

Michigan Seed Potato Advisory Committee Meeting
September 10, 2018 – Constitution Hall – Lansing, MI
Meeting Minutes

Participants:

Brian Potter	Mike Wenkel	Matt Blakely	Elizabeth Dorman
Jeff Thorlund	Jeff Axford	Brad Deacon	Robin Rosenbaum
Jaime Willbur	Gordon Wenk	Jeff Zimmer	

Gordon Wenk - Welcome and Introductions

Discussed future meetings. Decided that future meetings will be at the Greenstone Farm Credit Services building (MPIC/PGMI) or at the MDARD Geagley lab where this is free parking and ease of access.

Mike Wenkel - Background

In 2012, MDARD signed onto the State National Harmonization Program (SNHP) which set a minimum certification standard for all seed potato producing states.

2012 – audit of Michigan’s program. Although in compliance, MDARD had no authority to specifically require seed coming into the state be certified.

- Used Colorado law and customized it for Michigan – Act 94
 - Recognizing 50% of seed comes from out-of-state
 - Question was how to get to the product being sold to homeowners, etc.
 - Decided it wasn’t a battle to take on with the chamber and retailers.
 - Decided upon the 1 acre minimum.
 - Legislation introduced last winter, went through March 26, 2018.
 - Good support – advisory committee was created to begin working upon rules.

Jeff Zimmer – Advisory Committee Logistics

Members and Terms

- Five members.
- Three-year terms (expire: June 24, 2021).
- Terms are unlimited terms, except commercial potato growers who do not grow seed potatoes, who serve no more than two terms consecutively.
- MDARD Director appoints persons to vacant positions for the remainder of the terms. Persons must represent the same group as the member being replaced.

Member Duties

- Advise the director in establishing rules for the act.
- Help determine the availability of seed potatoes.
- Recommend whether to grant permission to plant uncertified seed potatoes.
- Recommend independent auditors to review records required under Section 5.
- Consult with the director regarding administration and enforcement of the act.

Committee Meetings and Communications

- Manager: Robin Rosenbaum
- Facilitator: Elizabeth Dorman

- Minutes Recorder: Amanda Ewald
- Attendance and Participation:
 - Meetings should be in-person as needed, but can also be accomplished by email. When we need more in depth – will schedule face-to-face meetings.
 - Email appointment for each meeting
 - Reply to appointments
 - Attendance in person, by phone, Skype, etc.
 - Assignments
 - Deadlines regarding decision making, draft submissions, etc.
- Decision making choices:
 - Consensus
 - Majority: 50.1% - **Selected by committee.**
 - Supermajority: 66.7%
- Recommendations to MDARD Director choices:
 - Single recommendation made for each issue.
 - Multiple recommendations made for each issue.

Timeline

- June 2018: Establish Committee and schedule the first meeting.
- September 10, 2018: Hold first meeting.
- September-December 2018: Develop and finalize draft rules.
- January 1, 2019-December 31, 2019:
 - Rulemaking process and completion
 - Regulatory Impact Statement (primarily MDARD)
 - Opportunity for public comment.
- January 1, 2020-December 31, 2020: Outreach and Education
 - Growers with more than 20 acres (approximately 70 growers): PGMI.
 - Growers with 1 to 20 acres (number of growers not known), including organic producers and heirloom variety producers: MSU Extension and the Vegetable Council via Mike Wenkel.
 - Grower Testing and Certification Process for growers with 1 to 20 acres: Dr. Jaime Willbur
 - Additional outreach during the Great Lakes Fruit, Vegetable, and Farm Market Expo.
 - Seed potato producers (approximately 12): Jeff Axford
- January 2021: Implementation. Committee should verify the specific effective date of the rules.

Brad - Since this is an advisory committee it does not have to adhere to the open meetings act so public does not need to be consulted via posting online, etc. Meetings can be done via Skype and email. We can, however, still be subjected to a FOIA request for emails regarding this committee. Rulemaking could be very public.

Robin - Presentation of Seed Potato Laws and Regulations (see PowerPoint presentation)

- Regulation 628 – Seed Potato Certification
- State National Harmonization Plan (SNHP)
 - Specifies minimum standards for all states to abide by for seed potato certification programs. Will help with trade and shipment.
 - Each state must describe in a manual how they will meet the minimum phytosanitary standards.
 - Memorandum of Understanding (MOU) between MDARD and USDA which requires all seed transported into Michigan for commercial production to be certified.

