

CHAPTER 4-10 INSPECTION AND GRADING OF POTATOES AND OTHER PRODUCE

4-10-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agent" or "agents", when used to indicate or refer to the commissioner's agent or agents, means the commissioner's deputies, inspectors, representatives, agents, or other assistants as the case requires.
2. "Certified" means the potatoes were randomly inspected and found to meet the rules of the seed department at the time of inspection.
3. "Closed container", or its plural form, means any container which shall be sewed, tied, sealed, glued, nailed, or otherwise closed in a practical or secure manner for handling.
4. "Commissioner" means the state seed commissioner.
5. "Inspection" means a random sample of potato plants or potato tubers were examined according to the rules of the seed department or according to the instructions of the United States department of agriculture, food safety and quality service.
6. "Label", and its various grammatical forms, when used as a noun means any tag, label, brand, or device attached to, or written, stamped, printed, or stenciled on, any container and carrying a term or terms setting forth the grade, condition, quality, weight, variety, or class of the potatoes or other produce therein contained, and when used as a verb means the act or the fact of the use of the aforesaid labeling items and methods in connection with potatoes or other produce, and when used as an adjective, its descriptive meaning must be interpreted from its use and meaning as a noun and verb as herein prescribed.
7. "Other produce" means natural products of the farm, garden, and orchard, exclusive of grain, true seeds, livestock, and livestock products.
8. "Potatoes" means what is commonly called and known as white or Irish potatoes.
9. "Selection" means a subgroup of a variety of potato and is commonly referred to as line selection, clonal selection, or strain selection.
10. "State seed department" means the seed department of the state of North Dakota.
11. "Variety" means a plant group within a single botanical taxon of the lowest-known rank which, without regard to whether the conditions for plant variety protection are met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one characteristic, and considered as a unit with regard to the suitability of the plant grouping for being propagated unchanged. A variety may be represented by seed, transplants, plants, tubers, tissue culture, plantlets, and other matter.

4-10-01.1. Responsibilities of state seed department.

The certification of seed potatoes, establishing of grades for potatoes and other produce, and the licensing of wholesale potato dealers are the responsibility of the state seed department.

4-10-02. Commissioner - Duties - Fees.

The commissioner or the commissioner's designee shall provide the means and direct the inspection, certification, and promotion of quality and assist in the promotion and advertising of seed potatoes. The commissioner shall establish potato and other produce grades for the purpose of making inspection and otherwise providing for the proper handling and marketing of the agricultural commodities defined in this chapter under the classifications of "potatoes" and "other produce", and shall promulgate rules and regulations prohibiting or otherwise regulating the importation or dissemination within the state of particular detrimental insects and diseases. The commissioner shall appoint agents, inspectors, assistants, and clerical aides as the commissioner finds necessary to assist, represent, and act for the commissioner in enforcing the provisions of this chapter and shall fix the salaries of said employees and provide for

operating expenses with the approval of the seed commission within legislative appropriations therefor. Fees for the cost of performance of these duties must be established by the seed commission with the approval of the directors of the North Dakota seed potato growers association.

4-10-03. Rules - Commissioner to adopt.

The commissioner, from time to time, with the approval of the seed commission, shall adopt, publish, and amend uniform rules and definitions not inconsistent with the provisions of this chapter, and shall alter or suspend such rules and definitions whenever necessary in accordance with chapter 28-32 and appeals may be taken as provided in chapter 28-32. Rules and definitions for seed potato certification must be published in bulletin number 49.

4-10-04. Grades for potatoes and other produce.

