and 12

Changes to Subp. 1 A (2) and C, reflect the need to address a name change to the bacterial disease formerly known as *Erwinia carotovora*, to the new scientifically correct name, *Pectobacterium atrosepticum* ssp *Atrosepticum carotovora*.

Changes to Subp. 11, Table 1 and Subp. 12, Table 2, reflect the changes to generational descriptions, identified throughout this document, to bring a level of harmonization to the seed potato generational descriptions and to adopt disease tolerance levels that match those less restrictive tolerances of other states. The changes to the disease tolerance levels are reasonable because they reflect national standards that are used to certify seed potatoes across international borders, and they are based on risk and measurement standards which do not compromise the integrity of Minnesota seed stock.

1510.2355, Subps. 2 and 4

Subp. 2 B, offers expanded options for "Blue" tag, or premium grade, certification of oversize seed potatoes because the industry now has the ability to use control agents which limit disease in seed potatoes that are cut before planting. Allowing contracts for and certification of potatoes outside of the traditional size limits is necessary to allow Minnesota farmers the same opportunity as other states to meet market demand. Current seed treatment options that control disease make it reasonable to allow buyers and sellers of seed to mutually agree to a sale that was previously prohibited.

The sentence stricken in Subp. 4 allows white tag seed potatoes, which is the lowest grade, to be certified for interstate shipment. This change is necessary to allow Minnesota's farmers the same marketing opportunities as other states. Most potato-growing states allow certification for interstate shipment of this grade. Not only does it open up additional markets, but certification is necessary to make this seed eligible for federal crop insurance.

The amendment is reasonable because the demand for lower grade seed is increasing as technology and farming practices allow farmers to plant potatoes with higher disease tolerance with no adverse affects. Additionally, white tag grade seed potatoes have become acceptable in the market, and interstate sale will not be detrimental to the perception of Minnesota as a producer of quality seed.

Repealer:

1505.0610-1505.0680

These parts are invalid because the statutory authority to adopt these rules was repealed in Laws, 2003, chapter 128, article 7, section 1.

1505.0730-1505.0750

These parts were identified as obsolete in the 2009 report to the governor and legislature. The reference categories and definitions that applied to these parts were removed or placed in statute in Laws 2009, chapter 94, article 1, sections 25-43 and 107.

1505.1300-1505.1450

These parts were identified as obsolete in the 2009 report to the governor and legislature. These rules refer to disposal of foreign refuse which is no longer a responsibility of the department. USDA APHIS preempted the states as part of their regulation of interstate and international movement of potential pests. The statutory authority to adopt these rules was repealed in Laws, 2003, chapter 128, article 7, section 1

ALTERNATIVE FORMAT: Upon request, this Statement can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Carol Milligan at Minnesota Department of Agriculture, 625 Robert St. N., St. Paul, MN 55155-2538, 651-201-6606, and fax: 651-201-6118. TDD users may call the Department of Agriculture at 800-627-3529.

Date: November 3, 2010

To: Carol Milligan, Rules Coordinator
Minnesota Department of Agriculture

From: Alisha Cowell, Executive Budget Officer

Subject: M.S. 14.131 Review of Proposed Rules 1510 Governing Seed Potato Certification

BACKGROUND

The Minnesota Department of Agriculture (MDA) proposes to revise Minnesota Rules 1510 governing seed potato certification. The proposed amendments to the rules governing seed potato certification alter generational descriptions and disease tolerances, and allow for interstate shipment of a third grade of seed potatoes. Pursuant to M.S. 14.131, the Department has asked the Commissioner of Minnesota Management & Budget (MMB) to help evaluate the fiscal impact and fiscal benefit of the proposed rule on local units of government.

EVALUATION

On behalf of the Commissioner of MMB, I reviewed the proposed rules and related Statement of Need and Reasonableness (SONAR). My evaluation is summarized below:

1. The proposal, which aims to match the national standards for generational descriptions and tolerance levels of seed potatoes, will affect seed potato growers and brokers. By certifying the third, "White Tag" grade, Minnesota seed potato growers will be allowed to sell the same sizes and classes of seed potatoes as other states, thereby giving Minnesota the same opportunity to compete to meet market demand. The amendment is also necessary to make the seed eligible for federal crop insurance.
2. According to MDA, the rule change will not significantly affect revenue. With 33 seed potato growers in Minnesota, it is estimated that each will spend \$60 for the white tag certification, which will generate \$2000 in revenue for the agency. Since the inspections will occur concurrently with existing certification inspections, the agency anticipates minimal, if any, additional costs.
3. The amendment also expands the seed treatment options for "Blue Tag," or premium grade, certification of oversize seed potatoes to allow contracts for and certification of potatoes outside of the traditional size limits. This, too, allows Minnesota farmers the same opportunity as other states to meet market demand.
4. Local units of government are not involved in the regulation or certification of seed potatoes.
5. The proposed amendment was unanimously endorsed by the Minnesota Certified Seed Potato Growers Association.

Based on this information, I believe that the Minnesota Department of Agriculture's proposed rule revisions will have no fiscal impact on local units of government.

Cc: Britta Reitan, Budget Division Team Leader