- Michigan was the one of last to meet the above mandate.
- SNHP Agency Responsibilities
 - USDA-APHIS-PPQ
 - MDARD-PPPM
 - Oversight of MSPA Certification activities
 - Audits and records checks
 - Quality manual up to date
 - Diagnostic testing
- Act 94-Seed Potato Act of 2018 – items of discussion needed
 - Sec 2 - cwt seed potatoes need to plant an acre?
 - Sec 2 – Definition of grow?
 - Sec 4 - Must meet SNHP and quarantines. Is there anything extra in MI since no quarantines?
 - Sec 4 – Establish methods for determining whether there are unacceptable levels of disease beyond tolerance levels in Reg 628. Colorado – Bacterial Ring Rot (BRR) and late blight.
 - Sec 5 – Notifications and Records Review – Allow for random selection of 10% potato growers subject to annual records review. How do we know who has not notified the director?
 - Robin and Elizabeth reviewed Colorado law to Michiganize.
 - Sec 7 – Duties of the Director
 - Establish requirements of compliance
 - Allow for random selection of 10%
 - Establish methods of determining whether there are unacceptable levels of disease beyond the tolerances established in Reg 628.
 - Set schedules for fees for services performed by MDARD

Robin – How will the notification (registration?) work? How will we know who has not notified us of their intent to grow potatoes in quantities over an acre? – **needs to be discussed.**

Mike Wenkel – Irish potato is the intent, not sweet potato. **Clarification will be needed in the law.**

Brad Deacon – Rule-making Process

- Administrative Procedures act regarding rule making
- Biggest challenge is generating the content.
- Will work with each division when starting a new rule. Done a lot of pruning over 8 years regarding the rule code with Governor Snyder.
 - As of September 10, 2018 – 45% of rules were purged due to being obsolete.
- Brad will send request for rule making within the next couple weeks since we need permission to start that process.
- Rules are drafted from this group. Once draft is formed it will be submitted to the ORR for legal authority.
- Legislative Service Bureau (LSB) – they will do the final proofs for grammar, punctuation, etc.
- Start with the policy, go back to definitions to make sure they are used.
- Regulatory Impact Statement and cost analysis needs to be completed and submitted to the public.
- This committee needs to let him know of when and how many public hearings are needed.
- He will be the one conducting the public hearings.
- PPPM will publish notice in 3 papers.

- Public Hearing report which goes back to the legislature to evaluate if the new rule seems to be on point.
 - The group will reconvene after this returns to decipher the public opinion and address what was liked, disliked, etc.
- Legislative Service Bureau to check again.
- Joint Committee on Administrative Rules (JCAR) – gave themselves 15 session days per year. Tues, Wed, Thurs.
 - Rare that they meet 5 weeks in a row.
 - Long period of time for this to be hanging out – IMPORTANT to remember
 - This will be important for the timing issue regarding implementation.
- If the rule is done early, it can be in effect when we choose. Everything needs to be done within the 15 session days.
- Brad has 2 Legal interns who can research other state law, etc. and be of assistance. They do not work Monday mornings right now due to class schedules.

Robin R and Elizabeth D – Act 94 – Seed Potato Act Draft Regulation

“Registered Grower” – A person who has notified the director of their intent of growing potatoes in this state in combined seed lots of one acre or more.

– Put in definitions. **This was agreed upon.**

Colorado does not have a definition.

Should we include definition of “grow” or is “plant” sufficient? **(was not decided upon)**

Part 2.0 – Requirements for all certified seed potatoes - Colorado goes into detail regarding tolerances of diseases.

Mike W. – need to reference PA 221 regarding this. **It was agreed that this just needs to be referenced.**

Elizabeth – This part in Colorado regulation is specific to their act and not applicable to MI act because the commissioner was not responsible for specifying quality or disease standards for potatoes.

Part 3.0 – Quality and Disease Standards for Noncertified (MI – Uncertified) Seed Potatoes

Testing history would be of the years they kept it regarding certified seed – they must keep records for 2 years. This applies to both types of exemptions.

Commercial potato exemptions

- Bought certified seed and planting certified seed that crop year
- Bought certified seed from last year that bulked up on and planted the following year

Jeff A – wants to have it state **“proof of certification.”**

Robin – What should we require on an application to plant uncertified seed potatoes?

- It has to be seed that has been part of the certification process at one point
 - Grown prior year with intent to plant the next crop year.
 - Grown current year with the intent to plant that crop year.

- Must have been certified seed prior year with intent to certify and failed, a seed that failed the 5% viral is classified as non-certified class under MSPA.
- Exemptions for the grower carries over to the distributor. Section 3 (1).
 - For example: If a grower fills out an exemption form for a lot coming from out of state – it would carry to that grower where the seed came from – MOU needs to be updated to reflect this.

Mike – BRR is something that cannot be an exception regarding uncertified seed potatoes.

Jeff A – Can screen for other diseases at the same time for BRR for certification.

Part 7.0 – Requirements for seed potatoes planted under Section 4(3) Exemption.

- BRR and late blight minimum testing for zero tolerance.

Jeff A – MSPA doesn't feel that late blight needs to be done since field inspections are done regarding winter grow out so the test isn't necessary.

Mike W – In Colorado, any seed potatoes need to go through late blight lab testing. Does it need to happen for every lot, or could a visual inspection be sufficient?