The following grades for potatoes are designated as official and standard grades for North Dakota, namely: "U.S. Extra No. 1", "U.S. No. 1", "U.S. Commercial", "U.S. No. 2", "North Dakota Certified Seed", and "Unclassified" or such grades as the commissioner shall designate. The U.S. grades must conform in all respects to the requirements and standards specified by the United States department of agriculture, but the grade names may be used with appropriate size designations when specified in regulations by the commissioner, who shall be guided by the regulations and recommendations of the United States department of agriculture. The U.S. grades and standards herein designated are subject to change only if the United States department of agriculture promulgates any new and definite changes, and such changes shall be adopted by the commissioner for use in North Dakota. The North Dakota certified seed grade must conform in all respects to the provisions of the seed laws of this state and the regulations made thereunder, and must be labeled in accordance therewith. Unclassified lots shall include all potatoes not meeting the requirements of any of the foregoing grades. It is optional, however, to use the unclassified labeling on any lot of potatoes. For other produce, the grades which heretofore may have been or hereafter are fixed by the department of agriculture of the United States for such produce are designated as the official standard grades for North Dakota. Inspections of incoming produce may be made and certificates issued on the basis of other applicable states' grades or in accordance with sales contracts.

4-10-05. Labeling, branding, tagging potatoes in closed containers.

1. Every container packed with potatoes grown in North Dakota, being transported, or offered for sale or consignment must bear either by brand, tag, or label, in plain letters and figures, the net weight when packed and correct grade designation. Potatoes being shipped for processing or repacking are exempt of this requirement.
2. When an individual shipment is made from such towns or stations at which regular inspection service is not maintained, and when such shipments cannot be so routed as to be stopped in transit for inspection at a town or station at which inspection service can be provided, or when due to unforeseen circumstances which make it physically impossible for an inspector to perform such inspection, then the commissioner, or the commissioner's agent, may waive the inspection and labeling requirements provided in this section for such individual shipment.
3. The commissioner shall, by regulation, prescribe the general location of the labeling on the container and the minimum and maximum size of the letters and figures used in the labeling of the potatoes as herein provided.
4. After the grade inspection of the potatoes has been completed, if the official inspector finds that they are labeled properly according to the provisions of this chapter, the inspector shall furnish to the shipper or owner of the potatoes a signed certificate indicating that the shipment of potatoes is correctly labeled.
5. A vendor of seed may not alter the label or certificate furnished by the inspector under subsection 4.

6. A person in this state may not sell, offer for sale, transport for sale, or store with intent to sell within this state certified potato seed that is not labeled in accordance with this chapter.

4-10-06. Commissioner's duty to make examination.

The commissioner and the commissioner's agent shall make sufficient investigations and grade inspections to determine whether the provisions of this chapter are complied with properly. The commissioner and the commissioner's agents shall have free access to any private or public premises or structures and the vehicles of any public or private carriers, including sealed or unsealed freight cars, to make examinations or inspections of any potatoes or other produce which are being graded, handled, packed, stored, offered for sale or consignment, exposed for sale, shipped or delivered for shipment, whether the commodities are upon the premises or in possession or custody of the owner thereof or of any person other than the shipper or owner thereof, and may take samples of the aforesaid commodities of sufficient quantity for testing or inspecting.

4-10-06.1. Seed potatoes - Certification requirement.

1. A person may not plant seed potatoes in lots of one acre [.405 hectare] or more, for the purpose of selling the crop to be harvested, unless the seed potatoes:
 - a. Have been certified by the commissioner as meeting the standards of this chapter;
 - b. Have been certified by another state or province having a similar seed potato quality assurance program; or
 - c. Have been field inspected and approved by the commissioner.
2. The commissioner shall permit a North Dakota grower to plant uncertified potatoes grown by the grower, if the grower is within twelve months of having the grower's own certified parent seed potatoes.
3. The commissioner shall permit a North Dakota potato grower to sell or otherwise transfer certified seed potatoes to another North Dakota potato grower. The recipient grower may plant the seed potatoes only for commercial production. The seed potatoes may not be recertified or retained for use in the following production cycle.
4. If the commissioner has reason to believe that seed potatoes meeting the requirements of this section are not available in sufficient quantities to fulfill planting needs, the commissioner may permit the planting of seed potatoes with a higher disease content, provided that bacterial ring rot is not present and that a serious disease threat is not posed.

4-10-06.2. Records.

Every person who plants potatoes on more than one acre [.405 hectare] shall maintain records indicating the acreage [hectarage], varieties, and source of all seed potatoes planted. The records must be available for inspection by the commissioner for a period of two years.

4-10-06.3. Imported seed potatoes - Certification requirement.

All seed potatoes imported into this state for planting purposes by any person from any state, territory, or country must be accompanied by:

1.
 - a. An official grade certificate describing the grade of the potatoes; or
 - b. A health certificate to certify that the lot of seed potatoes was field inspected by an official certifying agency and is similar to the standards established by this chapter for seed potatoes; and
2. Any other document or certificate required for the importation of seed potatoes by the state, province, territory, or country of origin, including test results issued by a laboratory approved by the United States department of agriculture's animal and plant health inspection service.

4-10-06.4. Exported seed potatoes - Certification requirement.

All seed potatoes exported from this state must be accompanied by an official grade certificate describing the grade of the potatoes or a health certificate to certify that the lot of seed potatoes was field inspected by the state seed department.

4-10-06.5. Records.

Every person who plants imported seed potatoes on more than one acre [.405 hectare] of land shall maintain records indicating the acreage [hectarage], varieties, and sources of all seed potatoes planted. The records must be available for inspection by the commissioner for a period of two years.

4-10-07. Official inspection points designated by commissioner.

The commissioner may designate by regulation, as official potato shipment inspection points or areas, any or all points or stations within a county or specified subdivision. The commissioner may refuse to designate any point as an official potato shipment inspection point if the volume of shipments for inspection will not warrant the expense of maintaining inspection thereat.

4-10-08. Shipment of potatoes from inspection point prohibited.

Repealed by S.L. 1981, ch. 92, § 18.

4-10-09. Shipment of potatoes from undesignated points.

Inspection of potatoes may be made at points not designated by the commissioner as official potato shipment inspection points or areas on application of any person, or at the commissioner's option for regulatory purposes, but shipments of potatoes from such points may be made without an inspection.

4-10-10. Potatoes shipped into state - Labeling required - Exception.

Whenever potatoes are shipped into the state from any point outside of the state, the purchaser, vendor, and the person receiving such potatoes shall have the same labeled in accordance with and conforming to the requirements of this chapter for potatoes grown or originating in North Dakota, except that the standardized grades and labeling of potatoes in use at the point of shipment may be permitted by the commissioner.

4-10-11. Inspector to furnish certificate after inspection.

Repealed by S.L. 2007, ch. 57, § 5.

4-10-12. Certificate of inspection evidence of contents.

An official certificate of inspection, when signed by the commissioner or the commissioner's authorized agent, is prima facie evidence that the potatoes or other produce described in the certificate are of the grade, quality, or condition indicated on the certificate at the time inspection was made.

4-10-12.1. Liability - Potato crop quantity and quality.

The state seed commission, state seed department, commissioner and the commissioner's employees, certified seed potato producers, and wholesale potato dealers licensed under chapter 4.1-57 make no expressed or implied warranty of any kind as to the quantity or quality of the crop produced from the seed potatoes or through other produce inspected and certified, including merchantability, fitness for a particular purpose, or absence of disease. The only representation is that the potatoes or other produce were inspected under the rules of the state seed department or United States department of agriculture. The commissioner and the commissioner's employees function and serve only in an official regulatory manner.

4-10-13. Grade inspection - Fees and charges.

Repealed by S.L. 1981, ch. 92, § 18.

4-10-14. Misbranding potatoes and other produce.

No person, either while acting in that person's own behalf or while acting as agent or servant for any other person, shall sell, consign for sale, offer or expose for sale, have in possession or storage for sale, deliver within this state, or convey or cause to be conveyed out of this state, any potatoes or other produce which are mislabeled within the meaning of this chapter or the regulations thereunder, or which are labeled, represented, or advertised falsely in any respect, whether they are in closed containers, open containers, or in bulk regardless of the quantity.