Jeff A – We need something to specify when the potatoes failed. Need to have gone through the entire process. If they don't make it through the winter test, we should do the 400 tuber test for BRR and late blight to cover over the exemption process (7.1.1)

Can only fail the winter test and be allowable? Could have also failed the shipping point inspection.

Mike W – Could it be a requirement to part 7 that a shipping point inspection occur? Must submit grow out results, testing, reasons it failed the process, etc. for an exemption request.

Form – “List of sources certified seed grower attempted to contact, and the reason need an exemption.”

“This is where I found uncertified seed that I would like to source and the details of that lot.”

Jeff A – Testing is necessary for late blight due to concerns of it slipping by a post-harvest inspection.

MSPA – non-certified seed class still gets a field inspection report.

Mike W – Tuber sample as a condition of the exemption.

Elizabeth – Do we even consider anything that has not been part of the seed certification program for an exemption?

Jeff A – 400 tuber test to test for viruses.

Robin – This exemption is not for a new variety of potato.

Mike W – Those who are growing new varieties of potatoes, should be prepared to go through the same stringent procedures as others. Need to talk about a research exemption, or do they go through the normal process as others? They still need to follow through with the normal process. **Having something in the rules regarding research and exemption, etc. is a necessity.**

Jeff A – “Based on seed lot history the following verbiage may be required.”

...based on seed lot disease history, etc. the following documents..... may be required.

Mike W – Those with the smaller acres, such as 1 -20 acre, are the main ones who plant back with their seeds if we talk about seed attempting to come through the certification process, vs, others who have traditionally planted back in their seeds. (Do we need an exemption for this with the 400 tuber test?).

Jeff A – Need to be tested for necrotic viruses, BRR and late blight for that exemption process. It is important to know when the certification process ended.

Robin – Could we specify if it went this far in the certification process then you need this, and if it went further in the certification process, then you need the following.

Jeff A – Blanket statement regarding the certification process and where it stopped in the process, such as the field inspection or post-harvest inspection would determine what documents are needed in the exemption process.

Mike W – The more detail that they can provide us, the better, for the exemption. We need to break it down to four scenarios regarding the conditions on documents and further lab testing that need to be required.

Specific requirements on documentation needed for exemption based on at what point the seed failed the certification process.

1 Field Inspection - Field inspection report and results

2 Field Inspection – Field Inspection Report and results

Post Harvest Test – Health certificate would have virus level and approved class

Shipping Point Inspection – Grade/standards and viral check at that point (last check)

Documentation provided by your potential source.

Exemption Requirement - If seed lot failed during field inspections – a laboratory test will need to be completed for BRR, late blight, grow out for PVY at the cost of the grower.

Elizabeth – Insufficient volume varieties cannot qualify for exemptions.

Noncertified growers – There will be no testing required for seed growers planting back their seed potatoes next year.

Part 4.0 – Quality and Disease Standards for Noncertified Seed Potatoes

- Those growers who plant back their own seed potatoes
- This was decided to be stricken out.

Part 5.0 – Random Selection of Potato Growers for Records Review

- Robin and Elizabeth – thinking of an online registry to select the 10% and use a random number generating software to determine.
- If a grower doesn't register – that will be a violation.
- Department will conduct records inspections on the selected registered growers.
- Hard copy option possibility for notification.
- Auditor will go to the farm and will fill out a paper audit verification form

- Auditor will also fill out a records form to ensure the grower has all listed records
- Changes to the form were discussed to reference the requirements of keeping documents from one year prior.

Part 8.0 - Fee schedule for services performed by the Department

- Language is like the Plant Pest Law – Act 189.
- Fees are set by policy to allow the department to change those fees as necessary with the okay of the commission and the director.

MOU – to audit where the money is coming from regarding fees to bill the grower.

Part 9.0 – Seed potatoes needed to plant one or more acres

- Commercially Michigan is somewhere between 2,000 – 3,000 (20-30 CWT) means it has exceeded an acre.
- Could use verbiage like “based upon the assumption of ^, you have exceeded an acre. “

Matt would rather us not use CWT to issue a violation and use more of the verbiage of an “acre” status.

How do you convert what is there to something enforceable?

Matt – we can clarify a certain CWT or what an acre is into a thorough definition in an act. More of knowing that information and using that as a red flag point. Needs to be more of the definition of an acre.

Next Steps

Nematodes – do they need to be included?

Appeal process for a denied exemption process? – Brad?

Fines for not registering – this is covered already

Robin and Elizabeth will take information from today and do a more thorough review and check with other states to develop another draft.

Elizabeth – Do you feel this is a useful way to get information done?

Mike W – face to face is important to get through the draft.

MDARD will continue to work on the draft, then the committee will check on it before it goes to LSB, then when it comes back, we will go over again.

Robin – what rule can we establish for compliance? Hoping to establish it further in next draft.

Early November before Thanksgiving as a potential next meeting depending upon how the draft goes.
Greenstone as a meeting place for next meeting.

Meeting adjourned 12 PM