4-10-15. Seizure of potatoes and other produce - Liability.

The commissioner and the commissioner's agents may seize and hold any potatoes or other produce which, according to this chapter, are labeled, branded, marked, or tagged wrongly as to grade, quality, condition, or in any other respect. The potatoes or produce so seized may be held until they are graded or reconditioned to meet the requirements of the grade, or the labeling with which they are marked, or until they are labeled or marked with the grade or essential details as indicated by the official report or certificate of the commissioner or the commissioner's agent. The commissioner and the commissioner's agents are not liable for any loss or damage, or any other costs due to seizure when acting in accordance with the provisions of this chapter and the regulations duly made thereunder.

4-10-16. Refusal to accept shipment of potatoes or other produce.

Repealed by S.L. 1981, ch. 92, § 18.

4-10-17. Cooperation with departments and bureaus.

The commissioner may cooperate with the United States department of agriculture or any bureau or division thereof, and with similar state inspection service departments of the several states, and with any person, with the intent and purpose that the seed certification and the grade inspection service in this state, and any or all of the grade certificates issued on North Dakota potatoes or other produce, must be recognized officially and accepted elsewhere in the United States, and to protect and promote the interests of any and all persons having an interest in the potatoes or other produce grown or handled in this state, and to provide for any necessary joint arrangements therefor.

4-10-18. Fees and collections - Disposition.

All moneys arising from the collection of fees and other charges under the provisions of this chapter must be deposited by the commissioner with the state treasurer and credited to the seed department revolving fund, and shall be disbursed within the limits of legislative appropriations therefrom, upon order of the commissioner, with the approval of the seed commission.

4-10-19. Enforcement - Hearing by commissioner - Application of chapter 28-32.

The commissioner shall enforce this chapter and the rules adopted under this chapter. Except as provided in section 4-10-14, whenever the commissioner is of the opinion that a violation of this chapter or of the rules adopted under this chapter exists, the commissioner shall hold a hearing as provided in chapter 28-32. A person aggrieved by a seizure pursuant to section 4-10-14 may request a hearing pursuant to chapter 28-32. If after the hearing, or without hearing if the person involved fails or refuses to appear, the commissioner decides that there has been a violation of this chapter or the rules and regulations derived therefrom, the commissioner may impose the civil penalty provided in section 4-10-22, or if the commissioner decides that the evidence warrants prosecution, the commissioner shall proceed as provided in this chapter.

4-10-20. Prosecution for violations - Duty of attorney general and state's attorney.

Upon a complaint made by the commissioner, after a hearing as provided in section 4-10-19, alleging a violation of this chapter or of any rule duly adopted under this chapter, the

attorney general, or the state's attorney of the county wherein the case arises, immediately shall cause appropriate legal proceedings to be commenced and prosecuted for the enforcement of the penalties provided in this chapter. No prosecution may be instituted under this section unless the commissioner has held a hearing as provided in section 4-10-19.

4-10-21. Assistance to commissioner.

Any person involved in any way with the handling, transportation, storage, buying, or selling of potatoes and other produce shall cooperate with the commissioner and the commissioner's agents and shall render all possible assistance to them in the enforcement of the provisions of this chapter and the regulations duly made thereunder.

4-10-22. Penalties for violation of chapter.

1. Any person who violates any of the provisions of this chapter is guilty of a class A misdemeanor.
2. Any person who violates any of the provisions of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. Such civil penalty may be adjudicated by the courts or by the state seed department through an administrative hearing pursuant to chapter 28-32.
3. The department may, in accordance with the laws of this state governing injunctions and other process, maintain an action in the name of the state against any person violating any provision of this chapter.

4-10-23. Plant and seed records - Exempt.

The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed inspection, analysis, or testing and germination, purity, variety, or disease determinations conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under this chapter from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.